

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH AT KOLKATA
ORIGINAL APPLICATION NO. 38/2022/EZ**

IN THE MATTER OF:

Dr. Bina Basnett ... Applicant

Versus

State of Sikkim and Ors. Respondents

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Date: 22.01.2025

Place: Kolkata

DRAWN AND FILED BY:



Kazi Sangay Thupden
Advocate for Respondent No.2
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**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
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IN THE MATTER OF:

Dr. Bina Basnett ... Applicant

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**SUR REJOINDER ON BEHALF OF THE RESPONDENT NO. 2,
GANGTOK SMART CITY DEVELOPMENT LIMITED (GSCD),
TO THE COMPOSITE REJOINDER DATED 11.11.2024 FILED
ON BEHALF OF THE APPLICANT**

1. That the present Sur rejoinder is being filed on behalf of the answering respondent to the Rejoinder of the Applicant dated 11.12.2024.
2. That the present proceedings pertain to an O.A filed by the Applicant to stop the construction of a Multilevel Car Parking cum Shopping Hub at Old West Point School Area, Near Hotel Hungry Jack, Gangtok by alleging that the construction of the aforesaid building will have an adverse impact on the ecology of the town of Gangtok in the form of Earthquakes, landslides, air, water and noise pollution etc. The Applicant has further alleged that the said construction has been initiated without any planning and procedure and that there is a breach of the Notification dated 19.03.2021. The Applicant has averred that the construction of such a building not only jeopardizes the future of historical monuments but also

restricts the view of Mount Kanchenzonga from the M.G. Marg. The Applicant has also alleged that no Environment Impact Assessment (EIA) with respect to the construction of aforesaid building has ever been conducted in the area.

3. That I say and submit that, save and except those, which are matters of record, all averments, statements and submissions made by the Applicant in the above-mentioned Composite Rejoinder dated 11.11.2024 are disputed and denied as if traversed seriatim unless specifically admitted herein and therefore no part of the present sur rejoinder should be deemed to be admitted for want of specific denial.
4. That the contents of the Counter Affidavit dated 16.03.2024 filed on behalf of the Respondent No. 2 herein to the Original Application may be read as a part of this Sur Rejoinder and the submissions made therein are reiterated and have not been repeated herein to avoid repetition and for the sake of brevity.
5. That I humbly crave leave of this Hon'ble Tribunal to file a further response in the present matter, if necessary, and I say that I have replied to the averments specifically alleged against the Respondent No. 2, Gangtok Smart City Development Limited.
6. It is submitted that, the Rejoinder filed by the Applicant is untenable in both facts and law.
7. That the Applicant by filing the present rejoinder, has sought to expand the scope of the present proceedings, by raising new

facts and grounds, which is strongly objected to by the answering respondent.

8. That the Applicant by filing the present rejoinder, has sought to engage in a fishing and roving enquiry, which is strongly objected to by the answering respondent.

PARAWISE REPLY TO THE PRELIMINARY OBJECTIONS

1. That the contents of Para 1 merits no response save for what are matters of record. The Petitioner is merely engaging in hyperbole, without any cogent material to sustain his allegations.
2. That the contents of Para 2 are denied as wrong, false and devoid of merit. That the Applicant herein, has failed to note that, the provisions of Order VI Rule 15 CPC, which forms the genus for Rule 16(3) of *The National Green Tribunal (Practices and Procedure) Rules, 2011*, are merely directory and not mandatory. Assuming arguendo that, there was an error in the compliance of the provisions of Rule 16(3) of *The National Green Tribunal (Practices and Procedure) Rules, 2011*, the same would be a curable defect. That in the event the arguments raised by the Applicant are accepted i.e., removal of the Counter Affidavit of the answering Respondent for want of defective affidavit, the same would cause grave injustice to the answering respondent herein. Further, such an interpretation would be doing violence to the statute. It is humbly submitted that, procedural law is a handmaid of justice, and substantive justice must always prevail over procedural or technical justice.

3. That the contents of Para 3 and 4 merits no response as the same does not pertain to the answering respondent.
4. That contents of Para 5 are denied as wrong, false and devoid of any merit save for what are matters of record. That it is humbly submitted that, any challenge to the Cabinet Memorandum referred thereto, is not maintainable in the present proceedings, in facts and law. Further the Original Applicant, in Para 5, has incorrectly alleged that unlawful permissions have been granted to the Respondent No. 12, and is put to strict proof thereof.
5. That the contents of Para 6 to 10 are denied as wrong, false and devoid of any merit, save for what are matters of record. It is pertinent to state that, the answering respondent herein, has since the inception, with all earnestness directed the Respondent No. 12 to comply with all statutory compliances during the construction of the present project. Further, the Applicant is put to strict proof, as to why a special exception should be made for filing the present proceedings, contrary to the correct provisions of law, despite ample opportunity being granted.
6. That the contents of Para 11 are denied as wrong, false and devoid of any merit. It is submitted that; the Respondent herein is merely engaging in conjectures and surmises. For the sake of brevity the answering respondent herein reiterates the contents of the Counter Affidavit dated 16.03.2024.
7. That the contents of Para 12 merits no response, as the same do not pertain to the answering respondent.

8. That the contents of Para 13 are denied as wrong, false and devoid of any merit, save for what are matters of record. It is humbly submitted that, the Applicant despite several occasions being apprised of the law viz maintainability of an OA post grant of an Environment Clearance, continues to be lackadaisical in his approach in complying with the procedure established by law.
9. That the contents of Para 14 to 16 are denied as wrong, false and devoid of any merit save for what are matters of record. It is submitted that, the Applicant is merely engaging in conjectures and surmises.
10. That the contents of Para 17 merits no response, as the same do not pertain to the answering respondent. Further, it is reiterated that, the answering respondent herein, has since the inception with all earnestness directed the Respondent No.12 to comply with all statutory compliances during the construction of the present project.
11. That the contents of Para 18 are denied as wrong, false and devoid of any merit save for what are matters of record. The Applicant is put to strict proof thereof, as to the manner in which the alleged violation has occurred despite the rigorous process, resulting in the grant of Environmental Clearances dated 25.02.2022 and 23.08.2023
12. That the contents of Para 19 to 21 are denied as wrong, false and devoid of any merit save for what are matters of record. Further the said allegations made thereto, do not pertain to the answering

respondent. However, it is reiterated that, the answering respondent herein, has since the inception with all earnestness directed the Respondent No.12 to comply with all statutory compliances during the construction of the present project. Further it is humbly submitted that the prayers of the applicant herein, are in contradiction to the issues raised thereto.

13. That the contents of Para 22 and 24 are denied as wrong, false and devoid of any merit save for what are matters of record. It is pertinent to state that, that applicant cannot rely only on certain provisions of the regulations as notified under the *Sikkim Allotment of Housing Sites and Construction of Building (Regulation and Control) Act, 1985*, while objecting to the provisions that are contrary to the interests of the applicant. It is submitted that, the Applicant cannot be permitted to blow hot and cold. Further the interpretation of the applicant viz Regulation 39 which was inserted in the Sikkim Allotment of Housing Sites and Construction of Building (Regulation and Control) Act, 1985 vide Notification dated 16.10.2001 is erroneous in both facts and law.

14. That the contents of Para 24 to 31 do not pertain to the answering Respondent and hence warrants no reply.

PARAWISE REPLY TO PARA 1 TO 117 OF THE REJOINER

15. That the contents of Para 1 to 117 merits no response save for what are matters of record. Further, as admitted in Para B/Pg. 2264 of the Composite Rejoinder filed by the Original Applicant,

Para 1 to 145 (Pg. 2281 to 2344) of the same are specific to the submissions made by the Respondent No. 12 and the same do not pertain to the answering Respondent herein. However, the answering Respondent denies all averments made by the Original Applicant so long as they are inconsistent with the submissions made by the answering Respondent herein.

16. In view thereof, it is prayed that this Hon'ble Court be pleased to dismiss the Original Application of the Applicant, along with heavy costs and. pass any other or further order(s) as this Hon'ble Court may deem fit and proper, in the facts and circumstances of the instant case.

Date: 22.01.2025

Place: Kolkata

DRAWN AND FILED BY:



Kazi Sangay Thupden
Advocate for Respondent No.2
Top Floor, Hotel Dalam Residency,
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IN THE HON'BLE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
ORIGINAL APPLICATION NO. 38 of 2022

IN THE MATTER OF:

Dr. Bina Basnett

...Applicant

Versus

State of Sikkim & Ors.

...Respondent (s)

AFFIDAVIT

I, Bhupendra Kothari, S/o Late J. P. Kothari, aged about 56 years, am the authorized signatory for Gangtok Smart City Development Limited, Respondent No. 2, having its registered office at Kishan Bazar Gangtok-737102 Sikkim, do hereby solemnly affirms and declares as under:

1. That I am fully conversant of the facts and circumstances of the matter and am competent to swear this affidavit.
2. The contents of the accompanying Sur Rejoinder are true and correct to the best of my knowledge and have been drafted by the counsel on my instructions and nothing material has been concealed therefrom.
3. That the Annexures in the accompanying Sur Rejoinder are true and correct to the best of my knowledge.

J. K.

DEPONENT

VERIFICATION:

Verified at Gangtok, Sikkim on this 21st day of Jan., 2025 that the contents of the above affidavit are true and correct to my knowledge and belief and nothing material has been concealed there from.

Solemnly affirmed before me on this 21st day of January 2025 by Shri/Smt/Miss Bhupendra Kothari of Gangtok, Sikkim who is known and identified by Shri/Smt/Miss Lekhen Bas of Sichay, Gangtok.

P. Basnett
Ms. Preeti Basnett
Oath Commissioner
High Court of Sikkim

Vide Notification no 40/HCS/30.09.2022

J. K.

DEPONENT

Chief Executive Officer
Gangtok Smart City Development, Ltd.
Kishan Bazar, Gangtok-737102
Sikkim



Advocate KS Thupden <thupden2009@gmail.com>

Service for R-2 in Dr. Bina Basnett Vs. State of Sikkim & Ors.

1 message

Advocate KS Thupden <thupden2009@gmail.com>

Wed, Jan 22, 2025 at 6:10 PM

To: Legal Consultus <legalconsultus@gmail.com>, Amrita Pandey <amritalegal@gmail.com>, Saumitra Jaiswal <saumitra.jaiswal@gmail.com>, "advocateshubhamupadhyay@gmail.com" <advocateshubhamupadhyay@gmail.com>, Office of Sameer Abhyankar <contactadvsa@gmail.com>, Mansi Bachani <mansi.bachani08@gmail.com>, surya@eldfindia.com, Gitanjali Sanyal <gitanjalisanyal@gmail.com>

Dear Sir/Ma'am

Please find attached copy of the Sur-Rejoinder and Reply to IA dated 11.11.2024 on behalf of Respondent No. 2 (Gangtok Smart City) in the abovementioned case.

Thanks

Laki Doma Sherpa

for

Advocate Kazi Sangay Thupden

(Counsel for Respondent No.2 Gangtok Smart City)

**2025.01.22 Sur Rejoinder R-2.pdf**

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