

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

ORIGINAL APPLICATION NO. 88 OF 2024

IN THE MATTER OF:

Siddharth Ambaji Patil & Anr.

.....Applicants

Versus

Pen Municipal Council & Ors.

.....Respondents

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Filed by:



Zaman Ali,

Advocate for the Applicants

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**AFFIDAVIT-IN-REJOINDER TO THE REPLY DATED 06.11.2024
FILED BY R-1 (PEN MUNICIPAL COUNCIL)**

I, Siddharth Ambaji Patil, aged 69 years, Indian inhabitant, & having my address at A-8, Nav-Sahajeevan CHS, Shivrushti, Kurla (East), Mumbai – 400 024, do hereby solemnly state that I am filing this affidavit in rejoinder to the Affidavit-in-Reply filed by R-1 as under and I say that all the facts stated herein are true and correct to my personal knowledge:

1. With respect to Paras 1 to 3 of the Reply, I say that the same are formal in nature and do not warrant a response.
2. With respect to Para 4, I say that the contents therein are vague and with no specific denials stated therein, the said paragraph cannot stand on its legs and has, therefore, no meaning in the eyes of law.
3. With respect to Para 5, I say that there cannot be any deemed denial to a material fact submitted as it is necessary to have a reason as to why a particular fact averred in the OA is denied by the Respondent. On failure



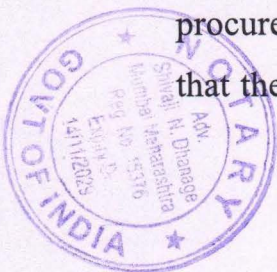
to do so, I say that R-1 has deemed to admit the contentions and submissions of the Applicants.

4. With respect to Paras 6 & 7, I say that the contents therein are formal in nature and do not warrant a response.
5. With respect to Para 8 of the Reply, I say that R-1 has outrightly admitted therein that it dumps the waste at the dumping place after collecting it from the household. I say that under the Indian environmental jurisprudence, a polluter is strictly liable which means that no ground of mistake due to negligence or internal or external exigencies can take away the liability of R-1 under the Polluter Pays principle. I deny the contents therein as irrelevant and I say that since 2007, R-1 has not complied with Municipal Solid Waste Rules, 2000 nor the Solid Waste Management Rules, 2016 and the same has been confirmed by the Jt. Committee Report. I say that the Jt. Committee set up by this Hon'ble Tribunal has concluded that hazardous waste that include toxic heavy metals such as chromium, cadmium, zinc, lead and copper was found to have been mixed with the solid waste on the Applicants' lands. In view thereof, I say that a *simpliciter* bioremediation process will not be enough to restore the Applicants' lands and in fact, other treatment processes as suggested by CPCB in its Guidelines titled "*Guidelines on liabilities for Environmental damages due to handling & disposal of Hazardous waste and penalty, January, 2016*" such as Phytoremediation, Chemical Oxidation, Bioslurping, Thermal treatment, Groundwater pumping and treatment and other containment measures for preventing further pollution of the Groundwater need to be implemented.



6. With respect to Paras re-numbered as Paras 1 and 2, I deny the contents therein as false and incorrect. I say that the demarcation of the plot was done by superimposing the revenue maps over the satellite imagery and on that basis, the Applicants have demonstrated before this Hon'ble Tribunal that Survey Nos. 157 & 158 have been contaminated by R-1 due to unscientific dumping of mixed waste, solid waste and hazardous waste. I say that the Applicant's contentions in this regard have now been corroborated by the Jt. Committee Report filed before this hon'ble Tribunal that clearly states that R-1 has completely failed in its duties to not only segregate the waste but has also illegally entered the private agricultural lands of the Applicants and use their fertile lands for dumping purposes that has made these lands completely infertile for which appropriate compensation for the damage to private property is required to be paid by R-1. I say that although it is true that Applicants have not grown crops commercially and have grown very limited quantities for domestic use over a period of time but that does not make R-1 not liable to pay for damages caused to the private property, loss of property value, loss of opportunity of agricultural business until the remediation work is 100% complete. That R-1 is required to pay personal damages to the Applicants in addition to the remediation costs in terms of the ascertainment done in the OA and aided by the Jt. Committee constituted by this Hon'ble Tribunal.

7. With respect to Paras re-numbered as Paras 3 to 5 in the Reply, I say that any new report of MRSAC will not be necessary in light of the Jt. Committee Report already providing the said data through MRSAC at Annexure-7 to the report and therefore, there is no requirement now to procure the data once again. That the MRSAC report clearly establishes that the entire Survey No. 157, belonging to the Applicant No. 1, was



covered with municipal waste and hazardous waste (*the waste was found to be spread across 5499 sq. mts.*) and 1558 sq. mts. of Survey No. 158, belonging to the Applicant No. 1, was covered with municipal waste and hazardous waste. I say that the actions of R-1 in (i) seeking details of how much waste has been entered Applicants' plots through satellite mapping from MRSAC in 2024 or (ii) seeking sanction of funds for construction of walls between R-1's lands and Applicants' lands in 2024 is absolutely belated, an after-thought and an attempt to digress from the fact that the Applicants' have continued to write to R-1 to take immediate action from 2016 onwards. Now that the Applicants were left with no other option but to approach this Hon'ble Tribunal, R-1 appears to have been awakened for which it has to now appropriately compensate the Applicants for its past actions and inactions over the last 8 years and take immediate remedial steps.

8. With respect to Paras re-numbered as Paras 6 to 8 in the Reply, I say that the soil testing reports clearly show the presence of toxic and heavy chemicals in the soil of Applicants' lands and therefore, R-1 is required to pay both direct and indirect damages to the Applicants as well as pay appropriate remediation costs. I say that although it is true that Applicants have not grown crops commercially and have grown very limited quantities for domestic use but that does not make R-1 not liable to pay for damages caused to the private property, loss of property value, loss of opportunity of agricultural business until the remediation work is 100% complete. That R-1 is required to pay personal damages to the Applicants in addition to the remediation costs in terms of the ascertainment done in the OA and aided by the Jt. Committee constituted by this Hon'ble Tribunal.



9. I say that in view of the settled position in law that a polluter is strictly liable to pay the individual sufferers as well as the remediation costs as damages, I say that appropriate orders be passed directing R-1 to pay the Applicants for the direct and indirect damages, which are in addition to the remediation costs.

Solemnly affirmed at Mumbai)

Dated this 16th Day of December, 2024)

16 DEC 2024

Identified by Me

Zaman Ali,
Advocate for Original Applicants



DEPONENT

BEFORE ME
Dhanage

NOTARIAL REGISTERED
Page No. 72.....Sr. No. 540
Date..... 16 DEC 2024.....

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**BEFORE THE NATIONAL GREEN
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SITTING AT PUNE
O.A. NO. 88 OF 2024**

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**AFFIDAVIT IN REJOINDER ON BEHALF
OF THE APPLICANTS TO THE REPLY BY
R-1**

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