

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

ORIGINAL APPLICATION NO. 457 OF 2025

GULSHAN KUMAR

VERSUS

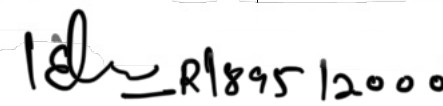
STATE OF U.P. & OTHERS

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Place- New Delhi

Dated- 07/07/2026


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STATE OF U.P. & OTHERS

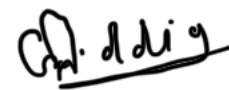
**COUNTER AFFIDAVIT/RESPONSE TO THE ORIGINAL
APPLICATION ON BEHALF OF RESPONDENT NO. 8 TO 11.**

MOST RESPECTFULLY SHOWETH:

That Respondent No.8 to 11 are submitting counter affidavit to Original Application filed by the Applicant as under-

PRELIMINARY OBJECTIONS TO THE ORIGINAL APPLICATION-

1. That Applicant had filed instant original application against the illegal encroachment being done upon the land of Khasra No.1578 recorded as pond in the revenue records and the allegations of the encroachment have been levelled against the humble answering respondents, however applicant had not disclosed complete facts of the matter before this Hon'ble Tribunal in order to get the undeserving relief as he had not disclosed about the orders of the local administration regarding the conversion of the land for the purpose of Abadi way back in the year 1974 and after that the plethora of persons are living upon said land from very long time but the applicant had not arrayed any of such persons as party/respondents rather chose to file the instant litigation only against the humble



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answering respondents in order to satisfy their oblique motives. It is submitted that Hon'ble Supreme Court had held time and again that while entertaining the Public Interest Litigation Petitions the credentials and motive of the applicant has to be looked into therefore the conduct of the applicant herein is required to be taken into consideration. It is submitted that the litigation filed by the applicant is not bona-fide in nature rather he filed instant litigation to black-mail the humble answering respondents for the fulfilment of his illegal demands, it is further stated that applicant had filed a Public Interest Litigation before Hon'ble Allahabad High Court alleging illegal construction by some persons and Hon'ble Allahabad High Court had dismissed said petition with following observations-

" 4. A perusal of the picture produced by the petitioner at page 43 clearly reflects that the said high tension line is going parallel to the road under which besides the construction qua which the petitioner has sought relief in the present petition, several other constructions are existing. The pictures produced by counsel for the petitioner also support the said aspect.

5. A perusal of the relief claimed, as noticed hereinbefore, reveals that the present petition is targeted against respondent no. 5 only. When several other constructions, which are claimed to be thousand in numbers, are having the same defect/deficiency, only targeting one person qua which his case is that the petitioner was seeking to blackmail him, cannot be countenanced.

6. The petition, is therefore dismissed. "

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2. That, the applicant has also failed to establish its bona fide and how applicant is aggrieved person as per NGT Act. In fact, the applicant lacks locus standi to file this OA. In this regard Answering Respondents are relying upon the order passed by Hon'ble National Green Tribunal (EZ) in Appeal No.05/2021 titled as Anand Kumar Jha v. UOI & Ors., wherein the Hon'ble Tribunal has regarded the testing of bonafide of the Applicant in approaching the Tribunal. The Tribunal relying upon the judgment dated 21.10.2022 of the Hon'ble Supreme Court in the matter of Uttar Pradesh and Others v. Uday Education and Welfare Trust and Others [2022 SCC OnLine SC 1469], observed as follows:

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"14. The Hon'ble Supreme Court in Civil Appeal No.2407 2412 of 2021, The State of Uttar Pradesh & Ors. Etc. Etc vs. Uday Education and Welfare Trust & Anr. Etc.Etc. and connected cases, has held that when issues and objections to the credentials and bonafides of litigants approaching the National Green Tribunal are seriously raised, the same cannot be ignored. Before a litigant is permitted to knock the doors of justice and seek orders which have far reaching effects of affecting the employment of thousands of persons, stopping investment in the State, prejudicing the interests of the farmers; the credentials and bonafides of the Applicants must be tested. The Hon'ble Supreme Court, therefore, laid stress that when credentials and bonafides of such litigants are seriously raised and when entertaining the grievance of such litigants, which is likely to affect the rights of many, the National Green Tribunal should ensure the bonafides and credentials of such litigants. The Hon'ble Supreme Court also observed that the Tribunal must examine questions as to what were the aims and objectives of the Applicants and what are their sources of funding etc. Merely filing some Public Interest Litigations in the past would not suffice."

It is submitted that Applicant is also the resident of same village/area qua which the instant original application is related and he is also well acquainted about the dense population situated upon land in question but he filed the instant litigation only against the humble answering respondents without disclosing his bona-fides behind filling of the instant original application. It is further submitted that prior to filling of instant original application humble answering respondents have filed a civil suit in

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which the applicant was also impleaded as party and the Civil Court had granted stay order in favour of humble answering respondents and permitted them to go ahead with the construction and after grant of interim order in favour of humble answering respondents the applicant had filed instant original application in order to harass them with the mala-fide intent. The Web-copy of the Judgment dated 15/05/2023 passed by Hon'ble NGT is annexed herewith and marked as **Annexure-R/2**.

3. That, in view of aforesaid submissions there is no iota of doubt left that the Applicant was well within the knowledge being a resident of same area/village about the about the nature of the land, therefore, the Original Application is filed clearly demonstrating mala fide intentions and ulterior motives on the part of the applicant.
4. That the Original Application filed by the Applicant is hopelessly barred by limitation for the reason that the land in question was duly converted and reserved for Abadi purposes way back in the year 1974 and thereafter number of persons have constructed their houses upon Abadi land and residing there since then and the applicant being the resident of same village/area was well acquainted with the nature of land and dense population developed upon said land but on one fine morning he made representations to the government authorities alleging encroachment upon land recorded as pond by the humble answering respondents, applicant has not disclosed in the original application as to when he became aware about the environmental violations alleged in the original application and he had submitted the representation to the government authorities on 12/02/2025, 15/02/2025, 18/02/2025 and 12/03/2025 for bring the original application within the limitation period

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and it cannot be presumed in any manner that applicant being the resident of same village/area was unaware about the nature of the land prior to 12/02/2025 therefore the Original application filed by the applicant is hopelessly barred by limitation and deserves to be dismissed on this count alone.

5. That, the present original application deserves to be dismissed on the sole ground that the same is hopelessly barred by limitation in terms of Section 14 of the National Green Tribunal (NGT) Act, 2010. Section 14 of the NGT Act envisages that "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". Evidently in the instant case the cause of action, if any, first accrued on dated 20.04.1974 when the land in question was converted for Adbadi purposes by the Order of the then SDM. Therefore, the cause of action, if any, had accrued way before the filing of the instant Original Application and as such the Applicant has unsuccessfully tried to bring the instant Original Application within limitation, allegedly stating various complaints made to the Respondents.
6. That, in this regard, the Hon'ble NGT (WZ) Bench at Pune in Mr. Ajay Jayvantrao Bhosale vs Union of India O.A. No. 63/2019 (WZ) dismissed an Original Application stating it to be time barred. The Hon'ble NGT (WZ) held as follows:-

"19. We are not inclined to accept this argument because according to his pleading, he had full knowledge in the year 2011 itself when the construction had started. The pretext of having come to know about this project being constructed through RTI on a later date as stated

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above appears to be only in order to bring the present Original Application within limitation period. We agree with the learned Counsel for the Project Proponent (PP) that it is very easy for any person to use RTI to seek information for any project on any date chosen by him. We are of the considered opinion that such kind of practice cannot be allowed. We are not inclined to accept the argument made by the learned Counsel for the Applicant in Original Application and are convinced with the argument raised by the learned Counsel for the Respondent No. 11/Project Proponent. We find that this Original Application is time barred, hence this Original Application stands dismissed as time barred."

The Web-copy of Order dated 01/12/2022 is annexed herewith and marked as **Annexure-R/3**.

PARAWISE REPLY TO THE ORIGINAL APPLICATION-

7. That the averments raised in Para No. 1 and 2 do not warrant any specific reply.
8. That averments raised in Para No.3 of the Original Application are not accepted as stated therein hence denied and as such the Original application does not involve any substantial question relating to environmental by implementation of Schedule I of the NGT Act, 2010.
9. That averments raised in Para No.4 to 5 of the Original Application are not accepted as stated therein hence denied. It is submitted that humble answering respondents have not made any encroachment upon the water body and the State Government had filed the reply to the instant original application and categorically stated that land in dispute was converted for Abadi purposes vide order dated 20/04/1974 and thereafter number of purposes have

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constructed their houses upon land in dispute and residing there since then and the mother of the humble answering respondents had purchased the property in question vide registered sale deed dated 20/03/1987 from Smt. Pravesh Kumari wife of Shri Dharampal and the construction of shops was done by erstwhile owner way back in the year 1976 as it transpired from the perusal of the sale deed dated 20/03/1987 and this aspect has recorded in the Joint inspection report submitted by UPPCB before this Hon'ble Tribunal and the reply and photographs of the site submitted by the State would reveal that no pond is in existence on site and the area is completely developed area and no water was ever collected on the land in question and Hon'ble Apex Court in case of The State of Rajasthan and Another Versus Ultra Tech Cement Limited [Civil Appeal No. 5841 of 2022 @ SLP (C) Nos.37439 of 2016] vide Judgment dated 26/08/2022 has held the allotment of the land recorded as Johad to be valid, legal and justified relying upon the reports of the Tehsildar to the effect that no water body exists on spot and thus instant judgment would have complete bearing upon the stand taken by humble answering respondents. The Web-copy of Judgment dated 26/08/2022 is annexed herewith and marked as **Annexure-R/4**.

10. That averments raised in Para No. 6 and 7A of the Original Application are not accepted as stated therein hence denied and the humble answering respondents have highlighted the conduct of the applicant in the preliminary objections therefore the averments regarding the conduct of the applicant are not required to be reiterated.

11. That averments raised in Para No.7B of the Original Application are not accepted as stated therein hence

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denied. It is submitted that prior to year 1974 the land was recorded as Johad but since no water body was in existence on spot so the land was converted for Abadi purposes by the Order of the then SDM and the endorsement regarding said order dated 20/04/1974 is also available in the revenue records qua the land in question and after conversion of said land the number of persons have constructed their houses upon said land and residing there since then and number of shops and houses are present upon land in question and similar stand has been taken by the State in the replies submitted before this Hon'ble Tribunal and the mother of the humble answering respondents had purchased the property in question vide registered sale deed dated 20/03/1987 from Smt. Pravesh Kumari wife of Shri Dharampal and the construction of shops was done by erstwhile owner way back in the year 1976 as it transpired from the perusal of the sale deed dated 20/03/1987 and this aspect has recorded in the Joint inspection report submitted by UPPCB before this Hon'ble Tribunal and as such there is no violation of the environmental norms on the part of humble answering respondents.

12. That averments raised in Para No. 7C to 7K are not accepted as stated therein hence denied. It is submitted that the guidelines and rules referred to by the applicant in said paras are not applicable in the facts and circumstances of present case for the reason that no water body is in existence on spot and it has never received any water and the land in question is Abadi land from the year 1974 upon which thousands of houses and shops are present since then and the complaints referred to by the applicant in said paras were made exclusively for bringing the instant original application within limitation

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period and that too with ill motive against the humble answering respondents and as such answering respondents are in legitimate possession of the property situated upon land in question and no violation of environmental norms has come on record therefore instant original application deserves dismissal with exemplary costs.

13. That averments raised in Para No.8 of the Original Application are not accepted as stated therein hence denied. It is submitted that humble answering respondents are in possession of their own land purchased by their mother through registered sale deed way back in the year 1987 and the land in dispute was converted for expansion of Abadi by the Order dated 20/04/1974 of the then SDM and as such there is no violation of environmental norms on the part of humble answering respondents.

14. That averments raised in Para No.9 of the Original Application do not warrant any specific reply.

REPLY TO GROUNDS-

15. That the grounds taken by the applicant are repetitions of the facts pleaded by him and reply of said facts has already been given in foregoing paras therefore no specific reply of the grounds is warranted.

REPLY TO LIMITATION CLAUSE-

16. That averments raised in Para No.10 of the Original Application are not accepted as stated therein hence denied. It is submitted that Applicant had referred to some representation submitted to the State authorities on 12/02/2025, 15/02/2025, 18/02/2025 and 12/03/2025 for bringing the original application within the limitation period and it cannot be presumed in any manner that applicant

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being the resident of same village was unaware about the nature of the land prior to 12/02/2025 therefore the Original application filed by the applicant is hopelessly barred by limitation and deserves to be dismissed on this count alone.

17. That the averments raised in Para No.11 to 12 of Original Application are not accepted as stated therein hence denied.

PRAYER

It is therefore most respectfully prayed that Counter Affidavit/Response filed by the respondent no.8 to 11 be taken on record and original application be dismissed with exemplary costs on the applicant.

Date- 07/07/2026

Place- New Delhi

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Humble Answering

Respondent No.8 to 11

Through Counsel

(Krishan Sharma)

Advocate

(R/895/2000)

Mob-9982765049

Email-vaibhavpancholy@gmail.com

Chief Justice's Court

Case :- PUBLIC INTEREST LITIGATION (PIL) No. - 2125 of 2024

Petitioner :- Gulshan Kumar @ Gulshan Chaudhary

Respondent :- State of U.P. and 4 others

Counsel for Petitioner :- Ankur Singh Kushwaha, Pankaj Misra

Counsel for Respondent :- C.S.C., Pankaj Kumar Shukla, Sudhanshu Srivastava (A.C.S.C.)

Hon'ble Arun Bhansali, Chief Justice

Hon'ble Vikas Budhwar, J.

1. The writ petition has been filed seeking a direction to the respondent no. 1 to 4 demolish unauthorized illegal commercial construction raised by the respondent no. 5 on Khewat No. 520, Khasra No. 4334 under 220 KVA Electricity Transmission Line.
2. Submissions have been made that construction has been made by respondent no. 5 under the 220 KVA Electricity Line and therefore, the same be directed to be demolished.
3. A perusal of the record indicates that in the report sent to the Senior Superintendent of Police, Saharanpur, statement of the respondent no. 5 has been recorded wherein he has indicated that under the said electricity line, thousands of residential houses, shops and government buildings like Community Health Centre are existing and the complaint has been made by the petitioner against the said respondent on account of personal enmity and that he wanted to blackmail him.
4. A perusal of the picture produced by the petitioner at page 43 clearly reflects that the said high tension line is going parallel to the road under which besides the construction qua which the petitioner has sought relief in the present petition, several other

constructions are existing. The pictures produced by counsel for the petitioner also support the said aspect.

5. A perusal of the relief claimed, as noticed hereinbefore, reveals that the present petition is targeted against respondent no. 5 only. When several other constructions, which are claimed to be thousand in numbers, are having the same defect/deficiency, only targeting one person qua which his case is that the petitioner was seeking to blackmail him, cannot be countenanced.

6. The petition, is therefore dismissed.

Order Date :- 6.11.2024

P.Sri./Sharad

(Vikas Budhwar, J) (Arun Bhansali, CJ)

Anand R/2

Item No.04

Court No.1

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
(THROUGH PHYSICAL HEARING WITH HYBRID MODE)**

Appeal No.05/2021/EZ
(I.A. No.78/2021/EZ)

IN THE MATTER OF:

Anand Kumar Jha

Son of Shri Bhalchandra Jha,
Resident of Type-B, Dakra,
Dakra Colliery,
Ranchi

.....Appellant(s)

Versus

1. Union of India,

Through its Secretary,
Ministry of Environment, Forests and Climate Change,
Indira Paryavaran Bhawan, Jor Bagh Road,
New Delhi-11003;

2. Jharkhand State Pollution Control Board,

Through its Member Secretary,
H.E.C., Dhurwa,
Ranchi-834004;

3. State of Jharkhand,

Through Chief Secretary,
Project Bhawan, Doranda,
Ranchi-834002;

4. Damodar Valley Corporation (DVC),

Through its Chairman-cum-Managing Director DVC Towers,
VIP Road, Kolkata-700054

.....Respondent(s)

Date of hearing: 15.05.2023

**CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE DR. ARUN KUMAR VERMA, EXPERT MEMBER**

For Appellant(s) : Mr. Kaustav Dhar, Advocate (in Virtual Mode)

For Respondent(s) : Mr. Apurba Ghosh, Advocate for R-1,
Mr. Ashok Prasad, Advocate for R-2 (in Virtual Mode),
Ms. Aishwarya Rajyashree, Adv. for R-3 (in Virtual Mode),
Mr. Sanjay Upadhyay, Advocate a/w
Mr. Prasun Mukherjee, Advocate and
Mr. Deepak Agarwal, Advocate for R-4

ORDER

1. This Appeal has been filed by the Appellant seeking quashing of the Environmental Clearance dated 28.04.2021 granted to the Respondent No.4, Damodar Valley Corporation (DVC), for Tubed Coalmine Project of 6 MTPA in the District of Latehar, Jharkhand.
2. The contention of the Appellant is that the said mining block is located in an area of 460 ha; the EIA report of the project does not estimate the background concentration of Mercury (Hg) and Chromium (Cr) in Particulate Matter as required by Standard ToR No.15; there is no detailed timeline, maps etc. provided in the EIA report with respect to Additional ToR No.15; no details have been given in the EIA report regarding ecological restoration and mine reclamation plan prepared with local/native species found in the area as was required by Additional ToR No.3; the Palamau Tiger Reserve and other Protected areas are in close proximity to the site of the Tubed Coalmine Project and there is no presence of Schedule-I species which appears to be unlikely.
3. In the present Appeal the Environmental Clearance dated 28.04.2020 is under challenge, as such the Tribunal raised a preliminary objection regarding limitation.
4. Learned Counsel for the Appellant has relied upon the judgment of the Hon'ble Supreme Court dated 23.09.2021 in *Miscellaneous Application No. 665 of 2021 in SMW(C) No. 03 of 2021; Re: Cognizance for Extension of Limitation*. It is mentioned therein that the limitation period has itself been extended by the Hon'ble Supreme Court by the said judgment in cases where limitation would have expired during the period from 15.03.2020 till 02.10.2021.

5. The Respondent No.4, Damodar Valley Corporation, has filed counter-affidavit dated 26.04.2022 wherein a preliminary objection of limitation has been taken. The second ground of objection is whether the Appellant can be permitted to maintain the present Appeal as an 'aggrieved person'.
6. We will first take up the second issue namely as to whether the Appellant can be said to be an aggrieved person within the meaning of Section 16 and 18 of the National Green Tribunal Act, 2010 to entitle him to maintain the present Appeal. Section 16 of National Green Tribunal Act, 2010, reads as under: -

“16. Tribunal to have appellate jurisdiction-

Any person aggrieved by, -

(a) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under section 28 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

(b) an order passed, on or after the commencement of the National Green Tribunal Act, 2010, by the State Government under section 29 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

(c) directions issued, on or after the commencement of the National Green Tribunal Act, 2010, by a Board, under section 33A of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);

(d) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the appellate authority under section 13 of the Water (Prevention and Control of Pollution) Cess Act, 1977 (36 of 1977);

(e) an order or decision made, on or after the commencement of the National Green Tribunal Act, 2010, by the State

Government or other authority under section 2 of the Forest (Conservation) Act, 1980 (69 of 1980);

(f) an order or decision, made, on or after the commencement of the National Green Tribunal Act, 2010, by the Appellate Authority under section 31 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);

(g) any direction issued, on or after the commencement of the National Green Tribunal Act, 2010, under section 5 of the Environment (Protection) Act, 1986 (29 of 1986);

(h) an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or processes or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 (29 of 1986);

(i) an order made, on or after the commencement of the National Green Tribunal Act, 2010, refusing to grant environmental clearance for carrying out any activity or operation or process under the Environment (Protection) Act, 1986 (29 of 1986);

(j) any determination of benefit sharing or order made, on or after the commencement of the National Green Tribunal Act, 2010, by the National Biodiversity Authority or a State Biodiversity Board under the provisions of the Biological Diversity Act, 2002 (18 of 2003),

may, within a period of thirty days from the date on which the order or decision or direction or determination is communicated to him, prefer an appeal to the Tribunal:

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

7. Section 18 of the National Green Tribunal Act, 2010 reads as under: -

18. Application or appeal to Tribunal-

(1) Each application under sections 14 and 15 or an appeal under section 16 shall, be made to the Tribunal in such form, contain such particulars, and, be accompanied by such documents and such fees as may be prescribed.

(2) Without prejudice to the provisions contained in section 16, an application for grant of relief or compensation or settlement of dispute may be made to the Tribunal by--

(a) the person, who has sustained the injury; or

(b) the owner of the property to which the damage has been caused; or

(c) where death has resulted from the environmental damage, by all or any of the legal representatives of the deceased; or

(d) any agent duly authorised by such person or owner of such property or all or any of the legal representatives of the deceased, as the case may be; or

(e) any person aggrieved, including any representative body or organization.”

8. In the paragraph-1 under the heading ‘Facts’ in the Memo of Appeal the Appellant has described himself as a resident of Village Dakra in Ranchi District of Jharkhand and he *“is stated to be concerned by the environmental impact of the mining activities of the Respondent No.4 in the State of Jharkhand”*. It is stated that the Appellant has been observing for the past several years that the air quality in various parts of the State of Jharkhand especially in the region around the coal mines has severely deteriorated due to large number of coal mines in Jharkhand. The Appellant is stated to have observed that due to pollution being caused, there is an

increase in the respiratory illness in the persons residing in the region and he has been raising the issue of pollution and other environmental issues due to coal mines in electronic and other media. It is also stated that the Appellant being a resident of Jharkhand is concerned by the grant of Environmental Clearance to Tubed Coal Mines Project of Respondent No.4 and hence has filed the present Appeal.

9. In our opinion, merely saying that he is concerned with pollution in Jharkhand, the Appellant cannot be said to be a 'person aggrieved' within the meaning of Section 16 and Section 18 of the National Green Tribunal Act, 2010. The Tubed Coal Mines Project of the Respondent No.4 is located in Latehar District of Jharkhand. The Appellant is not a resident of Latehar District nor has he stated that he is a resident of any of the villages which may fall within the area of operation of the Tubed Coal Mines Project of the Respondent No.4. The Project Proponent in its counter-affidavit has stated that the place of residence of the Appellant is about 200 km from the Project site.
10. Among the various issues raised for assailing the grant of Environmental Clearance to the Respondent No.4 one of the grounds taken by him is that 'Public Consultation' was not conducted as per the EIA Notification, 2006 and that the process of 'public consultation' has not been done in the present case while granting Environmental Clearance to the Project of Respondent No.4.
11. Nowhere in the body of the Appeal has the Appellant claimed that he had sought hearing during public consultation as a matter of right but was not given such opportunity. None of the persons who

live in the vicinity of the villages covered by the Tubed Coal Mines Project of the Respondent No.4 are present before this Tribunal to complain that they were not provided opportunity of public hearing and that public consultation was not held as per the EIA Notification, 2006.

12. In this view of the matter, we hold that the Appellant is not a person aggrieved within the meaning word “any person aggrieved” under Section 16 and Section 18 of the National Green Tribunal Act, 2010.
13. Mr. Sanjay Upadhyay, learned Counsel for the Project Proponent submitted that it is also not disclosed in the body of the Appeal other than what has been reproduced hereinabove and which is based upon the Appellant’s own disclosure, to show what are his credentials and *bonafides* in approaching the Tribunal. Reliance has been placed on the judgment of the Hon’ble Supreme Court in *Civil Appeal No.2407-2421 of 2021, State of Uttar Pradesh & Ors. vs. Uday Education and Welfare Trust & Anr.*
14. The Hon’ble Supreme Court in *Civil Appeal No.2407-2412 of 2021, The State of Uttar Pradesh & Ors. Etc. Etc. vs. Uday Education and Welfare Trust & Anr. Etc. Etc.* and connected cases, has held that when issues and objections to the credentials and *bonafides* of litigants approaching the National Green Tribunal are seriously raised, the same cannot be ignored. Before a litigant is permitted to knock the doors of justice and seek orders which have far reaching effects of affecting the employment of thousands of persons, stopping investment in the State, prejudicing the interests of the farmers; the credentials and *bonafides* of the Applicants must be tested. The Hon’ble Supreme Court, therefore, laid stress

that when credentials and *bonafides* of such litigants are seriously raised and when entertaining the grievance of such litigants, which is likely to affect the rights of many, the National Green Tribunal should ensure the *bonafides* and credentials of such litigants. The Hon'ble Supreme Court also observed that the Tribunal must examine questions as to what were the aims and objectives of the Applicants and what are their sources of funding etc. Merely filing some Public Interest Litigations in the past would not suffice.

Paragraphs-96 to 99 of the said judgment read as under: -

“96. Another aspect that needs consideration is that a serious issue was raised before the learned NGT by the appellants herein with regard to the credentials and bonafides of the original applicants.

97. When the matter was heard by us, we too made pertinent queries to Shri Mehta and Shri Chahar with regard to the credentials of the applicants before the learned NGT. One applicant is Uday Education and Welfare Trust; the second applicant is Samvit Foundation and the third applicant is U.P. Timber Association. Undisputedly, the U.P. Timber Association was a litigant interested in the litigation. However, insofar as the other original applicants, i.e. Uday Education and Welfare Trust and Samvit Foundation, for whom Shri Dhruv Mehta and Shri Brijender Chahar, learned Senior Counsel are appearing, specific queries with regard to the activities undertaken by the said original applicants were made as to whether they were involved in any activity with regard to the protection of the environment; had they at least been engaged in promoting plantation; what were the aims and objectives of the said original applicants; and what are the sources of funding, etc. Shri Mehta and Shri Chahar, learned Senior counsel, fairly submitted that apart from the fact that they (original applicants) had previously filed some public interest litigations wherein orders were passed in their favour, they had no other information.

98. Shri Dhruv Mehta, learned Senior Counsel has rightly relied on the judgment of this Court in the case of Ankita Sinha and Others (*supra*) to submit that the learned NGT is empowered to take suo motu cognizance. This Court has held that, taking into consideration the nature of functions of the learned NGT, it cannot be equated with other Tribunals and in environmental matters, it will also have a power to take suo motu cognizance. However, when the credentials and bonafides of a litigant approaching the learned NGT are seriously raised, the same cannot be ignored.

99. We find that before a litigant is permitted to knock the doors of justice and seek orders which have far reaching effects of affecting the employment of thousands of persons, stopping investment in the State, prejudicing the interests of the farmers; the credentials and bonafides of the applicants must be tested. In the present case, there is scope to infer that the litigation could be at the behest of the existing WBIs who wanted to avoid competition and continue to get raw material at a cheaper rate. There is also scope to infer that it could be at the behest of the WBIs in the adjoining Yamuna Nagar district of Haryana where lakhs of tons of timber is exported from the State of Uttar Pradesh. There is scope to infer that it could be in the interest of middlemen who are engaged in exporting timber from Uttar Pradesh to Haryana. We would, therefore, only request the learned NGT that, when credentials and bonafides of such litigants are seriously raised and when entertaining the grievance of such litigants, which is likely to adversely affect the rights of many, it should ensure the bonafides and credentials of such litigants.”

15. In the present case, nothing has been indicated by the Appellant as to why he is **only** concerned by the environmental impact of the mining activities of the ‘Respondent No.4’ in the State of Jharkhand as stated by him in paragraph-1 of the **“FACTS”**. What is his source of funding to maintain the Appeal or to take up such

environmental issues has not been disclosed. Assailing the Environmental Clearance, several scientific and technical facts and documents have been referred to by the Appellant; what is his source of funding and source of obtaining such documents, has not been disclosed. Not a single person who may be said to be a resident of any village affected by the mining operation of the Tubed Coal Mines Project of the Respondent No.4 is before us. Therefore, a serious shadow of doubt is cast upon the credentials and *bonafides* of the Appellant to maintain the present Appeal and in our considered view he cannot be said to be a 'person aggrieved' within the meaning of Section 16 and Section 18 of the National Green Tribunal Act, 2010 and, therefore, this Appeal is not maintainable at the behest of the Appellant.

16. The next preliminary issue raised by the Respondent No.4 is with regard to limitation. The Tribunal even on the first date while entertaining the Appeal had raised the issue of limitation and the same had been kept open for decision.
17. Mr. Sanjay Upadhyay, learned Counsel for the Respondent No.4, Damodar Valley Corporation, submitted that though the Environmental Clearance was granted to the Respondent No.4 on 28.04.2020 for 06 million tonnes per annum of the Tubed Coal Mines Project and uploaded on the Website of DVC (www.dvc.gov.in) under the head 'Business' sub-heading 'mining', the recommendations for grant of Environmental Clearance was made in the 51st Meeting of Expert Appraisal Committee on 05.12.2019, the Minutes of which were uploaded on the portal and, therefore, the decision of the Expert Appraisal Committee was already in public domain and, therefore, in the knowledge of the

Appellant whereas the present Appeal has been filed after a delay of almost one and half years challenging the Environmental Clearance granted to Respondent No.4.

18. The learned Counsel has also referred to the provisions of Paragraph-8 of the MoEF&CC Notification dated 14.09.2006 also known as 'EIA Notification, 2006' and submitted that Paragraph-8 provides that the regulatory authority shall consider the recommendations of the EAC or SEAC concerned and convey its decision to the Applicant within forty-five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned or in other words within one hundred and five days of the receipt of the final Environmental Impact Assessment Report, and where Environmental Impact Assessment is not required, within one hundred and five days of the receipt of the complete application with requisite documents.
19. Reference has also been made to Paragraph-8 (ii) which provides that the regulatory authority shall normally accept the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned. In cases where it disagrees with the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee, the regulatory authority shall request reconsideration by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned within forty-five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned while stating the reasons for the disagreement and intimation of this decision shall be simultaneously conveyed to the Applicant.
20. Paragraph-8 (i) & (ii) of the EIA Notification, 2006, read as under: -

“8. Grant or Rejection of Prior Environmental Clearance (EC)-

(i) The regulatory authority shall consider the recommendations of the EAC or SEAC concerned and convey its decision to the applicant within forty five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned or in other words within one hundred and five days of the receipt of the final Environment Impact Assessment Report, and where Environment Impact Assessment is not required, within one hundred and five days of the receipt of the complete application with requisite documents, except as provided below.

(ii) The regulatory authority shall normally accept the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned. In cases where it disagrees with the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, the regulatory authority shall request reconsideration by the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned within forty-five days of the receipt of the recommendations of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned while stating the reasons for the disagreement. An intimation of this decision shall be simultaneously conveyed to the applicant. The Expert Appraisal Committee or State Level Expert Appraisal Committee concerned, in turn, shall consider the observations of the regulatory authority and furnish its views on the same within a further period of sixty days. The decision of the regulatory authority after considering the views of the Expert Appraisal Committee or State Level Expert Appraisal Committee concerned shall be final and conveyed to the applicant by the regulatory authority concerned within the next thirty days.”

21. According to the Respondent No.4, the recommendations for Environmental Clearance was made in the 51st Meeting of the Expert Appraisal Committee on 05.12.2019, Minutes of which were uploaded on the website/portal on 13.12.2019. Under sub

paragraph-(i) of paragraph-8 of the EIA Notification, 2006, the period of hundred and five days (105) would end on 28.03.2020. The period of limitation has been extended by the Hon’ble Supreme Court in view of the outbreak of COVID-19 pandemic in *Miscellaneous Application No.21 of 2022 in Miscellaneous Application No.665 of 2021 in Suo Motu Writ Petition (C) No.3 of 2020, Re: Cognizance for Extension of Limitation* and connected cases, and on 23.03.2020 the Hon’ble Supreme Court directed extension of the period of limitation in all proceedings pending before the Courts and Tribunals with effect from 15.03.2020 till further orders and which has been further extended till 28.02.2022. The present Appeal was filed on 08.10.2021 i.e. within the extended period of limitation and, therefore, the same cannot be said to be barred by limitation.

- 22. However, since we have already held the Appeal to be not maintainable considering the *bonafides* and credentials of the Appellant we dismiss this Appeal as not maintainable.
- 23. In view of the above, the Appeal No.05/2021/EZ is dismissed.
- 24. Interlocutory Applications, if any stand disposed of accordingly.
- 25. There shall be no order as to costs.

.....
B. Amit Sthalekar, JM

.....
Dr. Arun Kumar Verma, EM

May 15, 2023
Appeal No.05/2021/EZ
(I.A. No.78/2021/EZ)
MN

Item No. 4

(Pune Bench)

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE**

(By Video Conferencing)

Original Application No. 63/2019(WZ)
(I.A. No. 100/2019 & I.A. No. 86/2021)

Mr. Ajay Jayvantrao Bhosale

.....Applicant

Versus

Union of India through MoEF&CC & Ors.

....Respondent(s)

Date of hearing: 01.12.2022

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Applicant : Mr. Nitin Lonkar, Advocate
Respondent(s) : Ms. Manasi Joshi, Advocate for R-1, 6 & 7
Mr. Aniruddha Kulkarni, Advocate for R-3 to 5
Mr. S. Swaminathan, Advocate for R-8 & 9/PCMC
Mr. Saket Mone along-with Mr. Abhishek Salian,
Advocates for R-11/PP

ORDER

1. Today this matter is listed on the issue of limitation against which objection has been filed by the learned Counsel for the Applicant.
2. Heard the arguments of learned Counsel for the Applicant Mr. Nitin Lonkar and learned Counsel for Respondent No. 11/Project Proponent- Mr. Saket Mone along-with learned Counsel Mr. Abhishek Salian.

I.A. No. 86/2021(WZ)

3. This I.A. has been filed by the Respondent No. 11/Project Proponent (PP), praying for dismissal of the Original Application No. 63/2019(WZ). The main ground which has been set up in this application is that Original Application is time barred, therefore, it requires to be dismissed at the threshold itself. The core issue raised by the Applicant is

that the Respondent No. 11 did not obtain prior Environmental Clearance (EC) with respect to the project in question.

4. As per the Project Proponent (PP), he commenced the construction and excavation in the year, 2012, therefore, the cause of action in respect of the alleged construction first arose in the year, 2012 which is well over 07 years from the date of the filing of the present Original Application.

5. The Sections 14 and 15 of the National Green Tribunal Act, 2010 provide for 06 months from the date when the cause of action first arose within which the Original Application ought to have filed. Therefore, if the 06 months period is calculated from the year 2012, it would expire in the year 2013 and as regards Section 15, it provides for 05 years period from the date of cause of action first arose, which too would expire in the year, 2017, while the Original Application has been filed on 14.08.2019.

6. The learned Counsel for the Respondent No. 11 has drawn our attention to para no. 40 of the main petition, where-in it is stated by the Applicant that the Project Proponent carried out illegal construction on 0 sq. mtrs. to 18500 sq. mtrs. vide sanction dated 24.11.2016.

7. As per the Applicant in O.A., the Project Proponent had intention to go on beyond 36,500 sq. mtrs. vide sanction dated 31.03.2018. The civil construction activity is recurring process. The Project Proponent/Respondent No. 11 has increased the project capacity from 0 sq. mtrs to 18500 sq. mtrs. from 2011 to 19.05.2018, therefore, it is nothing but a recurring cause of action for building construction activity.

8. The Applicant in Original Application had obtained information through online search and under RTI Act from 2017 to 18.05.2018 and thereafter had sent legal notice through Counsel to the Respondents inviting their attention towards the violations committed by the Project

Proponent. Therefore, the cause of action first arose on 15.06.2019 when SEIAA issued a Show Cause Notice to the Project Proponent.

9. Therefore, 06 months period from 15.06.2019 should be counted, which would end on 14.12.2019, while the present application has been filed on 14.08.2019, therefore, it is within time.

10. As per Respondent No. 11/Project Proponent (PP), the above contention of the Applicant in Original Application is absolutely false because the Applicant is trying to establish the date 19.05.2019 as the date, when the first cause of action arose on the basis of his having obtained information under RTI. It is further argued by the learned Counsel for the Respondent No. 11 that any person may move an RTI application on a particular date of his choice in order to create cause of action so as to bring it within the period of limitation in order to initiate legal proceedings, which cannot be allowed to happen because that is not the intent of law.

11. The learned Counsel for the Respondent No. 11 has placed reliance of the Judgment *Jai Javan Jai Kisan and ors. v. Vidarbha Cricket Association and Ors.* [MANU/GT/0006/2017], where-in relevant para no. 11 is as follows:-

“11. Conjoint reading of Section 14 and 15 of the National Green Tribunal Act reveals that essentially any application moved for claiming reliefs there-under must necessarily present a Civil case wherein substantial question relating to environment or environmental damage arising under the enactments specified in the Schedule-I of the Act (including accident occurring while handling any hazardous substance) is involved. We are, therefore, of the considered opinion that it is the substantial question relating to the environment or environmental damage as aforesaid which gives rise to the cause for an action under the provisions of National Green Tribunal Act, 2010. In the present case, the question raised is about restoration of the environmental damage on account of injury to it as a result of raising VCA Stadium without EC or consent to operate under the provisions of Schedule-I Acts viz Environment (Protection) Act, 1986, the Air (Prevention and

Control of Pollution) Act 1981 and Water (Prevention and Control of Pollution) Act 1974. As stated herein above, the causes of injury are insufficiency of Effluent Treatment Plant (ETP), open species, parking spaces and tree cover. These facts were very much manifest when the VCA stadium became functional in the year 2008. In our opinion, therefore, the cause of action for the present Application arose first when the VCA stadium became functional. There is nothing in the Application to state that these injuries stood compounded further to actuate the Applicants to initiate the action in the present case as framed.”

12. Thereafter, the learned Counsel for the Respondent No. 11 has placed reliance on *Graminee Environment Development Foundation v. Balaji Infrastructure Ltd. & Ors.* [(2017) SCC Online NGT 1098], where-in relevant para nos. 11 to 13 are as follows:-

“11. *Section 15 (3) of the NGT Act, 2010 in clear terms requires the Application for restitution of the property damaged to be made within the period of five (5) years from the date on which cause for such relief first arose, and provides for discretion to the Tribunal to condone delay for ‘sufficient cause’ if the application is filed within further period of sixty (60) days and no further. In the present case, the Applicant avers that the cause of action first arose on 24.2.2015, when the letter was addressed by the Member Secretary, Maharashtra Coastal Zone Management Authority (MCZMA) to the Collector, Raigad to take action in respect of the grievance made by the Applicant and yet no action was taken by the authorities. The Applicant has further revealed in her Application that she has been making several complaints to the Authorities about the said grievance, first such complaint being made on 15.9.2014 to the Divisional Commissioner, Konkan Division, Navi Mumbai. Reading of the letter dated 24.2.2015, Annexure ‘I to the Application (Pg.81) reveals the nature of grievance made by the Applicant. In short, the Applicant was aggrieved by the alleged illegal blasting work, storage of minerals and reclamation by Dighi Port Ltd. Similarly, the grievance made with complaint dated 15.9.2014 is regarding alleged illegal work of reclamation of seashore and filling rocks at village Nanavali and intertidal land encroachment without EC by Dighi Port Ltd, and Balaji Infrastructure Ltd.*

12. *In our considered opinion, making of grievance of the kind in the present case by writing a letter cannot be constituted as ‘cause of action’ but the actual act or its consequence constitutes ‘cause of action’ in any case. In the present case, cause of action has arisen as a result of blasting work as well as dumping of rocks etc. by Dighi Port Ltd and its holding Company Balaji Infrastructure Ltd in the said land.*

13. *A perusal of the Application gives some clue as to when such acts of blasting of hills and dumping of material excavated started. The Applicant has pleaded in her Application that Respondent No.1 encroached upon 3km of seashore of village Nanauali and without permission of any Govt. Authority dumped soil and rocks there. It is further pleaded that Respondent No.1 has been doing illegal activities of levelling, blasting, excavation of land, filling of land space with soil, dumping huge rocks and artificial land spaces without any permission; and in spite of such illegalities going on, Respondent Nos. 2 to 7- Govt. Authorities did nothing. The Applicant in her pleadings referred to EC granted in the name of Dighi Port Ltd on 30th September, 2005 for construction of Port at village Dighi, Taluka Shrivardhan, District Raigad and states that she does not challenge or dispute anything about such EC or any work at Dighi Port and her only grievance is that Respondent No.1 has encroached upon the property and extended various kinds of constructions beyond consented area. These facts as pleaded if read in conjunction with the plaint in Regular Civil Suit No.4 of 2009 filed by the Applicant in the Court of Civil Judge, Junior Division, Shrivardhan, do make sense as to when alleged activity had started. At para-7 of the said plaint, the Applicant has categorically stated that on 26.12.2008 the defendant (therein) i.e. Dighi Port Ltd came at the land adjacent to the house of the Applicant in order to make encroachment and reclaimed the land, and this highhanded activity of Dighi Port Ltd was resisted by the Applicant with objection that they cannot reclaim land by blasting the hills and dumping rocks at the said land. A clear fact emerges that the act of blasting the hill sides, dumping materials illegally and reclamation of land, first started in or about December, 2008. Thus, cause of action for the present Application clearly arose in or about December, 2008.”*

13. Based on the above provisions of law, it is vehemently argued by the learned Counsel for the Respondent No. 11/Project Proponent that the present application is time barred and needs to be dismissed on that ground alone.

14. During argument, the learned Counsel for the Applicant in Original Application has pointed out that he is relying on para no. 18.25 & 18.26 of the reply affidavit dated 26.10.2021, mentioned at page nos. 981 to 986 of the paper book, which are as follows:-

“18.25. *I state that, this Hon-ble Tribunal in the matter of "Forward Foundation, A Charitable Trust and Ors. Vs. State of Karnataka and Ors. (OA No. 222/2014) Judgment dated*

7th May, 2015”, reported in 2015 SCC Online NGT 5 in dealing with the issue of limitation and cause of action has specifically held as follows-

“24. The expression 'cause of action' as normally understood in civil jurisprudence has to be examined with some distinction, while construing it in relation to the provisions of the NGT Act. Such 'cause of action' should essentially have nexus with the matters relating to environment. It should raise a substantial question of environment relating to the implementation of the statutes specified in Schedule I of the NGT Act. A 'cause of action' might arise during the chain of events, in establishment of a project but would not be construed as a 'cause of action' under the provisions of the Section 14 of the NGT Act, 2010 unless it has a direct nexus to environment or it gives rise to a substantial environmental dispute. For example, acquisition of land simplicitor or issuance of notification under the provisions of the land acquisition laws, would not be an event that would trigger the period of limitation under the provisions of the NGT Act, 'being cause of action first arose'. A dispute giving rise to a 'cause of action' must essentially be an environmental dispute and should relate to either one or more of the Acts stated in Schedule I to the NGT Act, 2010. If such dispute leading to 'cause of action' is alien to the question of environment or does not raise substantial question relating of environment, it would be incapable of triggering prescribed period of limitation under the NGT Act, 2010. [Ref Liverpool and London S.P. and I Asson. Ltd. v. M.V. Sea Success I and Anr., (2004) 9 SCC 512, J. Mehta v. Union of India, 2013 ALL (I) NGT REPORTER (2) Delhi, 106, Kehar Singh v. State of Haryana, 2013 ALL (I) NGT REPORTER (DELHI) 556, Goa Foundation v. Union of India, 2013 ALL (I) NGT REPORTER DELHI 234].

25. In contradistinction to 'cause of action first arose', there could be 'continuing cause of action', 'recurring cause of action' or 'successive cause of action'. These diverse connotations with reference to cause of action are not synonymous. They certainly have a distinct and different meaning in law, 'Cause of action first arose' would refer to a definite point of time when requisite ingredients constituting that 'cause of action' were complete, providing applicant right to invoke the jurisdiction of the Court or the Tribunal. The Right to Sue' or 'right to take action' would be subsequent to an accrual of such right. The concept of continuing wrong which would be the foundation of continuous cause of action has been accepted by the Hon'ble Supreme Court in the case of Bal Krishna Savalram Pujari & Ors. v. Sh. Dayaneshwar Maharaj Sansthan & Ors., AIR 1959 SC 798.

18.26 Further I state that, the **Forward Foundation** Judgment was challenged before the Hon'ble Supreme Court in the matter of **Mantri Technoze Pvt. Ltd. Vs. Forward Foundation, Civil Appeal No. 5016/2016 reported in (2019) 18 SCC 494** has specifically held vide judgment dated 5th March, 2019 and has confirmed the said judgment

of Forward Foundation and even the Review petition of the same has been dismissed vide order dated 06/08/2019 and has thus become final and binding.

"In fact, in the original application before the Tribunal there was no mention of the provision under which it was being filed. It is well settled principal of law that non-mention of or erroneous mention of the provision of law would not be of any relevance, if the Court had the requisite jurisdiction to pass an order. It would be mere irregularity and would not vitiate the application or the judicial order of the Tribunal"

The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. (See Kishore Lal v. Chairman, Employees' State Insurance Corpn. (2007) 4 SCC 579, para 17). The existence of the Tribunal without its broad restorative powers under Section 15(1)(c) read with Section 20 of the Act, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialized Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with Experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment"

"The Tribunal has also jurisdiction under Section 15(1)(a) of the Act to provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Further, under Section 15(1)(b) and 15(1)(c) the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit. It is noteworthy that Section 15(1)(b) & (c) have not been made relatable to Schedule I enactments of the Act. Rightly so, this grants a glimpse into the wide range of powers that the Tribunal has been cloaked with respect to restoration of the environment."

"Section 15(1)(c) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment."

15. The Applicant in Original Application has also placed reliance upon the important dates and events, which have been quoted by him in para

14 of the reply affidavit, mentioned at page nos. 926 to 928 of the paper book, which are as follows:-

“14. IMPORTANT DATES AND EVENTS:

I state that, the following events and dates are very important to understand the collusion between the Government Authorities and Respondent No. 11-PP and tactics, favouring practices adopted by the Joint Committee Members and Respondent No. 11-PP;

“

Sr. No.	Events	Date
1.	<u>1st Application for EC</u>	<u>07.09.2013</u>
2.	<u>1st Show Cause Notice by SEIAA & PS- DoE</u>	<u>30.08.2014</u>
3.	<u>1st Withdrawal Communication for SCN</u>	<u>10.03.2015</u>
4.	<u>1st Consent to Establish</u>	<u>10.03.2015</u>
5.	<u>2nd Application for EC</u>	<u>30.06.2016</u>
6.	<u>2nd Consent to Establish</u>	<u>12.10.2017</u>
7.	<u>3rd Application for EC</u>	<u>06.10.2018</u>
8.	<u>Notice/ Complaint of Original Applicant</u>	<u>19.05.2019</u>
9.	<u>MPCB 1st Site Visit by Field Officer</u>	<u>10.06.2019</u>
10.	<u>2nd Show Cause Notice by SEIAA & PS- DoE</u>	<u>15.06.2019</u>
11.	<u>MPCB 2nd Site Visit by SRO-2</u>	<u>27.06.2019</u>
12.	<u>Filing of OA</u>	<u>14.08.2019</u>
13.	<u>First Order of NGT</u>	<u>22.10.2019</u>
14.	<u>Service to Joint Committee of SEIAA & MPCB</u>	<u>02.11.2019</u>
15.	<u>Personal hearing given to PP by PS-DoE</u>	<u>11.11.2019</u>
16.	<u>2nd Withdrawal Communication for SCN</u>	<u>16.11.2019</u>
17.	<u>Second Order of NGT</u>	<u>10.12.2019</u>
18.	<u>Joint Committee Visit to project site</u>	<u>15.12.2019</u>
19.	<u>Architect Certificates prepared on</u>	<u>20.12.2019</u>
20.	<u>Joint Committee Report filed to NGT</u>	<u>07.01.2020</u>
21.	<u>Third Order of NGT issuing Notice 86 Show cause to PP</u>	<u>05.02.2020</u>
22.	<u>Service to the Respondent No. 11-PP</u>	<u>15.02.2020</u>
23.	<u>Grant of ex-post facto EC</u>	<u>18.02.2020</u>
24.	<u>Appeal No. 26/2020 filed on</u>	<u>19.03.2020</u>
25.	<u>Fourth Order of NGT</u>	<u>13.07.2020</u>
26.	<u>Respondent No. 11-PP Reply Affidavit Sworn on</u>	<u>24.09.2020</u>
27.	<u>Respondent No. 11-PP filed</u>	<u>24.09.2020</u>
28.	<u>Fifth Order of NGT</u>	<u>03.09.2021</u>
29.	<u>Respondent No. 11-PP filed 86/2020 filed on</u>	<u>06.10.2021</u>
30.	<u>Respondent No. 11-PP Corrected Reply Affidavit served on Original</u>	<u>09.10.2021</u>

	<u>Applicant</u>	
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16. He has argued that in this case, there is recurring cause of action and therefore, the date which has stated in his application i.e. 15.06.2019, when the SEIAA issued a Show Cause Notice to the Project Proponent, should be treated to be the date of cause of action.

17. We have heard the arguments of the parties and perused the record and also have gone through the Judgments, which have been relied upon by both the parties, we find that as far as legal position is concerned, Sections 14 & 15 of the National Green Tribunal Act, 2010 provide as follows:-

“Section 14:- Tribunal to settle disputes.-
(1)
(2)
(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.”

Section 15:- Relief, compensation and restitution –
(1)
(2)
(3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief 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.”

18. According to the Applicant in Original Application, as per his own pleadings which are stated in para no. 40, it is clear that construction of the project by the Project Proponent was started in the year 2011 and continued till 19.05.2018. He states that he had obtained information

through online search and under RTI from 2017 to 18.05.2018. Thereafter, he had sent legal notice through Counsel on 19.05.2019. According to him, the SEIAA had issued first Show Cause Notice on 15.06.2019. Therefore, that date should be taken to be the date of cause of action, which first arose.

19. We are not inclined to accept this argument because according to his pleading, he had full knowledge in the year 2011 itself when the construction had started. The pretext of having come to know about this project being constructed through RTI on a later date as stated above appears to be only in order to bring the present Original Application within limitation period. We agree with the learned Counsel for the Project Proponent (PP) that it is very easy for any person to use RTI to seek information for any project on any date chosen by him. We are of the considered opinion that such kind of practice cannot be allowed. We are not inclined to accept the argument made by the learned Counsel for the Applicant in Original Application and are convinced with the argument raised by the learned Counsel for the Respondent No. 11/Project Proponent. We find that this Original Application is time barred, hence this Original Application stands dismissed as time barred.

20. All connected I.A.s also stand disposed of.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

December 01, 2022
Original Application No. 63/2019(WZ)
(I.A. No. 100/2019 & I.A. No. 86/2021)
P.Kr

Amd 15R | 4

Civil Appeal No. 5841 of 2022 @ SLP (C) Nos.37439 of 2016

REPORTABLE

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

**CIVIL APPEAL NO. 5841/ 2022
ARISING OUT OF
PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 37439 OF 2016**

THE STATE OF RAJASTHAN AND ANOTHER APPELLANTS

Versus

ULTRATECH CEMENT LTD. RESPONDENT

J U D G M E N T

HIMA KOHLI, J.

1. Leave granted.

2. The appellant–State of Rajasthan¹ has assailed the judgment dated 26th February, 2016, passed by a Division Bench of the High Court of Judicature for Rajasthan Bench at Jaipur whereby the order dated 05th October, 2012, passed by the learned Single Judge dismissing a writ petition preferred by the respondent–Ultratech Cement Ltd.² (S.B. Civil Writ Petition No. 15416 of 2012) was set aside and its appeal allowed with a direction to the appellant–State Government to process the allotment of the land in favour of the respondent–Company for setting up a cement plant in Tehsil

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¹ In short 'State Government'
² In short 'Company'

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Nawalgarh, District Jhunjhunu, in terms of the letter of allotment dated 23rd February, 2012.

3. A brief overview of the facts of the case is necessary.

3.1 With the idea of setting up a Cement plant having the capacity of 3 million tons of cement per annum in four villages situated in Tehsil Nawalgarh, District Jhunjhunu, spreading over 1000 hectares of land, the respondent–Company purchased/acquired 400 hectares of land through direct negotiations and took steps to acquire the remaining part of land through private negotiations, as also by way of allotment through RIICO. For executing the project of cement manufacturing, the respondent–Company applied to the appellant–State Government in the year 2000 – 2001 for grant of adjoining mining leases for mineral lime stone (cement grade) in Tehsil Nawalgarh, District Jhunjhunu. A letter of intent³ was issued by the appellant–State Government on 16th March, 2002 in respect of two mining leases, but due to non-availability of environment clearance within the stipulated time, the said LOI was cancelled by the State Government by order dated 07th February, 2005. The said order was challenged by the respondent–Company by preferring a revision petition before the Mines Tribunal which was allowed vide order dated 19th July, 2007 and the matter was remitted back to the State Government for fresh examination in accordance with law. The appellant–State Government vide order

³ In short 'LOI'

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dated 22nd November, 2007, restored the LOI subject to compliance of certain conditions and on an undertaking to be furnished by the respondent–Company. The said LOI was however, cancelled by the Mines Tribunal vide order dated 29th July, 2009. Aggrieved by the said cancellation order, the respondent–Company approached the High Court by filing a writ petition which was allowed vide order dated 19th August, 2010 and the appellant–State Government finally issued a LOI on 28th October, 2010.

3.2 This time, the District Collector, Jhunjhunu issued an approval letter dated 23rd February, 2012, for allocation of Government land falling under mining lease area to the respondent–Company for setting up a cement plant subject to the fulfillment of certain conditions stipulated therein. The captioned letter issued by the District Collector, Jhunjhunu is extracted hereinbelow:

“Sir,

Vide above referred letter under above mentioned subject, the State Government has granted approval for reservation and allocation of land falling under mining lease area for setting up a cement plant is granted under Section 92 of the L.R. Act which shall be subject to the fulfillment of the below mentioned conditions: -

- (i) Approval for allocation of the land recorded as pasture land in the mining leased area is given in favour of the applicant company subject to the condition that the company shall surrender the land equivalent to the allocated land after purchasing it in the same village and after developing it as grazing land and will also make it available to the concerned Gram

Panchayat after doing fencing of the four walls of the land.

- (ii) In-principle consent for allocation of the gair-mumkin johad land falling under mining lease area, as applied for by the company, is given in favour of the company subject to the condition that company shall purchase other land and develop it as Johad and surrender it to the Gram Panchayat. The company shall also produce NOC/ orders for allocation of Johad land obtained from Hon'ble High Court.
 - (iii) Company's application for allocation will be considered only after producing permission/ NOC of the competent authority of Panchayat Raj Vibhag and Education Department for gair-mumkin abadi school, graveyard, maszid etc. situated on the mining lease area.
 - (iv) 0.32 Hectare land in the mining lease area is recorded in the name of Ajmer Electricity Distribution Corporation Ltd. Above land shall be allocated in favour of the applicant-company on producing NOC from the Ajmer Electricity Distribution Corporation Ltd.
 - (v) Consent is issued for allocation of the classified land of gair-mumkin Bani & gair-mumkin passage as per your proposal which falls under mining lease area for the purpose in accordance with rules.
- Therefore, kindly ensure action as above.
Encl: as above.

Sd/-
District Collector, Jhunjhunu"

3.3 In view of condition No.(iii) contained in the captioned letter which called upon the respondent–Company to produce NOC/orders for allocation of ‘Johad’ land from the High Court, the respondent–Company approached the High Court by filing S.B. Civil Writ Petition No.15416/2012. Accompanying the said writ petition were several documents pertaining to the spot inspection of the site, the Reports of the Tehsildar and the correspondence between the parties to demonstrate that the subject land that had

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been classified as 'Johad', neither fell in the catchment area, nor did water gather there and there did not exist any natural source of water on the subject land and therefore, classification of the subject land could be converted to 'Siwai Chak' land. Not persuaded by the averments made in the writ petition, the learned Single Judge dismissed the writ petition at the stage of admission itself with an observation that it is for the State Government to decide whether the disputed land is 'Johad' land or not and that the Court was bound by the judgment of the Division Bench of the High Court in the case of **Abdul Rahman v. State of Rajasthan and Others**⁴.

3.4 Dissatisfied with the *in limine* dismissal of its writ petition, the respondent–Company preferred an appeal before the Division Bench of the High Court registered as D.B.Special Appeal (Writ) No. 73/2013. Noting that several representations submitted by the respondent–Company to the appellant–State Government for examining the matter afresh and for making necessary corrections in the revenue records were pending, *vide* order dated 23rd November, 2015, the Division Bench directed the appellant–State Government to consider the respondent's representations in the light of the observations made in the case of **Director General, Research and Development v. State of Rajasthan & Others**⁵, in particular, para 3 thereof, that is extracted hereinbelow:

4 2004(4) WLC (Raj.) 435

5 211 SCC Online Raj 3197

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"It is conceded on facts that in fact there is no Gair Mumkin Nadi existing on the spot, therefore the decision rendered by the Division Bench of this court in **(Abdul Rahman Vs. State of Rajasthan & Ors.)** shall not come in the way of the respondents in making the allotment. In view of aforesaid factual matrix and considering the nature of requirement, we direct that let the allotment be • processed as assured within six weeks from today".

While passing the aforesaid order, it was made clear that in the event the appellant–State Government does not decide the representation of the respondent–Company, the appeal will be decided on merits.

3.5 In compliance of the aforesaid order, the appellant–State Government passed an order dated 25th January, 2016, holding *inter alia* that the subject land having been recorded in the revenue record as 'Johad', no allotment could be made in favour of the respondent–Company. In view of the aforesaid stand taken by the appellant–State Government, the Division Bench proceeded to hear the respondent's appeal on merits and allowed the same by virtue of the impugned judgment whereunder the appellant–State Government has been directed to allot the subject land in question to the respondent–Company and take consequential steps in the matter.

3.6 The High Court has specifically recorded in the impugned judgment that learned counsel for the appellant–State Government did not dispute the fact even before the Court that though the subject land in question was classified as 'Johad', it neither fell within any catchment area, nor did water ever collect there and there was no natural

water reservoir on the subject land. The court opined that looking at the topography of the area, the site in question did not have use for any other purpose at all. In fact, the said site selected for mining, had commercially viable lime stone deposits and the selection was made after due consultation with the Gram Panchayat, Baswa. Thus, there was no justification for turning down the fact-finding Reports filed by the Tehsildar, Land Records, Nawalgarh, regarding the status of the land. In fact, the said Reports had been duly accepted by the appellant–State Government.

3.7 The impugned judgment went on to record that in ***Abdul Rahman's case***⁴, referred to by the learned Single Judge, the Court had only directed the State Government to chalk out a plan for restoration of the catchment areas to their original shape. The said judgment did not prohibit alienation of the property held as a public trust except for highlighting the fact that any such alienation would require a higher degree of judicial scrutiny, thus creating a balance between the Doctrine of Public Trust and the Doctrine of Sustainable Development. It was observed that a pragmatic view ought to be taken in the matter, more so, when the area classified as '*Johad*', did not fall in any catchment area, nor was there any natural water reservoir for it to be declassified from the category of '*Johad*' to '*Sawai Chak*' land.

4 Mr. Milind Kumar, learned Standing Counsel appearing for the appellant–State Government has assailed the impugned judgment by submitting that the same runs

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contrary to the judgment of the High Court in **Abdul Rehman's case**⁴ where it has been held by the Division Bench that no right can be given to use *Nadi* land or other water bodies for construction activity and that catchment of pond/water reservoir shall not be allotted for any personal/commercial purposes; that utilizing the '*Johad*' land for commercial purpose may cause environmental damage; that the High Court has erred in placing reliance on **Director General, Research and Development**⁵; that there are decisions of this Court as in **Vellore Citizens' Welfare Forum v. Union of India and Others**⁶, **A.P Pollution Control Board v. Prof. M. V. Nayudu (Retd.) And Others**⁷, **Lafarge Umiam Mining Private Limited (Applicant) in T.N. Godarvarman Thirumulpad v. Union of India and Others**⁸, **Electrotherm (India) Limited v. Patel Vipulkumar Ramjibhai and others**⁹, **Common Cause v. Union of India**¹⁰, **Alembic Pharmaceuticals Limited v. Rohit Prajapati and Others**¹¹ that have highlighted the use of precautionary principle in environmental matters and held that the burden of proof is on the project proponent who is proposing to alter the status quo or impact the environment. Reference was also sought to be placed on the judgment of this Court in **Jagpal Singh and Others v. State of Punjab and Others**¹², where directions were issued to all State Governments to prepare schemes for eviction of illegal occupants of

6 (1996) 5 SCC 647

7 (1999) 2 SCC 718

8 (2011) 7 SCC 338

9 (2016) 9 SCC 300

10 (2017) 9 SCC 499

11 (2020) 17 SCC 157

12 (2011) 11 SCC 396

Gram Sabha land and for restoration of the said land for common use of the villagers of the area. Learned counsel for the appellant–State Government went on to refer some additional documents filed recently, in particular, letter dated 07th July, 2014, addressed by the Tehsildar, Nawalgarh to the District Collector which mentioned the status of land in one of the four villages identified as mining area in district Jhunjhunu, namely Village Baswa and stated that in some khasra numbers of the said village, there exists a *pucca* pond which acts as a catchment area of rain water. Some circulars issued by the State Government have also been cited which state that all the allotments which were recorded in the revenue records as nala, river, pond, dam or embankment after 1955 and were converted by changing the land classification from agricultural purpose to non-agricultural purpose, be referred to the competent Court with the relevant facts for classification of allotment.

5 The aforesaid submissions have been repelled by Mr. Hiren P. Raval, Senior Advocate appearing for the respondent–Company who submitted that the present appeal is not maintainable when the appellant–State Government has already given its in-principle consent for the respondent–Company to use the subject land for mining purpose subject to obtaining a No Objection Certificate from the High Court. Once the High Court has given a No Objection Certificate in terms of the view expressed in the impugned judgment, there was no occasion to file the present appeal. On merits, it was

submitted that there is no good reason for the appellant–State Government to have refused to rectify the error in the revenue records in respect of the classification of the parcel of land, part of which has been wrongly classified as ‘*Gair-Mumkin Johad*’ i.e. reservoir land, despite the fact that the Tehsildar, Nawalgarh and the District Collector, Jhunjhunu submitted two Reports stating *inter alia* that there was no water reservoir on the subject land at any point in time. To substantiate the said submissions, learned counsel referred to the two Reports submitted by the Tehsildar, Nawalgarh dated 19th/27th April, 2011 and 25th November, 2012/5th December, 2012. He also took this Court through the recommendations made by the District Collector, Jhunjhunu calling upon the State Government to examine the matter and pass appropriate orders. In particular, he referred to the letters dated 19th December, 2012 and 26th, February, 2013, addressed by the District Collector, Jhunjhunu to the Deputy Secretary, Revenue Department of the State Government recommending change of class of the land in the revenue records from ‘*Gair-Mumkin Johad*’ to ‘*Sawai Chak*’ land, on the basis of the certificates issued by the Tehsildar, Nawalgarh. Learned counsel pointed out that at no stage has the appellant–State Government disputed the Reports of the Tehsildar or the recommendations made by the District Collector. Instead, it has been harping on the judgment of the Division Bench of the High Court of Rajasthan in ***Abdul Rehman’s case***⁴, without appreciating that the said judgment has not declared that alienation of

property held as a public trust, is totally prohibited. It was submitted that the fact situations of each case would have to be examined before taking a decision and in the instant case, it is not disputed by the appellant–State Government that the subject land does not fall in any catchment area, water does not collect there and there is no natural water reservoir on the land. In all this back and forth that commenced in the year 2000 and is continuing till now, the environment clearances issued in favour of the respondent–Company are going to lapse at the end of the year 2022, which would automatically result in cancellation of the LOI issued by the appellant–State Government, thus, leaving the respondent–Company high and dry for no fault attributable to it. It was therefore urged that the impugned judgment does not deserve to be interfered with, as it is based on fact finding Reports submitted by the revenue authorities that have not been questioned by the appellant–State Government till date.

6 We have heard the arguments advanced by the learned counsel for the parties, perused the impugned judgment and the documents placed on record. The only issue that arises for the consideration of this Court is that once an in-principle consent has already been accorded by the appellant–State Government for reservation and allocation of the subject land under the mining lease in favour of the respondent–Company for it to set up a cement plant and the condition inserted in the approval letter dated 23rd February, 2012 that the respondent–Company should produce a No

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Objection Certificate / order from the High Court permitting allocation of '*Gair-Mumkin Johad*' land stands satisfied by virtue of the impugned judgment, would a challenge still lie against the same at the instance of the appellant-State Government?

7 A perusal of the impugned judgment indicates the following factors that have weighed with the High Court for allowing the appeal preferred by the respondent-Company :-

- (a) That the Tehsildar, Nawalgarh had made a physical spot inspection of the subject land in question and submitted a detailed Report to the District Collector, Jhunjhunu on 19th April, 2011 stating that the subject land, classified as a '*Johad*' neither fell in the catchment area, nor did water ever collect there and that no natural source of water existed on the subject land; That the subject land was again inspected by the Tehsildar, Land Records, Nawalgarh, who sent a Report to the District Collector, Jhunjhunu on 25th November, 2012 / 05th December, 2012 stating *inter alia* that there is no natural water body on the subject land and the '*Gair-Mumkin Johad*' falling under the proposed mining lease area, does not fall within the water logging area or the catchment area. Therefore, a recommendation was made for change of the class of land and for recording it as '*Sawai Chak*' land;

- (b) That the District Collector, Jhunjhunu made his recommendations on two different occasions to the State Government for issuing necessary orders to correct the revenue records and change the classification of the land to be recorded as '*Sawai Chak*' land.
- (c) That on receiving a communication dated 01st February, 2013 from the State Government calling upon him to re-examine the matter and pass appropriate orders, the District Collector, Jhunjhunu had once again made a recommendation *vide* letter dated 26th February, 2013, that necessary orders for correction of the revenue records ought to be made in the instant case;
- (d) That the Gram Panchayat Baswa, Tehsil Nawalgarh, District Jhunjhunu passed Resolution No.21 dated 03rd February, 2011, stating that no water had ever accumulated in the subject land and the Gram Panchayat had no objection in granting the said land classified as '*Johad*', to the respondent–Company for mining lease purposes, subject to the Company giving equal measure of developed land to the Gram Panchayat in the same village;
- (e) the Court took note of the undertaking given by the respondent–Company in the writ proceedings for initiating the following activities for the benefit of the surrounding villages –

- (i) Equal and alternate land to be developed as '*Johad*' in place of '*Johad*' land in the mining activity area in the same village so that villagers could benefit from the basic amenities.
- (ii) Creation of a water reservoir in the mined out area.
- (iii) Development of water harvesting structures for augmenting ground water recharging in the area.
- (iv) Initiation of CSR activities in the surrounding villages.
- (f) The respondent–Company gave an undertaking before the Court that development of the site for alternate '*Johad*' would be done in a planned manner where the catchment area, water harvesting structures and cattle grazing land would be developed. The Company also undertook to convert Dug-cum-Bore Well (DCB Well) into injection wells in order to develop suitable drainage pattern for augmentation of ground water table;

8 It is a matter of record that the appellant–State Government has not questioned the Reports prepared by the Tehsildar, Nawalgarh after making spot inspection on two occasions. The position remains the same even as of now. The first Report was prepared by the Tehsildar on 19th/27th April, 2011 and the second one on 25th November, 2012/05th December, 2012. Both the Reports were categorical in their findings that there was no natural water body on the subject land classified as a '*Johad*' and that the

subject land neither fell in the catchment area, nor did water ever collect there and there was no natural source of water that existed on the subject land. That being the position, we see no reason to permit learned counsel for the appellant–State Government to rely on a communication dated 02nd July, 2014, addressed by the Tehsildar to the District Collector, in respect of a part of the subject land falling in village Baswa to urge that there exists a *pucca* pond at some spots, more so when there is no explanation for not filing the documents. The aforesaid communication could have easily been filed by the appellant–State Government before the High Court at the appropriate stage, well before the date of passing of the impugned judgment. Nothing prevented the appellant–State Government from producing the relevant photographs of the purported *pucca* pond existing at some spots within village Baswa. It is not the case of the appellant–State Government that the earlier Reports submitted by the Tehsildar, Nawalgarh after conducting a physical spot inspection had been manipulated or prepared in a *mala fide* manner, nor is there any averment made in the appeal that departmental action was initiated against the then Tehsildar, Nawalgarh for having prepared incorrect Reports of the spot inspection. Given the said position, there is no reason to discard the two Inspection Reports prepared by the Tehsildar, Nawalgarh that form a part of the record. Both the said Reports have stated in clear terms that there is no natural water body on the subject land and the '*Gair–Mumkin Johad*' falling under the proposed mining lease

area does not fall within the water logging area or the catchment area. We, therefore, decline to give any weightage to the letter dated 07th July, 2014 addressed by the Tehsildar, Nawalgarh to the District Collector, Jhunjhunu.

9 The Circulars dated 26th June, 2012, 17th April, 2013 and 26th July, 2017 issued by the Revenue Department can also not be of any assistance to the appellant–State Government, for the simple reason that the said circulars came to be issued in compliance of the judgments of the High Court and this Court directing removal of encroachment from the Gram Panchayat land and eviction of unauthorized occupants therefrom. The present case does not fall in the above categories for the simple reason that the respondent–Company has applied through proper channel for allotment of land for mining purpose; it has received requisite environment clearances followed by LOIs issued by the appellant–State Government. Armed with the necessary approvals from the State Government for reservation and allocation of land falling under mining lease area, the respondent–Company had approached the revenue authorities for setting up a plant on the subject land and requested that necessary changes be made in the revenue records pertaining to land described as ‘*Johad*’ at certain spots, where in fact, no ‘*Johad*’ actually existed. In this context, the recommendations made by the District Collector, Jhunjhunu gain significance. The first letter in this regard was addressed by the District Collector to the Deputy Secretary, Revenue Department of the appellant–State

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Government on 19th December, 2012, relevant extract whereof is reproduced hereinbelow:

“When a site inspection report in this connection was sought from Tehsildar, Nawalgarh, he informed vide his letter No.2501 dated 5.12.12 that there is a government primary school building on the *gair-mumkin Johad* land of Khasra No.493 area 3.96 hectare, Khasra No.546 raqba 16. 73 hectare, Khasra No.608 raqba 17.55 hectare, Khasra No.649 raqba 4.81 hectare, Khasra No.1304/493 raqba 0.14 hectare and Khasra No.1316/ 608 raqba 0.11 hectare land situated in village Basawa and rest of the land does not come within the catchment area. Land of the above mentioned Khasra Numbers does not have any natural water reservoir, nor it is in the catchment area. Tehsildar, Nawalgarh has recommended to change its class and declare it Sivaychak land.

In perspective of the above decisions of Hon'ble Rajasthan High Court and enclosing herewith the Tehsildar Report attached with letter No.2501 dated 5.12.12 (copy enclosed) and copy of the enclosed Jamabandi for Samvat 2067-2070, it is submitted that Tehsildar's report has been analyzed and I am satisfied with the report. As per the site inspection report of the *Gair-mumkin Johad* land of Khasra No.493 area 3.96 hectare, Khasra No.546 raqba 16.73 hectare, Khasra No.608 raqba 17.55 hectare, Khasra No.649 raqba 4.81 hectare, Khasra No.1304/4 93 raqba 0.14 hectare and Khasra No.1316/608 raqba 0.11 hectare land situated in village Basawa, there is a government primary school on 0.10 hectare land out of 16.73 hectare of Khasra No.546 it is recommended that class of the above land may be changed and allocated to M/s Ultratech Cement Limited Co. in accordance with law.”

10 After receiving the aforesaid letter, the Secretary, Revenue Department addressed a letter dated 1st February, 2013 to the District Collector, Jhunjhunu clearly stating *inter alia* that only he as the ‘District Collector’ must certify whether the land in question is a ‘*Johad*’ land or not and the said certification is not to be done by the State Government. Therefore, the District Collector was directed to visit the site himself and

inquire into the matter and then issue appropriate orders. In compliance of the said directions, the District Collector wrote another letter dated 26th February, 2013 to the Deputy Secretary, Revenue Department, reiterating that the revenue records do not record any water reservoir in the relevant khasra numbers of the subject land and it was in this background that letter dated 19th December, 2012 had been issued by him recommending change of class of the land on the basis of the certification of the Tehsildar, Nawalgarh in the revenue records. It was again stated by the District Collector that in the light of the Report of the Tehsildar and the copies of old and current revenue records, orders may be issued by the State Government with regard to change of class of the proposed land that was entered into revenue records as '*Johad*'.

11 The aforesaid material has been examined at length in the impugned judgment. The High Court has also taken note of the Resolution passed by the Gram Panchayat, village Baswa and the certificate issued by the Gram Panchayat which records that no water had ever accumulated on the subject land and the Gram Panchayat did not have any objection to the said land being granted to the respondent–Company for mining lease purpose subject to the condition that it would be receiving an equal measure of developed land in the same village from the respondent–Company in view of the land being consumed for mining lease purpose. The respondent–Company has also given undertakings to the High Court that the environment of the village will not be adversely

impacted and the ecological balance shall be maintained. One of the undertakings given by the respondent–Company is that the site identified for development of an alternate ‘Johad’ would be identified and developed in a planned manner, so as to create a catchment area, water harvesting structure and cattle grazing land.

12 Given the above background, reliance placed by learned counsel for the appellant–State Government on the judgments cited by him, is found to be misplaced. In **Vellore Citizens’ Welfare Forum**⁶ and **A.P Pollution Control Board**⁷, this Court recognized the requirement of reconciliation between the concept of development and ecology as a facet of sustainable development. The relevant Articles of the Constitution of India including Articles 21, 47, 48-A, 51-A (g) that protect and improve the environment have been highlighted and the Precautionary Principle and Polluter-Pays Principle have been declared to be a part of the environmental law of the country. It has also been accepted that the burden of proof should lie on the entity proposing an activity that is potentially harmful to the environment. There can be no quarrel with the above position, but neither of the aforesaid judgments are relevant in the facts and circumstances of the instant case, inasmuch as no burden has been placed on the respondent–Company to demonstrate that the industry proposed to be set up by it, shall not cause any serious and/or irreversible harm to the ecology of the area. On the contrary, it is the stand of the Revenue Department of the appellant–State Government

itself that there is no likelihood of any damage to the ecology of the area as the spot inspections reveal that there is no pond existing on the subject land that may be impacted adversely.

13 In ***Narmada Bachao Andolan v. Union of India***¹³, this Court had the occasion to discuss the Precautionary Principle and it was held that the said principle and the corresponding burden of proof on the person who wants to change the *status quo*, will ordinarily apply in the case of polluting or other projects or industry where the extent of damage likely to be inflicted, is not known. But when the effect of the project is known, then the principles of sustainable development would come into play which will ensure that mitigative steps can be taken to preserve the ecological balance. In the present case, there is no such uncertainty due to lack of availability of data or scientific material about the damage if any, likely to be caused to the ecological balance of the area. Instead, detailed spot inspections have been conducted by the revenue authorities from time to time that establish that there is no '*Johad*' existing on the subject land. Despite that, the respondent–Company has been directed to develop an alternate '*Johad*' in a planned manner at the same area, as a mitigative step which it has undertaken to execute.

13 (2000) 10 SCC 664

14 In **Lafarge Umiam Mining Private Limited⁸**, this Court has recognized the fact that the environment has different facets and universal dependence of humans for the use of environmental resources for the most basic needs, inescapably requires choices to be made at different levels on environmental protection and factor in the risks which are to be regulated, as recognized by the concept of sustainable development. Conceding that it is impossible to lay down 'across-the-board' principles and much would depend on the facts of each case, this Court opined that what was required to be seen was how much protection would be sufficient and whether ends would be served by diverting resources to other uses and at the same time, strike a fine balance between environmental protection and environmental risk. No such fine balance is required to be struck in the instant case when admittedly, the spot inspections show that there does not exist any '*Johad*' on the subject land that is likely to be affected on account of the change proposed in the revenue records.

15 The directions issued in **Jagpal Singh's case¹²** calling upon State Governments to prepare a scheme for eviction of illegal/unauthorized occupants of Gram Sabha land also do not come in the way of the respondent–Company. The purpose of the said direction was to prepare a scheme for removal of illegal occupants expeditiously. This does not prevent the respondent–Company from approaching the Court for correction in

the revenue records when the site inspection Reports prepared by the Revenue Authorities show that there is no water body or catchment area on the subject land.

16 The focus in the case of ***Electrotherm (India) Limited***⁹ was on conducting public hearings as a mandatory requirement of the environmental clearance process and the Court has frowned upon doing away with public hearings in the course of the decision-making process. In the case of ***Common Cause***¹⁰, this Court was seized of the aspect of illegal/unlawful mining in the State of Odisha and it was observed that Courts cannot interfere with the Mining Policy or lay down limits on the extent of mining activity that should be permitted by the State/Central Government. The said decision does not have any application to the facts of the instant case where the appellant–State Government has already given an in-principle consent for setting up a cement plant in favour of the respondent–Company and the High Court was only required to examine the aspect of correction in the revenue records in relation to the subject land where a ‘Johad’ was mentioned, but none existed at site.

17 In ***Alembic Pharmaceuticals’ case***¹¹, the issue before this Court was with respect to the operation of industries without obtaining prior environmental clearance for a long time and their liability on account of such non-compliance. Noting that the industries had evaded the legally binding regime of obtaining environment clearance, it was held that penalty must be imposed on them for disobedience and non-compliance

of the rules and regulations. Here, the respondent–Company has admittedly received environmental clearances and in spite of the same, its project has not taken off due to various hurdles created by the appellant–State Government. Clearly, the present case is not one of breach of any norms for imposition of penalty on the respondent–Company.

18 Even the judgment of the Division Bench of the Rajasthan High Court in the case of **Abdul Rehman⁴** is being completely misread by the appellant–State Government. The focus in the said judgment was on the restoration of the catchment area to its original shape for which a plan was directed to be drawn up which included demarcation of the catchment areas, demarcation of drainage channels etc. Nowhere in the said judgment has it been observed that the description of a land as a pond in the revenue records, when no pond exists on site, cannot be corrected after conducting a spot inspection. We are inclined to accept the submission made by learned counsel for the respondent–Company that in the absence of any pond at the spot, the decision rendered in the case of **Abdul Rehman⁴** cannot be an impediment for processing the application of the respondent–Company for allocation of the subject land, for setting up a cement plant. The High Court has rightly referred to the decision of this Court in **Director General, Research and Development⁵**, where noting the fact that there was no ‘Gair-Mumkin’ Nadi existing on the spot, it was observed that the decision of the High Court in **Abdul Rahman⁴** will not come in the way of allotting the land to the petitioner.

19 For the aforesaid reasons, we concur with the findings returned in the impugned judgment which is upheld. The appellant–State Government is directed to take necessary steps to process the allotment of the subject land in favour of the respondent–Company within four weeks from today. The respondent–Company shall file a fresh undertaking with the State Government, within the same timeline, as was filed by it before the High Court, for initiating time bound activities for the benefit of the surrounding villages, as compensatory measures for the allocation of the subject land.

The appeal is dismissed while leaving the parties to bear their own expenses.

.....CJI.
[N. V. RAMANA]

.....J.
[HIMA KOHLI]

.....J.
[C. T. RAVIKUMAR]

NEW DELHI,
AUGUST 26, 2022

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

ORIGINAL APPLICATION NO. 457 OF 2025

GULSHAN KUMAR

VERSUS

STATE OF U.P. & OTHERS

AFFIDAVIT

I, Farhan S/o Ashfaq, Aged About 46, R/o- Village Nanauta, Tehsil Rampur Maniharan, District Saharanpur, (U.P.) do hereby take oath and state as under: -

1. That I am respondent no.10 in this case and am well conversant with the facts and circumstances of the case.
2. That averments of facts and ground of the annexed counter affidavit/response, which I believe to be true and correct on the basis of my personal knowledge.
3. That Annexure R/1 to R/4 are true Photocopies/Web-copies of the originals and they are true and correct to the best of knowledge.

फरहान
DEPONENT

VERIFICATION

I, above named deponent, do hereby verify that contents of para no.1 to 3 of the above affidavit are true & correct to my personal knowledge. Nothing material has been concealed and no part of it is false. SO HELP ME GOD.

फरहान
DEPONENT

Identified by
100
Keishan
Sh. Adv.
R/895/2000



ATTESTED

OATH COMMISSIONER
RAJASTHAN HIGH COURT
JAIPUR BENCH, JAIPUR

07 JUL 2026