

BEFORE THE NATIONAL GREEN TRIBUNAL, PRINCIPAL
BENCH, NEW DELHI

ORIGINAL APPLICATION NO. 560 OF 2022.

IN THE MATTER OF: -
KAMLAPAT

... APPLICANT

VERSUS

U.P. POLLUTION CONTROL BOARD & ORS. ...RESPONDENTS

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NEW DELHI
DATED: 24, 11.2022

(MANOJ KUMAR)
(Advocate)

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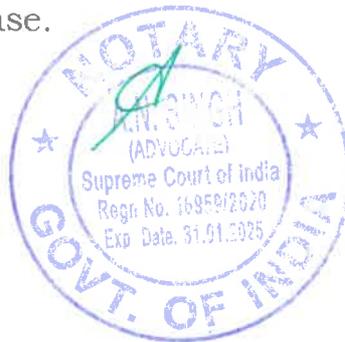
---Respondents

COUNTER AFFIDAVIT ON BEHALF OF

RESPONDENT NO. 5

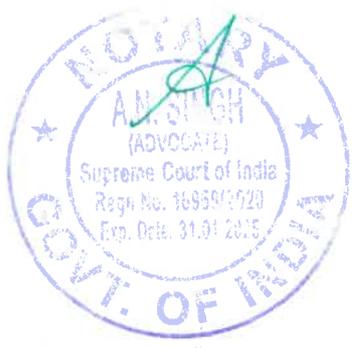
I, Dinesh chandra aged about 62 years son of late Sri Bhagirath, Religion-Hindu, qualification- High School, Occupation- stone crashing and other business Resident of Mohalla-Rajendra Nagar, Town-Kabrai, Tahsil And District-Mahoba, the deponent do hereby solemnly affirm and states on oath us under:-

1. That the deponent is at present resident of Mohalla-Rajendra Nagar, Town-Kabrai, District-Mahoba, (U.P.), and as such he is fully conversant with the facts and circumstances of the case.

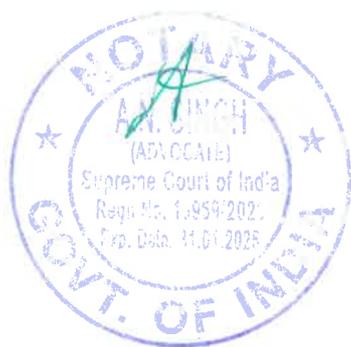


2. That the deponent has read over the above mentioned Original Application, and has understood the contents of the there of and is well acquainted with the facts and circumstances of the case deposed to here under.
3. That by way of aforesaid Original Application the applicant prayed to direct the Respondent no. 1 (U.P. State Pollution Control Board) to stop the work of stone mining through blasting towards the agricultural land of the applicant and similar agricultural land adjacent to the mountain may not be destroyed due to falling of big stones and dust also.
4. That this Tribunal vide order dated 08.08.2022 it has been observed that it is alleged that a stone blasting permission has been granted wherein in number of condition were imposed and such conditions are stated in paragraph no. 5 of the original application which mentioned herein under:-

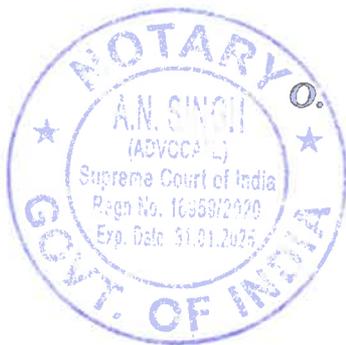
- A. *“ The height of the bench should be maximum 6 meters and the width of the bench should be at least 2 times the height.*
- B. *Mining should be done from top to bottom and making benches.*



- C.** *The debris, especially the topsoil, removed during the mining operation should be collected in a systematic manner.*
- D.** *The slope of the face should not exceed 60 degrees and there should be no undercutting anywhere.*
- E.** *Face dressing will have to be done after every plastic so that the workers are safe from loose stones etc.*
- F.** *The pit formed as a result of mining work will have to be leveled and planted with debris.*
- G.** *The stretchers will be kept in the first aid box at the mining site. For the safety of the workers, the lease holders will provide safety equipment at their own expense.*
- H.** *There should be proper arrangement for workers' rest houses, their drinking water etc.*
- I.** *In view of the possibility of diseases arising from silica in mining, provision should be made for medical examination of workers every 6 months and medical facilities should be provided as per the requirement.*



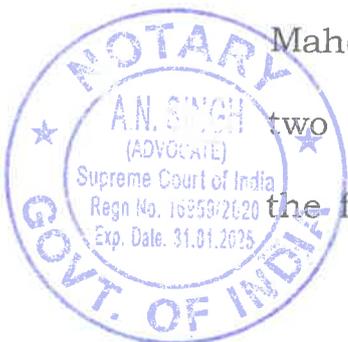
- 4
- J.** *The guidelines issued by the Government of India / State Government from time to time regarding environmental cleanliness and the orders of the Hon'ble Court should be complied with by the lessee.*
- K.** *Explosives shall be used within the stipulated time only and before detonating it will be mandatory to raise a red flag and to warn by using siren or city to give warning.*
- L.** *By giving training to the workers working in the said project for noise and air pollution control, it will be ensured that the environment is not affected by the said project.*
- M.** *Water sprinkling will be done by the lessee from time to time and only blasting will be done at midnight.*
- N.** *In order to control noise pollution, the drivers will be instructed not to use unnecessary pressure horn.*
- O.** *Mining will be done during the day and blasting will be done at midnight.*



P. *The required water will be met by private water tankers. However, measures will be taken for optimal use of ground water. At the end of mine life excavated pit will be converted into a water reservoir. This will help in recharging the ground water level.”*

5. That this Hon'ble Tribunal further observed vide order dated 08-08-2022 that it is contended that in violation of conditions, blasting is going at any point of time in day or night causing noise pollution, air pollution and in other violation damaging the environment. It is also said that dust is accumulating on agricultural field and stones are also coming down from hilly track to agricultural field.

6. That this Hon'ble Tribunal further observed vide order dated 08-08-2022 that before taking any further action in the matter, we find it appropriate to obtain a factual report in respect to aforesaid activities being conducted by Respondent No. 4 and therefore, we constitute a joint Committee comprising State PCB and District Magistrate, Mahoba to visit the site and submit its factual report within two months by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in

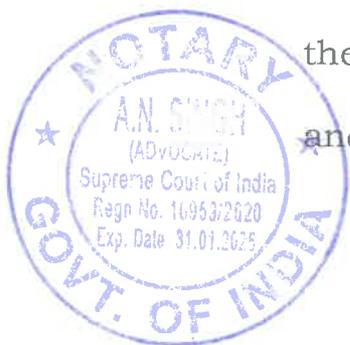


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the form of Image PDF. List for further consideration on 19.10.2022.

7. That in compliance of the order dated 08.08.2022 passed by this Hon'ble Tribunal the District Officer, Mahoba *sau-moto* constituted a three members committee which mentioned as under:-

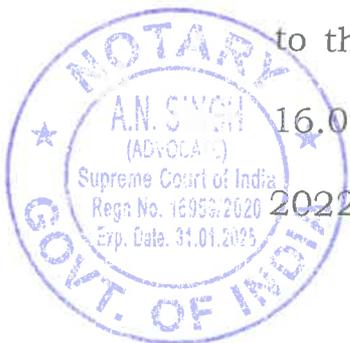
- i. Additional District Officer, (F&R) Mahoba.
- ii. Senior Mines Officer, Mahoba.
- iii. Regional Officer, Uttar Pradesh, Pollution Control Board, Regional Office, Banda.

8. That the aforesaid three members committee visited on site on 14.09.2022 and 19.09.2022 and it has been found that aforesaid leased areas devided in three blocks previously were granted in favour of Sri Rajendra Kumar Shivhare, Sri Dinesh Chandra Gupta (the deponent) and Sri Ram Manohar Shivhare separately. w.e.f. 05.11.2007 to 04.11.2017 It has been further mentioned the aforesaid areas again granted by way of public auction in favour of the previous lease holder's by giving preference as per law and mining lease deeds were executed on 10.12.2021 for a



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period of 10 years. Thus these areas were vacant with effect from 04-11-2017 to 10-12-2021 near about 4 years.

9. That it is further observed by the said committee that the extension of the mining lease area, is total 260 meter × 145 meter and depth of the area is 30 meters and all mining leases are affiliated with each other. It has been further observed that due to more depth of mines, fencing work has already been done by the lease holders and all measurement for safety of the mines has been done by the lease holders and the applicant has not Sowing any crops on the gata no. 472 hence there are no question for harm of crops as stated by the applicant. It is further submitted that the aforesaid committee also mentioned that there are no violation of any terms and condition of the E C or related statutory provisions” but without any reference it has been mentioned that the deponent illegally done the mining operation of 14760 cubic meters boulder from the area situate out side the leased area with out any support of credible evidence and a show cause notice dated 16-09-2022 has been issued to the deponent. The copy of the show cause notice dated 16.09.2022 also being annexed with the report dated 08-10-2022 as annexure No. 5 submitted by the Committee which

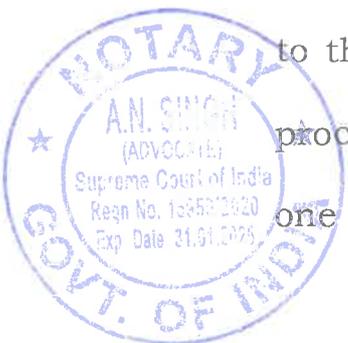


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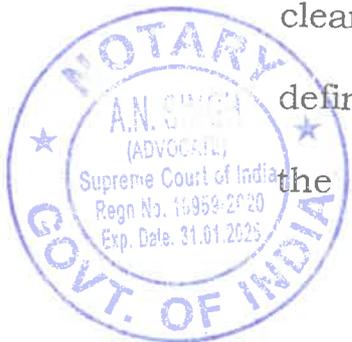
constituted by the District Officer, Mahoba in contradiction of the order dated 08-08-2022 passed by this Hon'ble Tribunal and also placed it before this Hon'ble Tribunal.

10. That the matter again listed before this Hon'ble Tribunal on 19.10.2022, and this Hon'ble Tribunal was pleased to observe that the compensation for illegal mining has to be equal to the sale price of the mined material in view of Section 21(5) of the Mines & Minerals (Development & Regulation) Act, 1957 and the judgment of the Hon'ble Supreme Court in Common Cause vs. Union of India and others (2017) 9 SCC 499. Apart from liability to pay compensation illegal mining is theft for which liability is provided under the Criminal Law. On this principles it appears that compensation amount may be Rs. 01 crore 67 lakhs.

11. That in view of the above mentioned observation this Hon'ble Tribunal before passing final order provided the opportunity of being heard to the PPS and pleased to direct to the State PBC may put both the PPS to notice of these proceeding so that they can filed their response if any within one month from today.



12. That in compliance of the order dated 19.10.2022 passed by this Hon'ble Tribunal the Regional Officer, U.P. Pollution Control Board, Regional Office, Banda served the copy of the orders dated 19-10-2022 vide its letter dated 28.10.2022 to the deponent, and after receiving the information, the deponent replied the show cause notice dated 16.09.2022 issued by the District Officer, Mahoba vide its explanation dated 04.11.2022 stating therein that the nearby area of mines possessed by one Sri Devendra Shivhare and the deponent respectively and due to depth of mines as 30 fits below the surface of the land such agricultural land sustained a major cracked and falling such garbage on the site of the mine in past and in view of safety purpose of the working labour the such garbage listed from the mines and dumped nearby the 'Kachcha Rasta'. It is further submitted that under the provisions of Section 3(d) of the Mines and Minerals (Development & Regulation) Act 1957 the '**mining operation**' means any operation undertaking for the purpose of wining any minerals, but the cleaning of the site of mines is not covered under the definition of the 'mining operation,' hence the allegation of the committee regarding illegal mining is totally false,



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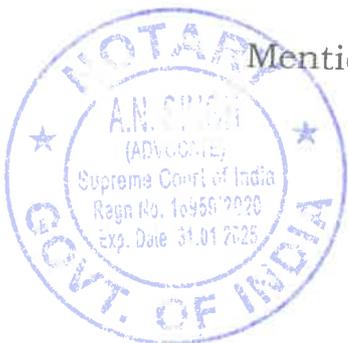
imaginary and is not acceptable by the deponent and the aforesaid explanation has already submitted before the District Officer, Mahoba but till today no any final order has been received by the deponent passed by the District Officer, Mahoba regarding alleged illegal mining.

13. That if any order is passed by the District Officer, Mahoba holding that the deponent is guilty for doing illegal mining operation then the deponent have the legal remedy to challenge it before the Divisional Commissioner, Chitrakook Dham Division, Banda under the provisions of Rule 79 of the Uttar Pradesh Minor Mineral (Concession) Rules 2021 and thereafter Revision Petition before the State Government under the provisions of Rule 80 of the said Rules, 2021.

14. That the deponent is also think it proper to mentioned the judgment and order dated 09-05-2022 passed by the Hon'ble Supreme Court in Civil Appeal No. 3795 of 2022, M/S Haryana Mining Company Vs. state of Haryana & Ors. And of such judgment and order

Mentioned as under :-

"12 We have already referred to the demarcation



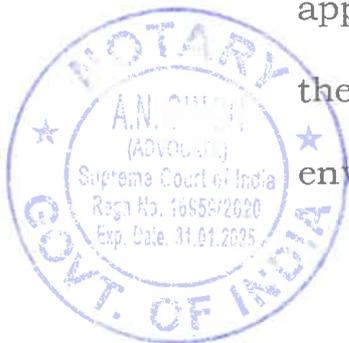
report dated 17.12.2018 and the report of the Mining Officer dated 04.02.2019, on the basis of which no conclusion can be reached about the Appellant indulging in any illegal mining operations. The Termination Order and the Appellate Order are arbitrary and suffer from the vice of unreasonableness. Relevant material has not been taken into consideration before the Termination Order was passed. There is no mention of the DFO's report dated 15.10.2019, which considered the reports relied on by the Director General, Mines and Geology and absolved the Appellant of indulging in any illegal mining activity on the ground that no evidence was found against the Appellant. There is no other material against the Appellant in support of the allegation that the Appellant was engaged in illegal mining in the area adjacent to the leased site. In our view, the High Court committed an error in dismissing the writ petition without examining as to whether there was an iota of evidence to justify the Termination Order. We are



aware that constitutional courts, in exercise of their power of judicial review, would not examine sufficiency of evidence. At the same time, it is well-settled that interference is warranted if it is found that the weight of the evidence was opposed to the conclusion recorded or there was no evidence at all, rendering the conclusion ex-facie erroneous or perverse1 .”

15. That in view of above observation of the Hon'ble Supreme Court, it is well seteled principal of law that unless until, it is not proved that the deponent has done any illegal mining with the support of credible evidence, till then there are no occasion before this Hon'ble Tribunal to take the view that the deponent was indulged in illegal mining operation on the near by area it is also relevant to mention here that the leased area is not mountain and is similar the surface of land.

16. That in view of above it is evident that this original application is fit to be dismissed with the observations that there are no any violation of the terms and conditions of the environmental clearance and there are no harm to the



agriculture field of applicant and may further direct to the District Officer, Mahoba to decide the allegation regarding illegal mining after considering the explanation dated 04.11.2022 submitted by the deponent, in the interest of justice.

New Delhi *[Signature]*
I Identify the deponent who has Signed/Put T.I. in my presence

DEPONENT

Dated November, 2022

[Signature]

VERIFICATION

I, the above named deponent do hereby verify that the contents of paragraphs no. 1 to 16 of this counter affidavit are true to the best of my knowledge, and I have not suppressed any material fact. 23 NOV 2022

Verified at New Delhi on this day of November 2022

[Signature]
DEPONENT

IDENTIFICATION



[Signature]
A.N. Singh, Adv.
Notary Public
Govt. of India, Delhi
Mob.: 9718139591, 7982539115

23 NOV 2022

Certified that the above Named Deponent identify by Shri/Smt. *[Signature]* *[Signature]*
Solely affirmed before me at Delhi
S. No. *[Signature]*
The contents of the affidavit which have been read & explained to me are true and correct
Notary

23 NOV 2022

VAKALATNAMA

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IN THE COURT OF Before the Honble National Green Tribunal Bimetal Bench Delhi

Suit / Appeal No. O.A No - 560 of 2022 of 2022

KAMLA PAT Plt./Appl./Petitioner/Complainant

VERSUS

U.P state pollution control Board for Defdt./Resf./Accuses Defendent

KNOW ALL to whom these present shall come that I/We Dinesh chand Gupta R/o Rajender shagarkabri Mahua
U.P Set Bhagirath Gupta.

the above named do hereby appoint
srimanoj Kumar E.No - U.P 1502/78 COP No 193761

(herein after called the advocate/s) to be my/our Advocate in the above-noted case authorised him :-

To act, appear and plead in the above-noted case in this Court or in any other Court in which the same may be tried or heard and also in the appellate Court including High Court subject to payment of fees separately for each court by me/us.

To sign, file, verify and present pleadings, appeals cross-objections or petitions for execution review, revision, withdrawal, compromise or other petitions or affidavits or other documents as may be deemed necessary or proper for the prosecution of the said case in all its stages.

To file and take back documents to admit and/or deny the documents of opposite party.

To withdraw or compromise the said case or submit to arbitration any differences or disputes that may arise touching or in any manner relating to the said cause.

To take execution proceedings.

The deposit, draw and receive money, cheques, cash and grant receipts thereof and to do all other acts and things which may be necessary to be done for the progress and in the course of the prosecution of the said case.

To appoint and instruct any other Legal Practitioner, authorising him to exercise the power and authority hereby conferred upon the Advocate whenever he may think it to do so and to sign the Power of Attorney on our behalf.

And I/We the undersigned do hereby agree to ratify and confirm all acts done by the Advocate or his substitute in the matter as my/our own acts, as if done by the/us to indents and purposes.

And I/we undertake that I/we or my/our duly authorised agent would appear in the Court on all hearings and will inform the Advocate for appearance when the case is called.

And I/we undersigned do hereby agree not to hold the advocate or his substitute responsible for the result of the said case. The adjournment costs whenever ordered by the Court shall be of the Advocate which he shall receive and retain himself.

And I/we the undersigned do hereby agree that in the event of the whole or part of the fee agreed by me/us to be paid to the advocate remaining unpaid he shall be entitled to withdraw from the prosecution of the said case until the same is paid up. The fee settled is only for the above case and above Court. I/we hereby agree that once the fee is paid, I/we will not be entitled for the refund of the same in any case whatsoever. If the case lasts for more than three years, the advocate shall be entitled for additional fee equivalent to half of the agreed fee for every addition three years or part thereof.

IN WITNESS WHEREOF I/we do hereunto set my/our hand to these presents the contents of which have been understood by me/us on this day of 202

Accepted subject to the terms of fees.

Mannu
E.No - U.P. 1502/78 COP No 193761

Advocate

Client

[Signature]

Client

E-mail - manojkumar.dgop@gmail.com

OA No. 560 of 2022; Kamlapat Vs. U.P. State Pollution Control Board & Ors.

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From: anand bhadola (anandbhadola1979@yahoo.com)

To: seemairsp7@gmail.com

Date: Thursday, November 24, 2022 at 03:06 PM GMT+5:30

Sir,

Please find the attached PDF copy Counter Affidavit on behalf of Respondent No. 5 & 6.

(With Regards)

(MANOJ KUMAR)
Advocate



O.A No. 560 of 2022; Kamlapat Vs. UPSPCB.pdf
849.5kB



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