

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

ORIGINAL APPLICATION NO. 66 OF 2020 (WZ)

Gram Panchayat Kasarwadi

.... Petitioner

Versus

Maharashtra State Vadar Samaj Sangh & Others

.... Respondents

AFFIDAVIT-IN-REPLY

ON BEHALF OF RESPONDENT NO. 17 and 18

I, Shri. Anand Gulab Patil, Age : 33 years, Occupation –District Mining
Officer, District-Kolhapur, do hereby state on solemn as duly authorized
officer affirmation on behalf of Respondents No. 17 and 18 as under :-

No. of Corrections
on this page. Nil

1. I say that I have read the Original Application along with its exhibits. I have perused the relevant record maintained by my office. I say that, with reference to the subject matter of the present Original Application, and on the basis of the said record, I am filing this Affidavit-in Reply to the above Original Application. I am filing this Affidavit for the purpose of opposing the Original Application. I say that the contentions, which are not specifically denied by me in this Affidavit-in-reply, should not be construed as an admission on part of the Respondent No. 17 and 18. I crave leave of this Hon'ble Court to file additional affidavit, if so required in the interest of justice.

2. With reference to Para No. I to VI, I say that, Applicants have filed this present application for restitution and restoration of environment and ecology in Gat no 630/1- A+B of village Kasarwadi, Taluka Hatkanangale, Kolhapur, against the air & noise pollution caused by illegal stone mining run at Gat No. 630/1-A+B by Respondent No. 1 to 14. However, the Respondent No. 17 and 18 specifically deny the allegation that they have violated various laws and rules relating to the environment protection.

3. With reference to Para No. 1, I say that, it is true as per pleading.

4. With reference to Para No. 2, I say that, it is true as per pleading.

5. With reference to Para No. 3, I say and submit that, contents of the para are partly true. It is not true that, the Respondent No. 6 to 10 are Government Authorities and are related to granting permission for running stone crushing.



6. With reference to Para No. 4, I say that, the contents of the Para are partly true. It is true that, some lands in Gat no. 630/-A+B were given on lease to Respondents.

7. With reference to Para No. 5, I say that, as per the 7/12 extracts of Gat No. 630/1A admeasuring 130 H 69 R, out of the total extent of area 66 H 53R is Government Gayran land and 40 H 16 R belongs to the Government 17 H 16 R land is wasteland. The rest of the land in the said Gat No. 630/1 i.e. 6 H 84 R has been allotted to private parties. At present, 122 H 5 R land has been transferred to Forest Department on 13/07/2021 and 1 H 60 R land is under litigation in Civil Court.

8. With reference to Para No. 6, I say that, Respondents had filed their representation before Respondent No. 17 The Collector, Kolhapur and requested for grant of temporary lease of land of Gat No. 630/1A for the purpose of Mining. I say that, Gat no. 630/1A situated in Village Kasarwadi, has been declared as "Reserve Forest" vide GR. SR.FLD-1153/57127/(K) dated 20/11/1953. Therefore, in order to grant the said land on lease to Respondents it is necessary to obtain prior approval of the Central Government as per the provisions of Section 2 of the Forest (Conservation) Act, 1980 ("No Objection Certificate" from Central Ministry of Forest). Also, as per the directions of Honorable Supreme Court in the matter of Jagpal Singh v/s State of Punjab as well as Revenue Department, Govt. of Maharashtra order dated 12 July, 2011, Section 9 (2) restrictions had been imposed for use of Gayran land for Public Utility and Public Purpose.

Accordingly, Respondent No. 17 Collector, Kolhapur has refused to grant permission for temporary lease to Respondents.

9. With reference to Para No. 7, I say and submit that, contents of the paragraph are false, frivolous and misleading to Hon'ble Court, and are specifically denied by Present respondents.

10. With reference to Para No. 8, I say that, it is true as per pleading.

11. With reference to Para No. 9, I say and submit that, contents of the paragraph are false, and misleading to Hon'ble Court, and are specifically denied by Present respondents. The Respondent No.17 & 18 have initiated the necessary action under the law and has stopped illegal mining activity in the said Gat No.630/1.

12. With reference to Para No. 10 and 11, I say and submit that, It is true that said land is acquired and declared as Reserve Forest as per the Notification in the year 1953, the Said Land is declared as Forest and the Forest Department had issued letter to the Bharat Reserve Battalion on 23/03/2016 and affirmed that the said land in Gat No.630/1-A + B is Reserved Forest and non forest activities are not allowed in the forest area.

It is pertinent to note that as the said land is declared as Reserved Forest by the State of Maharashtra, vide a letter bearing outward number Kr.Karya 4/Gavthan/Forest/RR/74/2021 dated 03/02/2021 issued by Respondent no. 17 i.e. The Collector Kolhapur, possession of the said lands is handed over to Forest Department and Mutation Entry No. 2232 is





recorded in respect of Transfer of land in favor of Forest Department in the record of rights of the said land.

13. With reference to Para No. 12, I say that, it is true as per pleading.

14. With reference to Para No. 13, I say and submit that, the record of the said land reveals that in the past leases of the said land had been granted. However, as mentioned above after the expiry of the lease period, these leases have been either cancelled or have not been renewed subsequently.

I say that, Respondent No. 3 Mr. Rangrao Baburao Gaikwad, had been granted Mining Lease by the Respondent no. 17 Office, on 10.11.2009 and Mining Lease Deed was executed on 21.12.2009 for period of five years from 21.12.2009 to 20.12.2014 for Black Stone/Murram Gat No. 630/1A over an extent of H 1.20 R at Village Kasarwadi, Taluka Hatkanangale, Kolhapur. Respondent No. 4 Mr Pradip Nanasaheb Patil, was granted Mining Lease by the Respondent no. 17 on 02.01.2009 and Mining Lease Deed was executed on 05.02.2009 for period of five years from 05.02.2009 to 04.02.2014 for Black Stone/Murram at Gat No. 630/1 over an extent of H 1.50R at Village Kasarwadi, Taluka Hatkanangale, Kolhapur. Respondent No. 6 Mr. Daulat Mahadev Patil was granted Mining Lease by Respondent no. 17 on 02.01.2009 and Mining Lease Deed was executed on 05.02.2009 for period of five years from 05.02.2009 to 04.02.2014 for Black Stone/Murram at Gat No. 630/1 over an extent of H 1.5R at Village Kasarwadi, Taluka Hatkanangale, Kolhapur. Respondent No. 7 Mr. Suresh Rajaram Patil, had

been granted Mining Lease by the Collector office on 02.01.2009 and Mining Lease Deed was executed on 05.02.2009 for period of five years from 05.02.2009 to 04.02.2014 for Black Stone/Murram at Gat No. 630/1 over an extent of H 1.50R at Village Kasarwadi, Taluka Hatkanangale, Kolhapur. I say and submit that, term of all lease granted to all Respondent as per the Bombay Minor Mineral Extraction Rule, 1955 and other prevailing rules and regulations have expired in year 2014. Thereafter, No further renewal/grant of the said land for any mining activity has been permitted/granted to any person.

15. With reference to Para No. 14, I say that, contents of the para are false and misleading to the Hon'ble Court. It is pertinent to note that though by way of the Notification in the year 1953 the Said Land along-with the other lands had been declared as Forest, the record reveals that the mutation entry to that effect was not made in the revenue record and the Record of Rights of the said land. As such in the Revenue Records the said land remained as land owned by the Revenue Department. The record further reveals that as per the Revenue Records the land was Revenue Land and leases for mining purpose were granted to various persons for mining and quarrying activities on various occasions. However, the said orders granting leases of the said lands had not been challenged by any persons on the ground of use of forest land for non-forest purpose. Therefore, the record reveals that further extensions with respect to the leases and renewals thereof were done in the past based on the entry in the revenue record that the said land was shown as land belonging to the revenue

department. It is pertinent to note that vide the notification 12th July, 2011 the use of the gayran (cattle grazing land) for any purpose other than public utility was prohibited. Therefore, the Respondent No.17 and 18 have not permitted any mining activity after the same and the leases which were granted earlier have not been renewed further. The term of all lease granted to all Respondents has been expired in year 2014. It is pertinent to note that the Respondent No.17 and 18 gained knowledge in respect of the Notification of 1953 declaring the said land as Forest Land, in the year 2017. Therefore, the Respondent No.17 and 18 have not granted further leases.

It is matter of fact that due to the entry in the revenue record of rights of the said land, on the assumption that the said land is revenue department land, in the village division, wherein the Mouje Kasarwadi was carved out of Mauje Toap and the said land is renumbered as Gat No.630/1 . The record of the Respondent No.17 reveals that based on the entry regarding the ownership of the land with the Revenue Department, some part of the said land was divided into plots and was allotted to various persons prior to 2011. The possession of the remaining land admeasuring 123 Hectre 85 Aar was handed over to the Forest Department on 13/07/2021 by due procedure of law and entry regarding the occupancy of the said land by Forest Department has been mutated to the Record of Rights of the said land.

Thereafter, State of Maharashtra vide GR S10/2016/PR.KR.413/F-3 dated 02/12/2016 directed Revenue Departments to transfer possession of all lands notified as forests to Forest Department, and to record those lands

as "Forest Lands" in Revenue records of the such lands. Therefore, The District Authority vide letter Kr. Karya-4/Gavthan/Forest/RR/74/2021 dated 03/02/2021 directed/ ordered Tahasildar Hatkangale to immediately hand over possession lands in Gat No. 630/1A, 630/1B and 630/1C to Forest Department.

It is pertinent to note that the record reveals that the Notification of 1953 remained unimplemented at the relevant time and as such it could not be incorporated in administrative proceedings, without any malafide intention on the part of the Revenue Department. Therefore, the grants of leases, allotment of lands to the private persons was without any malafide intention.

16. With reference to Para No. 15, I say and submit that, contents of the paragraph are false, and misleading to Hon'ble Court, and are specifically denied by Present respondents.

17. With reference to Para No. 16, I say and submit that, contents of the para are false, and misleading to Hon'ble Court, and are specifically denied by Present respondents. In Compliance with the order passed by the Hon'ble National Green Tribunal, Principal Bench, New Delhi on dated 09.11.2020 in Original Application No.66/2020, Action Taken Committee was formed on 02.12.2020 and site visit was carried out on 15.12.2020 and it was During the visit, mining activity was not observed however Quarrying had been undertaken in Gat No 630 1/A as per lease granted in 2009, at Kasarwadi and in the adjacent area of said Gat No. Also, The work of



boundary demarcation of Gat No 630 1/A is being carried out by officials of Deputy Superintendent of land record Hatkanangale.

18. With reference to Para No. 17, I say and submit that, contents of the para are false, and misleading to Hon'ble Court, and are specifically denied by Present respondents.

19. With reference to Para No. 18, I say and submit that, contents of the para are false, and misleading to Hon'ble Court, and are specifically denied by Present respondents. Joint Committee has carried out monitoring of ambient air quality and noise level at village Kasarwadi, near Grampanchayat office and near Birdev temple, village Toap. The analysis results are within standards prescribed under the National Ambient Air quality standard as per Notification of MoEFCC. However, no mining activity was being carried out during the monitoring.

20. With reference to Para No. 19, I say and submit that, it false and misleading to the Hon'ble court.

21. With reference to Para No. 20, I say that, it is true as per pleading. Government of Maharashtra vide GR.NO JAMIN 03/2011/PR.KR.53/J-1 dated 12/07/2011 has directed use of Gayran Land for public Purpose and Prevention of utilization of Gayran Lands for other purpose and removal of encroachment for such lands.

22. With reference to Para No. 21, I say and submit that, contents of the para are false and misleading to Hon'ble Court.

23. With reference to Para No. 22, I say and submit that, contents of the para are false, and misleading to Hon'ble Court, and these contents are specifically denied by Present respondents. In Compliance with the order passed by the Hon'ble National Green Tribunal, Principal Bench, New Delhi on dated 09.11.2020 in Original Application No.66/2020, Action Taken Committee was formed on 02.12.2020. The first meeting of the committee was held on 09.12.2020. Site visit was carried out on 15.12.2020. The second meeting of the committee was held on 18.12.2020. Further, Ambient air quality monitored at two locations on 18.12.2020 & 19.12.2020. Also, hearing of the respondents was conducted by the Committee on 01.01.2021 and Noise levels were monitored on 06.01.2021 and the findings given by concerned committee are that the Noise Level and Ambient Air quality are within limits.

24. With reference to Para No. 23, I say that, it is true as per pleading.

25. With reference to Para No. 24, I say and submit that, contents of the para are false, and misleading to Hon'ble Court, and are specifically denied by Present respondents.

26. With reference to Ground [A], I say and submit that, contents of the para are true as per pleading.

27. With reference to Ground [B] and [C], I say and submit that, contents of the para are false, frivolous and misleading to Hon'ble Court, and are specifically denied by Present respondents. On Site visit was carried out by Action Taken Committee on 15.12.2020 and During the visit, mining



activity was not observed, however, quarrying had been taken place in Gat No.630 1/A, as per lease granted in 2009 to 2014, at Kasarwadi and in the adjacent area of said Gat number.

28. With reference to Ground [D], I say and submit that, contents of the para are true as per pleading.

29. With reference to Ground [E] TO [H], I say and submit that, contents of the para are true as per pleading.

30. With reference to Ground [I] of the petition, I say and submit that, the said contents are misleading to Hon'ble Court. The district mining officer had done all the necessary formalities in the past. However, as far as the land in the Gat No.630/1A is concerned the said land is reserved forest, therefore, the same can not be used or permitted to be used for any purpose other than the forest purpose.

31. With reference to Ground [J] AND [K], I say and submit that, false, frivolous and misleading to Hon'ble Court, and are specifically denied by Present respondents. As stated earlier, the Gat No.630/1 A is a forest land and to use the same for non forest purpose prior approval of the Central Government is necessary. The District Authority has not given any permission in violation of the said guidelines. Further, necessary action have been taken to ensure that no leases are granted, renewed. Therefore, the Respondent No.17 and 18 can not be saddled with the responsibility or liability of illegal activities carried out by other persons, when the respondents have acted in good faith and have performed their legal duties.

By not granting the further leases and cancelling the leases, the Respondent No.17 and 18 have followed their duties. Therefore, the allegation of the applicant is false and misleading.

32. With reference to Ground [L] & [M], I say and submit that, false, frivolous and misleading to Hon'ble Court, and are specifically denied by Present respondents. In Compliance with the order passed by the Hon'ble National Green Tribunal, Principal Bench, New Delhi on dated 09.11.2020 in Original Application No.66/2020, Action Taken Committee was formed on 02.12.2020. The first meeting of the committee was held on 09.12.2020. Site visit was carried out on 15.12.2020. The second meeting of the committee was held on 18.12.2020. Further, Ambient air quality monitored at two locations on 18 and 19.12.2020. Also, Hearing of the respondents was conducted by the committee on 01.01.2021. and Noise levels were monitored on 06.01.2021. Further, necessary action is also taken by the Respondent No.17 and 18 from time to time.

33. With reference to Ground [N] & [O], I say and submit that, it is matter of fact that by co-ordinating with various Governments involved in the said aspects, the Respondents have initiated all the due actions as per the law. It is pertinent to note that the leases and permissions have not been renewed further. Therefore, it is crystal clear that the Respondents No.17 and 18 are performing their duties with utmost care and caution. As such the allegations leveled against the Respondent No.17 and 18 are totally baseless and false.



34. I say and submit that, present application filed by applicants is not within the limitation.

36. In the light of the facts and circumstances mentioned hereinabove, I say that Petitioner is not entitled for any relief as prayed in the Petition and Petition filed by the Petitioner is without any foundation and devoid of any merit. It is pertinent to note that the Respondents have already taken the necessary actions as mentioned in the foregoing paragraphs of the Affidavit, therefore the reliefs claimed against the Respondent No.17 and 18 have become infructuous and therefore the petition deserves to be dismissed with costs as against the Respondent No.17 and 18.

37. It is pertinent to note that, the Respondent No.17 and 18 have taken all actions necessary to transfer the possession of the land admeasuring 122 H 25 R to the Forest Department by following due procedure of law on 14/07/2021 by preparing Memorandum Panchnama and Possession Receipts/Kabje Patti.

It is pertinent to note that timely action has been taken to stop the illegal activities in the said land penal action has been taken against concerned persons by seizures of the machinery, viz. excavators & dumpers and by imposing penalty by the Respondent No. 17 and 18 and its officers as per the law.

The Respondents No.17 and 18 have requested and directed the Shirol Police Station, MIDC, Shirol vide letter dated 23/12/2019 bearing

number Kra.Gau.Kha/Vashi/788/2019 and letter dated 04/06/2020 bearing Kra/Gau/Kha./Vashi/300/2020 to carry out surveillance through its Police Squad in the Gat No.630/1A of Mauje Kasarwadi and to ensure that no illegal mining, quarrying activities and transportation of the illegal minerals is not done, and also to initiate appropriate action against the delinquents under the provisions of the Indian Penal Code as well as other applicable laws.

Thus the Respondent No.17 and 18 have made every possible effort to protect the environment and also to comply all the rules and regulations. Further, the Respondent No.17 and 18 have initiated and taken action against illegal activities. Further, the Respondent No.17 and 18 are actively co-coordinating the course of action against the illegal activities if any within their jurisdictional limits with the coordination from the Respondent No.16 and 19. Therefore, reliefs claimed against the Respondent No. 17 & 18 have become infructuous. Therefore, the present application is not maintainable against the Respondent No.17 & 18.

It is pertinent to note that the applicant Grampanchayat Kasarwadi has given no objection certificate for the purpose of the mining and quarrying activities to the Crusher Owners who are residents of the said village without any enquiry and without any due procedure in the land adjacent to the Gat No.630/1/A. Therefore, the applicant themselves have committed the violation of the provisions of law and blowing hot and cold at the same time, by applying double standards motivated by reasons best known to them. Therefore, it is crystal clear that the applicant



Grampanchayat Kasarwadi has not come to seek the justice with clean hands, therefore the present petition is liable to be dismissed with costs. If the petitioner was really serious about the noise & air pollution, they would have raised voice against mining activity in the adjacent lands also. However, the petitioner have given No Objection Certificate to various mining activities from time to time in the adjacent lands and have not made the lease holders of the adjacent lands party to the present proceeding nor has claimed any reliefs against such persons. Such approach of the Petitioner shows that the petitioner have not approached this Hon'ble Tribunal with clean hands and with bonafide intention.

38. I say and submit that, the respondent no.17 i.e. Collector Kolhapur issued vide letter no.Desk-4/Gaothan/forest/RR/665/2021 dated 10.12.2021 to all Tahasildar regarding handover the possession of the revenue land to forest department as per notification by due procedure of law.

39. I say and submit that, the respondent no.17 i.e. Collector Kolhapur issued vide letter no.Desk-4/Gaothan/forest/RR/665/2021 dated 10.12.2021 to the District Superintendent of Land Records regarding measurement and preparing plan of the above mentioned revenue land by due procedure of law.

40. It is pertinent to note that the main relief claimed by the petitioner was stopping the mining activities in the said land. However, as mentioned hereinabove, the mining and quarrying activities in the said land have been stopped and at present no such activities are being carried. The

possession of the said land is transferred to the Forest Department, entries of the notification of the forest land have been mutated to the record of rights. Therefore, the purpose of the present petition has already been served. No malafide acts have been done by the Respondent No.17 and 18 and therefore the petitioner is not entitled for any costs. Therefore, nothing has remained to be adjudicated in the present petition. The petition has become infructuous. As such the petition is liable to be disposed of as dismissed.

Therefore, I pray that

1. The present petition be dismissed with costs.
2. Permission be granted to file additional affidavit if required in the interest of justice.
3. Any other just and necessary order be passed in the interest of justice.

All the contents of the affidavit in reply hereinabove are true and correct as per the best of my knowledge and belief, which is derived from the records and documents maintained at the office of the Respondent No.17 and 18. Hence, the affidavit in reply.

Kolhapur

Date – 17/12/2021


17.12.2021
DEPONENT

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VERIFICATION

I, Shri. Anand Gulab Patil, Age : 33 years, Occupation –District Mining Officer, District-Kolhapur, do hereby state on solemnly affirmation on behalf of Respondents No. 17 and 18, that whatever stated herein above is true to the best of my knowledge and based upon the information derived from the official records available to me.

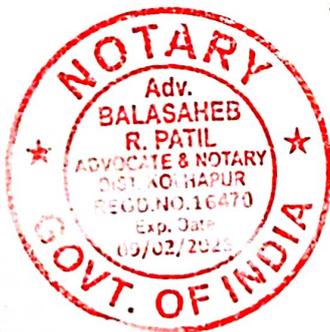
Solemnly affirmed at Kolhapur

This 17th day of December, 2021

[Signature]
17.12.2021
DEPONENT

I Identify the Deponent

[Signature]
Adv. A. A. Mahadeshwar,
17/12/2021
Ast. Govt. Pleader,
Kolhapur



SOLEMNLY affirmed before me
by Anand Gulab Patil
Who is identified before me
by Adv. A. A. Mahadeshwar
Whom I personally know
This 17 day of 12 2021

BEFORE ME

[Signature]
BALASAHEB R. PATIL
Advocate & Notary
2733, D Ward, Shukrawar Peth,
Near Jain Math, Kolhapur.

Notary Regi. Sr. No. 235
2021



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