

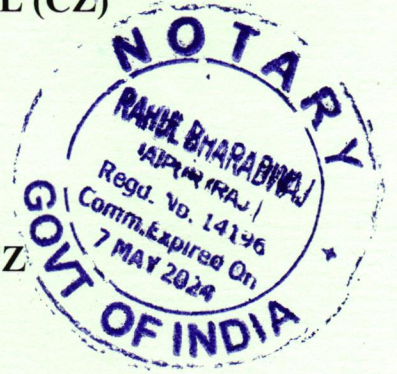
IN THE HON'BLE NATIONAL GREEN TRIBUNAL (CZ)

AT

BHOPAL

IN

ORIGINAL APPLICATION NO. 97 OF 2022/CZ



IN THE MATTER OF:

Kamal Tiwari

.... APPLICANT

VERSUS

Union of India & Ors.

...RESPONDENTS

**Reply Counter Affidavit on Behalf of the Respondent No.1 Union of India,
Ministry of Environment, Forest and Climate Change, New Delhi.**

MOST RESPECTFULLY SHOWETH:

I **Sudarshan Sharma**, aged about **50** years, working as Assistant Inspector General of Forest (C) at Integrated Regional Office, Jaipur in the Ministry of Environment, Forest and Climate Change at Jaipur do hereby solemnly affirm and State as under:

1. That I am duly authorized to swear this affidavit as such conversant with the facts of the present case and competent to swear the present affidavit.
2. That I have read and understood the contents of the accompanying reply and state that the same has been drafted under my instructions based on the official records.

STATEMENT OF FACTS:

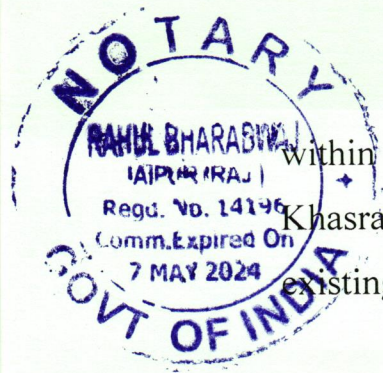
3. It is humbly submitted that the present petition has been filed with a prayer to stop non forest activities, Illegal construction upon the Forest land and

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within eco-sensitive Zone, more particularly for protection of lands in Khasra no 3 and Khasra No 10 from any of non- forest activities and existing non- forest activities by RIICO.

REPLY TO FACTS OF THE CASE:

4. It is submitted that as per section 29 of the Wild Life (Protection) Act, 1972, no person shall destroy, exploit or remove any wild life including forest produce from a sanctuary or destroy or damage or divert the habitat of any wild animal by any act whatsoever or divert, stop or enhance the flow of water into or outside the sanctuary, except under and in accordance with a permit granted by the Chief Wild Life Warden, and no such permit shall be granted unless the State Government being satisfied in consultation with the National Board that such removal of wild life from the sanctuary or the change in the flow of water into or outside the sanctuary is necessary for the improvement and better management of wild life therein, authorizes the issue of such permit.
5. It is submitted that, proposals pertaining to developmental activities within National Parks, Sanctuaries, Tiger Reserves, Tiger Corridors, and those activities that require environmental clearance within Eco-sensitive Zones (ESZ) around National Parks and Sanctuaries, are considered by the Standing Committee of the National Board for Wild Life.
6. It is submitted that such proposals are forwarded by State Governments to the Ministry of Environment, Forest and Climate Change for placing before the Standing Committee of the National Board for Wild Life after thorough scrutiny by the State/Union Territory Governments/Administrators and the State Boards for Wild Life headed by the respective Chief Ministers/Administrators. Incomplete proposals are returned to the States/Union Territories. The Standing Committee of the National Board for Wild Life, which also includes eminent ecologists, conservationists and

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environmentalists, takes informed decisions on the proposals placed for its consideration.

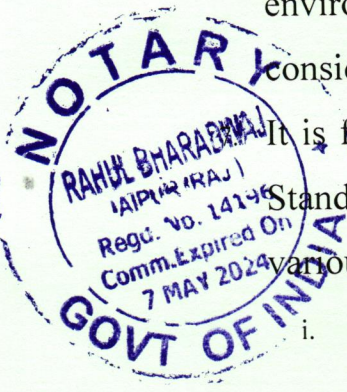
It is further submitted that the proposals submitted for consideration of the Standing Committee of the National Board for Wild Life are examined by various authorities and the following channel needs to be followed:

- i. The proposal has to be submitted by the agency seeking usage of the land to the Deputy Conservator of Forests, who after examining the proposal and site inspection, forwards the same along with his comments to the Chief Wild Life Warden (CWLW) of the State/Union Territory.
 - ii. The CWLW after examining the proposal, forwards the same along with his comments to the State Board for Wild Life (SBWL).
 - iii. The SBWL examines the proposal and the State Government considering the recommendation of the State Board for Wild Life forwards the same to the Government of India for approval/recommendation of the Standing Committee of the National Board of Wild Life.
8. It is submitted that Ministry has not received any proposal regarding industrial expansion by RIICO within the Nahargarh Wild Life Sanctuary area or its eco-sensitive zone for consideration of the Standing Committee of the National Board for Wild Life.
9. It is further submitted that as per section 32 of the Wild Life (Protection) Act, 1972, no person shall use, in a sanctuary, chemicals, explosives or any other substances which may cause injury to, or endanger, any wild life in such sanctuary.
10. It is also submitted that as per section 34A of the Wild Life (Protection) Act, 1972, (1) Notwithstanding anything contained in any other law for the time being in force, any officer not below the rank of an Assistant Conservator of Forests may,—(a) evict any person from a sanctuary or National Park, who

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unauthorisedly occupies Government land in contravention of the provisions of this Act; (b) remove any unauthorised structures, buildings, or constructions erected on any Government land within any sanctuary or National Park and all the things, tools and effects belonging to such person shall be confiscated, by an order of an officer not below the rank of the Deputy Conservator of Forests: Provided that no such order shall be passed unless the affected person is given an opportunity of being heard.

(2) The provisions of this section shall apply notwithstanding any other penalty which may be inflicted for violation of any other provision of this Act. It is further submitted that as per section 2 of the Forest (Conservation) Act, 1980, notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing—

1. that any reserved forest (within the meaning of the expression “reserved forest” in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;
 - i. that any forest land or any portion thereof may be used for any non-forest purpose.
 - ii. that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organization not owned, managed or controlled by Government;
 - iii. that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for re-afforestation.

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8. Explanation.—For the purposes of this section “non-forest purpose” means the breaking up or clearing of any forest land or portion thereof for—

(a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants;

(b) any purpose other than re-afforestation, but does not include any work relating or ancillary to conservation, development and management of forests and wild life, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams waterholes, trench marks, boundary marks, pipelines or other like purposes.

9. It is also submitted that Ministry has not received any proposal for diversion of forest land under Forest (Conservation) Act, 1980 in and around Nahargarh Sanctuary for industrial expansion by RIICO.

10. In light of the foregoing submissions, it is respectfully prayed that this Honourable Tribunal be pleased to issue such orders, directives, or relief as it may deem appropriate and just under the circumstances of the present case.

VERIFICATION

Verified at Jaipur on this 22nd day of May, 2023 that the contents of the above affidavit are true and correct to my knowledge based on the records no part of it is false and nothing material has been concealed there-from.

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 (AIPUR (RAJ)) INDIA

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Sharma
 22/5/23

DEPONENT
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Sudarshan Sharma

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