

IN THE HIGH COURT OF ORISSA AT CUTTACK
W.P.(C) No. 35001 of 2022

Sikshya "O" Anusandhan *Petitioner*
Jagamara

Mr.Asok Mohanty, Sr. Adv.
Dr. P.Chulli, Adv.

-versus-

State of Odisha & Ors.

Opp.Parties.
Mr. B.S.Rayaguru,
Central Govt.
Counsel

CORAM:
DR. JUSTICE S.K. PANIGRAHI

ORDER
16.01.2023

Order
No.

02. W.P.(C) No.35001 of 2022 & I.A.No.17400 of 2022

1. This matter is taken up by hybrid mode.

2. Heard Dr. Purusottam Chuli, learned advocate appearing for the petitioner and learned counsels appearing for the opposite parties.

3. The petitioner is a Charitable Trust named and styled as "Sikshya "O" Anusandhan" having its registered office at Plot No. 224, Dharma Vihar, P.O. Jagamara, P.S. Khandagiri, Bhubaneswar, District-Khordha.

4. By way of the present Writ Petition, the petitioner challenges the order dated 12.12.2022 passed by the National Green Tribunal, Eastern Zone Bench, Kolkata in Original Application No. 157/2022/EZ which has stayed all construction activities over the land in question *ex parte*.

5. The Opp. Party No. 11 to 15 herein, were the applicants before the National Green Tribunal, Eastern Zone Bench, Kolkata, who filed an application bearing No. 157/2022 U/s. 18(1) read with Section 14(1) & 15 of the National Green Tribunal Act, 2010 *inter alia* alleging therein that -

(a) Pending grant of Environmental Clearance the petitioner has commenced construction over the land in question (b) the State Environment Impact Assessment Authority, (SEIAA), Odisha vide its letter dated 23.11.2022 has communicated that the application for grant of Environmental Clearance is still under process (c) The Petitioner has already commenced construction of IMS & SUM Hospital (Campus-II) over the land in question (d) The Kisan of the land in question is "Nayanjori" through which storm water is discharged, which could not have been allotted by the General Administration Department, Government of Odisha. (e) It is also submitted that the land which is a water body

must be preserved as a water body and cannot be converted for any use other than water body in view of the judgment of Hon'ble Supreme Court of India in the case of *Hinch Lal Tiwari Vs. Kamala Devi & Ors* reported in (2001) 6 SCC 496.

6. Heard learned Counsel for the parties. It is *ex facie* clear that the major *lis* in question pertains to (a) the nature i.e. the *Kisam* of the land in question and (b) construction without a subsisting Environmental Clearance (EC). Admittedly, in the present case the land has been allotted by the State itself by the General Administration Department. Without delving into the specifics, the *Kisam* of "*Nayanjori*" merely means a water drainage roadside land or plot of land which can be used as a passage to approach the main road running on a canal embankment. Therefore, as a corollary whenever a road is constructed lands abutting both sides automatically become "*Nayanjori*" in nature. The same bears no adverse environmental significance but the said land does help in recharging the ground aquifers. Further in light of the above discussion, the allegation that the *Nayanjori* originally was called Prachi River in the Sabik Record and this river extended over 78 kilo meters with a catchment area of 600 square kilo meters as part of the Mahanadi

River Delta seems grossly misconceived without any evidence on record.

7. During the course of the hearing on 12.01.2023 a question was put to the learned Senior Counsel Shri Ashok Mohanty appearing for the Petitioner with regard to the maintainability aspect of the instant petition. To that end, reliance was rightly placed by him on the decision of the Supreme Court of India in the case of *M.P. High Court Advocates Bar Assn. v. Union of India and Anr*¹ wherein, it has been held that the power to exercise of judicial review by the High Courts under Article 226 and 227 of the Constitution of India *qua* the NGT cannot be curtailed by following the diktat of *L Chandra Kumar v. Union of India*² which observed as follows:

"22. It is also noteworthy that nothing contained in the NGT Act either impliedly or explicitly, ousts the jurisdiction of the High Courts under Article 226 and 227 and the power of judicial review remains intact and unaffected by the NGT Act. The prerogative of writ jurisdiction of High Courts is neither taken away nor it can be ousted, as without any doubt, it is definitely a part of the basic structure of the Constitution. The High Court's exercise their discretion in tandem with the law depending on the facts of each particular case. Since the High Court's

¹2022 SCC OnLine SC 639

²(1997) 3 SCC 261

jurisdiction remain unaffected, the first question is answered in the negative, against the petitioners."

Thus, he pointed out that the High court is well within its jurisdiction to entertain this petition.

8. There is no squabble that the GA Department is custodian of the land in question and must comply with all legal formalities while allotting lands. The principal concern that this Court had on the earlier date of hearing was that pending the grant of Environmental Clearance, the party in question had commenced construction work. However, such a position now stands changed with the grant of the Environmental Clearance by the Ministry of Environment, Forest and Climate Change, Government of India, New Delhi for the project in question after the requisite legal due diligence. It has been brought to the attention of this Court that the Government of India has granted Environmental Clearance during the pendency of the present Writ Petition on 3.01.2023 *vide* EC Identification No. EC23B038OR195241.

9. That being the case, the allegations with regard to the Kisam *i.e* nature of land being *ex facie* flimsy in nature; coupled with the fact that the Environmental Clearance has now been granted by the Ministry of Environment and Forest, Government of India, the primary issue raised in

the Original Application before the learned NGT seems to have attained a quietus. Be that as it may, the same needs some further consideration to mould the appropriate relief.

10. It is borne out from the records of the case that an *ex parte* impugned order dated 12.12.2022 has been passed by learned NGT staying the construction activity over the land in question. The said order was passed *ex parte* without giving an opportunity of hearing to the present petitioner. Even the clarification related to the issue of “fencing does not construe to be construction activities” was not shown to the learned Tribunal by the Applicants.

11. In view of the above, issue notice to the opposite parties.

12. Five spare copies of the writ petition be served on the learned counsel for the opposite party Nos. 1, 2, 5, 9 and 10. Since a copy of the petition is stated to have been served on opposite party No.8, it need not be served again on him.

13. Issue notice to the opposite party Nos. 3, 4, 6, 7, 11 to 16 through Regd. Post with A.D.. Requisites be filed within three working days.

14. List this matter on 16th of February, 2023.

15. As an interim measure, the impugned order dated 12.12.2022 passed by learned National Green Tribunal, Eastern Zone Bench, Kolkata in O.A. No. 157/2022/EZ under Annexure-2 is hereby stayed till the next date.

16. Issue urgent certified copy of the order as per Rules in course of the day.

(Dr. S.K. Panigrahi)
Judge

