

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH, PUNE

MEMORANDUM OF APPLICATION

(UNDER SECTION 14 OF THE NATIONAL GREEN

TRIBUNAL AT 2010)

I.A. NO. OF 2023

ORIGINAL APPLICATION NO. 4 OF 2023

Dilip Pandurang Koli & Ors.

... Applicants

Versus

Union of India through the Ministry of

Environment, Forests and Climate Change & Ors. ... Respondents

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BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE, BENCH PUNE
MEMORANDUM OF APPLICATION
(UNDER SECTION 14 OF NGT ACT, 2010)
I.A. NO. 30 OF 2023
IN
ORIGINAL APPLICATION NO. 4 OF 2023 (WZ)

In the matter between:

Dilip Pandurang Koli & Ors. ... Applicants
Versus
Union of India & Ors. ... Respondents

AFFIDAVIT IN REPLY ON BEHALF OF RESPONDENT NO. 2 TO THE INTERLOCUTORY APPLICATION

I, Vishwanath Gajanan Gharat, aged 53 years, the Authorised Signatory (Manager PP& D) of the Respondent No. 2, having office address at Administrative Building, Sheva, Navi Mumbai – 400 707, do hereby solemnly affirm and state as under:

1. I am the Authorized Signatory of the Respondent No. 2, having my address as mentioned above and I am competent, authorized, and able to depose the present Affidavit. I have perused and made myself conversant with the contents and record pertaining to the present Application and I am otherwise aware of the facts and circumstances of the present case from personal knowledge as

also office records and thus, competent to depose the same. I say that I am filing the present Affidavit in Reply for the limited purpose of opposing the reliefs as sought for by the Applicant in the present IA. I crave leave to file a further detailed affidavit in reply/additional affidavit along with supporting documents to the Original Application in due course.

2. At the outset, I deny each and every averment made in the present Application which is contrary to and/or inconsistent with that which is stated in the present Affidavit and humbly submit that nothing contained in the Interlocutory Application shall be deemed to have been admitted by or on behalf of the Respondent No. 2, merely for want of specific traverse. I clarify and submit that the averments made herein are in the alternative and without prejudice to one another.
3. I state and submit that Respondent No. 2 has certain preliminary objections with respect to the present Interlocutory Application which are being set out as under:
 - a) I say that the Civil Appeal No. 4102 of 2022 is pending before the Hon'ble Supreme Court;
 - b) I say that admittedly, there is neither a stay granted by the Ld. Tribunal in the earlier Original Application No. 46 of 2021 nor

- is there is a stay granted by the Hon'ble Supreme Court in the Civil Appeal No. 4102 of 2022;
- c) I say that the Hon'ble Supreme Court vide Order dated 02.01.2023 granted leave to the Applicants to withdraw the Interlocutory Application No. 174189 of 2022 in Civil Appeal No. 4102 of 2022 and granted liberty to the Applicants to approach this Ld. Tribunal, however, the said Order of the Hon'ble Supreme Court is not a direction to entertain the Original Application;
- d) The Interlocutory Application taken out in the Hon'ble Supreme Court was withdrawn by the Applicant voluntarily, and thus, admittedly, there is no direction to entertain the present Original Application;
- e) Admittedly, post the last NGT Order dated 21.02.2022 which is passed in OA No. 46 of 2021 which is challenged in the Hon'ble Supreme Court and pursuant to the observations of the committee appointed by this Ld. Tribunal, the Respondent No. 2 has obtained the amended in Environmental & CRZ Clearance from MoEF&CC dated 18.10.2021 by following the due process of law which has not been challenged in any proceedings, therefore, the Original Application standalone cannot be entertained.

4. Without prejudice to the aforesaid preliminary objections, the Respondent No. 2 prefers the present Affidavit in Reply to address issues that have been raised in the captioned Interlocutory Application on merits and to place the correct facts on record.
5. On reading the Interlocutory Application in its entirety, it is ex-facie clear that the Applicants have raised the following allegations qua the said project;
- i) Allegations with respect to the construction being carried out in CRZ IA area;
 - ii) Allegations with respect to impact on the livelihoods of fisherfolk community;
 - iii) Allegations with respect to impact on migratory birds.

Submissions with respect to the construction carried out:

6. The Fourth Container Terminal is being developed in two phases of which Phase-I (quay length of 1000M) is operational and Phase-II (quay length of 1000M) is expected to be fully operational by April, 2025 with a total quay length of 2,000 meters adding an annual capacity of 4.8 million TEUs. The work of Phase I development of 4th Container Terminal is completed along with 90 ha reclamation out of 200 ha, 1 km of quay, 5

approaches, dredging and public buildings including gate complex and facilities commissioned on 18th February 2018.

7. The Respondent No. 2 is taking up construction of phase 2 facilities for container handling with capacity of 2.4 MTEUs in the Jawaharlal Nehru Port Authority as a balance work. The Central Water and Power Research Station ("CWPRS"), the well-known institute of Government of India has conducted Hydraulic model/studies and recommended the said layout taking into consideration all aspects. For balance work MOEF&CC, Government of India has accorded Environmental & CRZ Clearance on 9th October 2019 and amended the same on 18th October 2021. The copies of the CRZ Clearance dated 09.10.2019 and 18.10.2021 are already annexed at Annexure A-2 and Annexure A-10 of the Original Application respectively.

Submissions with respect to CRZ IA or CRZ IV:

8. The Hon'ble NGT in Appeal No. 9 of 2021 *Dilip Pandurang Koli v/s Union of India & Ors.* (I.A. No. 18/2021) vide Order dated 23.06.2021 formed a committee. Accordingly, the members, complainants and the Respondent No. 2 representative visited the 4th CT site and other areas on 8th September, 2021 during the low tide conditions between 5:30 am to 11:00 am from Mora Jetty location. After the visit, the Committee submitted their Report

directly to Hon'ble NGT on 10th September 2021. The Committee report records that *"as per the said approved CZMP, the site of triangular balance reclamation of the 4th Terminal is situated in CRZ IV area. Small part of landing point of triangular balance reclamation work is touching in CRZ IA area. The JNPT officials further informed that layout of the triangular reclamation is now proposed to be revised and application is submitted to MoEF&CC for amended EC."* The copy of the said committee report is already annexed at Annexure A-6 to the Original Application.

9. The Respondent No. 2 Authority have conducted HTL-LTL demarcation through Institute of Remote Sensing (IRS), Anna University (MoEF&CC approved Govt. Agency) in the month of August 2021 for revised layout of 4th CT amendment of Environmental & CRZ Clearance. The Committee report records that *"as per the said approved CZMP, the site of triangular balance reclamation of the 4th Terminal is situated in CRZ IV area. Small part of landing point of triangular balance reclamation work is touching in CRZ IA area."* and the same area is not incorporated in project area. The observation of Committee formed by the Hon'ble NGT is therefore complied by leaving the small area from the final layout. The reclamation shape is modified with revised stepped layout for storage facilities of 4th

Container terminal for operational point of view to increase the efficiency of the terminal. As per the report of Institute of Remote Sensing (IRS), Anna University (MoEF&CC approved Govt. Agency) on HTL-LTL CRZ demarcation, project falls under CRZ IV Category and there is no mudflat area under phase II facilities and the same is recommended by MCZMA on 16th September 2021. Subsequently, on 18th October 2021, MoEF&CC has issued amendment in Environmental and CRZ Clearance for revised layout of Phase II facilities.

10. The area statement as per IRS Report dated 11th August 2021, MCZMA recommendation dated 16th September 2021 and CRZ and Environment Clearance of MoEF&CC dated 18th October 2021, is as follows-

Sr. No.	Description	CRZ Classification	Area in SQM	Total area in SQM
1	Proposed approach Trestle	CRZ IV A	1,82,808.01	1,87,978.50
		CRZ IV B	5,170.49	
2	Proposed Dredging area Phase-2	CRZ IV A	4,77,857.82	4,77,857.82
3	Proposed Phase 2 yard	CRZ IV A	2,60,998.58	9,92,152.19
		CRZ IV B	7,31,153.61	
4	Proposed Wharf	CRZ IV A	1,26,522.92	1,26,522.92

Submissions with respect to fishermen folk community

11. The Respondent No. 2 Authority on 16th September 2021, had a meeting with Commissioner Fisheries to discuss the issues of Fisherman Folk for way forward with regard to fisherman compensation for their livelihood. The Respondent No. 2 Authority had deposited their share of Rs. 66.63 Crores in Hon'ble Supreme Court as per the order of Hon'ble NGT in 2015 with respect to the livelihood of affected fishermen. On 14th December, 2022, the Hon'ble Supreme Court allowed the Respondent No. 2 Authority's application for withdrawal of the Appeal being Civil Appeal Nos. 4455-4456 of 2015 filed in the Hon'ble Supreme Court, towards remittance of Rs. 66.63 Crores already deposited in the Hon'ble Supreme Court. The Hon'ble Supreme Court directed the Demand Draft to be handed over to the Standing Counsel for the State of Maharashtra, who in turn, shall remit it to the Collector, Raigad through the appropriate channel. Hereto annexed and marked as **Exhibit A** is a copy of the order dated 14th December, 2022 passed by the Hon'ble Supreme Court. In any case the issue ought to be raised before the Hon'ble Supreme Court in pending appeal.

Submissions with respect to migratory birds:

12. The Respondent No. 2 Authority in compliance to the conditions of Environmental Clearance, has appointed CSIR-National Institute of Oceanography & Gujarat Institute of Desert Ecology (GUIDE) for monitoring of Marine Biodiversity Management Plan and bird migration study respectively for project area and regular monitoring of Environmental parameters. Therefore, the allegation of the Applicants with respect to the fact that the 4th container terminal will lead to the ecologically sensitive areas being permanently lost is completely misplaced. An Independent Engineer is also monitoring the project and the project is progressing strictly as per Environmental & CRZ Clearance. In any case the issue ought to be raised before the Hon'ble Supreme Court in pending appeal.

13. In light of the facts stated hereinabove, the Respondent No. 2 states that this Hon'ble Tribunal ought to dismiss the Interlocutory Application with heavy costs. The Respondent No. 2 states that the Respondent will not be dealing with the Application in seriatim more particularly since the entire bogey of allegations and contentions raised in the Application have

been dealt with and answered in terms of the above. The Respondent No. 2, however, expressly craves leave to file an Affidavit in Reply dealing with the Original Application in a paragraph-wise manner, in due course.

14. The Respondent No. 2 states that the issues and grievances raised by the Original Applicants stand fully answered in terms of all that is stated hereinabove and thus, the Applicants have failed to make out a cogent and compelling case for grant of any interim and ad-interim reliefs by this Hon'ble Tribunal.

15. In the premises therefore, the answering Respondent submits that the Application be dismissed by this Hon'ble Tribunal with the imposition of costs.

Solemnly affirmed at)

Dated this 17th day of February 2023.)



Advocates for Respondent No. 2


 विश्वनाथ जी. घरत / Vishwanath Gharat
 प्रबंधक (प. यो. वि.)
 MANAGER (PP&D)
 ज. न. प. प्राधिकरण, शेवा, नवी मुंबई-400 0707.
 J.N.P.A. Sheva, Navi Mumbai-400 707.

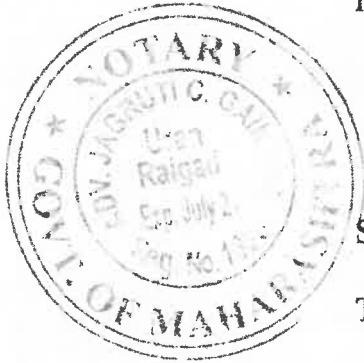
9/1/23

Respondent No. 2

Before me,

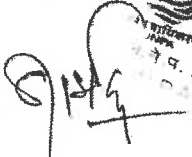
VERIFICATION

I, Vishwanath Gajanan Gharat, aged 53 years, the Authorised Signatory (Manager PP &D) of the Respondent No. 2, having office address at Administrative Building, Sheva, Navi Mumbai – 400 707, do hereby state and declare that whatever is stated in the foregoing paragraphs of the Affidavit in Reply is true and correct to the best of my knowledge and belief.



Solemnly affirmed at Mumbai)

This 17th day of February 2023)


 विश्वनाथ जी. घरात / Vishwanath Gharat
 प्रबंधक (प.पो.वि.)
 MANAGER (PP&D)
 शेवा, नवी मुंबई-400 0707.
 Sheva, Navi Mumbai-400 707.

Respondent No. 2

Before me,

BEFORE ME



Advocates for the Respondent No. 2

**THE PARTY IS KNOWN TO ME
AND IDENTIFIED BY ME**

Place:

Date: 17 FEB 2023

Mrs. JAGRUTI C. GAIKWAD

B.Com, LL.B.

ADVOCATE & NOTARY

RAIGAD DISTRICT

19/B, Inamdar House, State Bank Bldg. Uran

Notarial Register

Serial No.....Date.....

17 FEB 2023



CA 4117/2015

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**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

Civil Appeal Nos 4455-4456 of 2015

The Chairman, Jawaharlal Nehru Port Trust

Appellant

Versus

Ramdas Janardan Koli and Others

Respondents

ORDER

- 1 IA No 43329 of 2022 has been instituted on behalf of the Jawaharlal Nehru Port Trust¹.
- 2 The National Green Tribunal² by its order dated 27 February 2015 disposed of OA No 19 of 2013 in terms of the following directions:

“(i) The Applicants do recover Rs.95,19,20,000/- (Rs. Ninty Five Crores Nineteen Lakhs Twenty Thousand only), which be distributed equally to 1630 (one thousand six hundred thirty) affected and identified fishermen's families as per the Collector's Report, named therein, to the extent of Rs.5,84,000/- (Rs.Five Lakhs Eighty Four Thousand) per family within three (3) months by the Respondent Nos.7, 8

1 “JNPT”
2 “NGT”

Signature Not Verified

Digitally signed by
CHETAN KUMAR
Date: 2022.02.16
17:35:56 IST
Reason: —

and 9 (i.e. CIDCO, JNPT and ONGC) respectively, as per their shares mentioned above.

- (ii) In case, such amount is not paid within above period, then it will carry interest@ 12% p.a. till it is realized by the concerned fishermen's families.
- (iii) The Respondent Nos.7, 8 and 9, shall pay Rs.50 Lakhs (Rs. Fifty lakhs) and restoration cost for environmental damage, as per above share which work, the Collector, Raigad, shall carry out under his supervision within eight (8) months hereafter for activities of mangrove plantation, ensuring free passage of tidal currents etc. in consultation of MCZMA.
- (iv) The Respondent Nos.7, 8 and 9, shall pay costs of Rs.5 Lakhs (Rs. Five lakhs) as litigation costs to the Applicants and bear their own costs.
- (v) The Respondent Nos.7, 8 and 9, shall deposit the amount shown in above para (i) and (iii) in the office of Collector, Raigad within stipulated period, otherwise the Collector shall realize the said amount, as if it. is Land Revenue dues from them. A compliance Report in this behalf be submitted by the Collector, within four (4) months to this Tribunal."

- 3 In the concluding sentence of paragraph 76, the NGT directed that each family would be entitled to recover the compensation stipulated in the ratio of 10:70:20 from CIDCO, JNPT and ONGC respectively.
- 4 Since the interlocutory application has been instituted only by JNPT, the observations in this order are confined only to that application.
- 5 On 22 May 2015, this Court while issuing notice in Civil Appeal Nos 4455-4456 of 2015 instituted by JNPT, directed it to deposit an amount of Rs 66.63

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crores "as ordered by the NGT" within a period of two months. The amount has since been deposited and has been invested by the Registry of this Court.

- 6 JNPT while seeking the withdrawal of the civil appeals seeks a direction that the amount of Rs 66.63 crores together with the accrued interest be disbursed to the Commissioner of Fisheries for the allocation of compensation to 1630 families in terms of the orders of the NGT dated 27 February 2015 and 21 April 2015 (the subsequent order being in review).
- 7 In order to facilitate the proper identification of the families concerned, and the disbursement of compensation to the extent of the share of JNPT, it would be appropriate that the Collector, Raigad carries out the said exercise. The Collector, Raigad shall keep the Commissioner of Fisheries duly apprised of the steps which are taken on a quarterly basis.
- 8 We accordingly pass the following order:
 - (i) In terms of the request made before this Court by JNPT, these appeals are dismissed as withdrawn;
 - (ii) The amount which has been deposited in the Registry of this Court by JNPT pursuant to the order dated 22 May 2015 together with the interest accrued thereon shall be remitted by a demand draft drawn in favour of the Collector, Raigad. The demand draft shall be handed over

to the Standing Counsel for the State of Maharashtra, who in turn, shall remit it to the Collector, Raigad through the appropriate channel;

- (iii) The Collector, Raigad shall take steps to disburse the amount to the extent of the share of JNPT in terms of the orders of the NGT. The Collector shall ensure the proper identification of the families to whom compensation has to be disbursed in terms of the orders of the NGT;
- (iv) The Collector, Raigad shall ensure that the Commissioner of Fisheries is duly apprised of the steps taken for the disbursal of compensation on a quarterly basis; and
- (v) The claimants entitled to the disbursal of compensation are granted liberty to approach the Collector, Raigad indicating the amount of the claim and providing necessary proof for verification of identity within eight weeks. Thereafter, it would be open to the Collector to extend the period of eight weeks, should the facts and circumstances of the case so require for disbursal of the compensation to those who are entitled.

- 9 The Interlocutory Application for withdrawal of the civil appeals stand disposed of.

CA 4117/2015

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10 Pending applications, if any, stand disposed of.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Pamidighantam Sri Narasimha]

New Delhi;
December 14, 2022
CKB

CA 4117/2015

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ITEM NO.41

COURT NO.1

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G SCivil Appeal No.4117/2015THE GENERAL MANAGER, OIL AND NATURAL GAS
CORPORATION LIMITED

Appellant(s)

VERSUS

RAMDAS JANARDAN KOLI & ORS.

Respondent(s)

(With IA No.6/2015 - EXEMPTION FROM FILING O.T., IA No.3/2015 -
PERMISSION TO FILE ANNEXURES, IA No.4/2015 - STAY APPLICATION and
IA No.2/2015 - STAY APPLICATION)WITH C.A. No.4343/2015 (XVII)(With IA No.27468/2018 - EARLY HEARING APPLICATION and IA No.2/2015
- PERMISSION TO FILE ANNEXURES)C.A. Nos.4455-4456/2015 (XVII)

(With IA No.43329/2022 - APPROPRIATE ORDERS/DIRECTIONS)

C.A. No.5330/2015 (XVII)(With IA No.2/2015 - PERMISSION TO FILE ANNEXURES and IA No.3/2015
- STAY APPLICATION)C.A. No.4896/2015 (XVII)(With IA No.2/2015 - PERMISSION TO FILE LENGTHY LIST OF DATES and
IA No. 1/2015 - STAY APPLICATION)

Date : 14-12-2022 These matters were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE PAMIDIGHANTAM SRI NARASIMHA

CA 4117/2015

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For Appellant(s)

Mr. Tushar Mehta, SG
Mr. Ajit Bhasme, Sr. Adv.
Mr. Sanjay Kumar Visen, AOR
Mr. Mukesh Kumar Pandey, Adv.
Ms. Himani Bhatnagar, Adv.
Ms. Saumya Singh, Adv.
Mr. Sandeep Joshi, Adv.
Mr. Prakash Kumar, Adv.
Mr. Aman, Adv.

Mr. Kush Chaturvedi, AOR
Ms. Priyashree Sharma PH, Adv.
Mr. Syed Faraz Alam, Adv.
Mr. Atharva Gaur, Adv.

Ms. Srishti Agnihotri, AOR

Mr. K.R. Sasiprabhu, AOR

Ms. Jaikriti S. Jadeja, AOR
Mr. Amaan Shreyas, Adv.

For Respondent(s)

Mr. Tushar Mehta, SG
Mr. K.R. Sasiprabhu, AOR
Mr. Vishnu Sharma A.S., Adv.
Mr. Prakhar Agarwal, Adv.

Ms. Anitha Shenoy, Sr. Adv.
Ms. Srishti Agnihotri, AOR
Ms. Meenaz Kakalia, Adv.
Ms. Sanjana Grace Thomas, Adv.
Ms. Ayushma Awasthi, Adv.
Ms. Namrata Sarah Caleb, Adv.
Ms. Mantika Vohra, Adv.

Mr. Kush Chaturvedi, AOR

Mr. Satya Mitra, AOR

Mr. Binay Kumar Das, AOR

Mr. Tushar Mehta, SG
Ms. Aishwarya Bhati, ASG
Ms. Ruchi Kohli, Adv.
Ms. Swarupama Chaturvedi, Adv.
Mr. Madhav Singhal, Adv.
Mr. Gurmeet Singh Makker, AOR

Mr. Nishant Ramakantrao Katneshwarkar, AOR

Mr. Sachin Patil, AOR

Ms. Mayuri Raghuvanshi, AOR

Mr. Pankaj Kumar Mishra, AOR

Mr. Sanjay Kumar Visen, AOR

Ms. Jaikriti S. Jadeja, AOR

Mr. Sunil Kumar Jain, AOR
Mr. A.K. Shahi, Adv.
Ms. Rashika Swarup, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Civil Appeal Nos 4455-4456 of 2015

- 1 The appeals are dismissed as withdrawn in terms of the signed order.
- 2 Pending applications, if any, stand disposed of.

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Civil Appeal No 4117/2015, Civil Appeal No 4343/2015, Civil Appeal No 5330/2015 and Civil Appeal No 4896/2015

- 1 The Registry shall list the civil appeals in due course.

(CHETAN KUMAR)

A.R.-cum-P.S.

(Signed order is placed on the file)

(SAROJ KUMARI GAUR)

Assistant Registrar