

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

Original Application No.01/2023/EZ
(I.A. No.10/2023/EZ)

IN THE MATTER OF:

1. Dr. Bibhu Dash

212, Manorama Estate,
Bomikhal, Bhubaneswar,
Dist. Khurda,
Odisha - 751010

2. Mr. Biswanath Dash

Sisupalgarh, Old Town,
Bhubaneswar,
Dist. Khurda,
Odisha - 751001

Versus

.... Applicant(s)

1. Bhubaneswar Municipal Corporation

(Represented through Commissioner),
Vivekananda Marg, Kalpana Square,
Bhubaneswar,
Odisha - 751014

2. Bhubaneswar Development Authority

(Represented through Vice-Chairman),
Akash Shova Building, Sachivalaya Marg,
Bhubaneswar,
Odisha - 751001

3. Commissioner of Police,

Urban Police Department, Bhubaneswar,
Unit V, Bidyut Marg,
Bhubaneswar,
Odisha - 751001

4. State of Odisha General Administration Department,

(Represented through Chief Secretary & Chief Development
Commissioner),
Sachivalaya Marg,
Bhubaneswar,
Odisha - 751001

5. Forest, Environment and Climate Change Department,

(Represented through Additional Chief Secretary of Forest &
Environment),
Kharavel Bhavan,
Bhubaneswar,
Odisha - 751001

6. State Environment Impact Assessment Authority,

(Represented through Chairman),
5RF-2/1, Acharya Vihar, Unit-IX,
OPTCL Colony, Anand Bazar, Bhoi Nagar,
Bhubaneswar,
Odisha – 751022

7. Odisha State Pollution Control Board,

(Represented through Chairman),
ParibeshBhawan, A/118, Nilakantha Nagar, Unit-VIII,
Bhubaneswar– 751012

8. M/s Shuvam Construction Pvt. Ltd.,

(Represented by Mr. Kantilal Patel, Managing Director),
Plot No.564, Vivekananda Marg,
Old Town, Bhubaneswar,
Odisha – 751002

9. Inspector in Charge,

Shree Lingaraj Police Station,
Old Town, Bhubaneswar,
Odisha – 751002

10. Inspector in Charge,

Saheed Nagar Police Station,
Maharaj Hall, Bani Vihar, Near Utkal University,
Bhubaneswar,
Odisha – 751013

11. Mr. Kumarendra Mohapatra,

Corporator, Ward No.31,
Plot No.605, Rasulgarh,
Bhubaneswar,
Odisha – 751010

.... Respondent(s)

Date of hearing: 14.03.2023

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

For Applicant(s) :Dr. Bibhu Dash, in person (in Virtual Mode)

For Respondent(s) :Mr. Rajib Ray, Advocate for R-1,
Mr. Dayananda Mohapatra, Adv. for R-2, (in Virtual Mode),
Mr. Tarun Patnaik, ASC for R-3,4,5,9,10&12 (in Virtual Mode),
Mr. Apurba Ghosh, Adv. for R-6 (in Virtual Mode),
Ms. Papiya Banerjee Bihani, Adv. for R-7 (in Virtual Mode),
Mr. KallolBasu, Advocate a/w Mr. Nilanjan Pal Advocate &
Ms. Radhika Mishra, Adv. (in Virtual Mode) for R-8,

ORDER

1. Dr. Bibhu Dash, the Applicant, is present in person (in Virtual Mode).
2. We have heard the learned Counsel for the parties and perused the documents on record.
3. This Original Application has been filed by the Applicant on the allegation that there is a residential society known as 'Manorama Estate Welfare Society' built in 1996 at Bomikhal, comprising about 250 families most of whom are said to be senior citizens. It is stated that land next to this society is a pond commonly known as 'Sabarsahi Pond' which acts as an aquifer for the waste discharge from the society and other residential units of the society. It is stated that this Plot is marked as 'Adi Jalasaya' (ancient water body), covered under Plot Nos. 401, 402, 403, 405, 369, 370, 371 and part of Plot No. 184, bounded from three sides for access through Plot Nos. 372, 375, 376, 378, 379, 399, 400, 406, 408 and 411, which are owned by the General Administration Department, Government of Odisha. The Applicant No.1 is stated to be residing at Plot No. 373 and accesses the pond through Plot No. 372 (western boundary wall of the house of Applicant No.1).
4. It is stated that the Respondent No.8, M/s Shuvam Construction Private Limited, has started making construction by filling-up the said pond with debri thereby completely disturbing it and damaging the garden created around the pond. It is also stated that the Respondent No.8 has been granted Environmental Clearance by the SEIAA, Odisha, (Respondent No.6), as informed to the Applicant from the minutes of the 130th Meeting of SEIAA, Odisha, held on 24.06.2015.

5. It is also stated that the said Environmental Clearance was granted for five years and from 07.12.2022 the Respondent No.8 had started construction of permanent structures over the foundation of the outer boundary wall of Manorama Estate Welfare Society and depositing the debri in the Sabarsahi Pond leaving no free space between the constructions for rainwater or drains.
6. Considering the allegations made, the Tribunal directed the Collector & District Magistrate, Khurdha, to cause an inspection of the site in question and verify as to whether there was any form of encroachment on the Sabarsahi Pond in question which is stated to have been declared protected water body under the Government of India, Atal Mission for Rejuvenation and Urban Transformation-II (AMRUT-II) Schemes to revive ponds within the Bhubaneswar City limits and also in the State of Odisha under the Urban Infrastructure Development Fund, Smart City Mission Fund, City Investments to Innovate Fund, Integrate and Sustain Project Fund, for which a sum of Rs. 27 crores is stated to have been sanctioned. It was also directed that if the Collector & District Magistrate, Khurdha, on inspection finds that debri has been dumped/poured into any part of the pond or there is any encroachment on the part of the land, he shall take immediate action, civil and criminal, against the offending party.
7. The Tribunal had also permitted the Applicant as well as one representative of the Respondent No.8 to be present at the time of inspection, the date of which would be intimated by the Collector & District Magistrate, Khurdha.
8. The State Pollution Control Board, Odisha, Respondent No.7, in its affidavit dated 03.02.2023 has stated that an inspection of the

premises in question was carried out by the Board on 25.01.2023. An Inspection Report has also been filed as Annexure-R7/1 along with the affidavit which reads as under:-

**“Inspection Report w.r.t. O.A. No.01/2023/Eastern Zone of
Hon’ble National Green Tribunal, Kolkata”**

An Enquiry was conducted by the undersigned to the alleged area w.r.t. O.A. No.01/2023/EZ of Hon’ble NGT, Kolkata on dtd.25.01.2023.

→ Details of the Respondent over the case raised by the complainant:

- a) *Dr. Bibhu Dash (Complainant/Applicant)- (Respondent-1), Plot No.212, Manorama Estate, Bomikhal, Bhubaneswar, Khordha*
- b) *Mr. Biswanath Dash- (Respondent-2), Sisulgarh (Old Town), Bhubaneswar, Dist. – Khordha.*
- c) *Odisha State Pollution Control Board (Respondent-7) Parivesh Bhawan, Unit-8, Bhubaneswar, Dist.-Khordha*
- d) *M/s. Shuvam Construction Pvt. Ltd.- (Respondent-8)*

→ Highlight about the complain Raised by the Applicant:

- a) *The complainant Dr. Bibhu Dash is residing within Monorama Estate, over Plot No.212, Bomikhal, Bhubaneswar, Dist. – Khordha and within that colony also some residential building where nearly 250 families (as has been cited in the application) are residing.*
- b) *It has been stated in the complain that the land adjacent to the M/s Manorama Estate at Bomikhal is a pond in its kisam i.e. known as “Sabarasahi Pond” which act as an aquifer for the waste water discharge from the premises of the residential areas of the society.*
- c) *As has been cited in the raised complain that the said pond (Adi Jala Saya i.e. ancient water body) belong to Plot No.404 to 405, 369 to 371 and part of Plot No.184 bounded from three sides and for access through plot No.372, 375, 376, 378, 399, 400,*

406, 408 & 411 that is being owned by G.A. Department Govt. of Odisha.

d) It has been stated that the Respondent No.-8 i.e. M/s. Suvam Construction Pvt. Ltd. has started (making) construction by filling-up the said pond with dumping of debris and has damaged the garden which was existing around the Pond since long before. Also respondent-8 has started construction of permanent drainage wall over the outer boundary wall of Manorama Estate Welfare Society having no free space between the boundary wall and rain water drain, dumping debris into the Pond.

e) Also the complainant i.e. Respondent-1 has cited that the Pond is acting as active aquifer for entire region over the past century back as all the dwellers of residential building are existing within M/S Manorama Estate area are using bore well water excepting Municipal supply water. So it will damage to the ecology of that area.

→ Persons Present on the alleged site during inspection:-

- a) Dr. Bibhu Dash (Respondent No.-1):- The applicant/complainant,
- b) Sri Pankaj Giri (Respondent No-8):- Representative of M/s. Suvam Construction.
- c) Sri Sudhansu Sekhar Behera- Inhabitant (Permanent) from Netaji Vihar (Lane-1) that is within 200-300 meters radius from the sand filling site.
- d) Sri Sanjay Kumar Singh, Sanatan Sethi, Pramod Ku. Biswal (From Netaji Nagar Vasti site) and other Local people of nearby area of alleged site (at very close proximity).

→ Observation during site inspection:-

Over the issue following officials of Regional Office, State Pollution Control Board, Odisha, Bhubaneswar had conducted a filed enquiry to the alleged site and following are the informations about the issued raised in the case and other information gathered from the Public of surrounding inhabitants/residential areas:-

- a) *The alleged Land is surrounded by some habitation/ Colony areas like Netaji Vihar, Lane-I, Chandni Mata Colony, Manorama Estate, Netaji Nagar Vasti with small hamlets.*
- b) *Within the above cited colony areas a Patch of barren land is existing which has been filled up entirely with sand and the same has been done by M/s. Suvam Construction (As reported by Respondent-1 & Respondent-8) and statement received from inhabitants of nearby colony areas.*
- c) *Towards the backside wall of Respondent No.1 from approx. 10 mtr. Away a very small area was observed with marshy and swampy condition. During inspection Dr. Bibhu Dash (Respondent-1) informed that as the inhabitant of M/s. Manorama Estate housing area they were usually discharging their domestic waste water over to the said barren area as there was no provision of clear drainage system within their colony.*
- d) *No deposit/dumping any household debris (Garbage) were observed on the alleged Land which has already been filled up with soil.*
- e) *There is no existence/observed of clear Pond water system that is physically existing on that barren area/sand filling area.*
- f) *As has been cited in the complain that at present no plantations are existing over that sand filled area which was present during earlier days.*
- g) *The work of concreted was has already been started by M/s. Suvam Construction (Respondent No.8) and has been done entirely over the backside boundary wall of the inhabitants of M/s. Manorama Estate and that structure will facilitate both rain water /waste water drainage pattern of the colony area.*

→Discussion with the Persons Present during inspection are as follows:-

- a) *All the people present during inspection except the Respondent No.1 told that they have never seen any water body (ancient pond) since last 20 years over that barren area.*

- b) *The Respondent No.1, Dr. Dash had opined that in satellite picture it is showing the existence of a Pond (Jalasaya) over the same land.*
- c) *Except the complainant other inhabitants opined in favour of construction of concreted drainage structure for easy flow of domestic sewage and rain water up to the nearby canal system.*
- d) *The representative of respondent No.8 told that BMC has allowed their Company to construct the drainage system all around the plot so as to facilitate the easy flow of Domestic sewage and rain water for which many house owners have provided a pipe connection to the drainage structure through which the waste water which are being generated can easily be discharge into the drain.*

Remark:-

- a) *Since the alleged petition entirely deals with revenue land matter and is not coming under the purview of State Pollution Control Board, Odisha and is coming under the purview of District Administration, Khordha and Bhubaneswar Municipal Corporation, Bhubaneswar.*
- b) *However if Hon'ble Court agreed following orders may be passed such as: entire land to be surveyed properly by the District Administration i.e. in presence of Respondent-1 Administration who will demarcate the area occupied by the construction company, Govt. land over which the Netaji Nagar Vasti is existing since long period, the existence of Adi Jalasaya with concreted pillar structure.*
- c) *Central Ground Water Board Authority may be directed to justify about the existence of aquifer which has been cited in the case matter by the applicant i.e. Respondent No.1 and that part should be restored on ecological point of view.*
- d) *Complete drainage structure is to be developed by the BMC/BDA Authority so as to provide a clear passage of waste water and rain water from nearby colony area to nearby main drain so that no inhabitants will face problem during rain fall.*
- e) *Over the entire area a green belt to be developed under the direct supervision of Urban Local Body during coming monsoon.”*

9. A perusal of the Inspection Report filed by the State Pollution Control Board, Odisha, would show that the land in question is surrounded by colony areas like – Netaji Vihar, Lane-I, Chandi Mata Colony, Manorama Estate, Netaji Nagar Vasti with small hamlets. This land is filled up completely with sand by the Respondent No.8. According to the Applicants the Manorama Estate housing area were discharging their domestic waste water over the said barren area as there was no provision of drainage system within their colony. However, no deposit/dumping of debris (garbage) were observed on the land in question and there was no existence of any pond water system physically existing on the barren land. There were no plantations over the land in question. It is stated that a concrete wall construction has been started by the Respondent No.8 which has been done entirely over the backside boundary wall of Manorama Estate which will facilitate both rain water/waste water drainage pattern of the colony area. All the persons present at the site stated that they had never seen any water body over the area in question in the last 20 years, though in the satellite pictures existence of a Pond (Jalasaya) is shown over the said land.

10. The Inspection Report further mentions that except the complainant, the other inhabitants opined in favour of construction of a concrete drainage structure for easy flow of domestic sewage and rain water upto the nearby canal system. The Respondent No.8 also indicated that the Bhubaneswar Municipal Corporation ('BMC' for short) has allowed their company to construct a drainage system all round the plot so as to facilitate easy flow of domestic sewage and rain water forthwith for which many house owners

have provided a pipe connection to the drainage structure through which waste water which is being generated can easily be discharged into the drain.

11. Counter-affidavit dated 11.03.2023 has been filed by the Respondent No.8, M/s Shuvam Construction Pvt. Ltd., stating therein that the construction project in question is being executed by a partnership firm in the name and style of M/s BC Constructions. The Project is a residential colony to be built over Plot Nos. 372, 375, 392 to 400, 406, 531, 538, 542, 543, 1051, consisting of 28 revenue plots located at Mouza-Bomikhal Rasulgarh Square, Tahasil-Bhubaneswar, District-Khordha, over land measuring 14,144.85 sq. mtrs. (3.49 acres) with built-up Project area of 1,15,568.68 sq. mtrs.
12. In para 10 of the affidavit, it is stated that an inspection was carried out by the Collector and District Magistrate, Khurdha, in terms of the order of the Tribunal dated 10.01.2023 and it has been reported in the Inspection Report that there is an existing slum, namely, 'Netaji Nagar Sabar Sahi Basti', having around fifty families. Physically there is no water body existing over the Government plots which are Plot Nos. 401, 402, 403 405, 369, 370, 371 and those plots have been encroached by slum dwellers and the allegation of filling up of ponds is baseless and arbitrary.
13. Annexure R-3 (page no. 189 of the paper book), has also been filed to the affidavit which is an Environmental Clearance granted by the SEIAA, Odisha, dated 07.09.2022 to M/s BC Constructions.
14. The Collector & District Magistrate, Khurdha, has also filed his counter-affidavit dated 13.03.2023, stating therein that the inspection of the site in question was carried out by him in the

presence of all concerned parties including the Applicant No.1 on 19.01.2023. The Inspection Report, copy of which has been filed as Annexure-C/12 (page no. 28 of the paper book), reads as under:-

“Joint Demarcation Report of water body cover under Plot No. 401, 402, 403, 405, 369, 370, 371 (Govt. Land) & 184 in Mouza-Bomikhal.”

As per letter of Tahasildar, Bhubaneswar, bearing Letter No. 906 dated 19.01.2023, a joint demarcation of the Suit Land was conducted by the following officers of G.A. & P.B. Department, B.D.A., B.M.C. and Tahasildar, Bhubnaeswar, on dated 20.01.2023.

On verification of records the status of Suit Land is as follows:-

Mouza	Plot No.	Kissam	Area
Bomikhal	401	Adi (Pokhari)	Ac. 0.063
Unit No-11	402	Jalasya-II (Gadia)	Ac. 0.271
	403	Adi (Pokhari Adi)	Ac. 0.166
	405	Gharabari II	Ac. 0.022
	369	Adi (Pokhari adi)	Ac. 0.200
	370	Jalasya-II (Gadia)	Ac. 0.336
	371	Adi (Pokhari adi)	Ac. 0.073

The above plots are Government Land and stands recorded in the name of General Administration Department. These are coming under Milan Sheet No.8&9 of Mouza-Bomikhal, Unit No. 12. The plot no. 184 stands recorded in the name of Kalandi Routray & others vide Khata No. 411 in Chandana Satwa which is a private land. The same plot comes under Milan Sheet No. 4 and situated far away from the above Government lands.

After demarcation of the above suit plots, it is ascertained that there is an existing slum naming 'Netaji Nagar Sabar Sahi Basti' having around fifty families. Physically there is no water body exist over the above Govt. plots and the same has been encroached by the slum dwellers.

During enquiry representative of Shuvam Construction Pvt. Ltd. was present as per letter of Tahasildar Bhubaneswar as per Memo No. 908 dt. 19.01.2023.

Dr. Bibhu Das was informed by our team to remain present during enquiry but he was absent.

The suit plots stands recorded in the name of G.A. Department are shown in red colour in the Sketchmap enclosed.

Report submitted to the Tahasildar, Bhubaneswar, vide his Letter No. 906 dated 19.01.2023 is submitted for kind information and necessary action.”

15. A perusal of the Inspection Report clearly shows that Plot No. 184 mentioned by the Applicant is a private land recorded in the name of Kalandi Routray and others vide Khata No. 411 under ‘Chandana Satwa’ which is a private land.
16. The joint demarcation shows that the alleged Plot Nos. 401, 402, 403, 405, 369, 370, 371 are Government lands which stands recorded in the name of General Administration & Public Grievances (‘GA&PG’ for short) Department under Khata No. 429 in Mouza-Bomikhal, whereas Plot No. 184 (Part) is a private land which stands recorded in the name of one Kalandi Routray and others vide Khata No. 411 under ‘Chandana Satwa’ which means lands recorded as ‘Homestead’ in urban areas. No water body exists on any of the plots which has lost its characteristics as such, though the classification of the plot is water body or Adi and that the said lands have lost their characteristic since long.
17. It is also stated that a slum colony, namely, Netaji Nagar Sabar Sahi Basti, has grown over the said plot with around fifty families residing on the same. No debri has been found dumped or poured on the said plots.
18. It is further stated that ‘Adi’ is an embankment of pond and not a water body and Plot Nos. 401, 403, 371, 369 stands recorded in the Revenue Records as kism ‘Pokhari Adi’ (embankment of pond), Plot Nos. 402, 370 stands recorded as kism ‘Jalasaya Dui (Pond)’ and Plot No. 405 stands recorded as kism ‘Gharbari Dui (Homestead land)’. A Tabular Chart has also been filed with the affidavit which reads as under:-

Plot No.	Kisam
401, 403, 371, 369	<i>Pokhari Adi (Embankment of pond)</i>
402, 370,	<i>Jalasaya Dui (pond)</i>
405	<i>Gharabari Dui (Homestead land)</i>

19. In the affidavit, it is also stated that Plot No. 372 is a private land and not Government land and stands recorded in favour of Respondent No.8 the kisam of which is 'Gharbari (Homestead)' and not 'Adi' or 'Jalasaya' as per the Record of Rights. It is stated that the order dated 27.12.2022 passed in Criminal Misc. Case No. 1974/2022 under Section 144 of Cr.P.C. pertains to Plot No. 373/1587 which is neither Jalasaya nor Adi and, therefore, the said order has no relevance to the facts of the present case.
20. It is categorically stated by the State Respondents that no construction work is being carried out by the Respondent No.8 over any plots which are recorded as 'Jalasaya' or 'Adi'.
21. Dr. Bibhu Das, the Applicant No.1 appearing in person in Virtual Mode, submitted that the Respondent No.8 may be directed to connect its drain to the Manorama Estate Welfare Society, Applicant's colony, to allow easy flow of drain and waste water into the said drain.
22. In our opinion, no such direction can be given to the Respondent No.8. The Manorama Estate Welfare Society may enter into negotiations with the Respondent No.8 or with the Bhubnaeswar Municipal Corporation or both to connect its drain system with that of Respondent No.8 or construct its own drain system.
23. The Inspection Report of the Collector & District Magistrate, Khurdha, clearly mentions that the construction of Respondent

No.8 is over Plot No. 372 which is recorded as kism 'Gharabari (Homestead)' in the Revenue Records and Plot No. 405 is also recorded as 'Gharabari Dui (Homestead)'. Plot Nos. 401, 403, 371, 369, are recorded as kism 'Pokhari Adi' (embankment of pond) and Plot No. 402 and 370 are recorded as kism 'Jalasaya Dui' (pond). Plot Nos. 401, 402, 403, 405, 369, 370, 371 are stated to be the Government lands which stand recorded in the name of General Administration and Public Grievance (GA&PG) Department under Khata No. 429, whereas Plot No. 184 (Part) is a private plot which stands recorded in the name of Kalandi Routray and others vide Khata No. 411 under 'Chandana Satwa' which is recorded as 'Homestead' in urban areas.

24. In view of the categorical averments made, we direct the State Respondents to carry out a survey of the entire land and demarcate the area occupied by the construction company, Government land over which Netaji Nagar Basti is existing, and existence of Adi Jalasaya with a concrete pillar structures etc.
25. The General Administration and Public Grievances Department/State Respondents shall also take steps for restoration of Plot Nos. 402 and 370 recorded as 'Jalasaya Dui' (Pond) in the revenue records and create a green belt around the area under the supervision of the local urban body during the coming monsoon season. This will not only help in recharge of ground water but also provide a cool and healthy atmosphere to the surrounding area.
26. We also issue a direction to the Bhubaneswar Municipal Corporation/Bhubaneswar Development Authority to prepare an Action Plan for clear passage of waste water and rain water from the Manorama Estate Welfare Society and nearby colonies so that

adequate flow of drain water is taken care of and there is no overflow of drain water/rain water or submergence of the colonies in question during the monsoon season.

27. The State Pollution Control Board, Odisha, shall also take steps to ensure that the colonies in question establish adequate Effluent Treatment Plant (ETP)/Sewerage Treatment Plant (STP), as the case may be, to ensure that raw sewage is not allowed to flow into the common drain and from there to canal.
28. Let an Action Taken Report be filed by the Collector & District Magistrate, Khurdha, as well as the State Pollution Control Board, Odisha, by **31.07.2023** with the Registrar, National Green Tribunal, Eastern Zone Bench, Kolkata, on affidavit.
29. With the aforesaid directions, the Original Application No. 01/2023/EZ is accordingly disposed of.
30. The I.As. if any, are also disposed of.
31. There shall be no order as to costs.

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B. Amit Sthalekar, JM

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Prof. A. Senthil Vel, EM

March 14, 2023,
Original Application No.01/2023/EZ
(I.A. No.10/2023/EZ)
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