

**BEFORE THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
(Through Video Conferencing)**

Original Application No. 05/2018 (EZ)

Jayant Dehuri & Ors

Applicant(s)

Versus

State of Odisha & Ors.

Respondent(s)

Date of hearing: 12.02.2019

**CORAM : HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER  
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

For Applicant(s):

Mr. Sankar Prasad Pani, Advocate

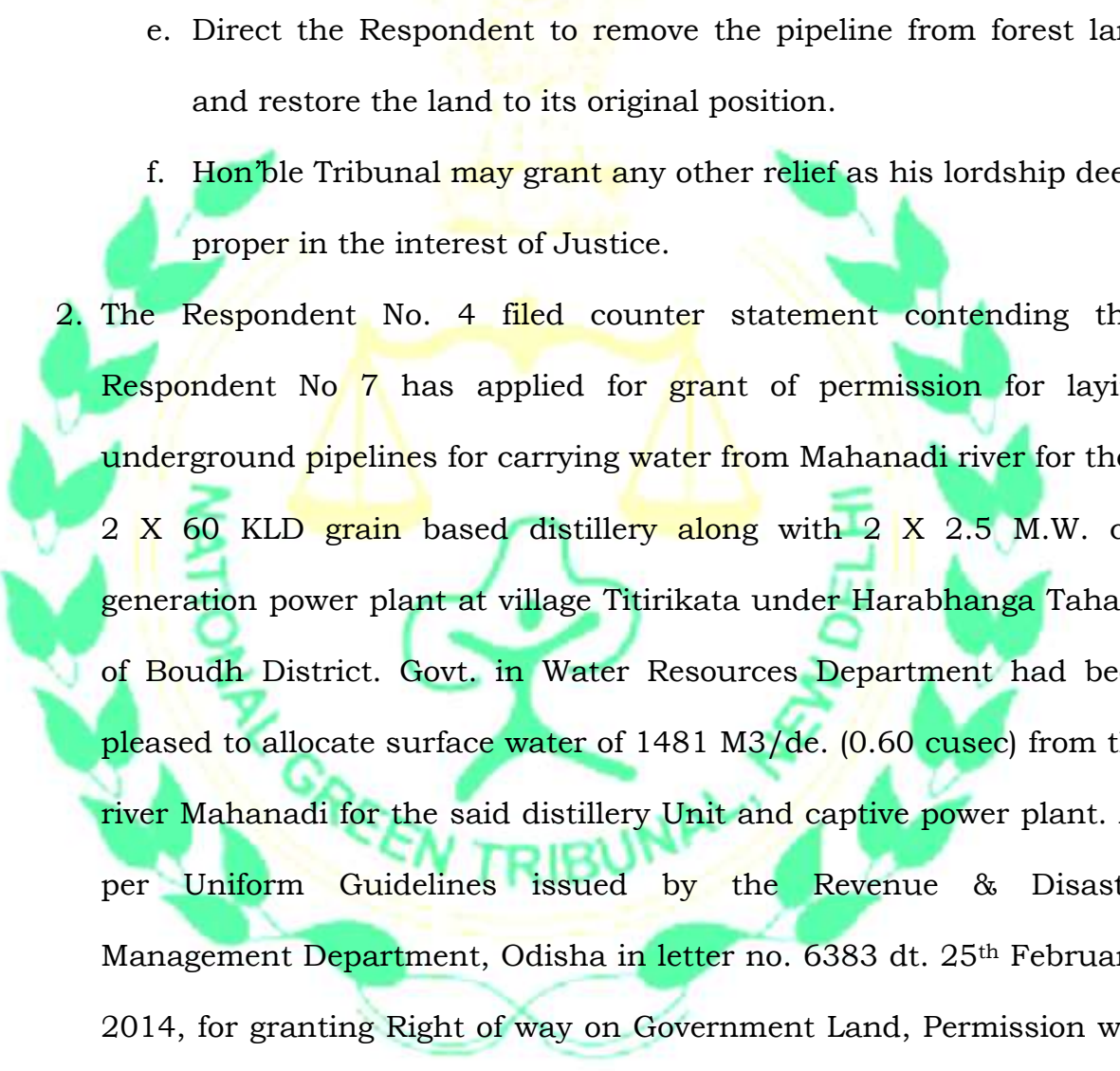
For Respondent (s):

Mr. Gora Chand Roy Choudhury, Advocate and Mrs.  
S. Roy, Advocate for Respondent No.3  
Mr. Jishnu Saha , Sr. Advocate, Mr. Ishaan Saha,  
Advocate and Mr. Zeeshan Haque, Advocate for  
Respondent No.7

**ORDER**

1. The above Application was filed by the applicants claiming that the project proponent ; Respondent No. 7 has constructed the distillery industry and laid pipes for drawing water for their purposed unit through Gramya Jungle Plot No. 87 in Fakirpur Village having an area of 4.28 acres and Plot No. 310 in same village having an area of 25 acres of Gramya Jungle. According to the applicants, it is a forest land and without getting prior permission from the Forest Department to use the land for non forestry purpose as required under the Forest (Conservation) Act, 1980, the project should not have been started and Consent to Establish should not have been granted to the industry by authorities in the area. They prayed for following reliefs:

- a. Direct the Respondent No. 2 to take necessary legal action against the Respondent No. 7 including the criminal proceeding for wilfully violating the provisions of Forest (Conservation) Act, 1980.

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- b. Direct the Government Respondent, Respondent No. 1, 2 and 3 to take necessary action against the Respondents No. 7 for unauthorized use of forest land for road construction.
  - c. Direct the Respondent No. 1 to 2 to take action against the Respondent No. 4 and 5 for their inaction in terms of restraining the private respondent to lay the pipeline.
  - d. Hold and declare that the construction of pipeline carried out by the Respondent No. 7 is illegal.
  - e. Direct the Respondent to remove the pipeline from forest land and restore the land to its original position.
  - f. Hon'ble Tribunal may grant any other relief as his lordship deem proper in the interest of Justice.
2. The Respondent No. 4 filed counter statement contending that Respondent No 7 has applied for grant of permission for laying underground pipelines for carrying water from Mahanadi river for their 2 X 60 KLD grain based distillery along with 2 X 2.5 M.W. co-generation power plant at village Titirikata under Harabhanga Tahasil of Boudh District. Govt. in Water Resources Department had been pleased to allocate surface water of 1481 M3/de. (0.60 cusec) from the river Mahanadi for the said distillery Unit and captive power plant. As per Uniform Guidelines issued by the Revenue & Disaster Management Department, Odisha in letter no. 6383 dt. 25<sup>th</sup> February, 2014, for granting Right of way on Government Land, Permission was granted in favour of the Company (Respondent No. 7) with certain conditions and an agreement was executed between the District Administration and M/s Boudh Distillery Pvt. Ltd. On 26.09.2017. It is not a fact that, the Respondent No. 7 had forcefully laid pipelines.
3. They obtained the necessary permission from the State Pollution Control Board, Consent to Establish in a private land. The pipeline passes over an area of 3.34 acres of land including 1.47 of Gramya

Jungle Kissam land consisting of four plots in Revenue Record having small bushes only. The area is neither coming under any protected area such as wildlife or sanctuary area nor there is any large tree growth. Permission has been granted to the Respondent No. 7 subject to surface right only without changing the classification or nature of land. Anticipating certain protest from the local persons, in order to protect law and order, Police personnel were deployed. Since, this only a Gramya Jungle and there were no wildlife variety animals, necessary permission have been granted in accordance with law.

4. As per clause 6 of the agreement, the Licensee was instructed to obtain necessary permission or Forest Clearance from the Authority, in case of forest land, if any, as required under the Forest (Conservation) Act, 1980 and rules or instructions made there under. Since, the company has violated the terms and condition of the agreement by not applying for Forest Clearance as required Forest (Conservation) Act, 1980, before laying pipelines on the forest land, the agreement executed on 26.09.2017 has been cancelled and communicated to them vide letter dated 10.01.2018. However, necessary action has been taken for sealing of pipeline and eviction as per Odisha Prevention of Land Encroachment Act & Rules.
5. It is also submitted by them that the Licensee is supposed to apply for the forest clearance before the appropriate authority. Since the land permitted for laying of pipeline under Right-of-Way guidelines under R. & D.M. Deptt., Odisha and the land recorded as revenue land, It is open to the Licensee to proceed for construction activity after obtaining approval in accordance with law. It is a Gramya Jungle in nature with small bush etc. Permission has been given for laying of pipelines under the earth only with a condition not to construct any structure over the land. The Licensee shall ensure making good the excavated trench for laying underground pipelines by proper filling



and compaction, so as to restore the land into the same condition as it was before digging the trench. They also have contended that the company has created a greenery field around the village by planting more than 20,000 trees.

6. The Respondent No. 5 filed a statement, stating that as per the orders of the Tribunal, a joint verification was made on 28.01.2018, in the presence of the District Collector, Boudh and DFO, Boudh. It is revealed that Plot No. 32 pertaining to Khata No. 88 of Bishnupur Mouza is having forest growth of species (pole size) like Asan, Dhaura, Kendu, Arjuna, Karada and Sidha etc. However, in plot No. 87 & 310 pertaining to Khata No. 58 of Mouza Tritirikata of Kissam Gramya Jungle are having bushy growth of species like Phoenix, Butea and Kurien etc. So far wild animal is concerned, no such wild animal is reported in the aforesaid Gramya Jungle Revenue Land.
7. It is also contented by them that the matter was also intimated to the Additional Principal Chief Conservator of Forest, ( Forest Diversion & Nodal, FC Act), Office of the Principal Cheif Conservator of Forests, Odisha, Bhubaneshwar for taking appropriate action vide this Office Memo No. 623 dt. 27.01.2018. At the same time, instruction have been given to the concerned Range Officer to stop the work immediately.
8. It is also revealed from the contentions that the Range Officer was directed to conduct an enquiry to ascertain the genuineness of the use forest land for non-forestry purpose and soon after receipt of preliminary report from Range Officer, Boudh Range the office of Divisional Forest Officer, Boudh promptly will take action and inaction on the part of Respondent No. 5 is not a fact.
9. The Respondent No. 7, Project Proponent filed a statement stating that it is a project established for the benefit of the persons in the locality and improve their conditions. The necessary permission required from

all the department have been obtained before establishing the unit. In order to draw water from Mahanadi River, an underground pipeline was required to be made for distance of 5 K.M. for which necessary permission was obtained from the Revenue Department and only after getting the necessary permissions, the work has been done. Since, it was objected by local people, in the presence of the District Collector and the Police Department, the work was carried out. They were in the impression that it was a Atta Land not a Forest Land and no permission is required. When they came to understand that it is a Forest Land and necessary permission from the Forest Department is required they have made necessary application to the Department and it is understood that after investigation they have made recommendations for granting permission and that process is pending. So, whatever act done by them is only a bona-fide mistake and only on the basis of the permission granted by the authorities which they felt are the necessary authorities to grant permission and there is no wilful violation on their part.

10. According, to them, if the work is stopped, the employment opportunity for several persons will be affected. So they pray for allowing the industry to continue anticipating the permission to be granted by the Forest Department under the Forest (Conservation) Act, 1980.

11. The learned Counsel for the Ministry of Environment, Forests and Climate Change submitted that they are filing a reply affidavit in which they contended that they have not received any proposal either from the project proponent or from the State Government in this aspect and as such no action is taken from their side. It is also submitted by the Learned Counsel that they have also requested the State of Odisha to submit a status report regarding the things going on in respect of establishment of this Distillery and on receipt of the

same, necessary action if any required under law will be initiated by them.

12. While admitting this Original Application, this Tribunal vide order dated 12.01.2018, directed:

*“The District Magistrate and the Divisional Forest Officer, District Boudh to inspect the unit in question and verify on the veracity of the allegations contained in the Original Application and submit a report. In the event the allegations are found to be correct, appropriate action as per law be taken and outcome incorporated in the report on the next date.”*

After getting the Report, this Tribunal vide order dated 27.11.2018, directed the Respondent No. 7 to forthwith forbear from continuing with work of laying pipelines in the area in question until further orders.

13. Heard the Learned Counsel for the Applicants, Learned Counsel for the Ministry of Environment, Forests and Climate Change and the Project Proponent.

14. The allegation of the Applicants in the Original Application was that without getting the prior permission from the Forest Department under the Forest (Conservation) Act, 1980, the project proponent was attempting to lay down pipelines through Forest Land causing damage to the environment. According to them it is a forest land having a lot of Bio-diversity. The report of the Forest Department shows that the pipeline was laid through an area of 0.966 hectares of forest land and no permission is obtained under the Forest (Conservation) Act, 1980. It is also mentioned in the supplementary affidavit that there is no trees and no bird species or animals found in that place.

15. They have submitted that since, no permission is obtained under the Forest (Conservation) Act, 1980, directions have been issued to the District Collector to cancel the lease and also instructed the



Forest Range Officer to proceed with in accordance with law for violation.

16. The Learned Counsel for Respondent No. 7 has submitted an application for permission as contemplated under the Forest (Conservation) Act, 1980 and that is under process.

17. So it clear from this that the pipeline was drawn through Gramya Jungle Kissam land which will also fall under the defination of forest land without obtaining necessary permission from the Forest Department as required under the Forest (Conservation) Act, 1980, which is a violation of environmental law. However, considering the fact that the Forest Department has already initiated an action for cancellation of lease by intimating the fact to the District Collector and the District Collector has acted upon this and cancelled the lease for the time being for violation of the condition imposed in the agreement that they will have to obtain necessary permission from the Forest Department, if it passes through any forest land and this Tribunal has already directed to discontinue with the work by the project proponent without getting necessary permissions from the Forest Department, we do not think that any further order is required in this regard.

18. As the request made by the learned counsel for the Applicants is concerned, it is for the Forest Department while granting the permission to consider as to whether any penalty has to imposed, any damage has been caused and what is the amount required for the restoration of the damage cause to the environment and impose that as condition for granting the permission.

19. So under these circumstances, if any action is required, it is for the Forest Department to consider and proceed in accordance with law against the person who had committed any offence under any of the Forest ailed Acts.

20. The interim order granted by the Tribunal against the Respondent No. 7 will continue till necessary permissions from the Forest Department is obtained under the Forest (Conservation) Act, 1980, for this purpose and the necessary fresh permission is granted by the authority for this purpose.

21. With the above directions and observations this application is disposed of. Parties are directed to bear the respective cost in the application.

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

February 12, 2019

O.A. No. 05/2018 (EZ)  
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