

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

ORIGINAL APPLICATION NO. 49 OF 2021

IN THE MATTER OF:

Bandhua Mukti Morcha NGO

...Applicant

Versus

Rajeev Kumar & Ors.

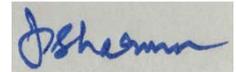
...Respondents

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Respondent No.5 to 7

Through



PIYUSH SHARMA
ADVOCATE
Ch.108, CK Daftary Block
Supreme Court, New Delhi
Mob: 9810613750

Place: New Delhi
Dated: 04.01.2022

BEFORE THE NATIONAL GREEN TRIBUNAL

PRINCIPLE BENCH NEW DELHI

ORIGINAL APPLICATION NO. 49 OF 2021

IN THE MATTER OF:-

Bandhua Mukti Morcha NGO

....Applicant

Versus

Rajeev Kumar &Ors.

....Respondents

**Counter Affidavit on behalf of Respondent No. 5, 6 and 7 in
opposition to the Show Cause Notice issued by this Hon'ble
Tribunal.**

Affidavit of Sh. Pawan Kumar S/o Sh. Thakur Dass, aged about 57 years, Authorised Signatory of the Union, having its registered office at plot no. 7, Mathura road, Badarpur, Opposite State Bank of India, New Delhi – 110044, do hereby solemnly affirm and declare as under:-

That I am filing the present counter affidavit in the capacity of General Secretary of Badarpur Traders Union and also in the capacity of being respondent no. 6.



That before giving para wise reply I am advice to state the following preliminary objection which arise to maintainable of the present original application.

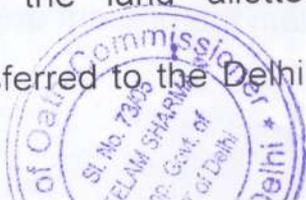
Preliminary Objection:-

1. That the present original application is liable to be rejected being not maintainable. The allegation levelled in the original application are bald, vague and not supported by any genuine evidence. In this view of the matter the present original application is liable to be rejected.
2. That this Hon'ble Tribunal has already dismissed once earlier original application filed by the present applicant, wherein they failed to disclosed the adequate particulars and therefore the same has been rejected by order dated 07.01.2021 (already annexed as annexure A-3 with the original application).
3. That the present original application dose not disclose any cause of action in so far as answering respondent are concerned. In fact on the basis of such vague original application, by misleading this Hon'ble Tribunal the applicant was successful in getting the direction issued to the statutory authorities to examined the matter and to file status report. It is submitted that as per the status report filed by SDM (Sarita Vihar) dated



02.07.2021 wherein it has been categorically stated that the land is allotted to the answering respondent i.e. Badarpur Trade s Union. It is further stated in the status report that during the inspection conducted on 25.08.2021 by the Tehsildar / Executive Magistrate (Sarita Vihar) all stock, constructions material was found covered and there was no movement any vehicle. In view of the aforesaid status report filed by the SDM (Sarita Vihar) various allegations in so far as answering respondent are concerned, as levelled in the original application are liable to be rejected and the original application is liable to be dismissed in so far as answering respondent are concerned.

4. That the answering respondent are conducting the business of selling the building material (Rait, Rodi, Gitti and Badarpur) on this land since 1967. The Govt. of NCT, the Land & Building Department had allotted a piece of land admeasuring 8.52 Acres to the Badarpur Traders Union on 28.06.1967 on temporary license basis @ Rs. 2400/- per acre per year. The handing over and taking over of the said land was done by the Govt. of NCT on 25.06.1967.
5. That the land allotted to the answering respondent was transferred to the Delhi Development Authority. The matter with



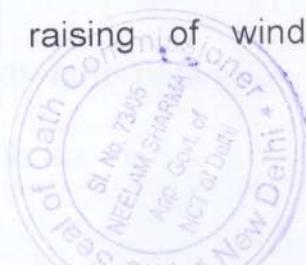
respect to the allotment in favour of the Badarpur Traders Union was considered by the Delhi Development Authority and allotted by the Authority vide Resolution No. 114 dated 29.04.1977.

6. That thus the allegations in the original application that the answering respondent are carrying on the selling activity illegally are wrong and thereafter liable to be rejected.
7. That the present original application is liable to be rejected in as much as it appears that it has been filed only harass answering respondent who are selling the building material since 1967 after being duly allotted the land from the Land Owning Agencies. It is pertinent to mention here that none of the photographs annexed with the application are of the site/plot owned by the answering respondent. In this view of the matter also the present application is liable to be rejected.

Further, more it is submitted that it has been not disclosed in the original application about the objects / memorandum of associations of the applicant which as disclosed in the original application is a society registered under the Society Registration Act. It is necessary for the applicant to disclose its objectives and rules and regulations to maintain the present application.



8. That as stated in the order dated 08.10.2021 by this Hon'ble Tribunal regarding the inspections carried out by DPCC of 01.10.2021 with respect to the site/plot (Tughlakabad Metro Station) all the observations / objections have been rectified by the answering respondent.
9. That the answering respondent is in possession of a plot size which is 3.69 Acre and less than 20000 sqmt .
10. That the answering respondent is doing the business of selling of Badarpur and Rodi in the area earmarked by DDA for the said purpose in the Master/Zonal Plan. The applicant is doing this business since last more than 51 years and have all the necessary permissions since last 51 years.
11. That entire material whether Badarpur or any other sand material is completely covered by tarpaulin. The wind breakers have been raised to applicable heights by the answering respondent.
12. That no date of inspection has been mentioned but when the team has visited on 01.10.2021, they have been shown to their satisfaction the entire arrangement made by the applicant which includes raising of wind breakers, covering of the entire



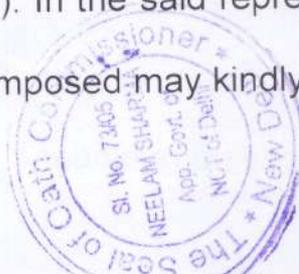
construction material with tarpaulin, sprinkling of water by the workers at hourly intervals and anti smog guns.

13. That the Hon'ble Delhi High Court in writ petition (C) No. 4625 of 1995 has given certain directions to the land owning agency DDA. The directions issued by the Hon'ble High Court to cover the Badarpur by Tarpaulin and keep it wet. Upon the undertaking given by Advocates appearing on behalf of answering respondent before the Hon'ble Delhi High Court, the Hon'ble Court permitted them to carry out trade of selling building materials. In the said order, the Division Bench of the Hon'ble Delhi High Court has directed that the Badarpur and Sand be kept wet and will be covered by a tarpaulin. It further passed an order that answering respondents have right to carry on the trade of Badarpur as well as Sand and Rodi. The order passed by the Division Bench of the Hon'ble Delhi High Court dated 30.05.1997 was also shown to the DPCC officials and copy was also handed over. A true copy of this order dated 30.05.1997 in Writ Petition (C) No. 4625 of 1995 passed by the Hon'ble Delhi High Court is annexed herewith and marked as **Annexure R-1**

14. That it is further respectfully submitted that the imposition of heavy fine of Rs.50,000/- on a poor sand/badarpur seller

association is hampering their right of livelihood as enshrined in Article 21 of the Constitution of India. Though the answering respondent /association is taking every step to control the dust pollution despite that the members of the Committee who are visiting the area/site earmarked for selling/ trading of construction material are insisting of imposing fine upon the poor sand traders. In the order dated 01.10.2021 itself, it has been recorded that various steps have been taken by the sand traders to minimize the dust pollution in accordance with various orders of the Hon'ble Supreme Court as well as of the Hon'ble Delhi High Court.

15. That as stated hereinabove the answering respondent has immediately taken out the corrective measures by constructing wind breaking wall of 10 meter high erected around the boundary.
16. That answering respondent have also installed Anti Smog Gun (Sprinkling Water Machine) and has covered entire material (fine aggregate) with green tarpaulin. The photograph of the entire of area submitted alongwith representation that the SDM (Sarta Vihar). In the said representation it has also been prayed that the fine imposed may kindly be waived. The copy of the representation



alongwith photograph is annexed herewith and marked as **AnnexureR2(Colly)**.

17. That in view of the aforesaid submission it is submitted that the present application is devoid of any merit and therefore liable to be dismissed.

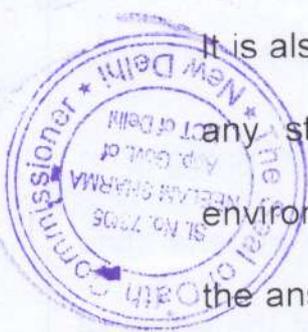
It is falsely claimed in the synopsis that the applicant is working for protection of the environment, improving the Air quality and ensuring that all citizen of this country get healthy environment to live and clean air to breath.

It is also falsely claimed that answering respondent are carrying out illegal businesses of building material chips, rodi, bajri, from open plot of land.

It is also falsely claimed that answering respondent are not taken any steps to minimize the adverse impact on the air and environment. These submission are totally false in as much as the answering respondent as noticed in the various status report filed by the Tehsildar as well as by DPCC that no major violation are committed by the answering respondent.

Para wise Reply onmerits:-

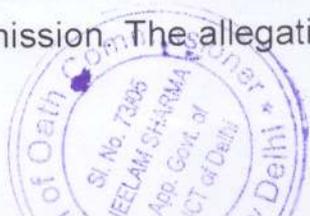
- 1-2. The contents of these para are needs no rejoinder.



3. The contents of this para as stated are wrong and denied. It is vehemently denied that applicant is working for the issues related to health welfare and wellbeing of public at large. It is the respectful submission of the applicant that the present original application is filed only to harass the answering respondents who are doing the business of selling the building material since last 51 years. It appears that the original application is filed with a malafide intention and to black mail the answering respondent. The original application is therefore liable to be rejected.

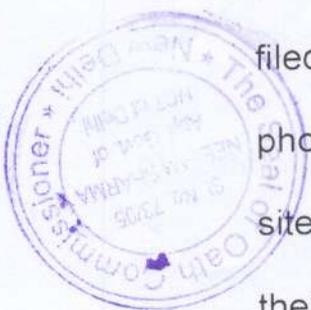
Reply to the facts of the case:-

- a-d. That the contents of these paragraph merely states the statutory provisions. It is submitted that the answering respondent are following every directive issued by various authorities to check the air pollution.
- e. That the contents of this para in so far as it is relates to answering respondent, as stated are wrong and denied. It is submitted that as explained in detail hereinabove the answering respondents are carrying out their business activities of selling building material strictly in accordance with law and with due permission. The allegations of carrying out illegal businesses and



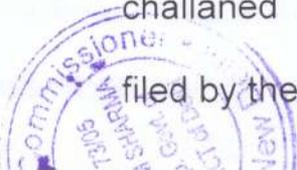
indulging in evasion of green tax are totally mis-conceived untannable and vehemently denied.

- f. That the contents of this para as stated are wrong and denied. It is submitted that the answering respondent are carrying out the business with due permission of the concerned authorities since 1967. It is further clear that the present original application is filed only to harass the answering respondent. It is vehemently denied that there are any deployment of heavy machinery like crane and earthmovers. The allegation of continues 24x7 movement of vehicles and use of heavy machinery to create noise and environmental pollution is totally false in as much as the entry of heavy vehicle is ban in Delhi during day time. This facts further established beyond doubt that the present application is being filed only to harass the answering respondent. None of the photographs annexed with the original application is of the site/plot from where the answering respondent are carrying out their business activities. It is pertinent to mention that in the zonal plan the site/plot from where the answering respondent doing there business, is earmarked by the land owning agencies for selling of building materials. The allegation of the applicant that

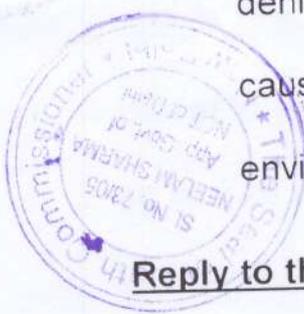


answering respondent are carrying out selling of building material illegally is totally mis-conceived and wrong.

- g. That the contents of this para are wrong and denied. The applicant has not furnished any evidence of air pollution being alarmingly high in the said area. This is a vague allegation levelled by the applicant.
- h. That the contents of this para are wrong and hence denied. It is submitted that the original application is filed with a malafide intention and with ulterior motives.
- i-j. That the contents of these paragraphs are matter of record. It is submitted that the present application is also liable to be rejected in view of various submission made by the applicant.
- k-n. That the contents of these paragraphs which are matter of record needs no reply. It is submitted that the representation as well as the complaint lodge by the applicant are false and therefore they are liable to be rejected. It is submitted that the answering respondent are not indulging in any activity which has adverse impact upon the air pollution. It is submitted that the some of the members of the answering respondent have been wrongly challaned by the concerned SDM. A representation has been filed by the answering respondent against the imposition of fine



- m. That the contents of this paragraph are wrong and hence denied. The answering respondent has taken various steps whereby they have complied with all the observations of the DPCC. It is further submitted that the answering respondent and its members are carrying out their business activities perfectly in accordance with law. None of the photograph annexed as annexure A6 are of the site/plot where the applicants are carrying their business.
- n. That the contents of this para are wrong and hence denied. The present application is liable to be rejected in view of the submission made in the present counter affidavit.
- o-q. That the contents of these paragraphs are wrong and hence denied. It is submitted that the answering respondent are not causing any harm to the quality of air or damaging the environment. The original application is filed with ulterior motives.



Reply to the Grounds:-

A-M. That the contents of these ground paras are wrong and hence denied and toto. It is vehemently denied that the answering respondent are indulging in such activities which has adverse impact upon the air as well as upon environment. It is vehemently denied that any illegal activity is being carrying out by the applicant. It is further vehemently denied that the

answering respondent are deploying heavy vehicle such as cranes, earthmovers. It is further vehemently denied that there is any continues 24x7 movement of vehicles. It is submitted that all the order passed by this Hon'ble Tribunal have been complied with by the answering respondent. It is also submitted that the answering respondent have a fundamental right to carry out their businesses in accordance with law and the applicant cannot by way of present application pray for stoppage of their business activities the answering respondent has a right to life and families of various persons are depending upon the business conducted by the members of the answering respondent.

No Similar Application:-

That the contents of these para needs no reply.

Limitation:-

That the present application is barred by limitation in as much as the applicants are carrying out their businesses since 1967. Therefore, the present original application is liable to be rejected.

Prayer:-

Prayer clause of the application is total mis-conceived unattainable hence liable to be rejected. It is submitted that the



present application filed by Bandhua Mukti Morcha is liable to be dismissed with heavy cost. It is prayed accordingly.

[Handwritten signature]

DEPONENT

3 JAN 2022

VERIFICATION:-

Verified at New Delhi on this day of December/January, 2021/2022 that the contents of this Affidavit are true and correct. Nothing material has been concealed therein.

[Handwritten signature]
I identify the Deponent who has sworn before me in my presence.

[Handwritten signature]

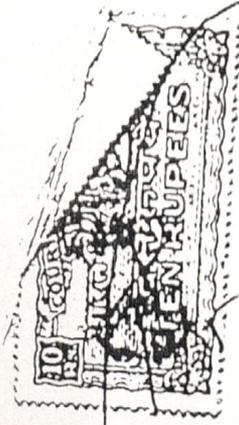
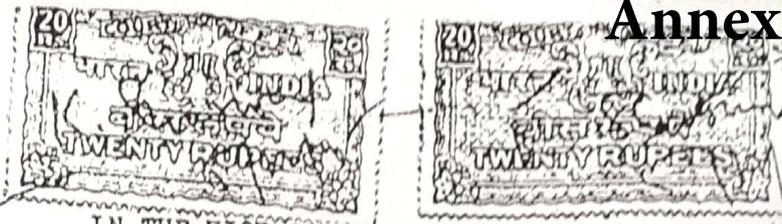
DEPONENT

I solemnly swear before me read over & explained to the deponent Admitted to be correct.

Oath Commissioner, New Delhi



3 JAN 2022



15

IN THE HIGH COURT OF DELHI AT NEW DELHI

CIVIL WRIT PETITION NO. _____/95

MEMO OF PARTIES

IN THE MATTER OF:

K.S.Goswami, Advocate,
Sheet No.253, Karkardooma Courts,
New Delhi.

...Petitioner

Versus

1. Union of India,
through its Secretary,
Ministry of Surface Transport,
New Delhi.
 2. Lt. Governor of Delhi
Sham Nath Marg,
Delhi.
 - The Govt. of
 3. National Capital Territory of Delhi
through its Secretary,
Sham Nath Marg,
Delhi.
 4. Deputy Commissioner of Police (Traffic),
Police Hd.Qrs.,
I.P.Estate, M.S.O. Building,
New Delhi.
 5. The Pollution Control Board,
Police Headquarters Building/MSO Building,
I.P.Estate,
New Delhi.
 6. Delhi Development Authority,
through its Vice-Chairman,
Vikas Sadan,
New Delhi.
- ... Respondents.

S/12

7. The State Transport Authority, (Sr.No. 1 to 7)
Under Hill Road,
Delhi.

Shanti Prakash
Air Pollution Control & Prevention Act, 1987

(SHANTI PRAKASH)
ADVOCATE FOR THE PETITIONER
327, PATJALA HOUSE COURTS
NEW DELHI-110001

NEW DELHI
DATED: 5-12-1995.

DIGITIZED DATA
Certified to be True Copy

M
Department
D-701
Sector 70
New Delhi

30.05.97.

Present: Mr. Shanti Prakash for the petitioner.
Mr. Ravinder Sethi, Sr. Advocate with
Mr. Abhilekh Verma for the DDA.
Ms. Avnish Ahlawat for respondents 4 and 7.
Ms. Meera Bhatia with Ms. Babita Verma for
respondent No. 1.
Mr. L.R. Gupta, Sr. Advocate with Mr. Shyam
Moorjani for the applicants.

CMs. 4093 & 4094/97 and CW. 4625 & CM. 7702/95.

On 13th March, 1997 we issued certain directions with a view to protect the life of the citizens under Article 21 of the Constitution of India. These applications have been filed by the persons claiming to be in trade of badarpur and rori. One of the directions issued on 13th March, 1997 was that the DDA would ensure that on the land/area these goods are not staged in open for commercial use and it would be open to the authorities to take requisite action for due compliance of directions. There seems to be serious dispute as to whether the applicants stage badarpur and rori in open or not. We clarify that if the applicants do not cover badarpur by tarpoline and also if it is not kept wet, DDA would be well within its rights to remove the same from the land/area and so also any other public authority. In fact Mr. Gupta and Mr. Moorjani have given an undertaking to this Court that their client will keep badarpur wet and will cover the same by tarpoline. The traders will also not carry out any filtering and screening operation of badarpur and sand etc. We, however, make it clear that this

Sr. No.

Date

Orders

order does not in any way go into the question of the right of the applicants to carry on the trade or right of the authorities to remove them, if otherwise permissible in law. We have made directions keeping in view the aspect of air pollution.

For further proceedings, list on 1st September, 1997. A copy of this order be given dasti to counsel for the parties.

[Signature]
Y.K. Sabharwal, J.

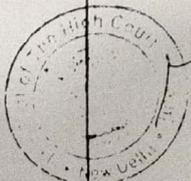
[Signature]
D.K. Jain, J.

30 May, 1997.

'gkk'

Reminder filed by appellants

DITIZED DATA
Certified to be True Copy



Ex-100/1000
High Court
Authorized Under
Section 17(1) of the
Information Act, 2000

Badarpur Traders Union (Regd.)

Plot No.7, Mathura Road, Badarpur, Opp. State Bank of India, New Delhi-44

Ph. : 011-26944599, M. :9810128832

18

Annexure R-2 (Colly)

Ref. No.

To

Smt. Ajeeta Dayal Agrawal

Incharge, (CMC-II),

Delhi Pollution Control Committee,

5th Floor, ISBT Building, Kashmere Gate.

Delhi-06.

Dated:- 03-12-2021

03/12/2021

(ENQUIRY COUNTER)
DELHI POLLUTION CONTROL COMMITTEE
DEPARTMENT OF ENVIRONMENT
GOVT. OF NCT OF DELHI
4TH FLOOR, ISBT BUILDING,
KASHMERE GATE, DELHI-110006

Sub: Appeal/ Representation against the order dated 01.10.2021 and 30.11.2021 vide ref. no. F() ACG-I/SV/Rec/DPCC/2021/6423 whereby a fine of sum of Rs.50,000/- (Rupees Fifty Thousand only) was imposed upon the Applicant/ Association of this Representation.

Sir,

1. That the applicant of this representation is association of sand and Rodi traders who have allotted about 3.69 acres of land by DDA for the purpose of selling it . The land is also duly earmarked in the zonal and master plan of Delhi. The applicant herein is making a Representation/Appeal on the following grounds and respectfully submits that the order is liable to be recalled/reviewed in view of the following facts:-

construction material with tarpaulin, sprinkling of water by the workers at hourly intervals and anti smog guns . The order passed by the Division Bench of the Hon'ble Delhi High Court dated 30.05.1997 was also shown to them and copy was also handed over. In the said order, the Division Bench of the Hon'ble Delhi High Court has directed that the Badarpur and Sand be kept wet and will be covered by a tarpaulin. It further passed an order that they have right to carry on the trade of Badarpur as well as Sand and Rodi. A copy of this order is also enclosed with this representation as **Enclosure -1**.

7. That furthermore the facts stated in the order are totally incorrect inasmuch as wind breaking walls are in place . It has been wrongly recorded that the construction material was lying uncovered. In fact the fine sand/badarpur as well as other material has been duly covered with tarpaulin. The association has also installed anti smog guns to control dust pollution .
8. That as without the permission of Delhi Jal Board and land owning agency, underground water sprinkling system cannot be installed, the Bardpur Traders Union, Association of traders have engaged water tankers for sprinkling water with pipes whenever the fine

aggregate is loaded or unloaded, therefore a wrong statement is made in the order. Construction of internal pathway/roads are the obligation of Municipal Corporation as well as the Delhi Development Authority. The traders association have taken up this issue various times with them but no action has been taken.

9. That it has been wrongly stated that the workers who are handling the construction material have not been provided with face masks. It is submitted that the applicant has provided the face masks to the workers however he cannot enforce wearing up the face masks by the concerned workers each and every time.
10. That with out prejudice to the aforesaid submission and without admitting the contents of order dated 1-10-2021 , it is submitted that as the entire area is about 3.69 acres and is in possession of members of Badarpur Traders union less than 20000 sq metre , a flat fine of Rs.50,000/- cannot be imposed. The imposition of fine of Rs 50000 is contrary to the orders of Hon`ble NGT in OA No. 21 /2014 Vardhaman Kaushik vs Union of India dated 20-7-2016 where in it is directed that fine of Rs 50000 can be imposed upon the land consisting of more than 20000 sq ft.

In this view of the matter, the order is also wrong, and therefore is liable to be recalled.

12. That it is further respectfully submitted that the imposition of heavy fine of Rs.50,000/- on a poor sand/badarpur seller association is hampering their right of livelihood as enshrined in Article 21 of the Constitution of India. Though the applicant /association is taking every step to control the dust pollution despite that the members of the Committee who are visiting the area/site earmarked for selling/ trading of construction material are insisting of imposing fine upon the applicant poor sand traders. In the order dated 01.10.2021 itself, it has been recorded that various steps have been taken by the sand traders to minimize the dust pollution in accordance with various orders of the Hon'ble Supreme Court as well as of the Hon'ble Delhi High Court.

It is submitted that the applicant association has constructed wind breaking walls . The applicant association has also installed on permanent basis anti smog guns .The entire construction material is duly covered by Tarpaulin. Photographs of the area showing the wind breaking walls , anti smog guns and construction material covered with Tarpaulin is enclosed herewith as **Enclouser -2**

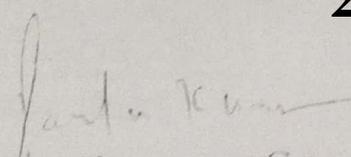
Copy of the order dated 20-7-2016 passed in OA NO. 21/2014 by Hon'ble NGT is Enclosed as **Enclouser -3**

In this view of the matter, it is submitted that the order passed is illegal, arbitrary, passed without following the principle of natural justice, therefore liable to be recalled/reviewed.

It is further submitted that the order dated 01.10.2021 is contrary to the order passed by the Hon'ble Delhi High Court in W.P. (C) No. 4625 of 1995.

13. That applicant association Badarpur Traders Union has been in constant touch with the SDM, Sarita Vihar and apprising the steps taken by the association and all the individual members to control the dust pollution. In this regard, various representations have been submitted by the association to the SDM, wherein it has been highlighted that various steps have been taken which are in accordance with the orders passed by the Hon'ble Delhi High Court in W.P. (C) No. 4625 of 1995 and C.M. No. 7702/1995 and C.M. No. 4693, 4694 of 1997 dated 30.05.1997.

The Badarpur Traders union in view therefore request your good-self to recall/review the order dated 01.10.2021 and 30.11.2021.

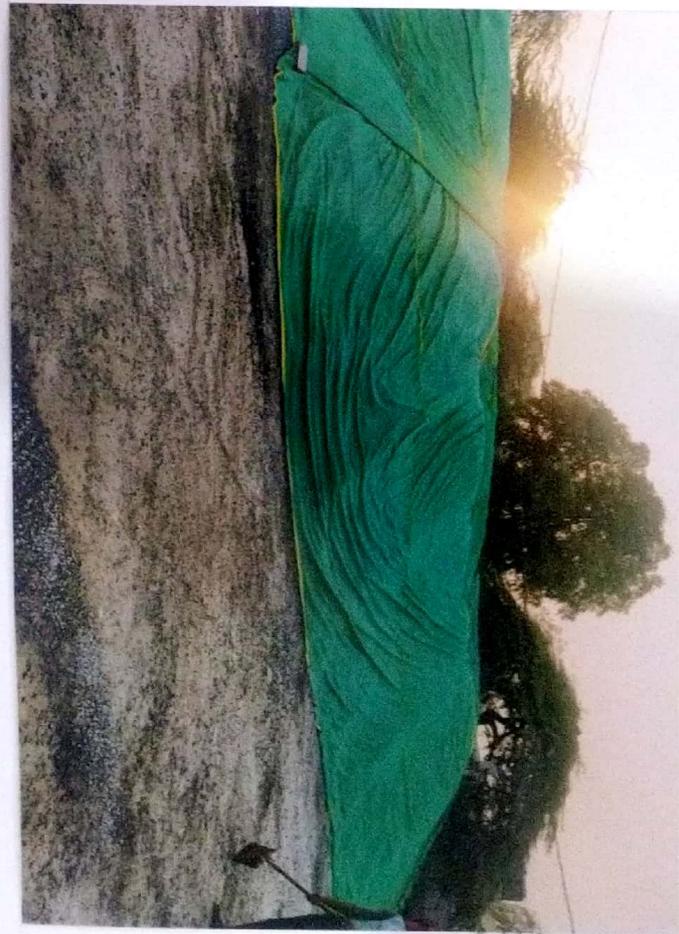
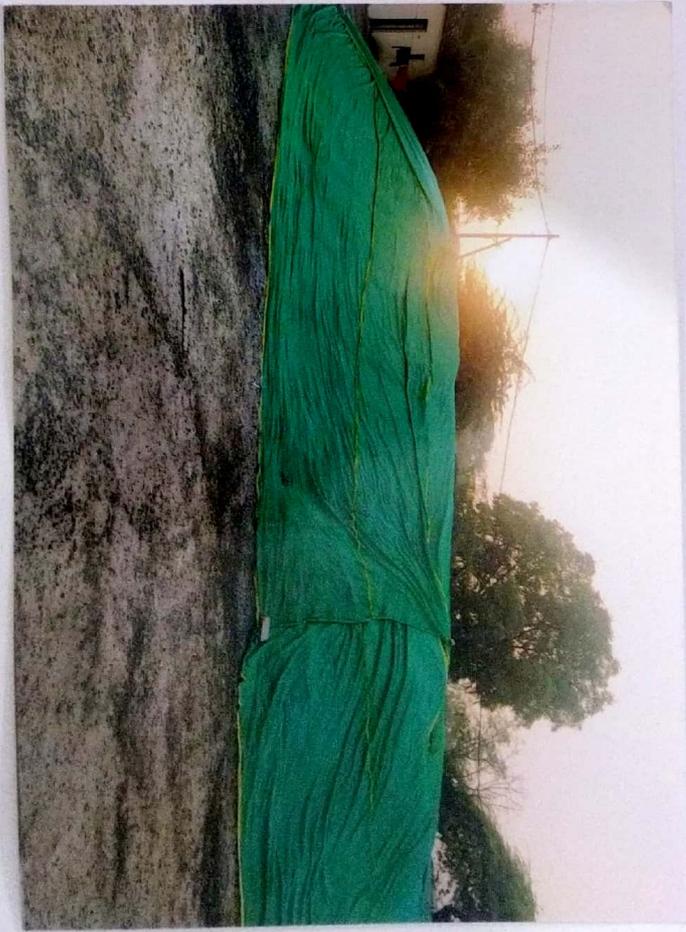

Pawan Kumar General
Secretary Badarpur Traders Union
Plot No. 07, Rori & Sand
Market Main Mathura Road,
Badarpur, Delhi-44

3/12/2021

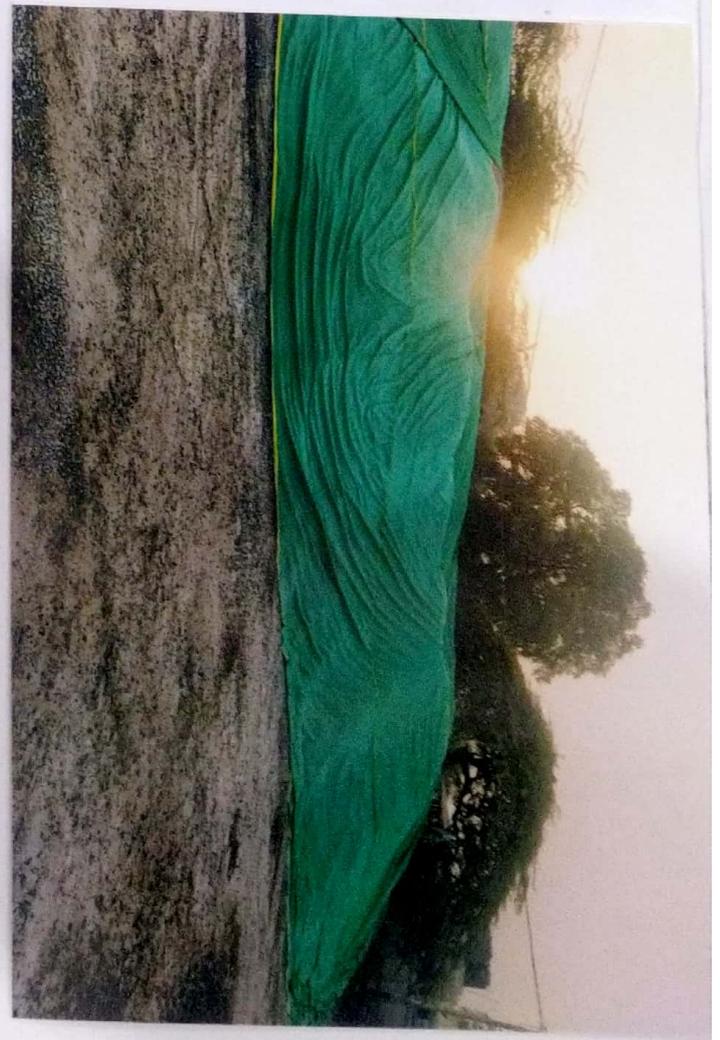
Enclose :- As above





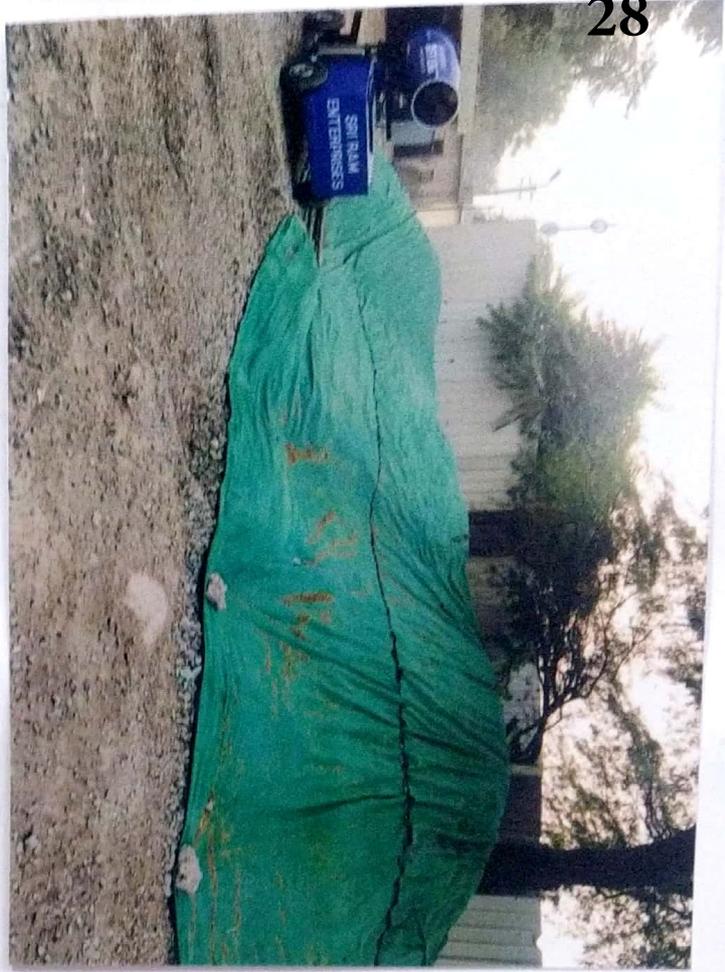


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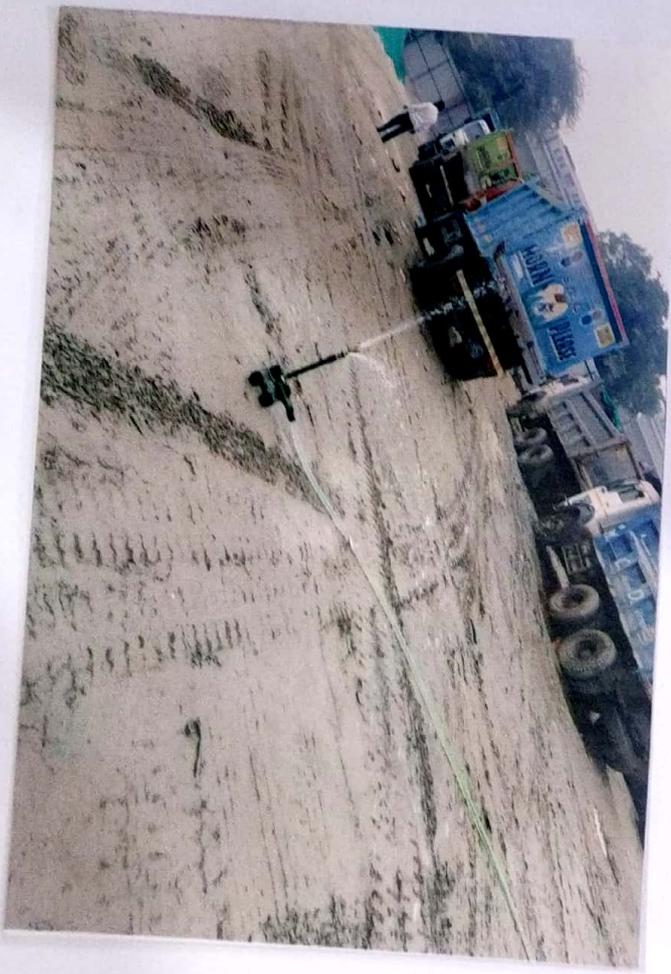








126



PROOF OF SERVICE



chetan sharma <chetan1995sharma@gmail.com>

Counter Affidavit

1 message

chetan sharma <chetan1995sharma@gmail.com>
To: kmgvakil@gmail.com

Wed, Jan 5, 2022 at 11:43 AM

Sir,

Please find attached the Counter Affidavit being filed on behalf of Respondent No.5 to7 in O.A. No. 49 of 2021 titled Bandhua Mukti Morcha NGO V/s Rajeev Kumar & Ors.

Regards,

Chetan Sharma
O/o Piyush Sharma, Advocate
Ch. 103, C.K. Daftary Block
Supreme Court , New Delhi
Mob. 9810613750

 **Bandhua Mukti Reply 04-01-2022.pdf**
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