

BEFORE THE NATIONAL GREEN TRIBUNAL,
SOUTHERN ZONE, CHENNAI

APPEAL NO. 05 OF 2022 [sz]

A.K. Shaji

:: Appellant

M.O.E.F & CC.
and others

:: Respondents

**Reply of the 5th Respondent to the 2nd Additional
Rejoinder filed by the Appellant**

Filed on : 18.10.2022

M/s. B.G. Bhaskar
K.R.Harin
Advocates

Counsel for the 5th Respondent

**Before the Honorable National Green Tribunal
Southern Zone, Chennai**

Appeal No. 5 of 2022

Shaji. A. K.

Appellant

Vs.

MoEF & CC and 4 others

Respondents

**REPLY OF 5th RESPONDENT TO THE 2nd ADDITIONAL
REJOINDER FILED BY THE APPELLANT**

I, Arun S. Babu, aged 34, son of Suresh Babu, Senior Architect, Landmark Builders & Developers (India) Pvt. Ltd, having my office at Landmark World, NH-17 Bypass, Kozhikode, and presently come down to Chennai, do hereby solemnly affirm and state as follows:

1. I am the authorised representative of the 5th Respondent in charge of this case. I am conversant with the facts of the case and as such I am competent to swear and depose this affidavit.
2. I am filing this affidavit opposing the reception of what is termed as "second additional rejoinder" dated 11.10.2022 put into court by the appellant. I am advised as follows: that there is no provision for filing any rejoinder in an appeal; that a rejoinder is an answer to the reply affidavit in an application. Here the appellant had sought the stay of the EC issued to R5 by R2. I filed my counter affidavit

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opposing the stay. The appellant as the applicant for stay had filed a rejoinder dated 03.09.2022. There is no scope for any further pleadings on the stay application.

3. It is settled law that once an appeal is filed, and additional grounds can be raised only by an application praying for permission to amend the appeal memo. This requirement cannot be circumvented by styling the application as a rejoinder or additional rejoinder.
4. Further it is also trite law that no documents are admissible in an appeal except on satisfaction of the stringent conditions prescribed by Order 41 Rule 27. Here the appellant is trying to smuggle in additional documents under the guise of being part of the rejoinders.
5. A detailed objection dated 12.10.2022 has been filed by R5 to the documents sought to be brought in by the appellant with his rejoinder dated 06.09.2022. It may be recalled that during the arguments on 11.10.2022, the appellant's counsel not merely referred to the documents produced on 06.09.2022 but relied on them to set up a totally new case based on the report of the SEAC, which report had come into existence after the issue of the EC.
6. It is respectfully submitted that though this Honb'le Tribunal is free to frame its own procedure and is not shackled by the constraints in the Code of Civil Procedure, the statute however also insists on procedural fairness. Additions to the pleadings and introduction of new documents on every successive date of hearings cannot



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be fair to the opposite party by any standards. It is submitted that the rejoinders may be rejected on the basis that they are opposed to the concept of fairness.

7. In the absence of compelling circumstances, the Supreme Court has held that the general principles of the Code of Civil Procedure can be applied by Tribunals and all Quasi-judicial authorities in proceedings before them. Applying this rule, also the two "additional rejoinders" dated 06.09.2022 and 11.10.2022 filed by the appellant deserves to be rejected.
8. Without prejudice to the objections to receive the 2nd Additional Rejoinder, the averment in the affidavit by the appellant dated 11.10.2022 that part of the project site is agricultural land [paddy land] is an arrant falsehood. The report of the Village Officer referred to in the order of the Sub Collector itself says that there are no paddy lands adjacent to the project site and that no cultivation will be affected by construction on this land.
9. It is respectfully submitted state that there was no law prohibiting conversion of paddy land into garden land by soil filling till 1967; thereafter also filling could be done by getting permission from the RDO under the Kerala Land Conservancy Rules. It was only in 2008 that future conversion was prohibited by the Act referred to by the appellant.
10. In the Basic Tax Register prepared in 1961 [nearly fifty years ago] this land was shown as Nilam. It had ceased to



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be cultivable land long before 1967, may be because it was filled up. But the entry in the BTR was not corrected by the concerned authorities. On account of their default, to make the timely corrections, we had to apply for rectification paying a hefty fee of nearly 8 Lakhs for the correction of the records.

11. It is respectfully submitted that when our application for rectification of the wrong entry was allowed, and that too on the payment of the prescribed fee, the appellant cannot attack the EC on the basis of the apparently wrong entry in the BTR. It is also relevant to note that the mistake in the record prepared more than 50 years ago, had been corrected long before the issue of the EC.
12. I respectfully state that there are no paddy lands anywhere near the project area is something that the team deputed by the SEAC has seen for themselves. It may be recalled that the only objection raised by them was that they found a partly constructed building and nothing else. The Google map does not show any paddy land or water body near the project site. It is obvious that the appellant is trotting out red herrings to mislead this Tribunal in his anxiety to support the frivolous appeal.
13. In the light of the above, R.5 reiterates that all the submissions made by it in its Counter as true and correct and therefore all contrary allegations and averments made in the 2nd Additional Rejoinder filed on 11.10.2022 are untenable and denied as false.



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It is therefore respectfully prayed that this Honb'le Tribunal may be pleased to take on record the Reply to the 2nd Additional Rejoinder filed on 11.10.2022 by the Appellant and may be further pleased to dismiss the same and also the above Appeal as the same is devoid of merits.

Solemnly and sincerely affirmed
at Chennai on this the 18th day of
October 2022 and signed his name
in my presence



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BEFORE ME



Advocate, Chennai

(MS. 333/2000)

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