

Before the National Green Tribunal, Principal Bench, New Delhi

Original Application No 252/2023

In the matter of:

Shri Bhera Lal Goyal & Ors.

...Applicants

vs

Ministry of Environment, Forest & Climate Change & Ors.

...Respondents

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DATE: 25.07.2023

PLACE: New Delhi

Through  
SANJAY KHANNA & SULACHA PRASAD

Advocates

D-715/2002 & D-2426/2009

Off: L-27 G.F., Kailash Colony,

New Delhi 110048

Emails: [advkhanna2002@gmail.com](mailto:advkhanna2002@gmail.com) & [sulachaprasad@gmail.com](mailto:sulachaprasad@gmail.com)

Ph Nos: 0989930564 & 9313605767

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In the matter of:

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vs

Ministry of Environment, Forest & Climate Change & Ors. ...Respondents

LDOH: 19.05.2023

NDOH: 31.07.2023

**AMENDED SHORT REPLY ON BEHALF OF RESPONDENT NOS. 8 AND**

**9.**

**MOST RESPECTFULLY SHOWETH**

1. The present Original Application No. 252 of 2022 has been filed by the Applicants for seeking directions to respondent authorities to permanently stop/restrain the commercial activities of hotel/resort being undertaken by Respondent No. 8 & 9 within the eco sensitive zone of Kumbhalgarh Wildlife Sanctuary District - Pali (Rajasthan) in defiance of judgment dated 3<sup>rd</sup> June 2022 passed by Hon'ble Supreme Court in re: T.N. Godavarman Thirumulpad Versus Union of India and without obtaining statutory clearances as per law and for directions to concerned authorities to take action against Respondent no.8 &9 for illegal felling of trees and for unauthorized construction on the hill area and Charagrah land.

2. That the contents of the Original Application are denied, unless the same are a matter of record or are explicitly/categorically admitted hereinafter. The said application is not maintainable on accounts of several grounds taken hereinafter.

### PRELIMINARY OBJECTIONS

1. At the outset it is most respectfully submitted that Application is barred by limitation as the Applicant is alleging about the "Construction started in January, 2022" and taken the said date as the date from which the cause of action has arose. However, the present Application was filed on 03.03.2023 (i.e. after more than one year). Hence the present application is filed with gross delay and that to without showing any reason for delay. Thus the present Application may be dismissed at this count alone. At this juncture, it would be relevant to mention the Section 14 of the NGT Act which states as under:

14 Tribunal to settle disputes-

(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

2. It is further submitted that the present Application is also barred by Jurisdiction as the land in question is situated in Rajasthan. However, the Applicant herein has filed the present Application before this Hon'ble Tribunal instead of filing the same before the Central Zone bench of this Hon'ble Tribunal so as to harass the Answering Respondent.
3. It is further submitted that the Applicant has made several allegations particularly regarding the statutory permissions, eco sensitive zone and further regarding the felling of trees etc. however, the Applicant has never raised such allegations before any authorities/ departments/ CEC or made any objections against the draft notification before approaching this Hon'ble Tribunal which itself shows that the Applicant is not concerned with the Environmental damage but has malafide intention son to harass the answering Respondent.
4. That the Original Application filed under Section 14 & 15 of National Green Tribunal Act, 2010 (hereinafter referred to as 'the Act'), is beyond the scheme and purpose of the act as no substantial question relating to environment is set out in the application filed by the applicant. The applicants have failed to specify any actual environment harm or damage in its application or through the evidence placed on record.

#### **PRELIMINARY SUBMISSIONS**

5. The present original Application has been filed particularly relying on the judgment dated 22.03.2022 passed by the Hon'ble Supreme Court in the matter of titled as "T.N. Godavarman Thirumulpad Versus Union of India" being Writ Petition Civil No. 202 of 1995. However, the said judgment of the Hon'ble Supreme Court has been modified vide judgment dated

26.04.2023 whereby, the restriction in 1Km area was made 'not applicable in respect of which a draft and final notification issued by the MoEF & CC and in respect of the proposals received by the Ministry. Hence in view of such modifications, the present application has become infructuous.

6. It is further submitted that the activity of development for "Tourism (resort)" comes under the 'regulated activity' as per the guidelines dated 09.02.2011 and even the draft notification dated 18.06.2020 does not prohibited tourism activity within the eco-sensitive zone. Hence the present application is mere in attempt to stop the answering respondent from getting the further permissions.
7. It is submitted that the Hon'ble Supreme Court while passing the Judgment in T. N. Godavarman (Supra) has categorically observed that the person can file objections to the draft notification so if there is any objection, the Original Application ought to have approach the government Authorities before filed the present Application and particularly knowing the fact that the draft notification has not been finalized.
8. It is submitted that the Answering Respondents has been allotted the land in question by the State Government in the year 2011 pursuant to 2007 Tourist Policy of the State Government for the purpose of Tourist Facility (i.e. Resort) in the land in question. Thereafter, several permissions were sought from different departments i.e. PWD, Water Department, Forest Department, Nagar Palika, RSPCB etc. Moreover, various discussion occurred with the State Authorities and concerned departments regarding the ESZ and after opinion from various State Departments and due deliberation, the no objection was granted only for a smaller area out of the total area and that to with certain conditions being a regulated activity.

9. It is submitted that the land in question has been allotted and sanctioned for the purpose of tourism with several conditions and the State Government after following the due procedure of law has granted the same which is evident from the various permissions sought by the Answering Respondents till date.
10. It is humbly submitted that the answering respondents have already taken permissions/ granted NOCs from all the concerned departments/ stake holders, only whereafter the construction of the project proposed i.e. Respondent no. 9 commenced. The applicants have approached this Hon'ble Tribunal with unclean hands so as to portray that the answering respondents resort is not in compliance with the judgment of the Hon'ble Supreme Court in T.N. Godavarman's Case.
11. It is submitted that even for the draft notification, the answering Respondent has also filed its objections and that will be decided during the finalisation of the said draft notification and even the Hon'ble Supreme Court has left with the State Authorities and Central government qua the demarcation of the ESZ and regulated/permittted activities so which is pending at final stage for approval at Government level. Hence, the present Application may not be entertained.
12. It is submitted that there is no felling of trees in the land in question as not even a single document has been placed on record which can show the felling of trees. In fact, the answering Respondent has planted hundreds of trees and further even the report submitted by the DFO itself goes on to show that there is no felling of trees in the land in question. Hence the said allegation is bald and frivolous.

13. It is most humbly submitted that the way the present application is being drafted in a casual manner shows that by way of the present application an attempt has been made to get declared, all the permissions/ NOCs already granted by all the concerned departments/ stake holders/ agencies in respect of the project proposed i.e. Respondent no. 9 to the present applicant i.e. Respondent no. 8, invalid/ null and void/ incorrect. Thus, the present petition/ original application is extremely belated.

#### **RELEVANT BRIEF FACTS**

14. That in the year 2007, the State Government came with the Tourism Policy (Rajasthan Tourism Unit policy 2007) whereby, Lands were allotted and converted for the Hotels and other tourism purpose.

15. That in the year 2010, the Answering Respondents applied for the allotment of the land in the Tourism Department. Pursuant to the same, in the year 2011, the Answering Respondent were allotted a piece of land admeasuring 5.90 hectares out of which 1.30 Hec. was allotted for Tourism purpose by the Nagar Palika, Sadri (Pali) bearing Khasra No 4603, Village Sadri, Tehsil Desuri, District Pali, Rajasthan.

At this juncture, it is pertinent to mention that the land in question was with revenue Department and was within the periphery of the Municipal Corporation which was marked for tourism purpose.

16. That thereafter, the Answering respondents sought no objection from the Forest Department, Rajasthan for the purpose of 'Resort', which was granted on 21.01.2011, stating that the Khasra No. 4603 admeasuring 2.50hec. out of 5.90 Hec. Does not come under the Forest Area and further mention that the

land in question is around 150-300 meters away from the boundary of the Kumbhalgarh National Park. A copy of the No Objection issued by the Forest Department to the Answering Respondents dated 21.01.2011 is annexed herewith and marked **ANNEXURE R-1** (already annexed with earlier reply).

17. That thereafter, the Answering Respondents further sought No Objection from the Public Works Department, Bali, Rajasthan and vide letter dated 01.02.2011, the Executive Engineer, Public Works Department granted the said No Objection Certificate to the Answering Respondents for the purpose of Tourism and Construction of Resort at Khasra No. 4603.

A copy of the No Objection Certificate from the Public Works Department dated 01.02.2011 is annexed herewith and marked as **ANNEXURE R-2** (already annexed with earlier reply).

18. Further, on 01.02.2011 the Water Department also granted the No Objection Certificate with regard to the Tourism facility/Resort at Khasra No. 4603, Sadri, Rajasthan, with few conditions. A copy of the No Objection Certificate by the Water Department dated 01.02.2011 is annexed herewith and marked as **ANNEXURE R-3** (already annexed with earlier reply).

19. That on 09.02.2011, the guidelines for declaration of eco sensitive zones around national Park and Wildlife Sancantury was issued by the MOEF & CC wherein in the tourism was marked under the regulated category at Serial No. 5 of Annexure-1.

20. That further the Answering Respondents applied No Objection to the office of Executive Engineer Public Development Section, District Pali which was granted vide the said Department on 31.07.2014 for the Tourism-Resort purpose. A copy of the Letter dated 31.07.2014 issued by the Executive

Engineer Public is annexed Development Section, District Pali herewith and marked as **ANNEXURE R-4** (already annexed with earlier reply).

21. That thereafter, on 24.04.2018, the Forest Department, Rajasthan granted No objection for the tourism-resort purpose after discussing the issue of land in question being within the 1 Km from the boundary of sanctuary and within the Eco Sensitive Zone. It was further observed that the land in question has been "exempted" for the tourist-Resort facility vide Government order dated 13.05.2016. Moreover, the land in question is away from the boundary of Kumbhalgarh Wildlife Sanctuary and 1.30 hec. out of total area has been allotted for a tourism-resort purpose only. A copy of the order dated 24.04.2018 issued by the Secretary Forest Department is annexed herewith and marked as **ANNEXURE R-5** (already annexed with earlier reply).
22. That on 25.07.2018, the Senior Town Planner, Jodhpur Zone further issued letter to Nagar Palika, Sadri regarding the inclusion of land in question in the Zonal Master Plan 2031. A copy of the Letter dated 25.07.2018 issued by the Senior Town Planner, Jodhpur Zone is annexed herewith and marked as **ANNEXURE R-6** (already annexed with earlier reply).
23. That thereafter, on 04.01.2022, the Nagar Palika, Government of Rajasthan Issued a letter thereby, granting/sanctioning converted land for the Tourism facility-Resort in an area of 1.30 hec out of area 5.90 hec only. A copy of the letter dated 04.1.2022 issued by the Nagar Palika, Head Office Jaipur, Rajasthan is annexed herewith and marked as **ANNEXURE R-7** (already annexed with earlier reply).
24. That on 03.06.2022, the Hon'ble Supreme Court while considering the issue of eco sensitive zone at large passed several directions in the matter of titled as "T.N. Godavarman Thirumulpad Versus Union of India" being Writ

Petition Civil No. 202 of 1995. The relevant extract of the judgment dated 03.06.2022 is quoted herein for ready reference:

"56.1. Each protected forest, that is, national park or wildlife sanctuary must have an ESZ of minimum one kilometre measured from the demarcated boundary of such protected forest in which the activities proscribed and prescribed in the Guidelines of 9-2-2011 shall be strictly adhered to. For Jamua Ramgarh Wildlife Sanctuary, it shall be 500 m so far as subsisting activities are concerned." 56.2. In the event, however, the ESZ is already prescribed as per law that goes beyond one kilometre buffer zone, the wider margin as ESZ shall prevail. If such wider buffer zone beyond one kilometre is proposed under any statutory instrument for a particular national park or wildlife sanctuary awaiting final decision in that regard, then till such final decision is taken, the ESZ covering the area beyond one kilometre as proposed shall be maintained. 56.3. The Principal Chief Conservator of Forests as also the Home Secretary of each State and Union Territory shall remain responsible for proper compliance of the said Guidelines as regards nature of use within the ESZ of all national parks and sanctuaries within a particular State or Territory. The Union Principal Chief Conservator of Forests for each State and Union Territory shall also arrange to make a list of subsisting

structures and other relevant details within the respective ESZs forthwith and a report shall be furnished before this Court by the Principal Chief Conservator of Forests of each State and Union Territory within a period of three months. For this purpose, such authority shall be entitled to take assistance of any governmental agency for satellite imaging or photography using drones.

56.4. Mining within the national parks and wildlife sanctuaries shall not be permitted.

56.5. In the event any activity is already being undertaken within the one kilometre or extended buffer zone (ESZ), as the case may be, of any wildlife sanctuary or national park which does not come within the ambit of prohibited activities as per the 9-2-2011 Guidelines, such activities may continue with permission of the Principal Chief Conservator of Forests of each State and the person Union Territory or responsible for such activities in such a situation shall obtain necessary permission within a period of six months. Such permission shall be given once the Principal Chief Conservator of Forests is satisfied that the activities concerned do not come list and were within the prohibited continuing prior to passing of this order in a legitimate manner. No new permanent

structure shall be permitted to come up for whatsoever purpose within the ESZ.

56.6. The minimum width of the ESZ may be diluted in overwhelming public interest but for that purpose the State or Union Te concerned shall approach CEC and rarr and both these bodies shall give their respective opinions/recommendations before this Court. On that basis, this Court shall pass appropriate order."

A copy of the Judgment dated 03.06.2022 passed by the Hon'ble Supreme Court in the matter titled as "T.N. Godavarman Thirumulpad Versus Union of India" being Writ Petition Civil No. 202 of 1995 is annexed herewith and marked as **ANNEXURE R-8** (already annexed with earlier reply).

25. That further on 26.04.2023, the Hon'ble Supreme Court was pleased to modify the above mentioned judgement dated 03.06.2022 whereby, inter-alia, the Hon'ble Supreme Court has clarified that the directions qua the restrictions in minimum 1 KM area would not be applicable to ESZs in respect of which a draft and final Notification issued by the MOEF&CC and in respect of the proposals received by the Ministry. That vide the said order, the Hon'ble Supreme Court has further modified the other directions as well. The relevant paragraph of the judgment dated 26.04.2023 passed by the Hon'ble Supreme for is quoted herein below for ready reference.

"61. We are therefore inclined to allow the present I.A. The direction in paragraph 56.1 of the order dated 3rd June 2022 49 (supra) is modified and clarified that the directions contained therein would not be applicable to the ESZs in respect of which a draft and final

notification has been issued by the MoEF& CC and in respect of the proposals which have been received by the Ministry."

We also modify the directions contained in paragraph 56.5 of the order dated 3rd June 2022 (supra) and replace the same as under: (i) The MoEF & CC and all the State/Union Territory Governments shall strictly follow the provisions in the said Guidelines dated 9th February 2011 and so also the in the ESZS provisions contained notifications pertaining to the respective Protected Areas with regard to prohibited activities and activities, regulated permissible activities;

(ii) We further direct that while granting Environmental and Forest Clearances for project activities in ESZ and other areas outside the Protected Areas, the Union of India as well as various State/Union Territory Governments shall strictly follow the provisions contained in the Office Memorandum dated 17th May 2022 issued by MoEF& CC."

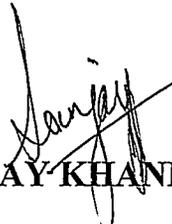
A copy of the Judgment dated 26.04.2023 passed by the Hon'ble Supreme Court of India in in Writ Petition Civil no. 202 of 1995 titled as "T.N. Godavarman Thirumulpad Versus Union of India" is annexed herewith and marked as ANNEXURE R-9. In view of the above, it is therefore most respectfully prayed that this Hon'ble Tribunal may be pleased to dismiss the present application of the Applicant with exemplary cost.

26. That the answering Respondent further reserve its right to file detailed/additional reply as and when required by this Hon'ble Tribunal.

27. That the affidavit in support of this Reply is being filed along with this Reply.

  
Respondent/s

DATE: 25.07.2023  
PLACE: NEW DELHI

  
SANJAY KHANNA & SULACHA PRASAD

Through

Advocates

D-715/2002 & D-2426/2009

Off: L-27 G.F., Kailash Colony,  
New Delhi 110048

Emails: [advkhanna2002@gmail.com](mailto:advkhanna2002@gmail.com) & [sulachaprasad@gmail.com](mailto:sulachaprasad@gmail.com)

Ph Nos: 0989930564 & 9313605767

**VERIFICATION :-**

Verified at Delhi on \_\_\_ this day of June 2023 that the contents of above amended reply from Para no. 1 to \_\_\_ are true and correct to the best of my knowledge. The Last Para is the prayer to this Hon'ble Court and nothing material has been concealed therefrom.

  
Respondent/s

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH NEW DELHI

ORIGINAL APPLICATION NO. 252 OF 2023

**In the matter of: -**

Bhera Lal Goyal & Ors.

..Applicants

**Versus**

Ministry of Environment, Forest

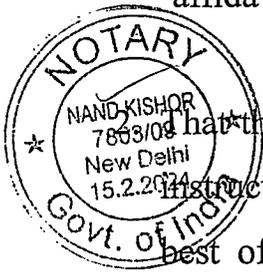
and Climate Change & Ors.

..Respondents

**AFFIDAVIT ON BEHALF OF APPELLANT.**

I, Indu Kumari, wife of Shri Khushaveer Singh, aged about 53 years, Resident of Kadamb Van, Jojawar Pali, Rajasthan 306022, do hereby solemnly affirm and declare as under :-

1. That I am the respondent No. 8 and thus duly competent to file the instant Application/Reply and further is well conversant with the facts and circumstances of the case, hence competent to swear this affidavit.



That the Application/reply has been drafted by my counsel under my instructions and the contents of the same are true and correct as per the best of my knowledge and belief and the same has been properly verified by me.

3. That the contents thereof have been drafted by my counsel as per my instructions and the same may kindly be read part and parcel of this

affidavit, as the same are not being repeated herein for the sake of brevity and the same has been explained to me in vernacular.

*Indu Kaur*  
DEPONENT

*Saraj*

**VERIFICATION:**

25 JUL 2023

Verified at Delhi on \_\_\_\_\_ day of June, 2023 that the contents of affidavit are true and correct to my knowledge and belief, no part of it is false and nothing material has been concealed there from.

I identify the Executant/Deponent  
Who has Signed in my Presence

*Indu Kaur*  
DEPONENT



CERTIFIED THAT THE CONTENTS EXPLAINED TO THE  
DEPONENT/EXECUTANT WHO IS SEEMED PERFECTLY TO  
UNDERSTAND AFFIRMED & DEPOSED BEFORE ME AT NEW DELHI  
*Saraj Kishor*  
IDENTIFY THE EXECUTANT/DEPONENT WHO HAS  
SIGNED IN MY PRESENCE  
NOTARY PUBLIC (NEW DELHI)  
NAI  
JRACARWAL Advocate

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25 JUL 2023



# PROOF OF SERVICE

Karan Sokhi &lt;advkaransokhi@gmail.com&gt;

## Advance Service of Amendment in short reply- NGT

1 message

Karan Sokhi &lt;advkaransokhi@gmail.com&gt;

Tue, Jul 25, 2023 at 7:16 PM

To: "rkhuranalegal@gmail.com" <rkhuranalegal@gmail.com>, hasil jain <advjain25@gmail.com>, secy-moef@nic.in, csraj@rajasthan.gov.in, pccf.raj.forest@rajasthan.gov.in, dsrevenue@gmail.com, ce.wr@rajasthan.gov.in, rajpal@nic.in, pccf.cwlv.forest@rajasthan.gov.in

Cc: Sanjay Khanna <advkhanna2002@gmail.com>, Tarandeep Singh <adv.taransokhi@gmail.com>, Sulacha Prasad <sulachaprasad@gmail.com>

Respected All

PFA Amendment Application seeking amendment in the short reply alongwith the amended short reply in case titled as **SHRI BHERA LAL GOYAL & ORS. V. MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE & ORS.** being **Original application no. 252/2023** filed on behalf of Defendant No.8.

Please treat this as an advance service and kindly acknowledge the receipt of the same.

--

Thanks & Regards  
Karan S. Sokhi (Adv)  
09999116313

### 2 attachments



IA - SECTION 151 -- Shri Bhera Lal.pdf  
330K



Amended Short Reply -- Shri Bhera.pdf  
520K