

# Santanu Kumar Bhukta vs State Of Odisha on 28 February, 2023

Item No.05

Court No.1

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

Original Application No.110/2020/EZ

In the matter of:

Santanu Kumar Bhukta,  
S/o Golak Bhukta,  
At/PO - Santhapada,  
PS - Talcher, Dist. - Angul,  
Odisha, Pin - 759104,

....Applicant(s)

Versus

1. State of Odisha,  
Through Chief Secretary,  
Government of Odisha,  
Lokaseba Bhawan,  
At/Po- Bhubaneswar, Dist.- Khurdha,  
Pin - 751002,
2. District Collector, Dhenkanal  
At/Po/Dist. - Dhenkanal,  
Pin - 759001, Odisha,
3. Member Secretary,  
Odisha State Pollution Control Board,  
A-118, Unit-VII, Nilakantha Nagar,  
Bhubaneswar, Pin - 751012,
4. Member Secretary,  
State Environment Impact Assessment Authority (SEIAA),  
Odisha, Bhubaneswar,  
SRF-2/1, Acharya Vihar, Unit-IX,  
Pin - 751022,
5. Superintendent of Police, Dhenkanal,  
At/Po- Dhenkanal,  
Dist. - Dhenkanal,  
Pin - 755001, Odisha,
6. Tahasildar, Parjang,  
At/Po - Parjang,,  
Dist. - Dhenkanal,

Pin - 759039, Odisha,

7. Divisional Forest Officer, Dhenkanal,  
At/Po/Dist - Dhenkanal,  
Pin - 755001,

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8. Deputy Director General of Forests (C),  
Ministry of Environment, Forest and Climate Change,  
Regional Office (EZ),  
A/3, Chandersekharapur, Bhubaneswar,  
Pin - 751023,
9. Tahasildar, Kamakshyanagar,  
At/Po - Kamakshyanagar,  
Dist - Dhenkanal,  
Pin - 759039, Odisha,
10. Kunal Structure (I) Pvt. Ltd.,  
Through its Managing Director,  
Mondeal Heights, B-Wing, 15th Floor,  
Near Wide Angle Cinema, S G Highway,  
Ahmedabad, Pin - 380015  
Site office at Parjang College Road,  
Garhaparajang, Odisha,  
Pin - 759120,

....Respondent(s)

Date of completion of hearing and reserving of order: 30.01.2023

Date of uploading of order on the Website: 28.02.2023

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

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

For Respondent(s) : Mr. S. K. Nayak, AGA for State Respondents, (in Virtual Mode),  
Mr. Dipanjan Ghosh, Advocate for R-3,  
Mr. Gora Chand Roy Choudhury, Advocate for R-4, (in Virtual Mode)  
Mr. Surya Prasad Mishra, Sr. Advocate a/w  
Ms. L.K. Maharana, Advocate for R-10, (in Virtual Mode)

## ORDER

1. We have heard Mr. Sankar Prasad Pani, learned Counsel appearing (in Virtual Mode) for the Applicant as well as the learned Counsel for the Respondents and perused the documents on record.

2. This original application has been filed by the Applicant, alleging that the Respondent No. 10, Kunal Structure (I) Pvt. Ltd., is carrying out illegal mining of Morrum and Soil from the forest as well as non-forest Government land in the Parjang and Kamakshyanagar Tehsil of Dhenkanal District, without any Forest Clearance or Environment Clearance.

3. It is alleged that Sal trees standing on the ground have been felled without any permission from the Forest Department and indiscriminate mining is being carried out. It is also alleged that the Revenue Inspector, Kualo, has complained in this regard to the Tehsildar Parjang regarding illegal extraction of Morrum from Village Plot No. 324, Khata No. 822, Kisam-Jungle 2 Mela as well as illegal extraction of Morrum from Plot No. 282, Khata No. 481 Kisam Gramya Jungle and illegal extraction of Soil from Badajhara Village, Plot No. 1684, Kisam Jungle 2 Mela.

4. At the time of admission, the Tribunal constituted a Committee comprising of the following Members:-

1) District Collector, Dhenkanal,

2) Divisional Forest Officer, Dhenkanal,

3) Member Secretary, SEIAA, Odisha, and

4) Senior Scientist of Integrated Regional Office of MoEF&CC, Bhubaneswar, Odisha.

5. The Committee was directed to submit its report with regard to the illegal mining of Morrum and Soil and felling of trees and also report on the environmental degradation caused thereby, and the cost of restitution of the environment. It was also directed that if violation is found, appropriate action in accordance with law shall be taken. Further, the committee was also directed to assess the Environmental Compensation on account of damage to the environment besides loss to public exchequer.

6. Affidavit dated 30.08.2021 has been filed on behalf of the Respondent No.8, Ministry of Environment, Forests and Climate Change, bringing on record the Joint Inspection Report of an inspection carried out on 22.07.2021.

7. Recovery of Fine and Penalty for unauthorized extraction and transportation of soil in the Report read as under:-

"1. Site-Badjhara Area of excavation -3.00 acres Kissam of land -Revenue Forest Plot No. -1684,526,282 It is observed by the committee that Tahasildar, Parjang instituted 3 nos. of Touzi Misc. Cases, 2 nos. of vehicles detained & Rs.247721.00 was collected towards fine and penalty for unauthorized extraction and tranaporation of soil as per Rule 51 of OMMC, Rules 2016.

2. Site - Ambapalas/Kankadasoda Khata -9 Plot No. - 698/7406 Status - Village Pond, Private Land Owner - Sh. Kunal Mahapatra In this regard Tahasildar, Parjang instituted one no. of Touzi Misc. Case & Rs. 103455.00 was collected towards fine and penalty for unauthorised extraction and transportation of the earthen soil as per Rule 51 of OMMC, Rules 2016.

3. Site - Kankadasoda (Proposed Morrum quarry to project proponent) Status - Private land Khata - 315 Name - Kankadasoda proposed morrum mining quarry (no permission obtained) It is observed by the committee that in above noted khata & plot, the Project Proponent applied for temporary permit as per Chapter-V of OMMC Rules, 2016. In this regard, Environment Clearance has been obtained from SEIAA, it has been in DSR report with approved mining plan & registered agreement was executed, but CTO has not been obtained. During the field enquiry, it is found that there is no mining/excavation in above noted plot.

4. Site - Ambapalas (Nuabandha) Khata - 313/1, 334 Plot - 445/5010, 529 Status - Village Pond Dimension - 70x100x4 mtrs In this regard 2 nos. of Touzi Misc. cases have been instituted by the Tahasildar, Parjang and an amount of Rs. 251374.00 has been collected for unauthorized extraction and transportation of ordinary earth under rule-51 of OMMC Rules, 2016.

5. Site - Pitri Source - Earth Owner - Private, Late Hrudananda Behera Kissam - Jalasaya/Pond In this regard one no. of Touzi Misc. case has been instituted and a sum of Rs. 216938.00 has been collected for unauthorized extraction and transportation of ordinary earth.

6. Site - Odasingha Village Status - Private Plot, owner Late Manas Sahoo Source - Earth Khata - 177/56, Plot-1695/1759, 1690 Area - 54 decimals and 70 decimal In this regard 1 nos. of Touzi Misc. case has been instituted and Rs. 179766.00 amount has been collected for unauthorized extraction and transportation of ordinary earth.

7. Site - Jatia Village Status - Private land Owner - Kuna Sahoo Source - Earth/Soil In this regard 1 nos. of Touzi Misc. case has been instituted by the Tahasildar, Parjang and an amount of Rs. 120950.00 has been collected for unauthorized extraction and transportation of ordinary earth as per rule-51 of OMMC Rules, 2016.

8. Site - Kualo Status - Revenue Forest In this regard 1 nos. of Touzi Misc. case has been instituted by the Tahasildar, Parjang and an amount of Rs.55000.00 has been collected for unauthorized extraction and transportation of ordinary earth as per rule-51 of OMMC Rules, 2016.

9. Site - Saranga Khata - 657, Plot-5068 Status - Private plot In this regard 1 nos. of Touzi Misc. case has been instituted by the Tahasildar, Parjang and a sum of Rs.70082.00 has been collected for unauthorized extraction and transportation of

ordinary earth as per provisions under rule-51 of OMMC Rules, 2016.

10. Site - Barihapur Village In this petition, it is alleged that the private agency excavated soil/morrum unauthorized from village Barihapur. However, no particulars have been submitted with respect to the site location and quantity of soil removed. In this regard, two persons from the village Panchayat were asked about the allegation and on enquiry, it has been stated by them that no soil or morrum has been excavated by any private agency from their village.

It is alleged by the applicant that in 13 nos. of locations, morrum and soil had been lifted unauthorisedly, whereas the committee visited to 10 nos. of locations and no specific details like Khata & Plot are not mentioned in the petition about the other 3 locations namely Kantor Nuasahi, Kandheikhola and Rangathali.

It is emphatically clear that Kunal Structure India Ltd. has deposited Rs. 46,10,823.00 (Rupees forty six lakhs ten thousand eight hundred twenty three) only in 36 nos. of enforcement cases as per OMMC Rule, 2016. In addition to that an amount of Rs. 1,95,26,677.00 (Rupees one crore ninety five lakhs twenty six thousand six hundred seventy seven) only has been deposited by Kunal Structure India Ltd. as Royalty.

As regards to illegal extraction of morrum from Govt. land in Baunspal, Saradhapur and Kanpur village of Kamakhyanagar Tahasil, there is no specific details like khata & plot no. Hence, it is decided by the committee that it is difficult to ascertain the illegality. However, for unauthorized extraction and transportation of minor mineral Rs. 33,63,344.00 (Rupees thirty three lakhs sixty three thousand three hundred forty four) only has been collected in 66 nos. of enforcement Case. In addition to that Kunal Structure India Ltd. has deposited an amount of Rs. 1,83,68,830.00 (Rupees One crore eighty three lakhs sixty eight thousand eight hundred thirty) only as Royalty.

EIA Notification 2006 has been amended by Notification No. 1224/dt. 28.03.2020 of Govt. of India, Ministry of Environment, Forest & Climate Change. Appendix-IX has been substituted by a new one. As per provision of Appendix-IX, extraction or sourcing or borrowing of ordinary earth for linear project like roads, pipeline etc. is exempted from requirement of prior environmental clearance. The amended provisions were communicated to all District Collectors vide R&DM letter no. Govt. of Odisha RDM-DRTMM-Misc-0030-2020-28424/R&DM 28.09.2020.

Further Appendix-IX has been broadly elaborate below:

1. Exempting of requirement of Environment Clearance for extraction or sourcing or borrowing or ordinary earth for linear project like roads, pipeline etc.

2. Exemption of requirement of Environment Clearance for community works like de-silting of village pond or tanks, construction of village roads, ponds or bunds undertaken in MGNERGS schemes, other govt. sponsored scheme and community work.

Further it is raised by the petition in para No. 06 that the private respondent lifted stone chips and sand from various sources for which demand notice has also been issued by the Tahasildar, Parjang. It is a fact that no demand notice has been issued to the private respondent in connection to lift of stone chips and sand. In this regard, the private respondent transported sand from various legal sources with valid Y-Form. As regards to stone chips, the private respondent procured from different crusher units with GST bills. Further, it has come to the notice of the committee that the private respondent had made an agreement in the form of memorandum of understanding (MoU) in between the lessee of Jhilli Stone Quarry under Kankiadahad Tahasil and the project manager of Sri Sumant Patro to extract quantity of 50,000 MT in abiding the terms and conditions. Further for the better appraisal, the details of ordinary earth and soil extraction is given below in a tabular manner.

Collection of Royalty & Penalty against extraction and transportation of ordinary earth/soil/morrum for the year 2019-

20, 2020-21 and 2021-22

Sl. No.	Quantity in cum.	Royalty	Deposited amount		Remarks
			Penalty	Total	
1.	2800	98000.00	32000.00	130000.00	Enforcement
2.	4000	14000.00	45000.00	185000.00	Enforcement
3.	1000	35000.00	10000.00	45000.00	Enforcement
4.	1085	38000.00	12000.00	50000.00	Enforcement
5.	1000	35000.00	20000.00	55000.00	Enforcement
6.	2857	100000.00	0.00	100000.00	Enforcement
7.	142	5000.00	0.00	5000.00	Enforcement
8.	2000	70000.00	67520.00	137520.00	Enforcement
9.	2500	87500.00	32210.00	119710.00	Enforcement
10.	2000	70000.00	25000.00	95000.00	Enforcement
11.	2500	87500.00	23000.00	110500.00	Enforcement
12.	2500	87500.00	27000.00	114500.00	Enforcement
13.	3000	105000.00	21000.00	126000.00	Enforcement
14.	3000	105000.00	21429.00	126429.00	Enforcement
15.	4000	140000.00	20000.00	160000.00	Enforcement
16.	5000	175000.00	20000.00	195000.00	Enforcement
17.	16	3440.00	36560.00	40000.00	Enforcement
18.	16	3440.00	36560.00	40000.00	Enforcement
19.	2000	70000.00	27806.00	97806.00	Enforcement
20.	2000	70000.00	20000.00	90000.00	Enforcement
21.	1000	35000.00	35000.00	70000.00	Enforcement
22.	2000	70000.00	20000.00	90000.00	Enforcement
23.	1400	49000.00	15000.00	64000.00	Enforcement
24.	2000	70000.00	25000.00	95000.00	Enforcement
25.	3000	105000.00	31000.00	136000.00	Enforcement
26.	2500	87500.00	10098.00	97598.00	Enforcement

27.	5000	175000.00	40000.00	215000.00	Enforcement
28.	1000	35000.00	12000.00	47000.00	Enforcement
29.	1000	35000.00	59900.00	94900.00	Enforcement
30.	10	350.00	19650.00	20000.00	Enforcement
31.	10	350.00	19650.00	20000.00	Enforcement
32.	1200	42000.00	15000.00	57000.00	Enforcement
33.	800	280000.00	150000.00	430000.00	Enforcement
34.	2598	181860.00	0.00	181860.00	Enforcement
35.	20000	700000.00	270000.00	970000.00	Enforcement
36.	357007	13386003.00	0.00	13386003.00	Suo Mott deposited b NHAI
37.		6140674	0.00	6140674.00	Suo Mott deposited b NHAI
Total	451141.00	3391440.00	1219383.00	24137500.00	

POINT-WISE SUBMISSION OF REPLY TO THE HON'BLE NGT'S  
 REQUIREMENT FROM THE COMMITTEE:

I. Illegal mining of ordinary earth & soil:

It was noticed by the committee that extraction of earth/soil has been carried out by the private agency mostly from the private lands and ponds, with the consent from the owners. For this purpose, no statutory permission is required. However, whenever extraction of soil has been carried out from revenue forest land, Tahasildar has imposed penalties under OMMC Rules, 2016 to M/s Kunal Structure India Pvt. Ltd. for non-compliance to the provisions of law. With respect to extraction of morrum, it is observed that morrum is a minor mineral and is governed by the Notification No. S.O. 141 (E) dated 15.01.2016 issued by the Ministry of Environment Forest and Climate Change. Further this also comes under the purview of Odisha Minerals Concession 2016. It is observed by the committee that the private agency M/s Kunal Structure (India) Pvt. Ltd. has extracted/excavated mostly soil or ordinary earthy for renovation of ponds and high land to low land for cultivation.

II. Felling of trees:

The Committee, with the help of DFO and the Google images, over a time period of four years, has checked and noticed that there was not any appreciable cutting of trees during the period of operation by the private agency in the revenue forest land. It was observed at site that cultivation of paddy was underway along with vegetable cropping in the adjacent areas. However, it was viewed by the DFO that the above noted sites i.e. Plot No. 1684 which belongs to revenue forest was viewed from the

satellite image and observed that there were some excavation over the aforesaid plot for cultivation of land. It is seen from the satellite image that the land is under cultivation with Sal trees on the bunds in 2010 images. Further it is also observed from the satellite image of 2018, 2019, 2021 that 05 Nos. of Sal trees are removed from the bunds.

The observation made during the visit and from the support taken through Google images/pictures of the area over a period of last 4 years indicate that the area at Badajhara, which is revenue forest land, has been primarily used by the encroachers for cultivation purpose. Since the excavation of soil from the forest area is not a permissible activity, the Tahasildar has imposed a penalty on this activity.

### III. Report on environment degradation caused:

From the observations made during the visit, it is viewed that there has been felling of 5 trees in the revenue forest land. The soil excavated from the private ponds and private lands in fact, as revealed by the villagers, the company has helped them to increase the capacity of the village pond, its water retention capacity and also aid in the recharging of the ground water. This has also facilitated them in their storage of water for agriculture also.

However, since there has been felling of some trees in the process of extraction of soil, it is viewed by the committees that the private agency should rehabilitate to revenue forest and therefore, plantation need to be taken up with an outlay of 2.5 lakh.

### IV. Cost of Restitution:

It is viewed by the Committee that the private agency should deposit money and bear the cost for raising plantation in the revenue forest land, which is basically encroached by the people.

### V. Appropriate action against the violation:

The committee is of the view that there have been certain lapses by the private agency with respect to:

- a. Seeking prior permission from the tahasildar for extraction of soil from revenue land
- b. Extraction of soil from the revenue forest land.

The Controlling Authority, District Collector & District Magistrate, to initiate action against the above violations.

### Environment Compensation:



Show cause Notice u/s 19 of Environment (Protection) Act, 1986 has been issued to the private agency for illegal extraction of morrum which is the minor mineral in contravention of the provisions of EIA Notification 2006 by the Collector, Dhenkanal.

Conclusion:

The members of the committee unanimously are of the view that there are certain lapses by the private agency, M/s Kunal Structure (India) Pvt. Ltd. with respect to abiding the laws on Environment and Mining and Revenue laid down by the State.

Necessary and sufficient punitive action will be initiated as per the direction of the Hon'ble NGT."

8. Though the Inspection Report had been filed before the Tribunal but Environmental Compensation had not been computed for computing in monetary terms the degradation of land for illegal extraction of morrum. Cost of restitution of forest and revenue forest area had also not been computed. The Tribunal, therefore, directed the Committee Members to compute Environmental Compensation.

9. Accordingly, the Joint Inspection Committee computed Environmental Compensation and its Report was filed through affidavit of the Ministry of Environment, Forests and Climate Change, Respondent No.8, dated 04.02.2022 which reads as under:-

"I. Environmental Compensation for degradation of land:

The Joint Inspection Committee has accepted the report on environmental compensation for degradation of land for illegal extraction of morrum, submitted by the Regional Officer, State Pollution Control Board, Angul vide his L.No.188/Dt.25.01.2022.

As per the report submitted by the Regional Officer, SPCB, Angul, the environmental compensation for degradation of land for illegal extraction of morrum is Rs.20,30,000/- (Rupees Twently Lakh Thirty Thousand only).

II. Cost of Restitution of the forest land and revenue forest land:

The Joint Inspection Committee has accepted the report on cost of restitution of the forest land and revenue forest land submitted by the Divisional Forest Officer, Dhenkanal vide his L.No.266/3F/Misc./718/2021/Dt.06.01.2022.

As per the report submitted by the DFO, the cost of restitution of the forest land and revenue forest land is as follows:-

Sl. No	Name of forest land to be restituted	Khata No.	Plot No.	Status	Area (In Acre)	Kissam	Volume of earth (in Cum)	Cost of back filling of earth (in Rs.)
1	2	3	4	5	6	7	8	9
1.	Badajhara	478	1684	Revenue Forest	3.00	J/2 Mela	S0MX1 43MX1.  M=858 0 Cum	24,24,000/- 6

### III. Recovery of amount:

As directed by the Hon'ble NGT, the process of recovery of the amount to the tune of Rs.20,30,000/- (Rupees twenty lakh thirty thousand only) towards environmental compensation for degradation of land for illegal extraction of morrum and 31,00,430/- (Rupees thirty one lakh four hundred thirty only) towards cost of restitution of the forest land and revenue forest land in addition to Rs.2.5 lakhs for rehabilitating the Revenue forest by raising plantation therein, has been initiated."

10. The State Respondents, Government of Odisha, have also filed their counter-affidavit dated 24.08.2021.

11. Mr. Sankar Prasad Pani, learned Counsel for the Applicant referring to Annexure C-2 to the counter-affidavit of the State Respondents dated 24.08.2021, which is a Show Cause Notice dated 26.07.2021 issued by the Collector & District Magistrate, Dhenkanal, submitted that the Collector and District Magistrate has no power or authority to direct anyone to appear before the Court in proceedings under Section 19 of the Environment (Protection) Act, 1986 (hereinafter referred to as the 'Act, 1986').

12. The language of Section 19(a) of the Act, 1986 shows that the Court will take cognizance of the case only on a complaint of the Central Government or any authority or officer authorized in this behalf by that Government or by any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint to the Central Government or the authority or officer authorized as aforesaid. Section 19(b) of the Act, 1986

requires that a notice of not less than sixty days be given prior to lodging of such complaints.

13. We have seen the Show Cause Notice dated 26.07.2021 (Annexure C-2 to the counter-affidavit) which states that the Collector is empowered by the Central Government vide Notification S.O. No. 394(E) dated 16.04.1987 to take cognizance of the offence and powers conferred under Section 19 of the Environment (Protection) Act, 1986 and, therefore, the Show Cause Notice was issued to M/s Kunal Structure (I) Pvt. Ltd., Respondent No.10 herein, to show cause as to why he may not be prosecuted under Section 16 of the Environment (Protection) Act, 1986.

14. Section 19 of the Forest (Conservation) Act, 1986 reads as under:-

"19. Cognizance of Offences - No Court shall take cognizance of any offence under this Act except on a complaint made by -

(a) the Central Government or any authority or officer authorized in this behalf by that Government; or

(b) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Central Government or the authority or officer authorized as aforesaid."

15. A bare reading of Section 19 of the Act, 1986, would show that the Collector & District Magistrate is not a Court within the meaning of Section 19 of the Act 1986 and only a Court of competent jurisdiction can take cognizance of any offence under the said Act on a complaint made by the Central Government or any authority or officer authorized in this behalf by that Government or by any other person who has given notice of not less than sixty days in the manner prescribed of the alleged offence and his intention to make complaint to the Central Government or authority or officer authorized as aforesaid under the said Act.

16. We are also of the view that while exercising the powers conferred in Sections 15 and 16 of the Act, 1986, the authority under Section 19(a) can only initiate proceedings before a 'Court' of competent jurisdiction but cannot act as a Court on his own. Therefore, the Collector & District Magistrate only acts as a complainant but is not empowered to take cognizance of the offence. Section 19 of the Act also does not empower the Collector & District Magistrate to act as a 'Court'.

17. Mr. Sankar Prasad Pani, learned Counsel for the Applicant submitted that the Respondent No.10, M/s Kunal Structure (I) Pvt. Ltd., has been engaged as a contractor by the National Highway Authority of India for executing projects for construction of road i.e., National Highway No. 53 ('NH-53' for short) from Talcher to Kamakhyanagar Bypass section. It is stated that out of 41 kilometers of total construction work, around 32 kilometers of work is going on in Parjang Tahasil having a width of around 20 meters and height of 1 meter morrum and soil.

18. It is alleged that in the process of execution of work, the Respondent No.10, M/s Kunal Structure (I) Pvt. Ltd., has illegally lifted more than 2,00,000 m<sup>3</sup> of morrum from different places. It is stated

that the Respondent No.10 has illegally extracted morrum from Government Land in Baunspal Mouza, Saradhapur, Kanpur in Kamakhyanagar Tahasil and from Revenue Forest Land of different Villages such as - Badajhara, Kualo, Ambapalash, Kantur, Barihapur and Sal trees have also been felled. It is further alleged that the Respondent No.10 has illegally lifted stone chips and sand from various sources for which demand notices had also been issued by the Tahasildar.

19. Reference has been made to the letter of the Revenue Inspector, Muktapasi, dated 23.10.2019 (Annexure-1, page no.22 of the paper book), addressed to the Tahasildar-Parjang, informing that the Respondent No.10, M/s Kunal Structure (I) Pvt. Ltd., has illegally extracted morrum from Village-Badajhara, Plot No. 282, Khata No. 481 having Kissam-Gramya Jungle.

20. The Revenue Inspector, Muktapasi has made another complaint on 05.11.2020 (Annexure-2, page no. 23 of the paper book), addressed to the Tahasildar-Parjang, stating therein that the Respondent No.10, M/s Kunal Structure (I) Pvt. Ltd., has illegally extracted soil from Badajhara Mouza by using JCB machine from Plot No. 1684 having Kissam- Jungle-2 Mela area Ac. 0.15 for NH-200 expansion work and the JCB machine has also been seized with the help of Additional Tahasildar.

21. Reference has also been made to the letter of the Revenue Inspector, Kualo, (Annexure-3, page no. 25 of the paper book), dated 19.05.2020 addressed to the Tahasildar-Parjang, informing that the Respondent No.10, M/s Kunal Structure (I) Pvt. Ltd., has illegally extracted 1000m<sup>3</sup> of earth from Kualo Village, Plot No. 324, Khata No. 822 having Kissam - Jungle-2 Mela.

22. Reference has again been made to the letter of the Revenue Inspector, Kualo Circle, dated 19.05.2020 (page no. 26 of the paper book), addressed to the Tahasildar-Parjang, informing that the Respondent No.10, M/s Kunal Structure (I) Pvt. Ltd., has illegally extracted approximately 5000m<sup>3</sup> of morrum from an area of Ac. 5.00 (Government Ac. 2.00 and Private Ac. 3.00) of Pitiri Mouza.

23. Further reference has been made to the complaint letter dated 19.05.2020 (page no. 27 of the paper book), addressed by the Revenue Inspector, Kualo Circle, to the Tahasildar-Parjang, informing that Respondent No.10, M/s Kunal Structure (I) Pvt. Ltd., has illegally extracted approximately 4,000m<sup>3</sup> of morrum from Odasingha Mouza over an area of 4.15 acres.

24. Anexure-4 (series) to the Original Application are the letters dated 29.05.2020, 06.08.2020, 07.10.2020, 21.10.2020 and 03.11.2020 (filed colly), raising various demands from the Respondent No.10, M/s Kunal Structure (I) Pvt. Ltd., for making payment towards unauthorized extraction of minor minerals (morrum).

25. A chart has also been filed by the Applicant in para 15 of his Original Application, giving the details of Mouzas and Kisam of lands from where the morrum and soil were lifted in Parjang Tahasil which read as under:-

Sl. No.	Name of Mouza	Kisam	Area
1	Badajhara	Plot No. 526, Khata No. 273	2000cm,

				1.44 Acres
		Plot No. 282, Khata No. 481, 1000cm,		
		Kisam Gramya Jungle 0.5 Acres		
		(Muktapasi RI Report dated		
		23/10/2019)		
		Plot No. 1684, Kisam-Jungle 2 2500cm,		
		Mela, RI Report dated 0.15 Acres		
		05/11/2020		
2	Ambapalash	Jalabay surrounded by Sal 2.20 Acres,		
		Trees, Plot No. 445/5010, 2000cm,		
		Khata No. 313/1,		
		Plot No. 529, Khata No. 334		3000cm,
				2.78 acres
3	Barihapur	Pvt. and Govt. Land surrounded		
		by Sal Trees		
4	Kantur Nuasahi	Partly Pvt. and mostly Gramya		
		Jungle with Sale Trees		
5	Sarang	Plot No. 5068, Khata No. 657		1400cm,
		Govt. Land		1.37 Acres
6	Jatia	Govt. Land		
7	Pitiri Mouza	29/05/2020		5000CM,
				5 Acres
8	Kankadasoda			2000cm,
				2.75 Acres
9	Kandheikhol			
10	Odasingha	On dated 29/05/2020		4000cm,
				4.15 Acres
11	Kualo Mouza	Kualo RI Report dated 1000cm		
		04/10/2019, Plot No. 324,		
		Khata No. 822, Kissam Jungle-		
		2 Mela		
12	Rangathali			

26. It is alleged that the matter relating to illegally felling of Sal trees was brought to the notice of the Divisional Forest Officer, Dhenkanal but the same was brushed aside by the Divisional Forest Officer, Dhenkanal saying that the Sal trees were felled by excavating pond by a private person on his own land.

27. Learned Counsel for the Applicant has further referred to the Government of Odisha, Revenue and Disaster Management Department letter dated 26.04.2019 (Annexure-8, page no. 53 of the paper book), wherein certain guidelines have been laid down for regulating the sand quarrying in the State and also mentions that the lease holders of all minor mineral mines (irrespective of lease hold area) in the State are brought under the Consent Administration of the Board under the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981, vide State Pollution Control Board (SPCB), Odisha, Notice dated 12.05.2016 and that any

incidence of extraction of sand beyond the lease area by the lessee, if found, the same shall be treated as unauthorized and the lessee shall be penalized as per Section 21(5) of the Mines and Minerals (Development and Regulation) Act, 1957 and the provisions of Rule 51 of the Odisha Minor Mineral Concession Rules, 2016.

28. Reference has also been made to the letter of the Member Secretary, SEIAA, Odisha, dated 24.11.2020, (Annexure-9, page no. 58 of the paper book), which is in the nature of a complaint to the District Collector, Dhenkanal, brining to the notice of the Collector, Dhenkanal, that the Respondent No.10, M/s Kunal Structure (I) Pvt. Ltd., is alleged to be involved in illegal lifting of morrum/soil from various sources in Parjang Tahasil, which is in violation of the Environment (Protection) Act, 1986, Forest (Conservation) Act, 1980 and also the EIA Notification of 2006 and, therefore, the District Collector, Dhenkanal, may cause an enquiry into the matter and take appropriate action as per law and submit an Action Taken Report to SEIAA.

29. The Collector & District Magistrate, Dhenkanal, in his affidavit dated 24.08.2021 has stated that M/s Kunal Structure (India) Private Limited, Respondent No.10, is a company/sub-contractor representing Montecarlo Limited for rehabilitation and upgradation of existing two lane to four lane standards from Talcher to the end of Kamakhyanagar Bypass section of 8.844 kilometers to 15.725 kilometers of NH-23 (new NH-149) and 301.875 kilometers to 335.946 kilometers of NH-200 (new NH-53) in the State of Odisha under NHDP Phase-III on EPC Mode. It is stated that the Montecarlo Limited is a Project Proponent authorized by National Highway Authority of India (NHAI) for widening of National Highway 200 (new NH-53).

30. The allegations in the counter-affidavit of the State Respondents, Government of Odisha are as under:-

(A) It is stated that the Respondent No.10, M/s Kunal Structure (I) Pvt. Ltd., has used 4,52,586.63m<sup>3</sup> soil, hard soil, ordinary earth and morrum for expansion of NH-53 and 1,62,972.72m<sup>3</sup> of soil/morrum/ordinary earth has been extracted from various Government lands pertaining to Kissam Jungle-2 after approval of the Village Committee for renovation of ponds for increasing of water holding capacity and a quantity of 1,89,636.91m<sup>3</sup> was extracted by the Respondent No.10 from various private lands after obtaining due consent of the land owners for making cultivable due to high land and water reservoirs for renovation for storage of rain water to avoid water scarcity during the summer season. The State Respondents have also filed a chart as Annexure D/2 (page no. 232 of the paper book), showing details of Government and Private lands falling under the Parjang Tahasil where soil/morrum has been extracted for the National Highway Project in question which reads as under:-

SL. AREA PLOT UOM SOIL/ MORRUM SOIL/ MORRUM QTY.

NO.				QUANTITY FROM BORROW AREA	AS PER EXECUTION
1	PARJANG	GOVT.	CUM	1,62,972.72	

2	PARJANG	PRIVATE	CUM	1,89,363.91	
3	RENGALI LEFT CANAL	GOVT.	CUM	48,750.00	4,51,141.10
4	INDIAN RAILWAY	GOVT.	CUM	51,500.00	
				4,52,586.63	4,51,141.10

(B) It is stated that the Respondent No.10, M/s Kunal Structure (I) Pvt. Ltd., has used earth/morrum from Government land in Baunspal, Saradhapur and Kanpura Villages for construction of four lane widening and strengthening of NH-200 (new NH-53) for which an amount of Rs. 33,63,344/- (Rupees Thirty Three Lakhs Sixty Three Thousand Three Hundred Forty Four only) has been collected in enforcement activities towards fine and royalty in 66 cases during the year 2019-20 and 2020-21 as per the provisions of Odisha Minor Mineral Concession Rules, 2016.

During the arguments, it has been clarified that the 'enforcement activities' means penalty proceedings for illegal extraction.

(C) It is further stated that the Respondent No.10 deposited a sum of Rs. 47,85,336/- (Rupees Forty Seven Lakhs Eighty Five Thousand Three Hundred Thirty Six only) towards royalty. Thus, a total sum of Rs. 81,48,680/- (Rupees Eighty One Lakhs Forty Eight Thousand Six Hundred Eighty only) has been collected from the Respondent No.10 towards royalty and penalty for use of minor minerals in the National Highway Project. (D) It is further stated that the Respondent No.10, M/s Kunal Structure (I) Pvt. Ltd., has extracted unauthorisedly minor minerals i.e., ordinary earth/morrum from the different villages like - Badajhara, Kulao, Odasingha, Sarang, Pitiri, Kankadasoda and Ambapalash for which royalty and penalty was imposed and a sum of Rs. 8,27,230/- (Rupees Eight Lakhs Twenty Seven Thousand Two Hundred Thirty only) and Rs. 28,13,593/- (Rupees Twenty Eight Lakhs Thirteen Thousand Five Hundred Ninety Three only) has been collected for financial year of 2019- 20 and 2020-21 for violation of the provisions of the Odisha Minor Mineral Concession Rules, 2019.

(E) It is next stated that a sum of Rs. 1,33,86,003/- (Rupees One Crore Thirty Three Lakhs Eighty Six Thousand Three only) was deposited by the National Highway Authority of India towards royalty for the year 2020-21.

(F) It is next stated that Rs. 9,70,000/- (Rupees Nine Lakh Seventy Thousand only) has been realized from the Respondent No.10 during the year 2021-22 towards royalty and penalty. (G) It is also stated that the Respondent No.10 suo-motu has deposited Rs. 71,10,674/- (Rupees Seventy One Lakhs Ten Thousand Six Hundred Seventy Four only) towards royalty during the financial year 2021-22. It is also stated that the maximum quantity of ordinary earth and fly ash is utilized in expansion of National Highway development works other than morrum.

(H) It is next stated that the allegation with regard to felling of trees in forest area was intimated to the Range Officer, Mahabirod Range and Divisional Forest Officer, Dhenkanal Division, vide letter of Tahasildar-Parjang dated 05.11.2020 for taking action under the Forest (Conservation) Act, 1980.

(I) It is next stated that demand notices were also issued to the Respondent No.10, M/s Kunal Structure (I) Pvt. Ltd., for deposit of Government revenue towards illegal transportation of minor minerals and the Project Proponent has deposited the said royalty and penalty in this regard. It is also stated that no road metal quarry was in operational condition under Parjang Tahasil during the year 2019-20 and 2020-21 and the road metal used for the expansion of NH-200 (new NH-53) has been utilized by the Respondent No.10 from a legal quarry, namely, Jhilli Road Metal Quarry under Kankadahad Tahasil, District-Dhenkanal. It is also stated that a Memorandum of Understanding (MoU) has been entered into between the lessee of Jhilli Stone Quarry under Kankadahad Tahsil and the Project Manager of Respondent No.10, M/s Kunal Structure (I) Pvt. Ltd., for extraction of 50,000 Metric Tonnes (MT). It is stated that the Respondent No.10 has utilized the sand in development works of NH-200 (new NH-53) from the authorized sand quarries with valid Y Form.

(J) It is next stated that as per the Field Enquiry Report of Revenue Inspector Muktapasi, the Project Manager of Respondent No.10, M/s Kunal Structure (I) Pvt. Ltd., was required to deposit royalty of Rs. 35,000/- (Rupees Thirty Five Thousand only) and penalty of Rs. 10,000/- (Rupees Ten Thousand only) towards illegal extraction of minor minerals over Plot No. 282 under Khata No. 481 of Village-Badajhara and transportation of minor mineral to the working site of NH-200 (new NH-53) and the Respondent No.10 has deposited the said amount.

(K) It is further stated that as per the Field Enquiry Report of Revenue Inspector, Muktapasi, one JCB was seized from the Respondent No.10, M/s Kunal Structure (I) Pvt. Ltd., involved in illegal extraction of minor mineral and demand notice was issued to Respondent No.10 for deposit of Government revenue of Rs. 1,00,000/- (Rupees One Lakh only) towards royalty and penalty for illegal extraction and transportation of minor mineral for construction of NH-53 and intimation of which was given to the Range Officer, Mahabirod Range and Divisional Forest Officer, Dhenkanal, vide letter dated 05.11.2020. (L) It is further stated that based on the Field Enquiry Report of Revenue Inspector, Kualo, a sum of Rs. 55,000/- (Rupees Fifty Five Thousand only) towards royalty and penalty was realized from the Respondent No.10, M/s Kunal Structure (I) Pvt. Ltd., for illegal extraction and transportation of minor mineral from Plot No. 324 classified as Jungle-2 Mela under Khata No. 822 pertaining to Village-Kualo and intimation of which was given to the Range Officer, Mahabirod Range and Divisional Forest Officer, Dhenkanal, vide Tahasildar-Parjang letter dated 05.11.2020. It is also stated that no JCB machine was seized in this connection. The Respondent No.10 has also deposited the aforesaid amount.

31. Mr. Sankar Prasad Pani, learned Counsel for the Applicant has referred to the Chart filed in para 19 of the counter-affidavit of the Sub-Collector, Kamakshyanagar, dated 24.08.2021 and submitted that not only from the private land but also from Government land, vast quantities of morrum/soil have been extracted by the Respondent No.10, M/s Kunal Structure (I) Pvt. Ltd., for which royalty and fine was imposed against him and which has been collected from him. He further submitted that this Chart only shows 12 cases of recovery of fines whereas it is the own case of the State



Respondents in para 8 of their counter-affidavit that in 66 cases fine and royalty amounting to Rs. 33,63,344/- (Rupees Thirty Three Lakhs Sixty Three Thousand Three Hundred Forty Four only) has been collected in 'enforcement activities' and a further total sum of Rs. 81,48,680/- (Rupees Eighty One Lakhs Forty Eight Thousand Six Hundred Eighty only) has been collected from the Respondent No.10 towards royalty and penalty.

32. Learned Counsel for the Applicant further referred to the averments made in para 23 of the counter-affidavit of the State Respondents and submitted that huge amount of royalty and penalty has been recovered by the Tahasildar-Parjang for illegal extraction and transportation activities for the financial year 2020-21.

33. Learned Counsel for the Applicant has also referred to the Chart filed as Annexure-D/2 (colly) from pages 232 to 237 of the paper book, to show that the State Respondents were themselves aware that the Respondent No.10, M/s Kunal Structure (I) Pvt. Ltd., was a habitual and 'continuous' gross violator of mining laws and environmental laws and huge amounts had been recovered from him by way of royalty and penalty. He further submitted that inspite of Respondent No.10, M/s Kunal Structure (I) Pvt. Ltd., being a habitual offender, he was allowed, and is still being allowed to extract morrum/soil/earth and no action has been taken against him by the State Respondents as required by the strict provisions of Rule 51 of the Odisha Minor Mineral Concession Rules, 2016 (hereinafter referred to as the 'OMMC Rules, 2016').

34. Rule 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."

35. Learned Counsel 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.

36. Learned Counsel for the Applicant further referring to Clause (iii) of Sub-rule 51(1) of the OMMC Rules, 2016, submitted that no court shall take cognizance of any offence punishable under these

rules except upon a complaint in writing made by such officer or authority mentioned under Clause (ii) of Sub-rule 51(1), but in the present case the State Authorities have not made any complaint to the Court for taking cognizance for the acts of illegal extraction by the Respondent No.10, M/s Kunal Structure (I) Pvt. Ltd., for securing the conviction of Respondent No.10 inspite of the fact that the said Respondent is accused of having illegally extracted morrum/soil/earth in at least 66 cases in which royalty and penalty has been recovered from him and this shows that the State Respondents are acting in connivance with the Respondent No.10 and do not want to take any criminal action against him by lodging a complaint under Clause (iii) of Sub-rule 51(1) of the OMMC Rules, 2016 and are quite satisfied by merely recovering royalty and penalty, thus, encouraging the Respondent No.10 to continue with his acts of illegal extraction which is nothing but a loot of the State's valuable mineral resources.

37. Learned Counsel for the Applicant further submitted that even after the first case of illegal extraction and transportation of minor mineral, namely, morrum/soil/earth, was found against the Respondent No.10, action to lodge complaint against him in the Court of competent jurisdiction ought to have been taken but in the present case even after 66 admitted cases of offences committed by him, no action has been taken against the Respondent No.10.

38. Learned Counsel further submitted that S.O. No. 394(E) dated 16.04.1987 issued by the Ministry of Environment, Forests and Climate Change, has since been amended a number of times and now in terms of S.O. No. 2763(E) dated 10.11.2010 issued by the Ministry of Environment, Forests and Climate Change, even the Sub-Divisional Magistrate has been included among the authorities competent to exercise powers under Clause (a) of Section 19 of the Environment (Protection) Act, 1986, already reproduced hereinabove, but the Sub-Collector, Kamakshyanagar, who has filed the counter-affidavit on behalf of the State Respondents has not stated at all what action he has taken in exercise of powers conferred in Section 19 of the Act, 1986.

39. Mr. Surya Prasad Mishra, learned Senior Counsel appearing for the Respondent No.10, M/s Kunal Structure (I) Pvt. Ltd., at the outset, submitted that the said Respondent has never extracted any morrum from Government land or from private land. Averments to that effect have also been made in para 9 of the objections dated 22.12.2021 filed by the Respondent No.10.

40. Learned Senior Counsel also submitted that the Respondent No.10, M/s Kunal Structure (I) Pvt. Ltd., has not felled any trees and there is no finding that trees have been felled by the Respondent No.10 and it has only observed that trees were found to have been felled but in spite of the same the Committee has suggested to collect Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousand only) from the Respondent No.10 for rehabilitation of the environment in this regard.

41. Learned Senior Counsel further referring to the affidavit filed by the Respondent No.8, Ministry of Environment, Forests and Climate Change, dated 30.08.2021, submitted that the Committee constituted by the Tribunal has in its Joint Inspection Report, copy of which has been filed as Annexure-A/1 to the affidavit, only referred to extraction of soil and there is mention of any extraction of 'morrum'.

42. Learned Senior Counsel has also referred to the observations of the Committee with regard to the Site - 1 Badajhara, which mentions the area of excavation as 3.00 acres in the Kissam of land - Revenue Forest on Plot Nos. 1684, 526 and 282 and submitted that in Mouza-Badajhara the area of said Plots is as under:-

(i)	Plot No. 282	-	Ac. 0.50 decimal
(ii)	Plot No. 526	-	Ac. 1.44 decimal
(iii)	Plot No. 1684	-	Ac. 0.15 decimal

It is submitted that out of these three plots, Plot No. 526 is private land. Thus, only two plots are Government land, namely, Plot No. 282 and Plot No. 1684 from which there has been purported extraction of morrum and the total area of these two plots is Ac. 0.65 decimal but in the Report of the Committee the area of these three plots has been mentioned as 3.00 acres.

43. Learned Senior Counsel further submitted that the Tahasildar-

Kamakhyanagar has also furnished a report for Mouzas - Baunshpal, Saradhapur and Kanpura, stating that all these lands are Government land, but not forest or revenue forest lands, which can be culled out from the Table provided by the Divisional Forest Officer while calculating the cost of restitution of forest and revenue forest land as only Plot No. 1684 of Badajhara Mouza has been mentioned.

44. Learned Senior Counsel has further referred to the Table (at pages 301-303 of the paper book) which has been filed as Annexure to the affidavit of the Respondent No.8, Ministry of Environment, Forests and Climate Change dated 04.02.2022, and submitted that this Table has been prepared on the basis of information provided by the Tahasildar-Kamakhyanagar which only mentions Government land from which morrum has been extracted and there is no mention of the land being forest land or revenue forest land.

45. Further submission of the learned Senior Counsel is that the Ministry of Environment, Forests and Climate Change, Respondent No.8, Notification dated 08.08.2022 (at page no. 365-368 of the paper book), which refers to the earlier Notification No. S.O. 1224 (E) dated 28.03.2020 which amended the Appendix IX of EIA Notification of 2006 and provided that the exemption from Environmental Clearance (EC) for "extraction or sourcing or borrowing of ordinary earth for liner projects such as roads, pipelines etc." was re-examined in the light of the directions given by the National Green Tribunal Principal Bench in Original Application No. 190/2020 (Nobel M. Paikada Vs. Union of India & Ors), which referring to the Notification of 2020 observed that "...the exemption should strike balance and instead of being blanket exemption, it needs to be hedged by appropriate safeguards such as the process of exemption and quantum...."

Learned Senior Counsel, therefore, submitted that the Ministry of Environment, Forests and Climate Change Notification dated 08.08.2022 was issued in compliance of the directions of the

National Green Tribunal, Principal Bench, order dated 28.10.2020 and was examined by the Expert Appraisal Committee ('EAC' for short) and after due deliberations the EAC was of the opinion that;

"if such linear project has been obtained EC based on EIA studies incorporating such sourcing of construction material or other activities, necessary safeguards are already incorporated in the EC appraisal process.

However, if such sourcing of material is not considered in the EIA or such liner project does not attract provisions of EC, then such individual activities will be subject to extant environmental regulations as per EIA Notification 2006, as amended and/or applicable environmental safeguard related directions issued by the State Government/SPCB which need not to be observed while sourcing construction material."

It is further stated that 'based on the recommendations of the EAC and keeping in view the direction of Hon'ble NGT, the matter has been examined by the Ministry in detail and it has been decided that the exemption from EC provided vide S.O. 1224(E) dated 28.03.2020 for 'extraction or sourcing or borrowing of ordinary earth for linear projects such as roads, pipeline etc' shall be subject to Standard Operating Procedure (SOP) as enclosed to this Office Memorandum.". The Standard Operating Procedure for Borrow Area Identification; its operation, safety and redevelopment, has been filed as Annexure from pages 368-369 of the paper book.

The submission of learned Senior Counsel on this issue is that;

(1) the Ministry of Environment, Forests and Climate Change Notification dated 08.08.2022 would have prospective operation and cannot have deemed retrospective application and, therefore, the Respondent No.10, M/s Kunal Structure (I) Pvt. Ltd., cannot be saddled with the violation of the supposed Environmental Clearance conditions prior to 08.08.2022.

(2) and in any case after the Notification dated 08.08.2022, all extraction and sourcing or operation of ordinary earth for linear projects such as - roads, pipelines etc. shall be governed by the Standard Operating Procedure.

46. Mr. Surya Prasad Mishra, learned Senior Counsel for Respondent No.10 has referred to the judgment of the Hon'ble Supreme Court (2006) 6 SCC 371; (Karnataka Industrial Area Development Board Vs. Sri C. Kenchappa & Ors.) decided on 12.05.2006.

47. We find that that was a case where the Respondents therein who were agriculturists, had challenged the acquisition proceedings on their agricultural lands on the ground that they would lose their gomal lands (grazing lands for cattle) and there would also be an adverse impact on the environment of the villages if the industrial area increased. In our opinion the said judgment has absolutely no application to the facts of the present case.

48. Learned Senior Counsel has next referred to the judgment of the Hon'ble Supreme Court (2022) 9 SCC 306; (T.N. Goavarma Thirumulpad Vs. Union of India & Ors.), decided on 09.05.2022.

In our opinion, the said judgment also has no application to the facts of the present case instead on facts the said judgment would operate against the Respondent No.10.

49. Mr. S. K. Nayak, learned Additional Government Advocate appearing for the State Respondents, on the other hand, submitted that the Respondent No.10, M/s Kunal Structure (I) Pvt. Ltd., has not only illegally extracted morrum but also soil. Referring to the counter-affidavit of the State Respondents dated 24.08.2021, learned Counsel submitted that as per the own report of the Respondent No.10 he has extracted total quantity of 4,52,586.63m<sup>3</sup> of soil, hard soil, ordinary earth and morrum to be used for the expansion of NH-53, as stated in para 7 of the affidavit. The Respondent No.10 has extracted soil, morrum, ordinary earth of 1,62,972.72m<sup>3</sup> from the various Government lands pertaining to Kissam Jungle-2 after approval of the Village Committee for renovation of ponds for increasing of water holding capacity and a quantity of 1,89,636.91m<sup>3</sup> was extracted from the various private lands after obtaining due consent of the land owners for making cultivable due to high land and water reservoirs. However, for illegal extraction of earth/morrum from Government land in Baunspal, Saradhapur and Kanpura Villages, an amount of Rs. 33,63,344/- (Rupees Thirty Three Lakhs Sixty Three Thousand Three Hundred Forty Four only) has been collected in enforcement proceedings towards fine and royalty in 66 cases during the year 2019-20 and 2020-21 as per the provisions of Odisha Minor Mineral Concession Rules, 2016. Learned Counsel further submitted that the Respondent No.10, M/s Kunal Structure (I) Pvt. Ltd., has deposited Rs. 47,85,336/- (Rupees Forty Seven Lakhs Eighty Five Thousand Three Hundred Thirty Six only) towards royalty. Thus, a total amount sum of Rs. 81,48,680/- (Rupees Eight One Lakhs Forty Eight Thousand Six Hundred Eighty only) has been collected from the Respondent No.10 towards royalty and penalty.

50. Learned Counsel also submitted that for unauthorized extraction of minor minerals i.e., ordinary earth/morrum from the different Villages like - Badajhara, Kulao, Odasingha, Sarang, Pitiri, Kankadasoda and Ambapalash, a sum of Rs. 8,27,230/- (Rupees Eight Lakhs Twenty Seven Thousand Two Hundred Thirty only) and Rs. 28,13,593/- (Rupees Twenty Eight Lakhs Thirteen Thousand Five Hundred Ninety Three only) has been collected towards royalty and penalty for the financial year 2019-20 and 2020-21 respectively for violation of the provisions of the Odisha Minor Mineral Concession Rules, 2016. He further submitted that a total sum of Rs. 1,33,86,003/- (Rupees One Crore Thirty Three Lakhs Eighty Six Thousand Three only) was deposited by the National Highway Authority of India (NHAI) towards royalty for the year 2020-21 and Rs. 9,70,000/- (Rupees Nine Lakhs Seventy Thousand only) was realized from the Respondent No.10 during the year 2021-22 towards royalty and penalty. It is also stated that the Respondent No.10 has, after issuance of notices, deposited the royalty and penalty towards illegal transportation of minor minerals.

51. From a perusal of the affidavits filed by the Respondent No.10, M/s Kunal Structure (I) Pvt. Ltd., we find that though the case of the said Respondent is that he has only extracted 'ordinary soil' but not morrum, the facts are absolutely incorrect in as much as in para 5 of the objection filed by the

Respondent No.10 dated 22.12.2021, he has himself admitted while stating that he is in no way connected with the felling of trees and has excavated 'morrum' only in the year 2020 onwards.

52. So far as illegal extraction of ordinary soil is concerned, the report of the Joint Committee clearly mentions that the Respondent No.10 has illegally extracted soil from various plots in Mouzas such as - (1) Site -1. Badajhara:- The Respondent No.10 has paid Rs. 2,47,721/- (Rupees Two Lakhs Forty Seven Thousand Seven Hundred Twenty One only) towards fine and penalty for unauthorized extraction and transportation of soil. (2) Site-2. Ambapalas/Kankadasoda:- The Respondent No.10 has paid Rs. 1,03,455/- (Rupees One Lakh Three Thousand Four Hundred Fifty Five only) towards fine and penalty for unauthorized extraction and transportation of the earthen soil. (3) Site - 3. Kankadasoda:- It is stated that there is no extraction in Khata No. 315, Plot No. 719 which is a private land. (4) Site - 4. Ambapalas (Nuabandha):- The Respondent No.10 has paid Rs. 2,51,374/- (Rupees Two Lakhs Fifty One Thousand Three Hundred Seventy Four only) towards fine and penalty for unauthorized extraction and transportation of ordinary earth. (5) Site - 5. Pitri:- The Respondent No.10 has paid Rs. 2,16,938/- (Rupees Two Lakhs Sixteen Thousand Nine Hundred Thirty Eight only) towards fine and penalty for unauthorized extraction and transportation of ordinary earth.

(6) Site - 6. Odasingha Village:- The Respondent No.10 has paid Rs. 1,79,766/- (Rupees One Lakh Seventy Nine Thousand Seven Hundred Sixty Six only) towards fine and penalty for unauthorized extraction and transportation of ordinary earth. (7) Site - 7. Jatia Village:- The Respondent No.10 has paid Rs. 1,20,950/- (Rupees One Lakh Twenty Thousand Nine Hundred Fifty only) towards fine and penalty for unauthorized extraction and transportation of ordinary earth.

(8) Site - 8. Kualo:- The Respondent No.10 has paid Rs. 55,000/- (Rupees Fifty Five Thousand only) towards fine and penalty for unauthorized extraction and transportation of ordinary earth. (9) Site - 9. Saranga:- The Respondent No.10 has paid Rs. 70,082/- (Rupees Seventy Thousand Eighty Two only) towards fine and penalty for unauthorized extraction and transportation of ordinary earth.

(10) Site - 10. Barihapur Village:- It is stated that the Respondent No.10 has not extracted soil or morrum.

53. The Joint Committee Report further mentions that the Respondent No.10, M/s Kunal Structure (I) Pvt. Ltd., has deposited a sum of Rs. 46,10,823/- (Rupees Forty Six Lakhs Ten Thousand Eight Hundred Twenty Three only) in 36 enforcement cases as per Odisha Minor Mineral Concession Rules, 2016. In addition to that, he has deposited a sum of Rs. 1,95,26,677/- (Rupees One Crore Ninety Five Lakhs Twenty Six Thousand Six Hundred Seventy Seven only) towards royalty. The Report further mentions that the Respondent No.10 has deposited a sum of Rs. 33,63,344/- (Rupees Thirty Three Lakhs Sixty Three Thousand Three Hundred Forty Four only) for unauthorized extraction and transportation of minor mineral in 66 enforcement cases. In addition to that, he has deposited Rs. 1,83,68,830/- (Rupees One Crore Eighty Three Lakhs Sixty Eight Thousand Eight Hundred Thirty only) towards royalty.



54. So far as the allegation of felling of trees is concerned, we find that the Joint Committee Report does not anywhere mention that the Respondent No.10, M/s Kunal Structure (I) Pvt. Ltd., was responsible for felling of Sal trees. Even though felling of trees has been established by satellite images of 2010, 2018, 2019 and 2021, the Report mentions that the land in Badajhara which is forest land has been used by the 'encroachers' for cultivation purposes, but the allegation of felling of Sal trees has not been established against the Respondent No.10 and, therefore, in our opinion, no direction can be issued to the Respondent No.10 to deposit Rs. 2,50,000/- (Rupees Two Lakhs Fifty Thousand only) for restitution and rehabilitation of the revenue forest land in Badajhara on account of alleged illegal cutting of trees.

55. So far as the contention of the Applicant that as per the Ministry of Environment, Forests and Climate Change Notification dated 08.08.2022, the Respondent No.10, M/s Kunal Structure (I) Pvt. Ltd., was required to obtain Environmental Clearance in view of the EIA Notification 2006, since he was engaged in excavation of ordinary earth from burrow areas for linear project, we are not convinced with the submission of the learned Counsel for the Applicant. A perusal of the Ministry of Environment, Forests and Climate Change Notification dated 08.08.2022 clearly shows that it is in the nature of a clarification issued only after a query was put up to it by the National Green Tribunal, Principal Bench, vide its order dated 28.10.2020 passed in Original Application No. 190/2020/EZ (Noble M. Paikada Vs. Union of India & Ors.) and the Tribunal had held that;

'...the exemption should strike balance and instead of being blanket exemption, it needs to be hedged by appropriate safeguards such as the process of excavation and quantum....' The National Green Tribunal while deciding the M.A. No. 07/2022(WZ) & M.A. No. 08/2022(WZ) in Original Application No. 68/2020(WZ) (Shri Rajiv Babasahed Waman & Ors. Vs. Ministry of Environment, Forest & Climate Change & Ors.), vide order dated 31.05.202 has also held that;

".... that excavation of earth and mining of sand and other minor minerals being hazardous activity having serious adverse impact on environment in view of 'Precautionary' and 'Sustainable Development' principles, such activity cannot be left unregulated by statutory enforceable mechanism. Blanket exemption is against ecologically sustainable development norms and judgment of Ho'nble Supreme Court....."

56. The Ministry of Environment, Forests and Climate Change in compliance of the directions of the National Green Tribunal, Principal Bench, re-visited its previous Notification dated 28.03.2020 and the matter was also referred to the concerned Expert Appraisal Committee (EAC) for deliberation. The matter was deliberated in the EAC and thereafter the EAC opined that;

'if such liner project has obtained EC based on EIA studies incorporation such sourcing of construction material or other activities, necessary safeguards are already incorporated in the EC appraisal process. However, if such sourcing of material is not considered in the EIA or such liner project does not attract provisions of EC, then such individual activities will be subject to extant environmental regulations as per EIA Notification 2006, as amended and/or applicable environmental safeguard related directions issued by the State Government/SPCB which need to be

observed while sourcing construction material.' "Based on the recommendations of the EAC and keeping in view the direction of the Tribunal, the matter has been examined by the Ministry in detail and it has been decided that the exemption from EC provided vide S.O. 1224(E) dated 28.03.2020 for 'extraction or sourcing or borrowing of ordinary earth for linear projects such as road, pipelines etc.' shall be subject to Standard Operating Procedure (SOP)."

57. We may, at this stage, advert to the judgment of the Hon'ble Supreme Court in (2012) 4 SCC 629 (Deepak Kumar Vs. State of Haryana and Ors.) wherein in paras 18, 19 and 20 the Hon'ble Supreme Court has held as under:-

"18. Comments and inputs from various States and experts were also invited so as to prepare a report for consideration of MoEF. Based on the discussion held and subsequent inputs received, a draft report was prepared and circulated to all members for their further inputs. The report was further discussed on 29-1-2010 for its finalisation. The observations/comments made during the meeting were incorporated in the report and it was again circulated to all members for their consideration. The report so circulated was ultimately finalised. The decision taken by MoEF affects generally the mining of minor minerals including the riverbed mining throughout the country."

19. For an easy reference, we may extract the issues and recommendations made by MoEF, which are as follows:

"4.0.Issues and recommendations 4.1.Definition of minor mineral The term 'minor mineral' is defined in clause (e) of Section 3 of the MMDR Act, 1957 as:

'3. (e) "minor minerals" means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette declare to be a minor mineral;' The term 'ordinary sand' used in clause (e) of Section 3 of the MMDR Act, 1957 has been further clarified in Rule 70 of the MCR, 1960 as:

'70.Sand not be treated as minor mineral when used for certain purpose.--Sand shall not be treated as a minor mineral when used for any of the following purposes, namely:

(i) purpose of refractory and manufacture of ceramic;

- (ii) metallurgical purposes;
- (iii) optical purposes;
- (iv) purposes of stowing in coal mines;
- (v) for manufacture of silvicrete cement;
- (vi) manufacture of sodium silicate; and
- (vii) for manufacture of pottery and glass.'

Additionally, the Central Government has declared the following minerals as minor minerals: (i) boulder, (ii) shingle, (iii) chalcedony pebbles used for ball mill purposes only, (iv) limeshell, kankar and limestone used in kilns for manufacture of lime used as building material, (v) murrum, (vi) brick-earth, (vii) fuller's earth, (viii) bentonite, (ix) road metal, (x) reh-matti, (xi) slate and shale when used for building material, (xii) marble,

(xiii) stone used for making household utensils, (xiv) quartzite and sandstone when used for purposes of building or for making road metal and household utensils, (xv) saltpetre and (xvi) ordinary earth (used for filling or levelling purposes in construction or embankments, roads, railways building).

It may thus be observed that minerals have been classified into major and minor minerals based on their end use rather than level of production, level of mechanisation, export and import, etc. There do exist some minor mineral mines of silica sand and limestone where the scale of mechanisation and level of production is much higher than those of industrial mineral mines. Further, in terms of the economic cost and revenue, it has been estimated that the total value of minor minerals constitutes about 10% of the total value of mineral production whereas the value of non-metallic minerals comprises only 3%. It is, therefore, evident that the operation of mines of minor minerals need to be subject to some regulatory parameters as that of mines of major minerals.

Further, unlike India there does not exist any such system based on end usage in other countries for classifying minerals into major and minor categories. Thus, there is a need to relook at the definition of 'minor minerals' per se.

It is, therefore, recommended that the Ministry of Mines along with Indian Bureau of Mines, in consultation with the State Governments may re-examine the classification of minerals into major and minor categories so that the regulatory aspects and environment mitigation measures are appropriately integrated for ensuring sustainable and scientific mining with least impacts on environment.

4.2. Size of the mine lease Area for grant of mine lease varies from State to State. Maximum area which can be held under one or more mine lease is 2590 ha or 25.90 sq miles in Jammu and Kashmir. Rajasthan prescribed a minimum limit of 1 ha for a lease. Maximum area prescribed for permit is 50 × 50 m. In most of the States area of permit is not specified in the Rules. It has recently been observed by the Punjab and Haryana High Court in its order dated 15-5-2009 that the State Government apparently granting short-term permits by dividing the mining area into small zones in effect avoids environmental norms.

There is, thus a need to bring uniformity in the extent of area to be granted for mine lease so as to ensure that eco-friendly scientific mining practices can be adopted. It is recommended that the minimum size of mine lease should be 5 ha. Further, preparation of comprehensive mine plan for contiguous stretches of mineral deposits by the respective State Governments may also be encouraged. This may suitably be incorporated in the Mineral Concession Rules, 1960 by the

Ministry of Mines. 4.3. Period of mine lease The period of lease varies from State to State depending on type of concessions, minerals and its end use. The minimum lease period is one year and maximum 30 years. Minerals like granite where huge investments are required, a period of 20 years is generally given with the provisions of renewal. Permits are generally granted for short periods which vary from one month to a maximum of one year. In States like Haryana, minor mineral leases are auctioned for a particular time period. Mining is considered to be capital intensive industry and considerable time is lost for developing the mine before it attains the status of fully developed mine. If the tenure of the mine lease is short, it would encourage the lessee to concentrate more on rapid exploitation of mineral without really undertaking adequate measures for reclamation and rehabilitation of mined out area, posing thereby a serious threat to the environment and health of the workers and public at large.

There is thus, a need to bring uniformity in the period of lease. It is recommended that a minimum period of mine lease should be 5 years, so that eco-friendly, scientific and sustainable mining practices are adopted. However, under exceptional circumstances arising due to judicial interventions, short-term mining leases/contracts could be granted to the State Agencies to meet the situation arising therefrom. 4.4. Cluster of mine approach for small-sized mines Considering the nature of occurrence of minor mineral, economic condition of the lessee and the likely difficulties to be faced by Regulatory Authorities in monitoring the environmental impacts and implementation of necessary mitigation measures, it may be desirable to adopt cluster approach in case of smaller mine leases being operated presently. Further, these clusters need be provided with processing/crusher zones for forward integration and minimising excessive pressure on road infrastructure. The respective State Governments/mine owners' associations may facilitate implementation of Environment Management Plans in such cluster of mines.

4.5. Requirement of mine plan for minor minerals At present, most of the State Governments have not made it mandatory for preparation of mining plan in respect of minor minerals. In some States like Rajasthan, eco-friendly mining plans are prepared, which are approved by the State Mining Department. The eco-friendly mining plans so prepared, though conceptually welcome, are observed to be deficient and need to be made comprehensive in a manner as is being done for major minerals. Besides, the aspects of reclamation and rehabilitation of mined out areas, progressive mine closure plan, as in vogue for major minerals could be introduced for minor minerals as well.

It is recommended that provision for preparation and approval of mine plan, as in the case of major minerals may appropriately be provided in the rules governing the mining of minor minerals by the respective State Governments. These should specifically include the provision for reclamation and rehabilitation of mined out area, progressive mine closure plan and post mine land use.

4.6. Creation of separate corpus for reclamation/rehabilitation of mines of minor minerals Mining of minor minerals, in our country, is by and large an unorganised sector and is practised in haphazard and unscientific manner. At times, the size of the leasehold is also too small to address the issue of reclamation and rehabilitation of mined out areas. It may, therefore, be desirable that before the concept of mine closure plan for minor minerals is adopted, the existing abandoned mines may be reclaimed and rehabilitated with the involvement of the State Government. There is

thus, a need to create a separate corpus, which may be utilised for reclamation and rehabilitation of mined out areas. The respective State Governments may work out a suitable mechanism for creation of such corpus on the 'polluter pays' principle. An organisational structure may also need to be created for undertaking and monitoring these activities.

4.7. Depth of mining Mining of minerals, whether major or minor have a direct bearing on the hydrological regime of the area. Besides affecting the availability of water as a resource, it also affects the quality of water through direct run off going into the surface water bodies and infiltration/leaching into groundwater. Further, groundwater withdrawal, dewatering of water from mine-pit and diversion of surface water may cause surface and subsurface hydrologic systems to dry up. An ideal situation would require that quarrying should be restricted to unsaturated zone only above the phreatic water table and should not intersect the groundwater table at any point of time. However, from the point of view of mineral conservation, it may not be desirable to impose blanket ban on mining operation below groundwater table.

It is, therefore, recommended that detailed hydrogeological report should be prepared in respect of any mining operation for minor minerals to be undertaken below groundwater table. Based on the findings of the study so undertaken and the comments/recommendations of the Central Groundwater Authority/State Groundwater Board, a decision regarding restriction on depth of mining for any area should be taken on case-to-case basis.

4.8. Uniform minor mineral concession rules The economic value of the minor minerals excavated in the country is estimated to contribute to about 9% of the total value of the minerals whereas the non-metallic minerals contribute to about 2.8%. Keeping in view the large extent of mining of minor minerals and its significant potential to adversely affect the environment, it is recommended that model mineral concession rules may be framed for minor minerals as well and the minor minerals may be subjected to a simpler regulatory regime, which is, however, similar to major minerals regime. 4.9. Riverbed mining 4.9.1. Environment damage being caused by unregulated riverbed mining of sand, bazari and boulders is attracting considerable attention including in the courts. The following recommendations are therefore made for the riverbed mining:

- (a) In the case of mining leases for riverbed sand mining, specific river stretches should be identified and mining permits/lease should be granted stretchwise, so that the requisite safeguard measures are duly implemented and are effectively monitored by the respective Regulatory Authorities.
- (b) The depth of mining may be restricted to 3m/water level, whichever is less.
- (c) For carrying out mining in proximity to any bridge and/or embankment, appropriate safety zone should be worked out on case-to-case basis, taking into account the structural parameters, locational aspects, flow rate, etc. and no mining should be carried out in the safety zone so worked out.

5.0. Conclusion Mining of minor minerals, though individually, because of smaller size of mine leases is perceived to have lesser impact as compared to mining of major minerals. However, the activity as a whole is seen to have significant adverse impacts on environment. It is, therefore, necessary that the mining of minor minerals is subjected to simpler but strict regulatory regime and carried out only under an approved framework of mining plan, which should provide for reclamation and rehabilitation of the mined out areas. Further, while granting mining leases by the respective State Governments location of any eco-fragile zone(s) within the impact zone of the proposed mining area, the linked rules/notifications governing such zones and the judicial pronouncements, if any, need be duly noted. The Union Ministry of Mines along with the Indian Bureau of Mines and respective State Governments should therefore make necessary provisions in this regard under the Mines and Minerals (Development and Regulation) Act, 1957, Mineral Concession Rules, 1960 and adopt model guidelines to be followed by all States.

20. The Report clearly indicates that operation of mines of minor minerals needs to be subjected to strict regulatory parameters as that of mines of major minerals. It was also felt necessary to have a relook to the definition of "minor minerals"

per se. The necessity of the preparation of "comprehensive mines plan" for contiguous stretches of mineral deposits by the respective State Governments may also be encouraged and the same be suitably incorporated in the Mineral Concession Rules, 1960 by the Ministry of Mines."

58. Para 19 of the judgment clearly mentions 'ordinary earth' '(used for filling or leveling purposes in construction or embankments, roads, railways, building)'.

59. The contention of the learned Senior Counsel appearing for the Respondent No.10, M/s Kunal Structure (I) Pvt. Ltd., that the judgment of Deepak Kumar (Supra) was confined only to cases relating to sand is not correct and includes minor minerals including ordinary earth.

60. Though, the Ministry of Environment, Forests and Climate Change, vide its Notification dated 28.03.2020 had granted exemption from Environmental Clearance for 'extraction or sourcing or borrowing of ordinary earth for linear projects such as roads, pipelines etc.'. The same was questioned by the National Green Tribunal, Principal Bench, in Original Application No. 190/2020 (Noble M. Paikada Vs. Union of India & Ors.) and the National Green Tribunal, Western Bench, in M.A. No. 07/2022(WZ) and M.A. No. 08/2022(WZ) in Original Application No. 68/2020(WZ) (Shri Rajiv Babasaheb Waman & Ors. Vs. Ministry of Environment, Forests & Climate Change & Ors.), which has already been noted hereinabove.

61. The stand of the Respondent No.10, M/s Kunal Structure (I) Pvt.

Ltd., that in view of the Ministry of Environment, Forests and Climate Change Notification dated 28.03.2020 he is not required to obtain prior permission for extraction or sourcing or borrowing of ordinary earth is not correct since in his affidavit it is his own case that he has deposited penalty for the financial year 2019-20 and for subsequent years which shows that he was extracting ordinary

earth even prior to the Ministry of Environment, Forests and Climate Change Notification dated 28.03.2020 and, therefore, he would have had to obtain Environmental Clearance under the EIA Notification, 2006 as existing prior to the exemption granted under the Notification dated 28.03.2020.

62. Moreover, the Notification of 08.08.2022 also in para 4 thereof states that if linear project has obtained EC based on EIA studies incorporating such sourcing of construction material or other activities, necessary safeguards are already incorporated in the EC appraisal process. But if such sourcing of material is not considered in the EIA or such linear project does not attract the provisions of EC, then such individual activities will be subject to the extant environmental regulations as per EIA Notification, 2006.

Thus, the Respondent No.10, cannot claim exemption from the rigour of the EIA Notification 2006 in respect of ordinary earth illegally excavated by him and would be liable for payment of Environmental Compensation for the same. The Standard Operating Procedure which is part of the Ministry of Environment, Forests and Climate Change Notification dated 08.08.2022 also does not grant any exemption to the Respondent No.10, M/s Kunal Structure (I) Pvt. Ltd., from the rigour of environmental norms and only lays down guidelines for borrowing and the manner in which topsoil should be removed, etc.

63. In this view of the matter, the claim of the Respondent No.10, M/s Kunal Structure (I) Pvt. Ltd., that the Ministry of Environment, Forests and Climate Change Notification dated 08.08.2022 will only have prospective application is misconceived and is rejected.

64. We are also of the view that the Respondent No.10, M/s Kunal Structure (I) Pvt. Ltd., would not be absolved from the rigour of punitive liabilities for violation of the Odisha Minor Mineral Concession Rules, 2016.

65. The facts on record show that the Respondent No.10, M/s Kunal Structure (I) Pvt. Ltd., has been guilty of illegal extraction of soil as well as morrum from the Government land on at least 66 occasions for which he has paid penalties as enumerated hereinabove. He is, therefore, prima-facie, guilty of offence inviting penalties under Rule 51 of the Odisha Minor Mineral Concession Rules, 2016.

66. We find from the affidavit of the State Respondents that only enforcement proceedings for recovery of penalties has been taken against the Respondent No.10, M/s Kunal Structure (I) Pvt. Ltd., which has probably only emboldened him to carry on with illegal extraction of soil/morrum so long as he can get away by paying royalty as well as penalty, thus causing loot of precious State mineral resources.

67. The Hon'ble Supreme Court in (2000) 3 SCC 745, (U.P. Pollution Control Board vs. Mohan Meakins Ltd. &Ors.), has held as under: -

"11. Where an offence under the Act has been committed by a company every person who was in charge of and was responsible to the company for the conduct of the business of the company is also made guilty of the offence by the statutory creation. Any director, manager or other officer of the company, who has consented to or connived in the commission of the said offence, is made liable for the punishment of the offence. This is clearly discernible from Section 47 of the Act.

"47. Offences by companies-Where an offence under this Act has been committed by 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 the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to the proceeded against and punished accordingly:

Provided that nothing contained in this sub-

section shall render any such person liable to any punishment provided in this Act 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.

(2)Notwithstanding anything contained in sub-

section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of or, is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly."

12. In the above context what is to be looked at during the stage of issuing process is whether there are allegations in the complaint by which the Managers or Directors of the Company can also be proceeded against, when the Company is alleged to be guilty of the offence. Para 12 of the complaint reads thus:

"That the accused persons from 2 to 11 are Directors/Managers/Partners of M/s Mohan Meakins Distiller, Daliganj, Lucknow, as mentioned in this complaint are responsible for constructing the proper works and plant for the treatment of their highly polluting trade effluent so as to conform to the standard laid down by the Board. Aforesaid accused persons are deliberately avoiding to abide by the provisions of Sections 24 and 26 of the aforesaid Act which are punishable respectively under Sections 43 and 44 of the aforesaid Act, for which not only the Company but its Directors, managers, Secretary and all other responsible officers of the accused Company, responsible for the conduct of its business are also liable in accordance with the provision of Section 47 of the Act." The appellant has further stated in para 23 of the complaint that "the Chairman, Managing Directors and Directors of the Company are the persons responsible for the act and therefore, they are liable to be proceeded against according to the law".



13. Shri P. Chidambaram, learned Senior Counsel who argued for the respondents made a fervent plea to rescue the Directors of the Company on the ground of lapse of a long time now since the institution of the complaint. Lapse of seventeen years is no doubt considerable, but the Board is not the least to be blamed for it. Since it is not a pleasant task to probe into the causes which contributed for such a long delay we choose to refrain from doing that exercise. Nonetheless, lapse of such long period cannot be a reason to absolve the respondents from the trial. It must reach its logical culmination. Courts cannot afford to lightly deal with cases involving pollution of air and water. The message must go to all concerned. The courts will share the parliamentary concern on the escalating pollution level of our environment. Those who discharge noxious polluting effluents into streams may be unconcerned about the enormity of the injury which it inflicts on the public health at large, the irreparable impairment it causes on the aquatic organisms, the deleteriousness it imposes on the life and health of animals. So the courts should not deal with the prosecution for offences under the Act in a casual or routine manner. Parliamentary concern in the matter is adequately reflected in strengthening the measures prescribed by the statute. The court has no justification for ignoring the seriousness of the subject.

14. We are, therefore, not inclined to accede to the plea made by Shri Chidambaram on the ground of lapse of long period now. Of course this lapse of long period is a good reason for expediting the trial. Now the deck is clear and hence the trial court can proceed with a faster pace and accelerated velocity.

15. If any of the accused applies for dispensing with his personal presence in the Court, after making the first appearance, the trial court can exempt him from continuing to appear in the Court by imposing any condition which the Court deems fit. Such conditions can include, inter alia, that a counsel on his behalf would be present when the case is called, that he would not dispute his identity as the particular accused in the case, and that he would be present in court when such presence is imperatively needed.

16. Subject to the above observations, we set aside the impugned judgment of the High Court as well as the order of the Sessions Court. We direct the trial court to proceed with the case in accordance with law and dispose of it as expeditiously as possible."

68. The present Original Application is a case where the Sub-Divisional Magistrate/Sub-Collector, Kamakhyanagar, who has filed the counter-affidavit on behalf of the State Respondents, was well aware of the activities of the Respondent No.10, M/s Kunal Structure (I) Pvt. Ltd., in illegal extraction of soil/morrum in at least 66 cases but we are surprised that no criminal action has been taken against the Respondent No.10.

69. We accordingly direct the District Collector, Dhenkanal, to initiate criminal proceedings against the Respondent No.10, M/s Kunal Structure (I) Pvt. Ltd., in accordance with the provisions of Section 51 of the Odisha Minor Mineral Concession Rules, 2016 within 15 days. The further question whether a gross violator of Odisha Minor Mineral Concession Rules, 2016, such as the Respondent No.10, should be allowed to continue with mining activities is a decision required to be taken by the Competent Authority in accordance with law.

70. So far as Environmental Compensation and recovery thereof is concerned, needless to say, the State Respondents shall initiate steps for recovery of the same in accordance with law, giving adequate notice and opportunity of being heard to the Respondent No.10, M/s Kunal Structure (I) Pvt. Ltd.,

71. M/s Kunal Structure(I) Pvt Ltd has carried out illegal mining in the land belonging to Government, Forest and Private. The District Magistrate shall examine the area of mining undertaken in each of the above three landownership areas and accordingly determine the environmental compensation. With regard to the mining carried out in the Forest area, the provisions of Forest Act shall apply for such illegal activity over and above the environmental compensation stipulated by the District Magistrate. In case of mining in private land though it has been said that the land owners have themselves given permission is not legally tenable. The private land owners who have allowed such mining activities in their land are jointly liable for action. Hence, the environmental compensation for such land will be recovered from the mining company as well as from the land owners by the District Magistrate. The amount generated by way of environmental compensation shall be used for environmental restoration which includes plantation. The amount shall be utilized for such activity under the supervision of the PCCF, Odisha, District Collector, Dhenkanal, and the Member Secretary, Odisha State Pollution Control Board.

72. With the aforesaid directions, the Original Application No. 110/2020/EZ is accordingly disposed of.

73. There shall be no order as to costs.

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B. Amit Sthalekar, JM .....

Prof. A. Senthil Vel, EM February 28th, 2023, Original Application No.110/2020/EZ AK