

9. It is clear that the physical infrastructure regarding development of port facilities was not created at Dhamra and the coastal areas were naturally either natural mangrove forests or mud flats (Wastelands). The Survey of India Topo sheet No. 73L/13 printed in 1979 clearly shows that entire coastal area is full of mangrove swamp backed by mud flats, there is a Nuna Bandh (Saline embankment) behind the mud flats and there is absolutely no development or habitation on the entire coast line towards the east of the Nuna Bandh. The Survey of India Sheet No. is marked as Annexure-XII.
10. The land use analysis report of SPARC provided by the DPCL also confirms the facts brought out by the Survey of India Toposheet (Annexure-II). As per the map available in the report, it is clear that the 1974 coast line full of mangroves swamps was subjected to heavy erosion and even most of the mangrove within the present coast line were also converted into the mud flats. However, as per the report, the present location of Dhamra Port was only a mud flat during 1974 also.
11. In the revision settlement survey conducted by Forest and Revenue authorities during 1982-86, most of the area towards the east of the Nuna Bandh was demarcated as un-surveyed area. This shows that there was no development in the area at the time of re-survey and said land was not put to any use till that time.
12. The Regional Office concluded that as per the land use/land cover map of the Dhamra Coast area using data source IRS-1B-L2, dated 28.01.1995 also, there are few settlements towards east of the Nuna Bandh (Saline embankment) just touching the boundary of the embankment.
13. Thus, it is absolutely clear from the above that:
 - a) The 1961 Notification was issued in supersession of all the previous orders on the subject and before that all the Port related activities being uneconomic were discontinued.
 - b) The eastern boundary of the notification is Bay of Bengal and the PCCF(WL) & CWLW in his report agrees to it.
 - c) Till the start of the construction activities by the DPCL, the entire project area towards east of the Saline embankment was either mangrove forest or mudflat which is waste land (as per Concise Oxford Dictionary, waste land is an unproductive or useless area of land) and no individuals or communities had any right over that area, except for the purpose of fishing and ancillary activities which cannot be abridged. Therefore, in the light of the 1961 Notification, the said Dhamra Port project area is part of the protected forest.
 - d) Thus, it is clear that Dhamra Port project site was never developed as a Port and is a part of the protected forest under Kanika Protected Forest. The port authorities can undertake all port development related activities after getting approval as per Forrest (Conservation) Act, 1980.

P-497-503/c It is pertinent to mention that a copy of affidavit submitted by the State Government, Central Empowered Committee on 05.04.2010 and as per the Annexures submitted before the Hon'ble Supreme Court as an Annexure of Notification dated 09th June, 1931 regarding the limit of the Port and Notification dated 04th October, 1961 regarding declaration of Kanika ex-Jamindari Estate as Protected Forest does not mention the area and only mentions the boundary of the limits. The eastern boundary of the PF is Bay

of Bengal. The views of the State and final report of Regional Chief Conservator of Forests is quite different however, both agrees that the most of the land to be used for port is unsurveyed, unclassified and undemarcated. The the National Environmental Appellate Authority in 2000, in its judgement has clarified as follows: "an area between High Tide and low Tide. Such an area is part of both land and sea and, in our view, can not be called a wasteland as it was neither surveyed nor classified into any type of land in 1961."

Hence, the land in question is a unsurveyed, unclassified and undemarcated, which is not included in the 1961 notification based on Ex-Zamindari Forest Rules and in the list of deemed forest submitted to the Supreme Court in 1998. A detailed affidavit, if agreed to, can be filed either before CEC or before Hon'ble Supreme court itself.

Submitted.

08/04/2010
(B.K. Singh)
Sr. AIGF(FC)
6057/12(W/FC/S)/10
8/4/10
1636/12(F/FC)/10
19/4/10

IGF(FC)

If approved, we may file an affidavit as XX above in the S. Court. as the CBC has already filed their report

Submitted.

The conclusion in XX is somewhat ~~non-sequitur~~ - we need to clearly bring out the position recorded in (A) on previous page.

DGF-285

M.F.F

19/4/10
MOS (IC)E&F Dy. No. 1783
Date 21/4/10

I have gone through this carefully. Clearly, RCF, Bhombameshwar has one persuasive view, while PCT(WL) and CLNW Orissa has an opposite but equally persuasive view. Meanwhile I understand the Port itself is nearing completion. Had construction not



Commenced, we could have taken a decision unequivocally not to let the project proceed at the site whose "forest" status is disputed.

The Port is being established by a Group that has a wide reputation for corporate social responsibility and I have been conscious of this fact also.

2) We cannot and should not force the abandonment of the project. However, I am persuaded that while at the time of giving approval the evidence may have been insufficient or inadequate to insist on clearance ~~from~~ under FCA, 1980, now we appear to have sufficient evidence to suggest that were ^{we} to consider this case today, we will have no option but to insist on clearance under FCA, 1980.

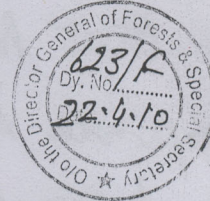
3) This is not an open-and-shut case. It is full of ambiguity, made worse by the incontrovertible fact that the land

used by the Port is unswayed,
reclassified and undemarcated.

Nevertheless, since we have to let
it go ahead and file the affidavit
based on Sr AIG (FC)'s observations
above.

Jagan Ramesh

22/4



DGFCS

22/4/10

FC

Sr AIG (FC)

Jagan Ramesh

22/4/10

The draft affidavit number xx on P-9/21
has been prepared and is placed below for approval &
submitted.

JLH (FC)

AP
05/05/2010

1887/RSF/RS/10
5/5/10

AdR DGF

in meeting

DGF ESS

in meeting

Jagan Ramesh

5/5/10

ll

21/5/10

1887/RSF/RS/10
20/5

Sr AIG (FC) (PUS)

So (FC)

AP
05/05/2010