

ORISSA HIGH COURT: CUTTACK

W.P(C) NO. 37866 OF 2020

In the matter of an application under Articles 226 and 227 of the Constitution of India.

AFR Raj Kishor Deo Petitioner

-Versus-

State of Odisha & Ors. Opp. Parties

For petitioner : Mr. Asoka Mohanty, Sr. Advocate
along with M/s. S. Mohanty, A.Das
and T. Nayak, Advocates

For opp. parties : Mr. P. P. Mohanty,
Addl. Govt. Advocate

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI
AND
THE HONOURABLE MR. JUSTICE S. K. MISHRA**

DECIDED ON : 20.06.2022

DR. B.R. SARANGI, J. The petitioner, by means of this writ petition, seeks to quash the letter no. 4207 dated 16.10.2020 under Annexure-11, which was issued by opposite party no.6-Divisional Forest Officer, Bamara Wildlife Division, Sambalpur to opposite party no.7-Member Secretary, State Environment Impact Assessment Authority (SEIAA), Bhubaneswar requesting him not to grant environment clearance in respect of

Laigura Stone Quarry on the ground that the land was not demarcated, even if three joint measurements were conducted by the Revenue Department and Forest Department and the plots were proposed to be included for constitution of the Langposh-Baliturei Protected Reserve Forest (PRF); as well as letter no. 9803/SEIAA dated 26.11.2020 under Annexure-12 issued by opposite party no.7 rejecting the proposal for grant of environment clearance in respect of Laigura Stone Quarry as per letter no. 4207 dated 16.10.2020.

2. The factual matrix of the case, in brief, is that the petitioner is the owner of the land appertaining to plot no. 692/3087, khata no. 43, measuring Ac. 0.38 decimal, Kissam Goda-2 of Village-Gochhara in the district of Sambalpur. Lokanath Pradhan, Jenamani Pradhan and Purna Chandra Pradhan of the same village are the owners of the plots adjacent to the plot of the petitioner. On 27.06.2016, petitioner executed lease agreements with Lokanath Pradhan and Arjun Pradhan, who are sons of late Jenamani Pradhan, and also Purna Chandra Pradhan in respect of their plots for a period of

twenty-five years. After execution of the said agreements, as the kism of the land is Goda-2 and stones are available on the surface of the land, including the land of the petitioner, the petitioner had applied in Form-J under the provisions of Rule 26(2) of the Odisha Minor Mineral Concessions (Amendment) Rules, 2014 to opposite party no.5-Tahasildar, Kuchinda to grant lease of the stone quarry for a period of five years over Ac. 4.81 decimal. The said application was registered as Touzi Case No. 140 of 2016 of Kuchinda Tahasil. The other owners had submitted their no objection certificates in shape of affidavit. On 17.10.2016, the Tahasildar, Kuchinda had invited objections and no objection was received within the stipulated period. After necessary scrutiny, opposite party no.5-Tahasildar, Kuchinda recommended the application of the petitioner to opposite party no.4-Sub-Collector, Kuchinda, who duly recommended the application of the petitioner to opposite party no.3-Collector, Sambalpur. On 19.06.2017, opposite party no.3, being the competent authority, declared Laigura Stone Quarry as a new

sairat. The schedule of the land described in Form-J by the petitioner was approved by the Collector, Sambapur for Laigura Stone Quarry. Pursuant to such approval, the Deputy Collector (Revenue), Sambalpur, on 20.06.2017, wrote a letter to the Tahasildar, Kuchinda to take further necessary action as per the provisions of Odisha Minor Mineral Concessions (Amendment) Rules, 2014. Accordingly, on 21.06.2017, the Tahasildar, Kuchinda wrote a letter to the petitioner to submit mining plan and environmental clearance of Laigura Stone Quarry. After receipt of the said letter, petitioner prepared mining plan of Laigura Stone Quarry, which was approved by the Deputy Director of Geology, Sambalpur. After approval of the mining plan, petitioner submitted the same before the Tahasildar, Kuchinda and requested him to forward the proposal/application for necessary environmental clearance.

2.1 On 31.05.2018, the Tahasildar, Kuchainda-opposite party no. 5 wrote a letter to the Chairman, District Level Environment Impact Assessment Authority, Sambalpur to grant necessary environmental

clearance in respect of Laigura Stone Quarry. In the year 2019, during pendency of the environmental clearance, Range Officer, Kuchinda and the other forest authorities forcefully entered into the land of the petitioner and his other leasehold area and forcibly put pillars claiming as the forest land and part of the protected reserve forest, to which the petitioner submitted a representation on 03.10.2019 before the Collector, Sambalpur. In response to the same, on 21.10.2019, the Deputy Collector (Revenue), Sambalpur forwarded the representation of the petitioner to opposite party nos. 5 & 6 to take necessary action as per law. On 10.07.2019, 24.09.2019 and 10.12.2019 three joint verifications were conducted by the Revenue and Forest authorities, in presence of the petitioner and other villagers, on the status of the land where Laigura Stone Quarry is situated.

2.2 The Divisional Forest Officer, Bamara, 29.01.2020, wrote a letter to the Collector, Sambalpur to the following effect:-

"In response to your office letter No. Cited above, a joint verification by Revenue and Forest Officials in presence of the

Petitioner and the villagers was taken up on 10.12.2019 at Mouza: Laigura. It is to mention here that earlier also two nos. of joint verification have been carried out on the status of the land on dt. 10.07.2019 and on dt. 24.09.2019. The copied of all these JV are enclosed here with.

From all these JVs it came out that in the year 2007 lease for as area of Ac. 2.41 dec. was given to Sri Raj Kishore Deo of village: Gochhara for lifting of stone. The details of leased land particular are

Sl. No.	Name of Village	Name of Rayat	Khata No.	Plot No.	Area
1.	Gochhara	Rajkoishore Deo S/o-Harish Ch. Deo	43	693/3058 692/3087	Ac. 0.21 Ac. 0.38
2.	Laigura	Lokanath Pradhan	121/67	692/3237	Ac 1.82
		Total			Ac. 2.41

As per Revenue Department records and maps, the disputed stone quarry is situated on the Revenue Land having the above Plot No. and Khata No. But as per the Revenue Department Notification on "Langaposh-Baliturei PRF(A)" having No. FS4986/79/5997 dt. 28/01/1980 and its map the said stone quarry comes inside the notified PRF area. On 10.07.2019 the Tahasildar, Kuchinda who was present in the JV also directed to Sri Rajkishore Deo for not to lift any stone from this quarry till further orders. From the Notification's "Prismatic Compass and Chain Survey" readings a fresh map was also prepared and verified it in the field during JV.

After all these efforts in could not be cleared up whether the Land in question is a Revenue Land or Forest Land because both the Department claim the right over it as per the official records available with them."

2.3 On 16.10.2020, the Divisional Forest Officer, Bamara wrote a letter to the Member Secretary, State Environment Impact Assessment Authority (SEIAA), Odisha, Bhubaneswar to the following effect:-

"As per records and maps of Revenue Department, the disputed stone quarry is situated on the Land having the above plot No. and Khata No. But as per the Revenue Department Notification on "Langaposh-Baliturei PRF(A)" having No. FS484/79-5997dt. 28/01/1980 and its map the said stone quarry comes inside the notified PRF area. On 10.07.2019, the Tahasildar, Kuchinda who was present on the joint verification also directed to Sri Rajakishore Deo for not to lift any stone from this quarry till further orders. From the Notification's "Prismatic Compass and Chain Survey" readings a fresh map was also prepared and verified it

in the field with fresh posting of the lost pillars during joint verification. Now after fresh pillar postings, it is seen that the said stone quarry is situated is within the notified PRF area.

After all these efforts it could not be cleared up whether the Land in question is a Revenue Land or Forest Land because both the Department claim the right over it as per the official records available with them.

Therefore in such a situation, it was suggested to the District Magistrate and Collector, Sambalpur vide his office memo No. 269 dt. 29.01.2020 to refer to the Forest Settlement Officers report (who was appointed at that time for the purpose) on list of plots that were proposed to be included for constitution of the "Langposh-Baliturei PRF(A)" from the Revenue Department Record Room. The information from the District Magistrate and Collector, Sambalpur has not yet received. Therefore after receipt of the above clarifications from the Collector, Sambalpur regarding the status of the land (Forest or Non-Forest) of Plot No. 692, 692/3237, 692/3087, Khata No.121/70, 121/69, 121/67,43 categorical reply can be submitted.

Since at present it is a PRF land as per records of Bamara Wildlife Division, the above plot nos. are not included in the DLC report."

On receipt of the aforesaid letter from the Divisional Forest Officer, Bamara, the State Environment Impact Assessment Authority (SEIAA), on 26.11.2020, wrote a letter to the Tahasildar, Kuchinda stating inter-alia that as the Laigura Stone Quarry is situated inside the notified Protected Reserve Forest (PRF) area, as intimated by the DFO, Bamara Wildlife Division vide letter no. 4207 dated 16.10.2020, the environment clearance sought by the petitioner is rejected. Hence this writ petition.

3. Mr. Asok Mohanty, learned Senior Counsel appearing along with Mr. S. Mohanty, learned counsel for the petitioner vehemently contended that the letter

dated 16.10.2020 under Annexure-11 issued by the Divisional Forest Officer, Bamara Wildlife Division is illegal, arbitrary and thus cannot sustain in the eye of law, in view of the letters dated 29.01.2020 and 16.10.2020 of the Divisional Forest Officer, Bamara Wildlife Division addressed to the Collector & District Magistrate, Sambalpur and Member Secretary, State Environment Impact Assessment Authority, (SEIAA), Odisha, Bhubaneswar respectively that the plots of Laigura Stone Quarry are not coming under the protected reserve forest. Therefore, the order refusing to grant environment clearance cannot sustain in the eye of law. It is further contended that save and except Section-4 notification, no further follow up action has taken place till today. Therefore, inclusion of disputed plots under “Langposh-Baliturei PRF(A)”, as alleged, has no justification. Furthermore, the disputed plots are not included in the notification and in absence of the said plot numbers in the notification, the map cannot be relied upon, particularly when the Divisional Forest Officer, Bamara Wildlife Division in his letter dated

16.10.2020 stated that *“after all these efforts it could not be cleared up whether the land in question is a Revenue Land or Forest Land because both the Department claim the right over it as per the official records available with them”*. It is further contended that the status of the land in question is ‘Rayati’ and, as such, the petitioner-lessee has been paying rent to the State Government. Thereby, the assertion made by the Divisional Forest Officer, Bamra Wildlife Division that the disputed plots are coming under the protected reserve forest, has no justification. Thereby, he seeks for quashing of the letter dated 16.10.2020 under Annexure-11 issued by the Divisional Forest Officer, Bamra Wildlife Division and the letter dated 26.11.2020 under Annexure-12 issued by opposite party no.7-State Environment Impact Assessment authority (SEIAA).

4. Mr. P. P. Mohanty, learned Additional Government Advocate for the State admitted that the petitioner had made a grievance petition regarding putting of pillar over his quarry land by the forest officials and that a joint inquiry was conducted by

opposite parties no. 5 & 6 and it was found that the quarry land the petitioner comes inside the “Langposh-Baliturei PRF(A)” as per records of the forest officials. He, therefore, contended that the order impugned refusing to grant environmental clearance in favour of the petitioner is justified. It is further contended that opposite party no.6, vide letter dated 16.10.2020, reported to the Member Secretary, SEIAA, Odisha that the District Magistrate and Collector, Sambalpur was requested vide memo no.269 dated 29.01.2020 to refer to the Forest Settlement Officer’s report on list of plots that were proposed to be included for constitution of the Langposh-Baliturei PRF (A) from the Revenue Department Record Room, and that information from the District Magistrate and Collector, Sambalpur has not yet received, and that after clarification from the District Magistrate and Collector, Sambalpur regarding status of plot nos.692, 692/3236, 692/3237, 692/3087, khata no.121/70, 121/69, 121/67, 43, categorical reply can be submitted. It is further contended that the authority is well justified in refusing to grant

environmental clearance in favour of the petitioner to operate the quarry in question.

5. This Court heard Mr. A. Mohanty, learned Senior Counsel appearing along with Mr. S. Mohanty, learned counsel for the petitioner and Mr. P. P. Mohanty, learned Additional Government Advocate appearing for the State by hybrid mode. Pleadings having been exchanged between the parties, with the consent of learned counsel for the parties, the matter is being disposed of finally at the stage of admission.

6. On the basis of factual matrix, as discussed above, the dispute which revolves around in this case is whether the land in question where the Laigura Stone Quarry situates belongs to the Revenue Department or the Forest Department and if so, does it come under the proposed reserved forest area?

7. Even though counter affidavits are filed by opposite parties no. 5 & 6 on 16.07.2021 and 22.07.2021 respectively, the same could not give a correct picture to resolve the conflict between the

Revenue Department and the Forest Department.

Therefore, in course of hearing, on 09.05.2022, this

Court passed the following order:-

"This matter is taken up through hybrid mode.

2. Heard Mr.Ashok Mohanty, learned Senior Advocate along with Mr.S.Mohanty, learned counsel for the petitioner and Mr. P.P.Mohanty, learned Addl. Government Advocate.

3. Mr.Ashok Mohanty, learned Senior Advocate brings to our notice that a memo of affidavit has been filed by the Addl. Government Advocate in compliance of orders of this Court dated 10.08.2021 and 31.08.2021, by which certain documents have been attached and out of them letter No.3811 dated 3.9.2021 issued by the Divisional Forest officer, Bamra Wildlife Division has been referred to wherein it has been stated that the Government of Orissa in its Revenue Department vide Notification No.FS-486/79-5997/R dated 28.01.1980 proposed to constitute Langposh-Baliturai 'A' Block as Revenue Forest under Section 4 of Orissa Forest Act, 1972. The said proposed Reserved Forest notified has not yet notified under Section 21 of the Orissa Forest Act, 1972 as Reserved Forest. In the said memo also, another letter No.09.09.2021 of the Office of the District Magistrate and Collector, Sambalpur has been attached, wherein it has been specifically mentioned as follows:-

"As per available files and records in this office, the enquiry report by the Forest Settlement Officer pursuant to Section 7 of the Orissa Forest Act, 1972, relevant documents Page 2 of 2 showing the exercise of power by FSO under Section, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 of the Act and notification u/s 21 of Orissa Forest Act, 1972 in respect of reservation of Langposh-Baliturei 'A' forest Block under Bamra Forest Division are not traceable. However, we have requested to Govt. in Forest & Environment Department, Odisha to provide a copy of the notification, if issued and available at their end."

4. In view of such position, the direction given in the impugned order in Annexure-12 dated 26.11.2020 is contrary to the documents which has been referred to above, thereby it is contended that the authorities have mechanically passed the impugned order and rejected the claim of the petitioner and the area has not been declared as reserved forest pursuant to Rule 21 of the Orissa Forest Act, 1972.

5. Mr. P.P.Mohanty, learned Addl. Government Advocate is directed the place all such documents which has been annexed in the Memo, by way of an affidavit duly sworn in by the competent authority, for just adjudication of the case.

6. The affidavit shall be filed within a week.

7. Call this matter after two weeks."

8. In obedience to the above order, an additional affidavit was filed by Jitendra Kumar Behera, Assistant Conservator of Forest, Bamara on behalf of opposite party no.6, paragraphs-3 & 4 whereof reads as follows:-

"3. That it is humbly submitted that on 22.07.2021, the Opp. Party No. 6 has already filed counter affidavit in the present writ application, inter-alia, stating that the Govt. of Odisha, Revenue Department vide Notification No. FS-486/79-5997/R, dated 28.1.1980, issued a notification U/s. 4 of the Orissa Forest Act, 1972, wherein proposed to constitute Langposh- Baliturai proposed reserve forest.

4. That it is humbly submitted that the proposal of reserved forest has not yet been notified U/s. 21 of the Orissa Forest Act, 1972.

Copy of the letter dated 3.9.2021 of the D.F.O. Bamara Wild Life Division, Sambalpur along with Notification dated 28.1.1980 issued by the Govt., Revenue Department are annexed herewith and marked as Annexure-M/6 Series."

9. Referring to such pleadings and documents available on record under Annexure-M/6 series, the letter dated 03.09.2021 of opposite party no.6 addressed to the Additional Govt. Advocate makes it clear that the proposed reserved forest has not yet been notified under Section-21 of the Orissa Forest Act, 1972 as reserved forest. As such, the notification dated 28.01.1980, which was issued under Section-4 of the Orissa Forest Act, 1972 declaring that it has been proposed to constitute as reserved forest lands of Mauza Langposh Baliturai of Lamna Forest Division under Mahulpali

Police Station of Kuchinda Tahasil in the district of Sambalpur, the limits of which have been demarcated by cairns and line cleared to a width of 20' or by natural boundaries as specified therein, has not been given effect to.

10. Similarly, an additional affidavit has been filed by the Tahasildar, Kuchinda, Sambalpur on 20.05.2022, paragraphs 3 to 5 whereof read as follows:-

"3. That it is humbly submitted that on 16.07.2021, the Opp. Party No. 5 has filed counter affidavit in the present Writ Application, inter-alia, stating that the quarry in question i.e. Laigura Stone Quarry was declared as sairat sources in the year, 2017 after observing all the formalities and thereafter the petitioner was requested to submit mining plan and Environment Clearance etc. for operation of said stone quarry.

4. That while the matter stood thus, on 29.01.2020 the D.F.O. Wild Life Division, Bamara, vide Annexure-10, communicated a letter intimating therein "that after all these efforts, it could not cleared up whether the land in question is a Revenue Land or Forest Land because both the Department claim the right over it as per the official records available with them. Therefore, in such a situation, it is suggested to refer to the Forest Settlement Officer's report (who was appointed at that time for the purpose) on list of plots that were included for constitution of the "Langposh-Balitura PRF(A)" from the Revenue Departments' Record Room and further direction from you office be issued for addressing the complain petition.

5. That on 09.9.2021, the Collector, Sambalpur, wrote a letter to the Addl. Government Advocate, Office of the Advocate General, Odisha, inter-alia stating

"I am to intimate that the relevant available case records have been submitted to your good office vide this office letter mentioned supra. As per available files and records in this office, the enquiry report by the Forest Settlement Officer pursuant to section 7 of the Orissa Forest Act, 1972, relevant documents showing the exercise of power by FSO under Section 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and 19 of the Act and notification u/s. 21 of the Orissa Forest Act, 1972 in respect of reservation of

Langposh-Baliturei A" forest Block under Bamara Forest Division are not traceable. However, we have requested to the Govt. in Forest & Environment Department, Odisha, to provide a copy of notification, if issued and available at their end."

Copy of the letter dated 9.9.2021 of the Collector, Sambalpur is enclosed herewith and marked as Annexure-A/5."

11. In view of pleadings available on record, now it is to be examined with reference to the law governing the field. The legislators of the State of Odisha enacted Orissa Forest Act, 1972 giving paramount consideration to the protection and management of the forests and forest produce. Chapter-II of the Orissa Forest Act, 1972 deals with "Reserved Forest". Section-3 thereof provides that the State Government may constitute any land which is the property of the Government or over which the Government have proprietary rights of the reserved forest in the manner provided therein. Sections-4 & 6 of the Orissa Forest Act, 1972, being relevant for the purpose of this case, are extracted hereunder:

"4. Notification by State Government — (1) Whenever it is proposed to constitute any land a reserved forest, the State Government shall issue a notification in the Official Gazette -

(a) declaring that it is proposed to constitute such land a reserved forest;

(b) specifying, as nearly as possible, the situation and limits of such lands; and

(c) appointing an officer (hereinafter called "The Forest Settlement Officer") to inquire into and determine the existence' nature and extent of any rights or privileges

alleged to exist in favour of any person in or over any land comprised within such limits, or in or over any forest produce, and to deal with the same as provided in this Chapter.

Explanation — *For the purpose of Clause (b), it shall be sufficient to describe the limits of the forest by roads, rivers, bridges or other well known or readily intelligible boundaries.*

(2) The officer appointed under Clause (c) of Sub-sec. (1) shall ordinarily be a person not holding any forest office except that of a Forest Settlement Officer.

(3) The Divisional Forest Officer not below the rank of a Range Officer authorised by him in that behalf may represent the Forest Department at the enquiry conducted under this Chapter."

xxx

xxx

xxx

6. Proclamation by Forest Settlement Officer- *When a notification has been issued under Section 4 the Forest Settlement Officer, in the prescribed manner, publish in Oriya in every town and village in the neighbourhood of the land comprised therein, a proclamation-*

(a) specifying, as nearly as possible, the situation and limits of the proposed forest;

(b) explaining the consequences which, as hereinafter provided will ensue on the reservation of such forest; and

(c) fixing a period of not less than three months from the date of such proclamation, and requiring every person claiming any right mentioned in Section 4 or Section 5 within such period either to, present to the Forest Settlement Officer a written notice specifying or to appear before him and state the nature, of such right and the amount and particulars of the compensation, if any, claimed in respect thereof."

12. After proclamation by the Forest Settlement Officer under Section-6, Section 7 speaks about the enquiry by the Forest Settlement Officer whereas Section-8 deals with power of Forest Settlement Officer and Section-9 deals with extinction of rights. Section-21 states about notification declaring the forest reserved, which reads as follows:

“21. Notifications declaring forest reserved- (1) When the following events have occurred, namely:

(a) the period fixed under Section 6 for preferring claims has elapsed and all claims, if any, made under that section or Section 9 have been disposed of by the Forest Settlement Officer;

(b) if any such claims have been made the period limited by Section 17 for preferring appeals from the orders passed on such claims has elapsed, and all appeals, if any, presented within such period have been disposed of by the appellate authority;

(c) if any such appeals have been presented, the period limited by Section 19 for making an application for revision of the appellate order has elapsed, and all applications, if any, made within such period have been disposed of by the revisional authority; and

(d) lands, if any, to be included in the proposed forest, which the Forest Settlement Officer has under Sec. 11 elected to acquire under the Land Acquisition Act, 1894 (1 of 1894) have become vested in the State Government under Section 16 of that Act.

the State Government may publish a notification specifying according to boundary marks erected or otherwise, the limits of the forest which is to be reserved, and declaring the same to be reserved with effect from a date to be specified in the notification.

(2) From the date so specified such forest shall be deemed to be a reserved forest.

(3) Production of an authenticated copy of a notification published under Sub-sec. (1) shall be conclusive proof that the forest, the limits whereof have been specified therein is a reserved forest.”

13. In view of aforesaid provisions of law, the procedure which is required to be followed to declare the forest as reserved under Section 21 of the Orissa Forest Act by issuing notification, but the same has not yet been done so far as the present quarry area is concerned.

14. In **Nazir Ahmed v. King Emperor**, AIR 1936 PC 253, law is well settled “where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.” The said principles have been followed subsequently in **State of Uttar Pradesh v. Singhara Singh**, AIR 1964 SC 358, **Dhananjay Reddy v. State of Karnataka**, AIR 2001 SC 1512, **Chandra Kishore Jha v. Mahabir Prasad**, AIR 1999 SC 3558, **Gujrat Urja Vikas Nigam Ltd. v. Essar Power Ltd.**, AIR 2008 SC 1921, **Ram Deen Maurya v. State of U.P.**, (2009) 6 SCC 735.

15. In **Subash Chandra Nayak v. Union of India**, 2016 (I) OLR 922, similar question had come up for consideration before this Court and this Court in paragraph-8 observed as follows:

“.....the statute prescribed a thing to be done in a particular manner, the same has to adhered to in the same manner or not at all. The origin of the Rule is traceable to the decision in **Taylor v. Taylor**, (1875) LR I Ch D 426, which was subsequently followed by Lord Roche in **Nazir Ahmad v. King Emperor**, AIR 1936 PC 253(2). But the said principle has been well recognized and holds the field till today in **Babu Verghese v. Bar Council of Kerala** (1999) 3 SCC 422, and **Zuari Cement Limited v. Regional Director, Employees’ State insurance Corporation, Hyderabad and others**, (2015) 7 SCC 690 and the said principles has been referred to by this Court in **Manguli**

Behera v. State of Odisha and others (W.P.(C) No. 21999 of 2014 disposed of on 10.03.2016)".

Similar view has also been taken by this Court in **Rudra Prasad Sarangi v. State of Orissa and others**, 2021 (I) OLR 844 and **Bamadev Sahoo v. State of Orissa**, 132 (2021) CLT 927.

16. The affidavit filed on behalf of opposite party no.6 clearly indicates that a notification was issued by the Government in Revenue Department on 28.01.1980 in exercise of powers conferred under Section-4 of the Orissa Forest Act, 1972 declaring that it has been proposed to constitute as reserved forest lands of Mauza-Langposh Balituri of Bamra Forest Division of Kuchinda Tahasil in the district of Sambalpur. Though details of the boundary description of the land has been mentioned and in exercise of powers under Section 4, the State Government has appointed the Forest Settlement Officer, Sambalpur to enquire into and determine the existence, nature and extent of any rights or privileges claimed by or alleged to exist in favour of any person in or over the lands comprised within the limits specified above or in or over any forest produce to

be found thereon and to deal with the same as provided in Chapter-II of the said Act, but no proclamation has been issued till date by the Forest Settlement Officer in compliance of Section-4 of the Act itself nor any inquiry has been conducted by him as per Section-7 of the said Act. Mere issuance of notification under Section-4 of the Orissa Forest Act, 1972 cannot take away the rights of the petitioner in whose favour lands have been recorded as 'Rayati' and the Forest Department cannot claim the same to be reserved forest unless it is notified under Section 21 of the Act declaring the same as reserved forest.

17. In absence of any materials available on record with regard to compliance of the provision of law, the order passed by the Divisional Forest Officer vide letter dated 16.10.2020 under Annexure-11 issuing clarification regarding proposal of environment clearance of Laigura Stone Quarry over an area of 4.81 acres or 1.95 hectare at village Laigura, Tahasil-Kuchinda in the district of Sambalpur cannot sustain in the eye of law and consequential order of rejection

passed by opposite party no.7 dated 26.10.2020 referring to the letter of the Divisional Forest Officer addressed to the Tahasildar, Kuchinda refusing to grant environment clearance of the proposal under Annexure-12 cannot also sustain in the eye of law. Thereby, the letter issued under Annexure-11 dated 16.10.2020 by the Divisional Forest Officer, Bamra Wildlife Division, Sambalpur addressing to Member Secretary, State Environment Impact Assessment Authority (SEIAA) and consequential letter dated 26.10.2020 in Annexure-12 are liable to be quashed and are hereby quashed. The Tahasildar, Kuchinda is directed to take necessary steps as expeditiously as possible in accordance with law.

18. The writ petition is accordingly allowed. However, there shall be no order as to costs.

(DR. B.R. SARANGI)
JUDGE

S. K. MISHRA, J. I agree.

(S. K. MISHRA)
JUDGE