

BEFORE THE NATIONAL GREEN TRIBUNAL (SZ), CHENNAI
MEMORANDUM OF APPEAL

(UNDER SECTION 18(1) READ WITH SECTION 16 OF THE NATIONAL GREEN
TRIBUNAL ACT, 2010)

APPEAL No. 22 of 2020

RAVI & ANR : APPELLANTS

Versus

UNION OF INDIA & ORS : RESPONDENTS

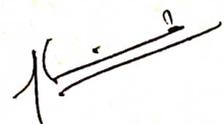
REJOINDER AGAINST THE REPLY AFFIDAVIT FILED BY THE 7TH
RESPONDENT

HARISH VASUDEVAN (H-253) [K/779/2013]
RAJAN VISHNURAJ (R-1268) [K/653/2010]

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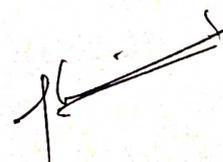
: RESPONDENTS

REJOINDER AGAINST THE REPLY AFFIDAVIT FILED BY THE 7TH
RESPONDENT

I, Ravi, aged 77 years, S/o Narayanan, M.K Vilas, (H), Chithara, Ayirakuzhi P.O, Mancode village, Kottarakara Taluk, Kollam district - 691 559, do hereby solemnly affirm and state as follows:

1. I am the 1st appellant in the memorandum of appeal and as such I am conversant with the facts of the case. I am competent to swear this affidavit and also on behalf of the 2nd appellant.
2. I submit that I have read the reply affidavit filed on behalf of the 7th respondent. I wish to deny all the contents except to the facts specifically admitted hereunder. Without prejudice to the generality of the above denial, the following rejoinder is filed. The appellants herein also reserve a right to file a detailed rejoinder against the reply affidavit filed by the 7th respondent, bringing more facts to prove the case before the Hon'ble Tribunal.
3. It is submitted that the averments and allegations raised by the 7th respondent in paragraph Nos. 1 to 5 of the reply affidavit are not true and hence denied. The allegation that the present appeal is barred by

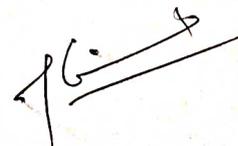
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limitation is not true and hence denied. The appellants as stated in the appeal had obtained a copy of the EC through the website only on 24.10.2019, even though the same was issued as early as 14.10.2019. Therefore, the date of communication of the impugned EC for the appellants is 24.10.2019 and even as per the reply affidavit of the 7th respondent, they have admitted that the appeal ought to have been filed by 24.11.2019. The appellants herein have approached this Hon'ble Tribunal filing the appeal within 30 days and filed the present appeal on 06.11.2019 and not on 28.07.2020 as alleged by the 7th respondent in their reply affidavit. Therefore, the appeal is filed well within the period of limitation.

4. That, the averments and allegations raised by the 7th respondent that the appellants are trying to make here yield to their illegal demands by compelling the 7th respondent to buy their property at the rate of Rs.1 Crore per cent is per se absurd and is only made with the sole intention to shed bad light into the case of the appellants. It is also pertinent to note that Rs.1 Crore per cent cannot be demanded for any property even in the city limits of Trivandrum District. The appellants herein have no intentions to make the 7th respondent purchase their property by making any illegal demands. The appellants herein are affected persons as a result of the mining operations of the 7th respondent and hence approaches this Hon'ble Tribunal for the redressal of their grievance against the improper grant of Annexure A1 EC.
5. It is submitted that the averments and allegations raised by the 7th respondent in paragraph Nos. 6 to 10 of the reply affidavit are not true and hence denied. The allegation that the appellants is not residing anywhere near the vicinity of the property and that they would in no way be affected by the conduct of the quarry by the 7th respondent is not true. As stated in the memorandum of appeal, the appellants possess a property which situates near to the quarrying site of the 7th respondent. As a result of mining operations in the property of the 7th respondent, the appellants

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would be directly affected due to the environmental degradation. The appellants are aggrieved persons as per the Act for the filing of the present appeal. The averments raised by the 7th respondent that he has not committed any suppression of material facts while preferring Form 1 application is not true and hence denied. It is to be noted that WP(C).No.30737 of 2018 was pending before this Hon'ble Court and the pendency of the same has not been brought to the notice of the statutory authority at any point of time by the 7th respondent. This is per se would reveal that the 7th respondent had malafide intentions while approaching the statutory authority of grant of EC. The averments raised by the 7th respondent that the area is not densely populated with various residential buildings, roads etc. are not true. The report of the Joint Committee appointed by this Hon'ble Tribunal would clearly indicate that there are several residential buildings and inhabitants within 100 meters of the project proponent's property. Taking consideration of this very aspect, the statutory authority has enforced a specific condition as Condition No.18 of the EC that a minimum buffer distance of 100 meter from boundary of the quarry to the nearest dwelling unit or other structures, not being any facility for mining shall be provided. Therefore, it is clear that the mining operations carried out by the 7th respondent would in fact affect any habitations or activities within 100 meters from the boundary of the quarry. The appellants would in fact be clearly affected by the mining operations carried out by the 7th respondent. The appellants submits that they are not trying to substitute the wisdom of the experts with their mere statement, but it is only common sense that would reveal that the mining operations at such close proximity to the property would in fact adversely affect their right to life ensured under Article 21 of the Constitution.

6. The averments raised by the 7th respondent that they will undertake measure to mitigate the chances of air and noise pollution as a result of quarrying operations is not true and hence denied. The report of the Joint

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Committee would reveal that the 7th respondent has not taken enough migratory measures to reduce or nullify the air and noise pollution that will be caused as a result of mining operations. It is also the finding of the Joint Committee that no boundary pillars have been established in the present working area of the quarry. As a result of such unscientific mode of conducting quarrying operations, the appellant's property would be damaged and would be subjected to colossal landslide. It is true that the statutory authority like Pollution Control Board has issued several conditions in Exhibit R7(b) consent to operate granted to the 7th respondent, however the same is being openly flouted by the 7th respondent while carrying out the mining operations. As a result, the appellants herein are constrained to approach this Hon'ble Court.

7. It is submitted that the averments and allegations raised by the 7th respondent in paragraph Nos. 11 to 16 of the reply affidavit are not true and hence denied. The averments that a hydrogeological study is not required to be carried out in the project of the 7th respondent as there is existing open well for the project is not correct. The intention of conducting a hydrogeological study in the area is to ensure whether the ground water level would be affected in the area as a result of meeting the water requirements by the 7th respondent's project. It is also to be noted that in the report submitted by the Joint Committee, it is seen that several conditions including to construct garland drains for channelizing the storm water is not complied by the proponent. Therefore, the averments raised by the 7th respondent that he has taken enough and more steps to ensure that there was proper rain water harvesting in the property is not true and hence denied. The averment raised by the 7th respondent with regard to the pendency of WP(C). No.30737 of 2018 before the Hon'ble High Court would itself reveal that the 7th respondent was well aware of the pending litigation against the project at the time of appraisal of the project. The averment raised by the 7th respondent that the writ petition

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was challenging the NOC granted by the District Collector and the same would have no bearing to the environmental impact as an appraisal of the project by the 2nd and 3rd respondents is not true and hence denied. This is in fact wrong interpretation. The first step to the starting of any mining project, the project proponent has to obtain an NOC from the District Collector evidencing that the said land has not been assigned for any other purposes and also to ensure that there is sufficient minable mineral in the government puramboke. Only after this, if he is satisfied, the project can be forwarded for the purpose of EIA process. If there is an adverse finding to the effect that the NOC granted was illegal, the project proponent would not be permitted to carry out any mining operations in the said property. However, if the EIA process is permitted to be continued during the pendency of litigation against the project with regard to NOC, the same cause irreparable damage to the environment of that area. The further averments raised by the 7th respondent that the land owned by the appellants through the mining area of the 7th respondent has been used by the appellants for more than 25 years is not merely for the purpose of filing of this appeal. The Joint Committee has reported that the 7th respondent is using an approach road through government puramboke for transit of mined mineral, though a different path is proposed in the approved mining plan. Also, it is observed that the benches are not properly erected as envisaged in the mining plan. The Joint Committee also report that the present working face is more than 10 meters. It was also detected that illegal mining has been done by the 7th respondent from the buffer zone of these area. Thus, this is causing serious debris falling the nearby properties causing serious casualties. The appellants, being nearby property holders are unable to employ laborers for the purpose of any agriculture due to the dangerous mode of mining operations carried out by the 7th respondent. Moreover, the slope/vertical hill causes great threat to the appellants' property. This aspect has never been considered

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by SEAC while granting EC to the 7th respondent.

8. The averments that the 7th respondent's NOC has been extended on the basis of Exhibit R7(c) is per se not correct. A perusal of NOC would reveal that the same is dated 07.07.2018. As per the pleading stated in the reply affidavit, it is seen that the District Collector has extended the period of Exhibit R7(c) on 21.02.2018 which is prior to the issuance of NOC. Even going by the averments raised by the 7th respondent, a mere issuance of Exhibit R7(c) would not suffice for extending the conditions stipulated in NOC granted by the District Collector. Instead, a fresh NOC has to be issued by the District Collector. The averments raised by the 7th respondent that quarrying operations will not cause any air, water or noise pollution is not true and hence denied, as there is a contrary finding to the same in the report submitted by the Joint Committee. In fact, the residence and property holders in the lower planes would suffer the consequences as a result of mining operations carried out by the 7th respondent.
9. It is submitted that the averments and allegations raised by the 7th respondent in paragraph Nos. 16 to 21 of the reply affidavit are not true and hence denied. The averments that the Administrator is only an executive authority which issued the certificate on behalf of the 7th respondent are not true. This aspect has to be answered by the 2nd respondent rather than the 7th respondent. As stated by the appellants in the appeal, the post of the Administrator and issuance of EC by the Administrator is totally against the scheme of the EIA Notification 2006 and he or she has no role in granting of EC. The averments made by the 7th respondent with regard to the aspect of limitation and that Appeal No.22 of 2020 was filed challenging the very same EC was on experimental basis is not true and hence denied. The appellants herein have approached this Hon'ble Court by challenging the EC granted on the violation of fundamental right, which is being affected by the mining operations

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carried out by the 7th respondent. It is irrelevant as to whether any other party has challenged the same on the same ground. As far as the appellants are concerned, the appeal has been preferred within the period of limitation. The appellants as stated in the appeal had obtained a copy of the EC through the website only on 24.10.2019, even though the same was issued as early as 14.10.2019. Therefore, the date of communication of the impugned EC for the appellants is 24.10.2019 and they have approached this Hon'ble Tribunal filing the appeal within 30 days and not on 18.08.2020 as alleged by the proponent in their reply affidavit. The appellants strongly believes that the EC itself has been issued late by the 7th respondent in order to ensure that no statutory appeal would be preferred against Annexure A1 EC within the statutory time. It is clearly malafide on the part of the 7th respondent while uploading the EC. As per the finding of the Joint Committee appointed by this Hon'ble Court, it is clearly seen that the 7th respondent is conducting illegal mining and also carried out several violations of the EC conditions stipulated by SEIAA.

10. In such circumstances it is only just and proper that this Hon'ble Forum while adjudicating the appeal can act as statutory authority and take necessary steps to set aside the EC granted to the 7th respondent. Therefore, it is most humbly requested and prayed that, having regard to the above mentioned and other grounds that may be pleased to accept this rejoinder and allow this appeal, with cost to the 7th respondent.

All the facts stated above are true to the best of my knowledge, belief & information.

Dated this the 9th day of July, 2022

 M. D. Ravi

DEPONENT



Solemnly affirmed and signed before me by the deponent whom I know on this the 9th day of July, 2022 in my office.


ADVOCATE

VERIFICATION

We, Ravi, aged 77 years, S/o Narayanan, M.K Vilas, (H), Chithara, Ayirakuzhi P.O, Mancode village, Kottarakara Taluk, Kollam district - 691 559 and Mohandas, aged 68 years, S/o Narayanan, Flat No. 10A Queens Way Point, Kowdiar P.O, Trivandrum - 695 003, do hereby verifies that the contents of the above paragraphs 1 to 10 are true to the best of my knowledge and I have not suppressed any material facts.

SIGNATURE OF THE APPELLANTS

DATE : 09.07.2022

PLACE: Kochi