

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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**AFFIDAVIT-IN-RESPONSE TO THE SECOND JOINT COMMITTEE
REPORT DATED 09.03.2026**

I, Siddharth Ambaji Patil, aged 71 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 response to the Second Joint Committee Report dated 09.03.2026 (**hereinafter “the 2nd Jt. Committee Report”**), filed by the Central Pollution Control Board as the Nodal Agency in purported compliance with the order of this Hon'ble Tribunal dated 27.06.2025, as under:

1. At the outset, I say that the 2nd Joint Committee Report filed through the CPCB, pursuant to the order dated 27.06.2025 is not only filed after a substantial delay that has impacted the results but the factual information on when the soil sampling was actually undertaken was blatantly misrepresented by way of untruthful statement recorded in the order dated 07.01.2026. I say that the Jt. Committee members have taken the orders of this Tribunal extremely casually which has adversely affected the Applicant's interests. On 27.06.2025, this Hon'ble Tribunal expressly stated that the site inspection needs to be conducted within 4 weeks and a report be filed thereof before the next date. I say that not only did the Jt. Committee failed to file its report before the next listing, which was 07.01.2026 (*seven months after*), it made



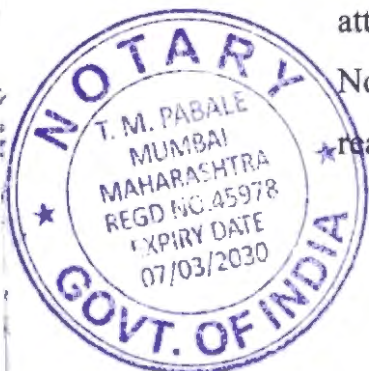
an absolutely false statement on 07.01.2026 that the soil sampling was already undertaken in the 3rd week of November and sought a further period of 3 months' time. It is on the basis of this statement that this Hon'ble Tribunal granted further time. However, a perusal of the 2nd Jt. Committee Report clearly shows at Annexure – 16 (at Pg. 1487) that the date of soil sampling is 16.01.2026 and not the 3rd week of November. Such a false statement clearly amounts to perjury and requires immediate attention of this Tribunal to pass strict orders, including and not limited to heavy costs. I further say that the delay in conducting the site inspection has led to dilution of the pollution in the soil as the entire monsoon had passed from July to September and thereafter, another 3 months were passed, before the sampling was finally undertaken on 16.01.2026. Further, no ground water testing has been undertaken by incorrectly and wrongly assuming that there is no groundwater despite the study clearly pointing that there is moderate levels of groundwater in the vicinity. Therefore, the report of the 2nd JCR does not substantially indicate the real damage and whatever results are shown reflect a substantially lower scale of the actual damage caused.

2. I say that at the outset, notwithstanding its conclusions, the following findings recorded in the 2nd Jt. Committee Report itself clearly vindicate the stand of the Applicants herein that R-1's action of dumping all forms of waste on the Applicants' private agricultural lands has caused grave and continuing environmental damage:

- (i) The time-series satellite image analysis carried out through MRSAC has confirmed that solid waste was dumped by R-1 on the Applicants' agricultural lands, at Survey No. 157 (covering an area of 5,499 sq. m.) and Survey No. 158 (covering an area of 1,558 sq. m.), from 2019 onwards. [Para 7.1 & 7.2]
- (ii) Untreated leachate from R-1's facility overflowed and was discharged, without any treatment, into the Applicants' agricultural lands through a small opening/nalah. [Para 7.3]



- (iii) PM10 concentrations recorded on the Applicants' agricultural lands were 323.7 $\mu\text{g}/\text{m}^3$ and 256.57 $\mu\text{g}/\text{m}^3$, i.e., **more than three times and two and a half times** the National Ambient Air Quality Standard of 100 $\mu\text{g}/\text{m}^3$, with PM2.5 also exceeding the standard of 60 $\mu\text{g}/\text{m}^3$. [Para 5.3 & 6.4]
 - (iv) Total Chromium exceeded the Screening Level for Agricultural Activity (64 mg/kg) at the majority of sampling locations on the Applicants' lands and, significantly, **equalled or exceeded the Response Level of 87 mg/kg** at multiple locations (101.39, 93.28 and 88.32 mg/kg), which, by the Committee's own annexed definition, denotes an *imminent threat to human health or the environment*. [Tables 2 & 3 read with Annexure-5]
 - (v) Copper **exceeded** the Screening Level for Agricultural Activity (63 mg/kg) at every single sampling location on the Applicants' lands, at both depths of 10 cm and 100 cm. [Para 6.1(III) & 6.2(III)]
 - (vi) As per Talathi records, the Applicants' lands were under 'Paddy' cultivation from 2003-04 up to 2020-21, i.e., until R-1's dumping engulfed the lands; [Para 7.2]
 - (vii) R-1 has, since the first Joint Committee inspection, removed the dumped waste from the Applicants' lands and stockpiled the same within its premises, a conduct which is nothing but an admission of the factum of dumping, and about 20,000 MT of legacy waste continues to remain stockpiled at the facility. [Paras 3.0 & 7.1]
3. Bearing in mind the aforesaid findings, I say that the 2nd Jt. Committee Report suffers from grave and fundamental infirmities, legal, procedural and scientific, and its conclusion that "there is no direct or indirect damage attributable to the solid waste dumping and leachate discharge by Respondent No. 1" is wholly unsustainable, perverse and contrary to the record, for the reasons stated hereinunder.



I. Sampling conducted after complete removal of the dumped waste cannot efface historical environmental damage

4. I say that the entire sampling exercise of the 2nd Jt. Committee was conducted on and after 21.11.2025, i.e., after R-1 had admittedly and “completely removed” the dumped solid waste from the Applicants’ lands [Para 7.1]. An assessment of a site after the polluter has cleaned it up can never be the measure of the damage caused while the pollution subsisted from 2016/2019 to 2025. The contemporaneous samples collected by the 1st Jt. Committee during the subsistence of the dumping had found heavy metals such as cadmium, chromium, nickel, zinc and lead in the soil and had found the leachate being discharged onto the Applicants’ lands to be contaminated. Those contemporaneous findings cannot be displaced by ex-post-facto sampling of a remediated surface.

5. I say that it is settled law under the Polluter Pays principle, statutorily mandated by Section 20 of the NGT Act, 2010 and expounded by the Hon’ble Supreme Court in *Indian Council for Enviro-Legal Action v. Union of India*, (1996) 3 SCC 212 and *Vellore Citizens’ Welfare Forum v. Union of India*, (1996) 5 SCC 647, that the polluter is liable both for the cost of restoration and for compensating the victims of the pollution. I say that voluntary removal of the offending waste, that too only after the institution of the present proceedings and adverse findings of the 1st Jt. Committee may mitigate future harm but does not and cannot extinguish the accrued liability to compensate the Applicants for nearly a decade of damage, loss of agricultural income and destruction of the productive capacity of their lands.

II. The “Geogenic influence” hypothesis is conjectural, non-site-specific and contradicted by the Committee’s own analytical data

6. I say that the sheet-anchor of the 2nd Jt. Committee Report that the exceedances of Chromium and Copper are attributable to “Geogenic influence” of Deccan trap basalt-derived soils rather than to R-1’s dumping



is a bare hypothesis founded entirely on generic literature concerning Konkan soils at large, and not on any site-specific scientific study. I say that no source-apportionment study, no chemical speciation analysis, no isotopic fingerprinting, and no statistical correlation between the waste characteristics of R-1's facility and the soil contamination profile was undertaken. I say that the attribution of contamination to natural background, when a solid waste facility unscientifically handling municipal, plastic, C&D and hazardous waste has operated on the adjoining plot and the Applicants' plots, requires rigorous site-specific proof, not sourced from regional bulletins and journal articles.

7. I further say that the so-called "reference" soil samples, drawn at aerial distances of merely 205 m to 510 m from the facility, are wholly incapable of representing an uncontaminated natural background. All four reference locations fall within the immediate airshed, runoff zone and zone of influence of a dumping ground that has operated for years, houses an incinerator, undertakes biomining of 20,000 MT of legacy waste and generates fugitive dust and leachate. I say that the Committee's own Geophysical Survey describes the area as a "foothills and run-off zone" [Para 8.0(ii) at Pg. 1216], which only reinforces that contaminants from the facility migrate laterally across the surrounding terrain, including to the very locations selected as "reference". Therefore, the elevated readings at such reference points therefore evidence the spread of contamination.

8. I say that, most tellingly, the Committee's own data is contrary to the geogenic hypothesis:

- (a) **Cadmium** was detected on the Applicants' lands at values up to 1.13 mg/kg (at Pg. 1189), yet was Below Level of Quantification (BLQ) at **all four** reference locations (at Pg. 1191);



- (b) **Arsenic** was detected on the Applicants' lands at values up to 4.37 mg/kg (*at Pg. 1190*), yet was BLQ at **all four** reference locations (*at Pg. 1191*);
 - (c) If the soil chemistry of the Applicants' lands were merely a reflection of the parent Deccan basalt geology, the reference soils – formed from the very same parent rock a few hundred metres away – would exhibit the same signature. The presence of toxic heavy metals such as cadmium and arsenic **exclusively on the lands upon which R-1 dumped its waste** is the classic signature of anthropogenic contamination, which geology cannot explain;
 - (d) The geogenic theory, at its highest, seeks to explain only Chromium and Copper; it offers no explanation for the cadmium, nickel, zinc and lead found by the 1st Jt. Committee in soil samples collected while the waste lay on the lands, nor for the contaminated leachate found flowing onto the lands.
9. I say that the geogenic hypothesis is also irreconcilable with the Committee's own finding that the Applicants' lands sustained paddy cultivation continuously from 2003-04 to 2020-21 as per Talathi records. I say that soil that was naturally toxic and hostile to agriculture by reason of its geology could not have supported paddy for nearly two decades. The lands turned barren only after and because of R-1's dumping, which the Report conveniently ignores.

III. Ignorance of the 'imminent threat' consequences of Chromium found above the Response Level

10. I say that under the Environment Protection (Management of Contaminated Sites) Rules, 2025, relied upon and annexed by the Committee itself at Annexure-5, the "Response Level" is defined as the concentration of a hazardous substance at or above which there is an *imminent threat to human health or the environment*, triggering a structured framework of remediation



on the Polluter Pays principle. Total Chromium on the Applicants' lands was recorded at 101.39 mg/kg, 93.28 mg/kg and 88.32 mg/kg, (*At Pg. 1198*) i.e., above the Response Level of 87 mg/kg. Having itself invoked the said Rules and recorded these values, the Committee was bound in law to declare the site as warranting response action and remediation; instead, it drew no consequence whatsoever from its own data and proceeded to exonerate R-1. The Report is, in this respect, self-contradictory and legally untenable.

IV. Complete abdication of the mandate to assess groundwater damage when the Precautionary Principle forbids treating absence of data as absence of harm

11. I say that despite the express direction of this Hon'ble Tribunal and despite its own first-meeting decision to install piezometric wells, the Committee did not collect a single groundwater sample. Having failed to generate any data, the Committee nonetheless concluded that the likelihood of groundwater damage "appears remote" [*Para 8.0(iv) at Pg. 1217*]. A conclusion of 'no damage' founded upon a confessed absence of any sampling is no assessment at all and it is nothing but speculation dressed as science. The CPCB's own General Framework of December 2022, as also the CPCB Framework annexed at Annexure A-16 to the Original Application prescribe an exact methodology for computation of damage to groundwater, which the Committee has simply abandoned.

12. I say and submit that under the Precautionary Principle, statutorily embedded in Section 20 of the NGT Act, 2010 and expounded in *Vellore Citizens' Welfare Forum (supra)* and *A.P. Pollution Control Board v. Prof. M.V. Nayudu*, (1999) 2 SCC 718, scientific uncertainty operates against the polluter, and the burden lies on the polluter to demonstrate that its activity is environmentally benign. The Committee has inverted this principle by giving R-1 the benefit of the very data-gap occasioned by the Committee's own inability to sample. Moreover, the Committee's finding that the terrain is a poor-recharge, compact basalt "run-off zone" cuts the other way: leachate



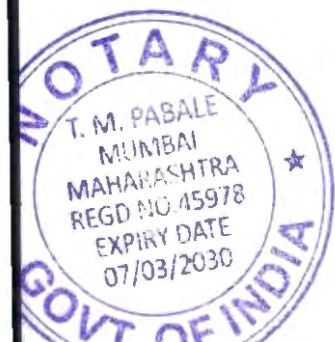
that cannot percolate vertically necessarily migrates laterally as surface runoff directly onto the adjoining, down-gradient agricultural lands of the Applicants.

V. *Gross ambient air exceedances explained away without any source-apportionment study*

13. I say that the Committee recorded PM₁₀ at 323.7 µg/m³ and 256.57 µg/m³ on the Applicants' lands, which is more than three times the NAAQS and PM_{2.5} exceedances as well, and then attributed the same, without any source-apportionment or dispersion study, to "dust resuspension from vehicular movement and sporadic land preparation activities". This is pure surmise. R-1's facility itself operates trommels for biomining of 20,000 MT of legacy waste, windrow composting, plastic crushing, baling, an incinerator and continuous waste haulage, which are all notorious sources of particulate emissions. A single-campaign monitoring exercise, with the "background" location admittedly chosen on the basis of "accessibility and availability of infrastructure" rather than scientific criteria, cannot support the exoneration of the adjacent facility from responsibility for a three-fold exceedance measured at the fence-line.

VI. *The "purchaser with knowledge" insinuation is no defense in law*

14. I say that the Committee's observation that the Applicants purchased Survey Nos. 157 and 158 in 2007 and 2008 "*with knowledge of the existing solid waste processing facility*" is legally irrelevant and impermissible. The Applicants purchased agricultural lands adjoining a facility that was, at that time, authorized and required by law to operate within its own premises, maintain a buffer zone, process waste scientifically and contain its leachate. I say that no purchaser of land 'consents' to unlawful trespass, dumping of waste on his private property, or discharge of untreated leachate onto his fields, which are acts which the 1st Jt. Committee already found to be in violation of the Solid Waste Management Rules, 2016, the Water (Prevention



and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981, committed at a time when R-1's Authorization itself had expired. The doctrine of 'coming to the nuisance' is no defense to an action for nuisance or trespass, and the liability of an enterprise carrying on an inherently hazardous activity is strict and absolute, as held in *M.C. Mehta v. Union of India*, (1987) 1 SCC 395, and that compensation has to be paid to the person whose lands have been damaged in any form.

VII. *The "Presently Uncultivated" entries are the consequence of R-1's own wrong and a wrongdoer cannot profit from his own wrong*

15. I say that the Committee's conclusion that "*no agricultural activity was being carried out by the Applicant*" and that the claim of reduced yield is "unfounded" stands the record on its head. The Committee itself records that Talathi entries show 'Paddy' on the Applicants' lands from 2003-04 to 2020-21, and that the dumping commenced in 2019 and progressively engulfed the entirety of Survey No. 157 and the northern part of Survey No. 158 by March 2024 (as found by the 1st Jt. Committee). The cessation of cultivation from 2021-22 onwards, and the present revenue classification of the lands as "चालू पड" (presently uncultivated), is the direct consequence and the very injury caused by R-1's dumping. It is a settled position in law that that no party can take advantage of its own wrong. Therefore, R-1 cannot render the Applicants' lands barren and then set up that very barrenness as a defense to the claim for loss of agricultural income and reduced yield. Further, paddy being a kharif/monsoon crop, satellite imagery captured outside the cropping season showing "no standing crop" proves nothing against two decades of consistent revenue records of cultivation.

VIII. *The buffer-zone recommendation is perverse and inverts the Polluter Pays principle*

16. I say that the recommendation at Para 8.0(viii) that MMRDA "*may acquire the adjacent Applicant's agriculture lands for establishment of buffer zone*"

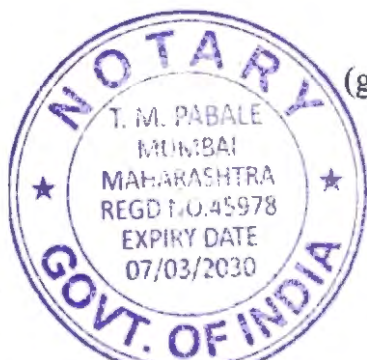


is startling and wholly beyond the Committee's terms of reference. The obligation to maintain a buffer zone around the solid waste processing facility was at all times that of R-1 and the concerned authorities under the Solid Waste Management Rules, 2016, and the absence of any buffer zone was itself recorded as a violation by the 1st Jt. Committee [Para 5(xiv) thereof]. To now recommend the acquisition of the victims' own agricultural lands, which are damaged by R-1's illegalities, in order to regularize R-1's non-compliance is to reward the violator, punish the victim, and stand the Polluter Pays principle on its head. The Applicants cannot be deprived of their constitutionally protected property under Article 300A of the Constitution of India for the benefit of the polluter, and in any event, no acquisition, if ever lawfully undertaken, can substitute or extinguish the accrued liability of R-1 to compensate the Applicants for the damage already caused.

IX. *The Report fails to answer the very objections referred to the Committee by the order dated 27.06.2025*

17. I say that the 2nd Jt. Committee Report does not deal with, much less answer, any of the specific objections raised by the Applicants in their affidavit dated 16.12.2024, which formed the very basis of the reference under the order dated 27.06.2025, namely:

- (e) the enhancement of the capital cost component of Environmental Compensation by the multiplication factor of 1.5, mandated by Recommendation at Para 3.4 of the Report of CPCB's In-House Committee, upon the admitted finding that hazardous waste was found mixed with the municipal solid waste dumped on the Applicants' lands;
- (f) the quantification of damage to groundwater in accordance with the exact computation methodology prescribed in the CPCB Framework (Annexure A-16 to the Original Application);
- (g) the continuation of the monthly compensation for non-remediation of the legacy waste site until actual completion of remediation, R-1 having



itself stated in its reply dated 06.11.2024 that the wall construction and bioremediation would be completed only by May 2025;

- (h) the compensation payable to the Applicants as affected third parties towards property damage, loss of ecological services and reduced agricultural yield, in terms of Para 1.3.8 read with Appendix III of the CPCB General Framework and Para 4.4 of the CPCB 'Guidelines on liabilities for Environmental damages due to handling & disposal of Hazardous Waste and Penalty, January 2016' (Annexure R-1 to the affidavit dated 16.12.2024).

18. I say that far from complying with the order dated 27.06.2025, the Committee Report is, therefore, deficient, incomplete, excludes the terms of reference, ignores the Affidavit of the Applicant dated 16.12.2024.

19. In view of the settled position in law that a polluter is strictly liable to compensate the individual sufferers as well as to bear the remediation costs, I say that the 2nd Jt. Committee Report deserves to be discarded, and this Hon'ble Tribunal be pleased to proceed on the basis of the findings of the 1st Jt. Committee Report dated 07.11.2024, with the enhancements and additions pointed out by the Applicants; and accordingly calculate the compensation payable to the Applicants and further direct R-1 to remediate and restore the Applicants' agricultural lands to their original cultivable condition at its own cost, and to pay the Applicants compensation for the direct and indirect damages, which are in addition to the remediation costs.

Solemnly affirmed at Mumbai)

Dated this 7th Day of July, 2026.)

Identified by Me



DEPONENT



Zaman Ali,

Advocate for Original Applicants



BEFORE ME

BEFORE ME

TUSHAR M. PABALE

B.Sc., LL.B.

ADVOCATE & NOTARY (GOVT. OF INDIA)

05, Ground Floor, Vimala Chambers,
Janmabhoomi Road, Fort, Mumbai - 400 001.**NOTED & REGISTERED**Page No. 8/13 Sr. No. 90Date 07 JUL 2026