

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

**ORIGINAL APPLICATION NO.83/2022/EZ  
(I.A. NO.189/2022/EZ)**

**IN THE MATTER OF:**

**1. DILIP KUMAR SAMANTARAY,**  
S/o LingarajSamantara,  
At – Bajtakot, PO – Baunsagarh,  
PS – Ranpur, Dist – Nayagarh

**2. DEEPAK KUMAR ROUTRAY,**  
S/o Rabi NarayanRoutray,  
Aged about 27 years,  
At – Ostapada, PO – Kamaguru,  
Dist – Nayagarh,

**.... Applicant(s)**

Versus

**1. STATE OF ODISHA**  
Represented by Chief Secretary,  
Government of Odisha,  
Lokaseva Bhawan,  
Bhubaneswar

**2. PRINCIPAL SECRETARY**  
Revenue and Disaster Management,  
Government of Odisha,  
Lokaseva Bhawan,  
Bhubaneswar,  
Pin - 751001

**3. ADDITIONAL CHIEF SECRETARY**  
Forest and Environment Department,  
Govt. of Odisha,  
Kharavela Bhawan,  
Bhubaneswar,  
Odisha – 751 001

**4. SECRETARY**  
Ministry of Environment, Forests and Climate Change,  
Indira Paryavaran Bhawan,  
Jorbag,  
New Delhi,  
Pin – 110003

**5. DEPUTY DIRECTOR GENERAL OF FORESTS (C)**  
Ministry of Environment, Forest and Climate Change,  
Regional Office (EZ),  
A/3, Chandrasekharpur,  
Bhubaneswar – 751023

**6. COLLECTOR & DIST. MAGISTRATE, NAYAGARH**

At/PO/Dist - Nayagarh,  
Pin - 752069

**7. TAHASILDAR, RANPUR**

At/PO/PS - Ranpur,  
Dist - Nayagarh,  
Pin - 752026

**8. SUPERINTENDENT OF POLICE, NAYAGARH**

At/PO/PS - Nayagarh,  
Pin - 752069

**9. INSPECTOR IN CHARGE,**

Chandpur Police Station,  
Chandpur,  
Dist - Nayapur,  
Pin - 752024

**10. DIVISIONAL FOREST OFFICER, KHORDHA**

At/PO/PS - Khordha,  
Pin - 752055

**11. MEMBER SECRETARY**

Odisha State Pollution Control Board,  
A/118, Unit - VII, Nilakantha Nagar,  
Bhubaneswar,  
Pin - 751012  
Odisha

**12. REGIONAL OFFICER**

State Pollution Control Board, Berhampur,  
2<sup>nd</sup> Floor, New Division Office,  
IDCO Berhampur Division,  
Industrial Estate,  
Berhampur, Ganjam,  
Pin - 760008

**13. MEMBER SECRETARY,**

State Environment Impact Assessment Authority (SEIAA), Odisha  
Bhubaneswar,  
5RF-2/1, Acharya Vihar, Unit - IX,  
Pin - 751022

**14. THE MEMBER SECRETARY**

Central Pollution Control Board,  
Parivesh Bhawan, East Arjun Nagar,  
Delhi - 110 032

**15. DIRECTOR OF GEOLOGY**

Bhubigyan Bhawan,  
Bhubaneswar, Khordha,  
Pin - 751001

**16. MANAGING DIRECTOR**

Odisha State Cashew Development Corporation Ltd.,  
At/PO - Ghatikia,

Bhubaneswar, Dist – Khordha,  
Pin - 751029

**17. SUSANT KUMAR BARAD**

Lessee of Mayurjhalia Laterite Stone Quarry,  
At/- Srikrushnapur,  
PO – Champagarh,  
Dist – Nayagarh,  
Odisha

**18. AGRAWAL INFRABUILD PVT. LTD.**

Registered Office at 1<sup>st</sup> Floor,  
VR Plaza, Link Road,  
Bilaspur,  
Chhatisgarh - 495011

**Site Office at Malipada, Khordha,**  
Odisha, Pin - 752020

.... Respondent(s)

Date of hearing: 18.04.2023

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

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

For Respondent(s) : Ms. Saswata Patnaik, AGA for R-1-3,6-10,15-16, (in Virtual Mode),  
Mr. Soumitra Mukherjee, Adv. for R-4 (in Virtual Mode),  
Ms. Papiya Banerjee Bihani, Adv. for R-11 & 12 (in Virtual Mode),  
Mr. Apurba Ghosh, Adv. for R-13 (in Virtual Mode),  
Mr. Ashok Prasad, Adv. for R-14,  
Mr. Biranchi Narayan Mahapatra, Adv. for R-17 (in Virtual Mode),  
Ms. Paushali Banerjee, Adv. for R-18,

**ORDER**

1. The allegation in this Original Application is that Respondent No.17, Private Respondent, is the lessee of the Laterite Stone Quarry in question while the Respondent No.18, Agrawal Infrabuild Pvt. Ltd., is the road contractor, engaged for laying six lane of National Highway No.16 from Tangi to Bhubaneswar, (355 Kilometers to 414 kilometers), over a stretch of 60 kilometers road.
2. It is stated that the Respondent No.16, Odisha State Cashew Development Corporation Ltd., has raised cashew plantation in Khata No. 495, Plot No. 1689 over an area of 144.49 acres which is shown as 'Kisam Patita' reserved for 'Gramya Jungle' in Mayurjhalia-Mouza, Ranpur-Tahasil, District-Nayagarh, Odisha.

3. It is also stated that the Respondent Nos. 17 & 18 are mining the plot in question by felling trees and clearing the forest area without obtaining any approval as required under Section 2 of the Forest (Conservation) 1980.
4. Reference has been made to Khatiyani filed at page no. 45 of the Original Application, and it is alleged that the morrum quarrying is being carried on in Plot No. 1689 on a permit of extraction of 2500m<sup>3</sup> of morrum issued by the Tahasildar-Ranpur in favour of the Respondent No.18 on 01.11.2021 without there being any Environmental Clearance or Consent to Operate.
5. It is also alleged that the Environmental Clearance has been granted in favour of the Respondent No.17 for mining of Laterite Stone Quarry on 02.02.2021 over an area of 4 acres for an extraction quantity of 7704m<sup>3</sup>/per annum for a period of five years which will come to 38520m<sup>3</sup> from Plot No. 1689 which is "Patit Kisan Reserved for Gramya Jungle" but the area over which the illegal laterite stone quarrying is being carried on by the Respondent No.17 is 144.49 acres of Plot No. 1689 which is absolutely illegal.
6. In para 7 of the Original Application, it is alleged that the Respondent No.18, Agrawal Infrabuild Pvt. Ltd. has been granted quarry permit for extraction of 2500m<sup>3</sup> of morrum by the Tahasildar, Ranpur, but he has extracted 100 times more than the permissible limit and more than 15 lakhs cubic meters of morrum has been extracted for six laning work of NH-16 by the Contractor and Respondent No.18.
7. The Odisha State Pollution Control Board, Respondent No.11, has filed its counter-affidavit dated 17.09.2022. Along with this affidavit,

an Inspection Report of an inspection carried out on 13.09.2022 has been filed which reads as under:-

**“SALIENT FEATURES OF THE LATERITE QUARRY:**

*M/s Mayurjhalia Laterite quarry, at-Mayurjhalia, Tehsil-Ranpur, Dist-Nayagarh has obtained Environmental Clearance from the State Environmental Impact Assessment Authority (SEIAA), Bhubaneswar vide letter no.271/SEIAA dtd. 02.02.2021 and is valid for the lease period as granted by the lease granting authority. The mining plan of M/s Mayurjhalia Laterite quarry for the period of five years has been duly approved by Deputy Director Geology, Director of Geology, Bhubaneswar on 13.07.2020 over Plot No.1689 under Khata No.495 of Minor Mineral Mine lease area of Ac. 4.0 res or (1.62) Hectares, Mouza- At-Mayurjhalia, Tahasil-Ranpur, Dist-Nayagarh. Lease agreemernt has also executed between Government of Odisha represented by the Tehsildar, Ranpur (Lessor) and Sri Susanta Kumar Barad (Lessee) which is valid for a term of five years i.e. from 2021-22 to 2025-26 over Plot No.1689 under Khata No. 495 of Minor Mineral Mine lease area of Ac. 4.0 res or (1.62) Hectares, Mouza- At-Mayurjhalia, Tahasil-Ranpur, Dist-Nayagarh.*

**CONSENT STATUS OF THE QUARRY:**

*The lessee had submitted complete Consent to Establish online application with adequate CTE fees of Rs.6000/- and also submitted complete Consent to Operate online application adequate CTO fees of Rs.22500/- for the period 2021-22 to 2024-25 with all statutory clearances like Environmental Clearance, approved mining plan from the competent authorities and also executed lease agreement with the Tehsildar, Ranpur which is valid upto 31.03.2026. Based on the above, Consent to Establish under Sec 25 of Water (PCP) Act, 1974 & under Sec 21 of Air (PCP) Act, 1981 was granted vide Office Memorandum No.2354/CTE-1550/2021 dtd.29.07.2021 in favour of M/s Mayurjhalia Laterite Quarry for Excavation / Quarrying of Laterite Stone @ 7704 cum/Annum and Consent to Operate under Sec 25/26 of Water (PCP) Act, 1974 & under Sec 21 of Air (PCP) Act, 1981 was granted vide letter No.2356/CTO-*

2080/2021 dtd. 29.07.2021 valid up to 31.03.2025 for Excavation / Quarrying of Laterite Stone @ 7704 cum/Annum.

The allegation made in the above mentioned O.A. No.83/2022/EZ is that the consent to establish and operate were granted to M/s Mayurjhalia Laterite quarry without carrying out any inspection and proper procedure was not followed for processing of consent to operate application by the CPCB. It is to mention that the procedure which has been uploaded in the website for processing consent to operate application is not applicable for the minor mineral mines. Generally minor mineral mines are auctioned in every 5 years which were earlier operational. Consent to establish is granted based on all required documents and adequate consent fees. However, the mine operates after obtaining valid consent to operate from the Board. Generally no inspection is required before granting of consent to operate as the sources were previously operational. As the lessee has applied for consent to establish and consent to operate application through online, accordingly consent to establish and operate were granted in favour of lessee with subject to strict compliance of the consent conditions.

**OBSERVATIONS:**

Following observations are made during inquiry:

- i. During visit M/s Mayurjhalia Laterite Quarry was found non-operational from the surrounding appearance.
- ii. As ascertain by the Revenue Supervisor, Ranpur and Revenue Inspector, Jhadapada Revenue circle during Inspection that the M/s Mayurjhalia Laterite Quarry is not in operation since June 2022.
- iii. As informed by the Revenue Circle Inspector, Jhadapada the mining activity is carried out within the lease hold area.
- iv. Pillar posting has been carried out around the mining area to demarcate ML area as observed during inspection.
- v. Mayurjhalia village is about 2.0 km away in North direction and Raj-Jankla village is about 1.5 km away from the lease hold area of M/s Mayurjhalia Laterite Quarry.
- vi. No other mine is located within 500 meters from the periphery of the existing mine area.

- vii. A mobile water tanker of capacity 3KL has been engaged by the lessee of mine for regular water sprinkling around the mining area to control fugitive emission.
- viii. Cashew plants observed about a distance of 500 meter from the lease hold area of M/s Mayurjhalia Laterite Quarry in North direction.
- ix. One no. of Morrur quarry was located about a distance of 700 m from the lease hold area of M/s Mayurjhalia Laterite Quarry in west direction which was non operational during the time of inspection.
- x. Topsoil generated from the mining activity has been found stocked outside the lease hold area.

**CONCLUSION & RECOMMENDATIONS:**

*From the above observations, it is noticed that the mining activity is carried out with valid Consent to Operate of the Board. Ambient Air Quality monitoring could not be conducted during inspection as the mine was not in operation. The lessee has obtained statutory clearance like Environmental Clearance, approved mining plan from the competent authorities and also executed lease agreement with the Tehsildar, Ranpur which is valid upto 31.03.2026. However, the solid waste management practices i.e. topsoil adopted by the lessee of M/s Mayurjhalia Laterite Quarry was not in accordance of approved mining plan.*

*In view of the above following recommendations are made:*

1. *Immediate steps shall be taken for disposal of topsoil generated from the mining activity as per approved mining Plan and conditions stipulated in consent order.*
  2. *The mining operation shall be carried out as per approved mining plan and in compliance to conditions stipulated in consent order issued by State Pollution Control Board and in accordance with special conditions stipulated in EC.”*
8. The Collector & District Magistrate, Nayagarh, has filed counter-affidavit dated 06.12.2022, stating therein that in place of 4 acres as against the lease of 6 acres on Plot No.1689, the Respondent Lessee has mined 23.439 acres and a quantity of 53,484.399m<sup>3</sup> of laterite stone and 2,41,768.372m<sup>3</sup> of morrum illegally. In

paragraph 9 of the affidavit, the Collector and District Magistrate, Nayagarh, has also recorded that illegal mining has been carried out by the Opposite Party No.17 and 18.

9. The Collector & District Magistrate, Nayagarh, has filed further affidavit dated 16.04.2023, stating that the Director, Geology, Odisha, had submitted a Detailed Survey Report (DSR) dated 30.11.2022 on the basis of which the Collector and District Magistrate, Nayagarh, has filed his previous affidavit dated 06.12.2022.
10. The Report of the Director, Geology, Odisha, has been filed at page no. 811-816 of the paper book, clearly showing illegal extraction of minor mineral found from the return 'Y' Form as being 13,000.231m<sup>3</sup> out of total minor mineral extraction being 14,067.000m<sup>3</sup>.
11. The Ministry of Environment, Forests and Climate Change, Respondent No.4, has filed affidavit dated 18.08.2022, stating therein that the matter relates to SEIAA, Odisha, which is competent to look into the allegations made in the Original Application and issue show cause notice to the Project Proponents, in case of violation of the conditions of Environmental Clearances.
12. The Central Pollution Control Board, Respondent No.14, has filed affidavit dated 24.08.2022 to the same effect, stating that as per the EIA Notification 2006, the Projects being in Category 'B' SEIAA is the competent authority to issue Environmental Clearance.
13. The Inspector-in-Charge, Chandpur Police Station, has filed affidavit dated 25.08.2022, denying the allegation of connivance with the Tahasildar-Ranpur or of being involved in the illegal quarry mining on Khata No. 495, Plot No. 1689 over an area of



144.49, Mouza-Mayurajhalia under Chandpur Police Station, District-Nayagarh.

14. In para 5 of the affidavit, it is stated that on receipt of information regarding illegal laterite stone mining within his jurisdiction, the following cases have been registered which are as follows:-

(I) "Chandpur PS case No.59 dt. 13.07.2020 u/s-379/411/34 IPC/sec.12 OMMPTS Act/Sec. 51 (1) OMMC Rule has been registered on the written report of informant Rabindra Ku KabiASI of Police PS-Chandpur, Dist-Nayagarh. During course of investigation he has visited the spot, examine the informant and other witnesses and record their statements u/s-161 Cr.P.C. He has arrested the accused persons Rabindra Behera s/o Gola Behera of village Khatia, PS Ranpur, Dist-Nayagarh and accused Siba Prasad Barik s/o-Lt. Gopal Barik of Bherupada, PS Ranpur, Dist-Nayagarh and forwarded them to the Court. He has seized one old 407 mini truck bearing Regd. No.-OR 02 BX 7940 loaded with Laterite stone. After completion of investigation the case has been Charge Sheeted vide Chandpur PS C.S. No-133 dt.29.09.2020 u/s-379/411/34 IPC/sec.12 OMMPTS Act/Sec. 51(1) OMMC Rule.

(II) Chandpur PS case No.97 dt. 16.09.2020 u/s-379/411/34 IPC/sec.12 OMMPTS Act/Sec. 51(1) OMMC Rule has been registered on the written report of informant SI S.S. Horo of Chandpur PS Dist-Nayagarh. During course of investigation the I.O has visited the spot, examine the informant and other witnesses and record their statements u/s-161 Cr.P.C. on 16.09.2020 I.O of this case arrested the accused persons Sapana Parida s/o-Ratnakar Parida of Karadapalla, 2. Prakash nayak s/o-Lt. Paknaj Nayak of village Karadapalla, 3. Bansi muduli s/o-Lt. Naba Muduli of Narsinghpur all are of PS-Ranpur, Dist-Nayagarh and forwarded them to the Court. In this connection one TATA 909 bearing Regd. No-OR – 02 BZ 8957 loaded with 170 nos. of Laterite stone have been seized from the possession of accused. After completion of investigation the case has been Charge

*Sheeted vide Chandpur PS C.S. No.-181 dt.06.12.2020 u/s-379/411/34 IPC/Sec.12 OMMPTS Act/Sec. 51(1) OMMC Rule.*

(III) *Chandpur PS case No.-05 dt. 10.01.2021 u/s-379/411/294/506/353/34 IPC/sec.12 OMMPTS Act/Sec. 51(1) OMMC Rule has been registered on the written report of informant Ramesh Behera ASI of Police Chandpur PS, Dist-Nayagarh. Informant has apprehended 5 persons namely 1. Ramesh Pradhan s/o-Nakula Pradhan, 2.Amrendra Pradhan s/o-Harihar Pradhan both of village Mayurjhalla PS-Chandpur, 3.Sarat Ku Das s/o-Haribandhu Behera 4.Pankaj Behera s/o-Kamadeba Behera of Komaguru, 5.Mantu Bhujabala s/o-Pradip Bhujabala of village Badheisandha Sahi, (Komaguru) all are PS-Jankia, Dist-Khurdha and also seized one Swaraj Tractor bearing Regd. No-OR 02 BJ 8106. During course of investigation the I.O has visited the spot, examine the informant and other witnesses and record their statements u/s-161 Cr.P.C and the case is now under investigation.*

(IV) *Chandpur PS case No-60 dt. 20.04.2021 u/s-379/411/34 IPC/sec.12 OMMPTS Act/Sec. 51 (1) OMMC Rule has been registered on the written report of informant Anjali Saa SI of Chandpur PS, Dist-Nayagarh. During course of investigation the I.O has visited the spot, examine the informant and other witnesses and record their statements u/s-161 CrPC. On 16.09.2020 I.O of this case arrested the accused persons. The I.O has seized one TATA 909 bearing Regd. No-OD 02 V 5288 loaded with 200 laterite stones and one TATA 407 Mini Truck bearing Regd. No-OR 02 BB 6811 loaded with 150 laterite stones. On dt. 26.05.2021 at 11.30 PM he has arrested the accused Anil @ Amrendra Pradhan s/o-Harihar Pradhan of Mayurjhalla, PS-Chandpur, Dist-Nayagarh and forwarded him to the Court. After completion of investigation the case has been Charge Sheeted vide Chandpur PS C.S. No-200 dt.15.12.2021 u/s-379/411/34 IPC/sec.12 OMMPTS Act/Sec.51(1) OMMC Rule the accused persons 1.Anil @ Amrendra Pradhan s/o-Harihar Pradhan of Mayurjhalla, PS-Chandpur, 2.Prasana Singh s/o-Sanyasi Singh of village*

Damasahi, PS-Ranpur, 3.Alok Ku patra s/o-Krushna ChPatra of Hariharpur, PS-Chandpur, 4.Kanhu Chmajhi s/o-Lt. Bansidhar majhi of village Raj-jankia, PS-Chandpur and 5.Kalu @ Akhaya Pradhan s/o-Duryodhan Pradhan of village Mayurjhalia, PS-Chandpur, Dist-Nayagarh.

(V) Chandpur PS case 08 DT 18.01.20, U/S 447/379/34 IPC, r.e section 12 OMM (PTS) Act On the written report of **E.M Susantaku Pati**, Ranpur regd the case against 06 accused persons. Vide C.S no165/dt 25.10.2021 against 06 persons. **P.O-Jankia**

(VI) Chandpur PS case 14 DT 30.01.20 U/S 341/294/232/253379/34 IPC, r.w section 12 OMM(PTS) Act On the written report of **Anil Acharya, Tahasildar** Ranpur regd the case against 07 accused persons. Vide c.s no 51/dt 21.03.2021 against 7 accused persons. **P.O-Srikrushnapur**, Seized-02 vehicle.

(VII) Chandpur PS case 67 DT 21.08.20 U/S 379/411/IPC, r.w section 12 OMM(PTS) Act On the written report of **CASI Kabiraj Behera** of Chandpur P.S regd the case against one accused person. Vide c.s no 180/dt 27.09.2020 against 02 accused persons. **P.O-Kerendatangi Road chhowk.**

(VIII) Chandpur PS case 72 DT 14.08.20 U/S 379/34 IPC, r.w section 12 OMM(PTS) Act On the written report of **S.I SS. Horoof** Chandpur P.S regd the case against 1 accused driver. Vide c.s no 138/dt 30.9.2020 against the accused driver. Seized 1 vehicle. **P.O-Infront of Royal Dhaba.**

(IX) Chandpur PS case 90 Dt 20.09.20 U/S 379/411/34 IPC, r.w section 12 OMM(PTS) Act/51(I) OMMC Rule On the written report of **Sanjayakumar Samantara, OAS, Tahasildar, Ranpur** regd the case against 1 accused person. Vide c.s no. 147/dt 19.10.20 against 01 accused person. Seized One stone cutter machine, **P.O-Kadamjhola Saharsahi, under Patia G.P.**

(X) Chandpur PS case 127 DT 4.11.20 U/S 379/411/34 IPC, r.w section r.w section 12 OMM(PTS) Act/51(I)OMMC Rule On the written report of **Sanjayakumar Samantara, OAS, Tahasildar, Ranpur** regd the case against driver of Tripper. Vide c.s no. 105 dt.26.6.21 against 04

accused persons. Seized-maruti alto and one Tractor.

**P.O-Champatipurchhowk.**

(XI) Chandpur PS case 129 DT 8.11.20 U/S 379/411/468/471/34 IPC, r.w section 12 OMM(PTS) Act/51(I) OMMC Rule On the written report of **Sanjaya Kumar Samantara, OAS, Tahasildar, Ranpur** regd the case against 04 accused persons. Vide c.s no 41/dt 25.02.21 against 11 accused persons. Seized -4 nos. Hawa Truck. **P.O-Old Patrol Pump on NH-16 Near kandhanayagarh.**

(XII) Chandpur PS case 139 DT 10.11.20 U/S 379/411/34 IPC, r.w section 12 OMM(PTS) Act/51(I) OMMC Rule On the written report of **Sanjaya Kumar Samantara, OAS, Tahasildar, Ranpur** regd the case against 03 accused persons. Vide c.s no 03/dt 14.01.21 against 02 accused persons. Seized-One Truck **P.O-Samantarapur, Natim**

(XIII) Chandpur PS case 147 DT 27.12.20 U/S 379/411/34 IPC, r.w section 12 OMM(PTS) Act/51(I) OMMC Rule On the written report of **Sanjaya Kumar Samantara, OAS, Tahasildar, Ranpur** regd the case against 04 accused persons. Seized One Tata Truck and One JCB, **P.O-Kusapalla, Patia G.P Area.**

(XIV) Chandpur PS case 10 DT 30.01.21 U/S 379/411/34 IPC, r.w section 12 OMM (PTS) Act-1989/51(I)OMMC Rule-2016 On the written report of **S.I S.K. Mallik** regd the case against 03 accused person and others and c.s no 217/dt 31.12.2021 against 03 accused persons seized-One TATA truck, Stone cutter machine-2 **P.O-Backside of Kandhanayagarh Patrol Pump(storage Trading).**

(XV) Chandpur PS case 140 dt. 11.10.21 U/S 379/411/294/506/353/34 IPC, r.w section 12 OMM(PTS) Act-1989/51(I) OMMC Rule-2016 On the written report of **Chandra Bariksekhar Tahasildar Ranpur (Enforcement)** regd the case against 7 accused persons. Vide c.s no 212/dt 30.12.2021 against 6 accused persons, Seized-One Power tiller **P.O-Ostapada.**

(XVI) Chandpur PS case 148 DT 4.11.21 U/S 379/411/34 IPC, r.w section 12 OMM (PTS) Act-1989/51(I) OMMC Rule-2016 On the written report of **S.I Anjali Sa** regd the case against 03 persons. Vide c.s no 195/dt 30.11.2021

against 03 accused persons. Seized-One JCB Machine, One Tractor, **P.O\_Gramya Junglener village Ranigadia.**

(XVII) Chandpur PS case 04 DT 08.01.22 U/S 379/411/120-B/34 IPC, r.w section 12 OMM(PTS) Act-1989/51(I) OMMC Rule-2016 On the written report of **S.I Anjali Sa** of Chandpur P.S. Registered the case against 4 accused persons and c.s no 32/dt 30.04.2022 against 4 persons, seized-1 JCB, One Stone Cutter Machine, **P.O-Near Phulachandisahi, Patia.**

(XVIII) Chandpur PS case 36 DT 25.03.22 U/S 379/411/120-B/34 IPC, r.w section 12 OMM(PTS) Act-1989/51(I) OMMC Rle-2016 On the written report of S.I anjali Sa of Chandpur P.S stered the case against 3 accused persons and c.s no 49 dt.31.05.2022 against 3 accused persons(Two stone cutter machine seized), P.O.-**Krushnachandrapur Stone quarry.**

(XIX) Chandpur PS case 61 DT 28.05.22 U/S 379/411/120-B/34, IPC, r.w section 12 OMM (PTS) Act-1989/51(I) OMMC Rule-2016 On the written report of **S.I Anjali Sa** of Chandpur P.S Registered the case against 14 accused persons. Seized-2 vehicle and one stone cuter machine, **P.O-Dungurpari Raj Jankia.”**

15. We find that while in the cases mentioned at Sl. No. I, II, III, IV, IV, the names of accused persons against whom action has been initiated or who have been arrested have been given but thereafter in cases from Sl. No. V to XIX, the names of the accused persons have not been disclosed. The name of the Respondent No.17 does not figure in this list and so far as Respondent No.18 is concerned, the Inspector-in-Charge, has also not disclosed as to who is the proprietor of the said firm, Agrawal Infrabuild Pvt. Ltd. Why their names have not been disclosed certainly does not show bonafide conduct of the Inspector-in-Charge, Chandpur Police Station.

16. The State Environment Impact Assessment Authority (SEIAA), Odisha, Respondent No.13, has filed affidavit dated 25.08.2022.

Para 2 of the affidavit is extracted herein below:-

- i) *“The project proponent Sri Susant Kumar Barad had submitted project proposal along with required documents (Form-1, checklist, pre-Feasibility Report (PFR), District Survey Report (DSR), Environmental Management Plan (EMP, Approved Mining Plan and other documents) for environmental clearance (EC) for Mayurajhalia Laterite Stone Quarry-3 over lease area 1.62 ha/4.00 acreas in village-Mayurjhalia under Ranpur Tahsasil, Dist-Nayagarh with attaching forwarding letter of Tahasildar, Ranpur on dated 11.01.2021 and application received at SEIAA, Odisha on dated 12.01.2021. Based on the documents and clarificatuion submitted by project proponent/concerned Tahasildar and State Level Expert Appraisal Committee (SEAC) appraisal report, the environmental clearance was issued by SEIAA, Odisha vide letter no.271/SEIAA dated 02.02.2021 for the said project.*
- ii) *During environmental clearance application the Divisional Forest Officer (D.F.O.), Khordha has submitted District Level Committee (D.L.C.) report on forest land with mentioned that the said laterite stone quarry bearing Hal status Khata no.495, Plot No.1689, Kissam-Patitia is not coming in D.L.C. list. However, the Sabik Kissam forest land could not be verified as the said status has not been rectified in the joint verification report.*
- iii) *The D.F.O. is the competent authority to verify the status of the land whether it is coming in forest or non-forest land.*
- iv) *Environmental Clearance issued based on information submitted by the project proponent and approved by concerned Tahasildar and SEAC recommendation. Presuming the peripheral situations some stipulated conditions was given in environmental clearance letter to mitigate any adverse environmental impact during mining activities and that should be followed and monitored by the concerned Tahasildar.”*

17. The affidavit of the SEIAA, Odisha, clearly mentions that during consideration of the Environmental Clearance, the Divisional Forest Officer, Khordha, submitted the District Level Committee (DLC)

report on forest land mentioning therein that the said lateriate stone quarry bearing Hal status Khata No. 495, Plot No. 1689, Kissam-'Patita' is not falling in D.L.C. list. However, the Sabik Kissam forest land could not be verified as the said status has not been rectified in the Joint Verification Report.

We are indeed surprised that Environmental Clearance was granted by the SEIAA, Odisha, so casually without insisting for production of the records from the Office of the Divisional Forest Officer concerned to ascertain for itself as to what was the nature of the land in the Sabik Records. This shows clear the lackadaisical and casual attitude of the SEIAA, Odisha, in granting Environmental Clearance.

18. The Divisional Forest Officer, Khordha Division in his counter-affidavit dated 17.09.2022 has stated that the land in question belongs to the Revenue Department and is situated under Ranpur Tahasil of Nayagarh District and since the Plot No. 1689, Khata No. 495, area 144.99 in Mouza-Mayurjhalia, Tahasil-Ranpur, District Nayagarh, was recorded as Kissam 'Patita' the same belongs to the Revenue Department and, therefore, the Tahasildar-Ranpur, granted quarry permit for extraction of morrum in favour of Agrawala Infrastructure Pvt. Ltd. and the Divisional Forest Officer has no knowledge about the lease. It is stated that the said Revenue 'Patita' land has neither been notified under any Forest Act nor handed over to the Forest Department for forestry activities. The said land does not find place in the District Level Committee (DLC) report of Nayagarh District, and no plantation programme has been carried out over the area by the Forest Department and there is no existing vegetation present over the area.

19. The Director of Mines & Geology, Respondent No.15 has filed affidavit dated 05.12.2022, stating therein that the cadastral map of the site in question was received by the Scientist of Odisha Space Application Centre ('ORSAC' for short) on 18.10.2022 for Differential Global Positioning System ('DGPS' for short) survey and accordingly DGPS survey and Total Station survey was undertaken on 30.10.2022 and 01.11.2022 for detection of the extent of illegal mining and based on the same a report was submitted on 11.11.2022 wherein it was found that two areas have been leased out in Plot No. 1689 by the Tahasildar, namely, one is Mayurjhallia for 'laterite quarry' over Ac.4.00 acres and another for 'ordinary earth' quarry comprising over Ac.2.00 acres in the same village. It is also stated that Mining has been done over 23.439 acres against the lease area of 6.00 acres and a quantity of 53,484.399m<sup>3</sup> of laterite and 2,41,768.372m<sup>3</sup> of morrum were excavated illegally from the aforesaid quarries.
20. The Respondent No.17, Private Respondent, in his additional counter-affidavit dated 25.02.2023 has denied the allegations made in the Original Application wherein it is stated that FIR has been lodged against him in the Chandpur Police Station and it is stated that the Respondent No.17 has also lodged an FIR.
21. The Respondent No.18, M/s Agrawal Infrabuild Pvt. Ltd., has filed affidavit dated 27.02.2023, disputing the findings of illegal excavation of morrum. In addition, it is stated that as per the land records, the Plot No.1689 is 'Patita' land i.e., waste land and referring to the document filed as Annexure-1 (page no. 45), to the Original Application, which mentions the land in question as reserved for 'Gramya Jungle' it is submitted that this does not



imply that the land in question is to be treated as forest land. Along with this affidavit, deliberations of the DIGF (FC) Agenda No.6 has been filed as Annexure-B (page 446 of the paper book).

22. Learned Counsel for the Respondent No.18 specifically referred to the para 7, 8 and 9 of the Agenda-6 as also the recommendations of the Forest Advisory Committee (FAC) and submitted that it has been held that recording of 'Gramya Jungle Jogya' cannot be stretched to mean that the said land is recorded as forest land and it has been observed therein that the lands recorded as 'Gramya Jungle' are forest lands whereas 'Gramya Jungle Jogya' lands are lands identified for future forest growth such as - for plantation purpose and are not included in the D.L.C. The recommendation of the FAC on this issue also is that 'Gramya Jungle Jogya Jamin' should not be treated as recorded 'forest land' unless they actually have natural forest growth thereon for the purpose of provisions of Forest (Conservation) Act, 1980.
23. The Respondent No.18, M/s Agrawal Infrabuild Pvt. Ltd., has also filed affidavit dated 11.11.2022, stating therein that it was granted permit on 01.11.2021 valid upto 01.02.2022 for quarrying of 'ordinary earth' and not 'morrum' and, therefore, Environmental Clearance was not required as per the Ministry of Environment, Forests and Climate Change Notification dated 28.03.2020. It is denied that there is cashew plantation on Plot No. 1689, Khata No. 495 i.e., the land in question or that there has been any excess quarrying of ordinary earth.
24. The stand of the Respondent No.17, Private Respondent, in his affidavit dated 04.12.2022 is that he is a lease holder of Laterite Stone Quarry of Plot No. 1689, Khata No. 495, area 4 acres of

Mauyurjhalia Mouza under Ranpur Tahasil of Nayagarh District and that he has a valid Environmental Clearance, Consent to Operate and Consent to Establish. Allegation of illegal stone quarrying has been denied and it is also denied that the land in question is forest land.

25. The stand of the Respondent No.17 further is that the land in question is recorded as 'Patita' in the revenue records and further that there are no trees standing on the said land. It is also stated that as per the Odisha Minor Mineral Concession Rules, 2016, ('OMMC Rules, 2016' for short), Mining Plan has been approved after following due formalities by the State Authorities. Allegations of fraud have been made and it is alleged that the Applicant has not come to the Court with clean hands and case law to that effect has been cited.

26. The Respondent No.17 has filed a further affidavit dated 05.03.2023, bringing on record translated copies of documents which he states have been filed with his affidavit dated 21.01.2023. However, we find that the said affidavit has not been taken on record as it was defective since translated copies Odiya documents had not been filed.

Merely filing the translated copies in the affidavit dated 05.03.2023 does not mean that the affidavit dated 21.01.2023 is taken on record. The Respondent No.17 has not re-filed his affidavit. However, we may refer to these documents (page no. 502 & 504 of the paper book), which show a deposit of Rs. 6,83,160/- (Rupees Six Lakhs Eight Three Thousand One Hundred Sixty Only) made by the Respondent No.17 towards royalty, additional charge, surface rent, dead rent, security deposit and cost of mining plan

etc. and another deposit of Rs.30,81,960/- (Rupees Thirty Lakhs Eight One Thousand Nine Hundred Sixty only) towards royalty, additional charge and surface rent. The said Respondent has also filed copies of complaints made by him against certain accused persons as well as copy of a representation made by some of the villagers of Chandpur to the Tahasildar-Ranpur, complaining of illegal operation of laterite stone quarry and to penalize the offender.

27. Be that as it may, we may refer to the affidavit of the Collector & District Magistrate, Nayagarh, dated 06.12.2022, wherein it is stated that quarry permit for extraction of 2500m<sup>3</sup> and 10,000m<sup>3</sup> of ordinary soil over an area of Ac. 2 out of Ac. 144.99 from Plot No. 1689 of Village-Mayurjhalia, was issued on 01.11.2021 and 13.06.2022 by the Tahasildar-Ranpur, in favour of Respondent No.18 for taking up developmental activities of NH-16. Grant of Environmental Clearance is not required and the Kissam of the land in question though recorded as 'Patita' in the remarks column it is 'Reserved for Gramya Jungle' (page no.45 of the Original Application). It is further stated that Plot No. 689, Kissam-'Patita' reserved for 'Gramya Jungle' corresponds to Sabik Plot No. 626 area Ac. 88.78; Plot No. 770 area Ac. 52.56; Plot No. 626/785 area Ac. 6.17 having Kissam 'Bada Jungle & Chhota Jungle' respectively. Out of these total Sabik Plots, Ac. 110.10 of land was leased out in favour of Odisha State Cashew Development Corporation Limited (OSCDC) for cashew plantation leaving the rest area of Ac. 39.89 which is lying without tree growth till date but having rich minor minerals. It is stated that the Hal Plot No.1689 does not come under D.L.C. It is further stated that Respondent

No.18 has extracted ordinary soil with morrum illegally from the leased out area as well as outside the lease area which came to light after DGPS Survey. The lessee has deviated from almost all the conditions of the lease and the local Revenue Authorities failed to watch and protect the Government property.

28. It is also stated that the then Tahasildar, Ranpur, although competent to issue temporary permit he has not given intimation with regard to issue of permit to the Controlling Authority which was mandatory. The Tahasildar concerned has not followed guidelines before and after issuance of temporary permit which helped the Respondent No.18 in extracting morrum etc. The local authorities remained silent without taking any corrective action but after coming to notice of the authorities after the DGPS survey report, the present Tahasildar has been instructed to impose penalty as per Rule 51 of Odisha Minor Mineral Concession Rules, 2016, and issue demand accordingly. It is further stated that the then Tahasildar, Ranpur, has also granted quarry lease (laterite stone) by creating a new source for an area of Ac. 4.00 out of Ac. 144.99 from the same Plot No. 1689 of Village-Mayurjhallia and from the DGPS Survey it is ascertained that lessee (Respondent No.17) has extracted laterite stone, morrum etc. from the lease area and outside the lease area. It is also stated that the then Tahasildar Sri Jugal Kishore Mishra, OAS, Retd. has issued 108 Y Form Books (each containing 50 Y Forms in triplicate) and Sri Sanjaya Kumar Samantaray, OAS, Ex-Tahasildar has issued 7 Y Form Books in excess which have helped the lessee to loot the minor mineral illegally from outside the source. No register or quarterly return as per OMMC Rules, 2016, was found in the Tahasil Office, thus the

illegal extraction of laterite stone and morrum by the concerned Respondent is established. It is stated that the local Revenue Authorities have not properly supervised the work and not intimated anything to the higher authority (controlling authority).

29. It is further stated in the affidavit that the present Tahasildar has stopped the illegal operation after field verification and has also suspended the temporary permit order issued to M/s Agrawal Infrabuild Pvt. Ltd., Respondent No.18 herein, and has also lodged FIR in the local Police Station, Chandapur and Ranpur to stop the illegal transportation of minor minerals in the night hours. Special Task Force has also been engaged in this regard to safeguard the minor minerals in the area. It is stated that the Tahasildar, Ranpur, has also imposed restraint order over Ac. 37.61 of land under Section 144 CrPC on the illegally operated quarries located over different Khata/Plot in Mayurjhalia and other adjacent revenue villages such as – Barborjhar, Ostapada, Krushnachandrapur, Patia, Raj-Jankia, Ektal, Kataksahar, Kadamjhola, Muktapur, Brundabanbiharipur and Kuspala, and a squad has also been formed comprising of Tahasildar, Ranpur, Additional Tahasildar, Ranpur, IIC, Chandpur, IIC, Ranpur, and Revenue Supervisor, Ranpur Tahasil, to monitor and accelerate the enforcement activities on illegal lifting and transportation of minor minerals from Ranpur Tahasil.

30. The allegation of the Applicants that depth of the quarry is 15 meters instead of permissible depth of 6 meters is denied and photographs have been filed in this regard with the affidavit. It is also denied that except Ac. 110.10 of land, there was no existence of cashew nut plant. It is stated that the Applicant himself has

stated in para 4 that cashew plantation was raised about 40 years ago and due to lease of land the productivity gradually declined.

31. It is further stated that Sri Sanjaya Kumar Samantaray, OAS, Sri Jugal Kishore Mishra, OAS (retd.) and Sri Ashok Kumar Pattanaik, ORS, are squarely responsible for illegal extraction of morrum by Respondent No.18 and have not followed the rules and regulations in this matter. In addition, the concerned Revenue Inspector, Revenue Supervisor and Dealing Assistant/Section Officer are also equally responsible for such lapses.

32. As regards the allegations of excess mining by Respondent Nos.17 & 18 , it is stated that the survey report received from Director of Mines & Geology, Odisha, Bhubaneswar, envisaged that the Respondent No.18 has extracted morrum beyond the permitted quantity and the present Tahasildar shall prepare estimate and issue demand accordingly to collect the same from the said Respondent. It is stated that the quarry permit has been issued for 2500m<sup>3</sup> and 10,000m<sup>3</sup> in favour of Respondent No.18 to extract ordinary soil from Plot No. 1689 over an area of Ac. 2.00 out of Ac. 144.99 and as per Government of India, Department of Environment, Forests & Climate Change, Information and Broadcasting & Heavy Industries and Public Enterprises order dated 15.07.2020, no Environmental Clearance is required for extraction of ordinary soil for developmental works. It is further stated that instead of lifting of ordinary soil, the Respondent No.18 has extracted morrum from different places of the same plot including the lease area beyond the quantity permitted for which action will be taken and the cost with penalty will be realized from him.

33. It is stated that quarry permit issued in Village-Mayurjhalia to Respondent No.18 was particularly for ordinary soil and accordingly the Mining Plan has been approved. In order to avert Environmental Clearance, the Respondent No.18 has 'cunningly' mentioned the requirement of ordinary soil but has lifted morrum from the lease plot as well as outside of the same plot illegally as per the DGPS Survey Report.
34. It is further stated that the survey report of Director, Steel & Mines Department, Odisha, discloses that Respondent No.17 (lessee Sri Sushanta Kumar Barad), has extracted laterite stone beyond the lease area and accordingly the Tahasildar, Ranpur, has been instructed to prepare estimate and send demand to the lessee as per guidelines. It is, however, denied that there was any cashew tree over the lease area.
35. The stand of the Collector & District Magistrate, Nayagarh, further is that Environmental Clearance was granted in favour of Respondent No.17 for laterite stone quarry over an area of Ac.4.00 from Plot NO. 1689 having Kissam-'Patita' and in the remarks column of the said plot it is mentioned that 'Reserved for Gramya Jungle' as per Hal Record of Rights. The Tahasildar, however, did not verify the Sabik Record of Rights and based only on Hal Record of Rights and D.L.C. Report that the land in question is not coming within the purview of the D.L.C., permitted the auction and if he had correlated the Sabik Record of Rights and intimated the same to the higher authority the said quarry would not have been auctioned. It is also stated that the then Tahasildar, Sri Sanjaya Kumar Samantaray, OAS and Sri Ashok Kumar Pattanaik, ORS, Addl. Tahasildar-in-Charge, Tahasildar, have unilaterally taken the

decision for auction of the quarry ignoring the Sabik Record of Rights.

36. The Collector & District Magistrate, Nayagarh, however, denied that 5,000 cashew trees were felled in Mayurjhalia Village due to illegal mining. The OSCDC Ltd. who has planted the cashew nut plants have never alleged felling of cashew plants. It is also denied that the enforcement authority remained silent by collecting nominal amount of penalty or have any nexus with offenders; on the other hand, and it is stated that the S.P., Nayagarh and IIC, Chandapur, have given specific affidavit on initiation of number of criminal cases against the persons unauthorisedly excavated and transported the laterite stone from Chandapur Police Station area. It is denied that timely action has not been taken by the field functionaries at Tahasil level and, in fact, after getting the field survey report from the Director, Mines & Geology, Odisha, the Tahasildar, Ranpur, has been instructed to prepare the estimate of the cost of the minor mineral lifted illegally and impose demand against the lessee.
37. Mr. Sankar Prasad Pani, learned Counsel for the Applicants has referred to the photographs filed as Annexure-1 (page no. 240 to 243) to the Additional Affidavit of the Applicants' dated 19.09.2022 and submitted that the scale map thereof would clearly show that vast forest area has been cleared by the Respondent Nos. 17 & 18 which fact is confirmed in the report of the Collector and District Magistrate, Nayagarh, to the effect that the said Respondents have mined earth and morrum in excess of the mine lease area.
38. Reference has also been made to the Mining Plan of Mayurajhalia Laterite Quarry i.e., the quarry in question, and it is submitted that



referred to Table-1 and Table-2 thereof would show that the thickness of Geological Reserves of Laterite in Table No.1 was 6 meter and Volume of Saleable Rock Mass was 72,900m<sup>3</sup> and the thickness of Mineable Reserve of Laterite in Table No.2 was 6 meter and Volume of Saleable Rock Mass was 54,436m<sup>3</sup>, which is for the entire period of the Mining Plan i.e., five years, and the Quarry Floor Level (RL) at the end of the plan period of the concession at its lowest level would be 36mRL over 0.856 hectare.

39. Mr. Sankar Pani, learned Counsel further submitted that Chapter-8 of the Mining Plan under the hearing 'OMS' provides that the average ore production/annum - 7704m<sup>3</sup>; working days per year - 300 days (on an average); production per day - 7704/300=25.65m<sup>3</sup>; and overall output per man shift (OMS) - 25.68/9 nos.=2.85m<sup>3</sup>, but the Respondent Nos. 17 & 18 have mined mineral far beyond the permissible capacity for which they are liable for payment of Environmental Compensation.
40. The Applicant has filed additional affidavit dated 04.04.2023, giving a list of dates with regard to the auction of the present quarry and other relevant dates with regard to grant of Consents and Environmental Clearance which is as under:-

**"LIST OF DATES IN RESPECT OF R-17"**

<b>08/08/2020</b>	<i>Auction Notice for different quarry sources including the present source in Ranpur Tahasil</i>
<b>02/02/2021</b>	<i>Grant of Environmental Clearance for the laterite Stone Quarry over 4 Acres of land in plot no. 1689 without forest Clearance</i>
<b>24/02/2021</b>	<i>Lease deed executed</i>
<b>25/02/2021</b>	<i>Work order issued by Tahasildar Sanjay Samantara</i>
<b>2/03/2021</b>	<i>Y Form Issued</i>

<b>07/03/2021</b>	<i>Transit Book No. 42030 issued by Tahasildar and the Transit Pass No. 2101490 issued by Lessee prior to grant of CTO</i>
<b>29/07/2021</b>	<i>Consent to Establish granted for the quarry</i>
<b>29/07/2021</b>	<i>Consent to Operate granted on the same day without verifying the site and compliance of CTE conditions</i>
<b>10/08/2021</b>	<i>Google earth image suggesting more than the permitted area under quarry along with three more illegal quarry pits</i>
<b>15/03/2022</b>	<i>DM forwarded the public complaint to Tahasildar but no action taken by the Tahasildar</i>
<b>26/08/2022</b>	<i>Direction by Hon'ble NGT for initiating criminal prosecution against the illegal miners but no action as of now</i>
<b>13/09/2022</b>	<i>Inspection by Regional Office of SPCB and filing of false report</i>
<b>19/09/2022</b>	<i>SEIAA reply under RTI saying no quarterly compliance report submitted even though mining started from March 2021, that is almost 18 months and at least 6 compliance reports are due</i>
<b>31/10/2022</b>	<i>Site Measurement by Director of Mines along with ORSAC team</i>
<b>01/11/2022</b>	<i>Electronic Total Station Survey with a team of 9 members including 5 from ORSAC, two from techno chamber and DDG.”</i>

41. A Joint Committee Report has also been filed as Annexure-A/4 to the affidavit by way of illustration to show computation of Environmental Compensation for laterite @ Rs. 6,00,98,923/- (Rupees Six Crore Ninety Eight Thousand Nine Hundred Twenty Three only) and compensation for morrum @ Rs. 1,24,61,378/- (Rupees One Crore Twenty Four Lakhs Sixty One Thousand Three Hundred Seventy Eight only); the total compensation charge comes to Rs. 7,25,60,301/- (Rupees Seven Crore Twenty Five Lakhs Sixty

Thousand Three Hundred One only) in another case Original Application No.10/2023 where also there were allegations of illegal mining. This Joint Committee Report was submitted computing Environmental Compensation in pursuance of directions given by this Tribunal in Original Application No.10/2023 dated 23.01.2023.

42. The Joint Committee Report is extracted herein below:-

**“Joint Committee verification report on Sahadaghai  
Laterite Quarry in the matter of Dillip Kumar  
Samantray&OrsVrs State of Odisha &Ors of NGT case  
O.A. No.10/2023 order dated 23.01.2023**

.....xxx.....xxx.....xxx.....xxx.....

**2.0 Present Status of the allegation against Stone Quarry:**

*As to the direction of Hon’ble National Green Tribunal, assessment of quantum of extraction was conducted at Sahadaghai by the Inspecting Team consisting of Addl. SP, Khordha, Sub-Collector, Khordha, RO, SPCB, BBSR, Dy. Director Mines and Geology, BBSR, Tahasildar, Tangi, Scientist, SEIAA, BBSR, ACF, Khordha, Assistant Mining Officer, Cuttack, Geologist, Khordha over plot no 712, 713, 714, 716 and 717 on 13.02.2023 at 9.00 AM to calculate the Quantum of laterite and Morrum excavated. The entire excavated area was measured with the help of Total Station and hand-held GPS. From the field verification following observations were made:*

<b>Sl. No.</b>	<b>Issues</b>	<b>Present status</b>
1.	<i>The Respondent No.11 (Sri Patitapaban Barik, lessee/successful bidder of Sahadaghai laterite quarry-A) was carrying on illegal laterite stone quarries</i>	<i>1. Environmental Clearance (EC) was issued for the Sahadaghai Laterite Stone Quarry-A over a lease area of 6.325 acres or 2.56 Ha at village-Sahadaghai, Tahasil-Tangi, Dist-Khordha vide SEIAA, Odisha letter no. 10394/SEIAA dated</i>

	<p>mining in Mouza-Sahadaghai, Tahasil-Tangi, Dist-Khordha, in absence of Consent to Establish (CTE), Consent to Operate (CTO) and prior of Transfer of Environmental Clearance (EC) dated 11.05.2022.</p>	<p>17.12.2020 in favour of Tahashildar, Tangi.</p> <p>2. Transfer of EC from the name Tahasildar, Tangi to Sri Patitapaban Barik (successful bidder) was made vide SEIAA, Odisha letter no. 4522/SEIAA dated 11.05.2022 (Online application no. SIA/OR/MIN/271033/2022).</p> <p>3. Consent to Establish (CTE) was issued on 12.10.2022 by SPCB, Odisha but Consent to Operate (CTO) has not been issued for the said quarry (plot no.719, Khata no.278).</p> <p>4. During inspection it was observed that the EC, CTE and Y form was issued for Sahadaghai Laterite Stone Quarry-A bearing Plot No.719 but no mining activity was observed over the said plot.</p> <p>5. Illegal mining was noticed over plot no. 712, 713, 714, 716 &amp; 717 and during inspection there were no mining activities and no machineries found at that place.</p> <p>6. Based on observation the committee suggested the Mines Dept. to calculate the illegally mined out material (without EC, CTO and approval from Tahasil) in that area and accordingly the concerned Dept. calculated illegally mined out material. The details are mentioned below.</p>
<p>2.</p>	<p>The petitioner alleged that the area in question is full of acacia, cashew and</p>	<p>1. The committee observed that some acacia, cashew and other associate trees were existing over the area and some species were fallen due</p>

<p><i>other associate trees and the said land is forest land recorded in the Sabik Record.</i></p>	<p><i>to illegal mining to clear that area for easily extraction of materials.</i></p> <p><i>2. That area is not coming under forest according to the Hal record. But in Sabik record it is found that Khata No.165, Plot No.384, corresponding to Plot No.712, 713, 714, 716 and 717 comes under Kisam-Chhota Jungle.</i></p>
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### **3.0 Overall observations:**

*The Committee members observed the following at the time of inspection:*

- Environmental Clearance (EC) was issued for the Sahadaghai Laterite Stone Quarry-A over a lease area of 6.325 acres or 2.56 Ha at village-Sahadaghai, Tahasil-Tangi, Dist-Khordha vide SEIAA, Odisha letter no. 10394/SEIAA dated 17.12.2020 in favour of Tahasildar, Tangi.*
- Transfer of EC from the name Tahasildar, Tangi to Sri Patitapaban Barik (successful bidder) was made vide SEIAA, Odisha letter no. 4522/SEIAA dated 11.05.2022 (Online application no. SIA/OR/MIN/271033/2022).*
- Consent to Establish (CTE) was issued on 12.10.2022 by SPCB, Odisha but Consent to Operate (CTO) has not been issued for the said quarry (Plot No. 719, Khata No. 278).*
- EC, CTE issued only for plot no. 719 and no mining activity was observed over the said plot. Illegal mining was noticed over Plot No. 712, 713, 714, 716 & 717 except plot no. 719, Khata no. 278 and the Committee concluded that there was illegal mining occurred and accordingly suggested for calculation of illegally mined out material.*
- The extent of the quarry was identified by concerned RI. Boundary pillars mentioned in the approved mining plan were not found at quarry lease area which reveals that the lessee has intentionally not posted the boundary pillars and operated quarry outside the lease area.*
- The Quarry operation was made at several patches over the plot no. 712, 713, 714, 716 and 717. The quantum of excavation was estimated over these plots. The details of calculation are given in the Table below.*

- The details calculation of illegally mined out material as follows:

1. Table of Calculation: Plot No.712, 713 and 714 (**Laterite**)

Sl. No.	PATCH	Excavated area in Sq.M	THICKNESS in M	VOLUME of excavation in cu.m
1	A	159	3	477
2	B	42	1	42
3	C	143	3	429
			<b>TOTAL</b>	<b>948</b>

2. Table of Calculation: Plot No.716 and 717(**Laterite**)

Sl. No.	PATCH	Excavated area in Sq.M	THICKNESS in M	VOLUME of excavation in cu.m
1	A	1337	2	2674
2	B	515	2	1030
3	C	834	0.5	417
4	D	314	0.5	157
5	E	635	1	635
			<b>TOTAL</b>	<b>4913</b>

3. Table of Calculation: Plot No.712, 713 and 714(**Morrum**)

Sl. No.	PATCH	Excavated area in Sq.M	THICKNESS in M	VOLUME of excavation in cu.m
1	A	159	1	159
2	B	42	1	42
3	C	143	1	143
			<b>TOTAL</b>	<b>344</b>

4. Table of Calculation: Plot No.716 and 717 (**Morrum**)

Sl. No.	PATCH	Excavated area in Sq.M	THICKNESS in M	VOLUME of excavation in cu.m
1	A	1337	2	2674
2	B	515	2	1030

3	C	834	0.5	417
4	D	314	0.5	157
5	E	635	1	635
			<b>TOTAL</b>	<b>4913</b>

Total Laterite excavated : 948+4913 = **5861cu.m**

Total Morrum excavated :344+4913 = **5257cu.m**

**1. Calculation for compensation of Laterite according to the order of Hon'ble NGT in O.A. No.150/2019 and CPCB guidelines:**

Market value of illegally mined Laterite (D) = 5861 x Rs.3080/-  
(Scale of compensation regime towards environmental and ecological damage for laterite was calculated @Rs.3080/- in the meeting held on 17.10.2023)

Annual value of Foregone Ecological value  
D\*/RF=Rs.1,80,51,880/- x 1(RF=1, Sever Impact) =  
Rs.1,80,51,880/-

- Present value of Foregone Ecological values (@ 5% discount rate and over 5 years)

$$PV = \sum_{t=1}^5 (D*RF)/(1+r)^t$$

$$= \sum 18051880/ (1+0.05)^1 + 18051880/ (1+0.05)^2 + 18051880/ (1+0.05)^3 + 18051880/ (1+0.05)^4 + 18051880/ (1+0.05)^5 =$$

$$17192266 + 16373587 + 15593892 + 14851370 + 14139688 =$$

**Rs.7,81,50,803/-**

- Net present value (after netting out market value of illegally mined material) – i.e., Total Compensation to be levied

$$= NPV = PV-D$$

$$= Rs.7,81,50,803.00 – Rs.1,80,51,880.00 = Rs.6,00,98,923/-$$

Compensation Charge in above case for **Laterite:**  
**Rs.6,00,98,923/-**

**2. Calculation for compensation of Morrum according to the order of Hon'ble NGT in O.A. No.150/2019 and CPCB guidelines:**

Market value of illegally mined Morrum(D) = 5257 x Rs.712/-  
(Scale of compensation regime towards environmental and ecological damage for morrum was calculated @Rs.712/- in the meeting held on 17.10.2023)

Annual value of Foregone Ecological value  $D^*/RF=Rs.37,42,984$

• Present value of Foregone Ecological values (@ 5% discount rate and over 5 years)

$$PV = \sum_{t=1}^5 (D^*RF)/(1+r)^t$$

$$= \sum 3742984/ (1+0.05)^1 + 3742984/ (1+0.05)^2 + 3742984/ (1+0.05)^3 + 3742984/ (1+0.05)^4 + 3742984/ (1+0.05)^5 = 3564746 + 3394996 + 3233330 + 3079362 + 2931929 =$$

**Rs.1,62,04,362/-**

• Net present value (after netting out market value of illegally mined material) – i.e., Total Compensation to be levied

$$= NPV = PV-D$$

$$= Rs.1,62,04,362.00 - Rs.37,42,984.00 = Rs.1,24,61,378/-$$

Compensation Charge in above case for **Morrum:**

**Rs.1,24,61,378/-**

**Total Compensation Charge in above case for Laterite and**

**Morrum = 6,00,98,923 + 1,24,61,378 = Rs.7,25,60,301/-.**

**Conclusion:**

A letter no. 2255 dated 20.02.2023 has been issued to Sub-Collector, Khordha for promulgation Section-144 CrPC over the plots of Sahadaghai mouza immediately to stop further illegal mining over the said area and intimate the action taken report within three days.

Another letter no.2252 dated 20.02.2023 has been issued to TahasildarTangi to realize the dues from the lessee and take all possible steps to stop illegal mining in the Sahadaghai mouza under TangiTahasil and intimate the action taken report within three days.”

43. Mr. Sankar Prasad Pani, learned Counsel submits that in the present case even assuming that Environmental Clearance was granted on 02.02.2021 and lease was executed on 24.02.2021, it is quite clear that upto filing of the present Original Application in 2022 and when the direction of the Tribunal issued i.e., on 26.08.2022, to initiate criminal action against the Private Respondent Nos. 17 & 18, if illegal extraction of morrum is established, the period of mining is just about one year and six months and in this period the Respondent Nos. 17 & 18 have



illegally mined 53,484.399m<sup>3</sup> of laterite and 2,41,768.372m<sup>3</sup> of morrum as per the affidavit of the Director, Mines and Geology, Odisha, therefore, while computing the compensation the authorities have also to take into consideration the period during which such illegal mining has taken place.

44. The affidavit of the Collector & District Magistrate, Nayagarh, dated 06.12.2022, clearly shows that the quarry permit was issued for 2500m<sup>3</sup> and 10000m<sup>3</sup> in favour of Respondent No.18 to extract ordinary earth from Plot No. 689 of Village-Mayurjhalia but the said Respondent, as per the report of the Director of Mines & Geology, Odisha, has extracted morrum beyond the permitted quantity. The affidavit further mentions that in order to avoid the mandatory requirement of taking Environmental Clearance, the Respondent No.18 has 'cunningly' mentioned the requirement of 'ordinary soil' in his application for lease but instead has lifted 'morrum' from the lease plot as well as outside the same plot illegally. It is further stated as per the survey report of the Director, Steel & Mines Department, Odisha, the Respondent No.17 has extracted laterite stone beyond the lease area.

45. So far as the question as to whether the land in question is forest land i.e. 'Gramya Jungle' or 'Gramya Jungle Jogya' is concerned, the affidavit of the Collector & District Magistrate, Nayagarh, categorically mentions that though the Hal Plot No.1689 mentions Kissam-'Patita' or reserved for 'Gramya Jungle' corresponding to Sabik Plot No.262 area Ac. 88.78, Plot No.770 area Ac. 52.65, Plot No. 626/785 area Ac. 6.17, having Kissam-'Bada Jungle & Chhota Jungle' respectively, this fact was concealed from the authorities by the then Tahasildar and Additional Tahasildar and if this fact

had been disclosed by the then Tahasildar and Additional Tahasildar, in-Charge Tahasildar and the Hal record correlated with Sabik Record of Rights, such quarry would not have been auctioned. The name of the Tahasildar and Additional Tahasildar have been disclosed in the affidavit as Sri Sanjaya Kumar Samantaray, OAS Tahasildar and Sri Ashok Kumar Pattnaik, ORS, Additional Tahasildar-in-Charge, Tahasildar, respectively and it is categorically stated that these aforesaid persons have unilaterally taken the decision for auction of the quarry ignoring the Sabik Record of Rights.

46. Thus, connivance and collusion of Sri Sanjaya Kumar Samantaray, OAS Tahasildar and Sri Ashok Kumar Pattnaik, ORS, Additional Tahasildar-in-Charge, Tahasildar, in fudging the records and concealing the correct records from the authorities have rendered themselves liable for criminal prosecution for causing financial benefit to the Respondent Nos. 17 & 18 and also causing loss to valuable State resources thereby causing huge loss to the Public Exchequer under the Odisha Minor Mineral Concession Rules, 2016. Section 51 of the OMMC Rules, 2016, reads as under:-

**“51. Penalties:—** (1) (i) *Whenever any person is found extracting or transporting any minor mineral or on whose behalf such extraction or transportation is being made otherwise than in accordance with these rules, shall be presumed to be a party to the illegal extraction or removal of such minor minerals and every such person shall be punishable with simple imprisonment for a term which may extend to two years or with fine which may extend to five lakh rupees or with both and in case of a continuing contravention, with an additional fine which may extend to five thousand rupees for every day during which such contravention continues after conviction for the first such contravention.*

(ii) *The Collector or Sub-Collector or Tahasildar or Director or Joint Director or Deputy Director or Mining Officer or Senior Inspector of Mines or Divisional Forest Officer or Assistant Conservator of Forest or Range Officer or Police Officer not below the rank of Sub-Inspector of Police may seize the minor minerals and its products together with all tools, equipments and vehicles used in committing such offence within their respective jurisdiction.*

(iii) *No court shall take cognizance of any offence punishable under these rules except upon complaint in writing made by such officer or authority mentioned under clause (ii) of this sub-rule having jurisdiction.*

(iv) *Where the offender agrees in writing to compound the offence punishable under these rules, the Tahasildar or Deputy Director or Mining Officer or Divisional Forest Officer, within their respective jurisdiction, shall, either before or after filing the complaint, compound the offence on payment of such sum, as determined by the officers mentioned under clause (ii), not exceeding the maximum amount of fine prescribed under these rules and value of the mineral and other properties seized and on payment of such fine and value, the seized mineral and properties shall be released forthwith: Provided that the accused shall be liable to furnish an undertaking or bond to the effect that he shall not commit such offence in future: Provided further that, in case the offender fails to pay the value of mineral and any other property, such properties shall be confiscated to Government and disposed of through public auction.*

(v) *Where an offence under these rules is compounded, no proceeding or further proceeding, as the case may be, shall be initiated against the offender in respect of the offence so compounded and the offender, if in custody, shall be released forthwith.*

(vi) *If no person claims the mineral and other property, if any, so seized within a period of thirty days, the authority competent to compound the offence may confiscate the same to the State and dispose of the same through public auction.”*

(2) *Whenever any person trespasses into any land in contravention of the provisions of these rules, such trespasser*

may be served with an order of eviction by the Tahasildar or Sub-Collector or Collector or Deputy Director or Mining Officer or Assistant Mining Officer or Divisional Forest Officer or Assistant Conservator of Forest or Range Officer within their respective jurisdiction and such Government Officer, if necessary, may obtain the help of the police to evict the trespassers from the land.

(3) Any mineral, tool, equipment, vehicle or any other things seized under these rules in respect of which complaint has been filed under clause (iii) of sub-rule (1), shall be liable to be confiscated by an order of the court competent to take cognizance of the offence and shall be disposed of in accordance with the directions of such court.

(4) Whenever the person wins, without any lawful authority, any mineral from any land, the Tahasildar or Mining Officer or Deputy Director or Divisional Forest Officer, as the case may be, may recover from such person the mineral so won, or, where such mineral has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority.

(5) If the person committing an offence under these rules is a company, every person, who at the time the offence was committed, was in charge of and was responsible to the company for the conduct of business of the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished as per the provisions of the Act and these rules:

Provided that nothing contained in this sub-rule shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(6) Notwithstanding anything contained in sub-rule (5), where an offence under these rules has been committed with the consent or connivance of any Director, Manager, Secretary or other officer of the company, such Director, Manager, Secretary or other officer shall be deemed to be guilty of that offence and

*shall be liable to be proceeded against and punished accordingly.*

*Explanation:- for the purposes of this rule –*

*(a) “Company” means anybody, corporate and includes a firm or other association of individuals;*

*(b) “Director” in relation to a firm means a partner in the firm.*

*(7) In case of breach of any condition of the lease deed, the Competent Authority may give notice of sixty days to the lessee to rectify the defects within the time specified and if the lessee fails to rectify the defects within the specified time, the Competent Authority may cancel the lease and/or levy a penalty not exceeding rupees fifty thousand.*

*(8) In case of breach of any condition mentioned in rule 37 of these rules and other conditions which the Competent Authority might have specified while granting a quarry permit, the Competent Authority may impose a penalty which may extend to rupees five thousand per day and in the event of continuing contravention, the Competent Authority may cancel the permit and in such case the minerals lying on the land from which the same are extracted shall thereafter become the property of the Government and be disposed of by public auction.”*

47. Learned Counsel for the Applicants, referring to Clause (i) of Sub-rule 51(1) submitted that the said Rule empowers the revenue assessing authority to punish any person found extracting or transporting any minor mineral or on whose behalf such extraction or transportation is being made otherwise than in accordance with the Rules, but shall be presumed to be a party to the illegal extraction or removal of such minor mineral, shall be punishable with simple imprisonment for a term which may extend to two years or with fine which may extend to five lakhs rupees or with both and in case of a ‘continuous’ contravention, with an additional fine which may extend to five thousand rupees for every day during

which such contravention continuous after conviction for the first such contravention.

48. We may also note that if the Respondents have applied for lease for extraction of ordinary soil/earth and under the garb thereof have illegally extracted morrum or laterite stone, as the case may be, they would have to obtain Environmental Clearance for the same.
49. We accordingly dispose of this Original Application with a direction to the State Respondents to initiate criminal proceedings against the Respondent No.17 & 18, Sri Susant Kumar Barad, Lessee of Mayurjhalia Laterite Quarry, and Sri Shashank Agarwal, Director of M/s Agarwal Infrabuild Private Limited, for illegal extraction of ordinary earth/soil/morrum beyond the lease area as per Section 51 of the OMMC Rules, 2016, by lodging FIRs within a period of two months.
50. The State Respondents shall also initiate criminal proceedings against the then Tahasildars Sri Jugal Kishore Mishra, OAS (retd.), Sri Sanjaya Kumar Samantaray, OAS, and the then Additional Tahasildar, in-Charge Tahasildar, Sri Ashok Kumar Pattnaik, ORS, concerned Revenue Inspector, Revenue Supervisor and Dealing Assistant/Section Officer (as disclosed in the affidavit of the Collector & District Magistrate, Nayagarh), for unilaterally taken the decision for auction of the quarry ignoring the Sabik Record of Rights and fudging the records and concealing the correct records from the authorities and causing financial benefit to the Respondent Nos. 17 & 18 and also causing loss of valuable State resources and thereby causing huge loss to the Public Exchequer, as per Section 51 of the OMMC Rules, 2016, by lodging FIRs within a period of two weeks.

51. A further direction is issued to the SEIAA, Odisha, Respondent No.13, to compute Environmental Compensation against the Respondent Nos. 17 & 18 for excess mining of laterite stone/morrum/ordinary earth, bearing in mind the observation made hereinabove, after giving the said Respondents due notice with regard to the methodology of computation and thereafter proceed to recover the same from the Respondent Nos. 17 & 18 in accordance with law without being influenced by Environmental Compensation computed in Original Application No.10/2023 within a period of two months.

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

53. 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 18, 2023,  
Original Application No.83/2022/EZ  
(I.A. No.189/2022/EZ)  
AK

NGT