

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

Original Application No.102/2021/EZ

Keshab Ganda

Applicant(s)

Versus

State of Odisha & Ors.

Respondent(s)

Date of hearing: 31.05.2022

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

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

For Applicant(s) : Mr. Janmejaya Katikia AGA for R-2, 3 & 9 (in Virtual Mode),  
Mr. Debasish Ghosh, Advocate for R-8, (in Virtual Mode)

**ORDER**

1. Mr. Sankar Prasad Pani, learned Counsel is present (in Virtual Mode) for the Applicant.
2. One affidavit dated 20.04.2022 has been filed on behalf of the Respondent No.9, Divisional Forest Officer, Nabarangapur Forest Division; the same is taken on record.
3. One counter-affidavit dated 22.04.2022 has been filed on behalf of the Respondent No.8, Ministry of Environment, Forests and Climate Change; the same is taken on record.
4. The allegation in the Original Application is that 0.74 acres of Kisam Bad Jungle situated in Plot No. 274, Khata No. 234 in Ichhapura Village under Jharigam Tahasil, has been diverted for non-forestry purposes without prior approval from the Central Government for Forest Clearance.
5. The Divisional Forest Officer, Nabarangapur Forest Division, in para 6 of his affidavit has stated that he has accepted the diversion proposal with certain reasons indicated in Form-B, which was

communicated to the Range Officer, Jharigaon, vide letter dated 06.10.2021 for construction of Community Centre which is less than one hectare in exercise of the power conferred in Section 3 (2) of The Schedule Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (in short 'Forest Rights Act, 2006').

6. Sub-section (2) of Section 3 of the Forest Rights Act, 2006 categorically lays down that the Central Government shall provide for diversion of forest land for the following facilities managed by the Government which involve felling of trees not exceeding seventy-five trees per hectares. Sub-section (2) of Section 3 of the Act, 2006 reads as under: -

*“Notwithstanding anything contained in the Forest (Conservation) Act, 1980 (59 of 1980), the Central Government shall provide for diversion of forest land for the following facilities managed by the Government which involve felling of trees not exceeding seventy-five trees per hectare, namely:-*

- a) Schools;*
- b) Dispensary or hospital;*
- c) Anganwadis;*
- d) Fair price shops;*
- e) Electric and telecommunication lines;*
- f) Tanks and other minor water bodies;*
- g) Drinking water supply and water pipelines;*
- h) Water or rain water harvesting structures;*
- i) Minor irrigation canals;*
- j) Non-conventional source of energy;*
- k) Skill upgradation or vocational training centres;*
- l) Roads; and*
- m) Community centres;*

*Provided that such diversion of forest land shall be allowed only if,-*

- (i) That forest land to be diverted for the purposes mentioned in this sub-section is less than one hectare in each case; and*
- (ii) The clearance of such developmental projects shall be subject to the condition that the same is recommended by the Gram Sabha.”*

7. The affidavit of the Divisional Forest Officer, Nabarangapur Forest Division, does not disclose whether the Clearance from the Central Government has been taken for construction of Community Centre or not on the land in question and also whether there is a recommendation from the Gram Sabha for the purpose. The issue is as to how the Divisional Forest Officer, Nabarangapur Forest Division, has usurped the power of the Central Government.
8. The Respondent No.1, Ministry of Environment, Forests and Climate Change shall file fresh affidavit considering this aspect of the matter within three weeks stating as to whether any sanction was granted by it for diversion of forest land over the plot in question. It will also clarify whether diversion of forest area below one hectare can be permitted under the Forest Rights Act, 2006 in supersession of the Forest (Conservation) Act, 1980.
9. The letter of the Divisional Forest Officer, Nabarangapur Forest Division, dated 06.10.2021 (at page no. 209 of the paper book), refers to Plot No. 276, Khata No. 234 and not the Plot No. 274 as alleged in the Original Application which shows that the said Respondent has not addressed himself to the allegations regarding the Plot No. 274.

10. Mr. Sankar Prasad Pani, learned Counsel appearing for the Applicant states that the allegation is with regard to the Plot No.274 for which no reply has been given, a presumption may be drawn as to the admission of the allegations made in the Original Application on the principles enshrined in Order 8 Rule 5 of the Code of Civil Procedure even though the strict rules and procedures under the Code of Civil Procedure may not apply before the proceedings in the Tribunal.

11. **List on 25.07.2022.**

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**B. Amit Sthalekar, JM**

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**Saibal Dasgupta, EM**

May 31, 2022,  
Original Application No.102/2021/EZ  
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