

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE
ORIGINAL APPLICATION NO. 108 OF 2022**

IN THE MATTER BETWEEN

Nandakumar Waman Pawar & Anr.

... Original Applicants

Versus

Maharashtra Industrial Development Corporation

& Ors.

... Respondents

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Zaman Ali,

Advocate for the Applicant

30.06.2023

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**COMMON AFFIDAVIT-IN-REJOINDER ON BEHALF OF THE
APPLICANT**

I, Nandakumar Waman Pawar, aged 62 years, Indian inhabitant, Applicant No. 1 and residing at Nandakumar Pawar House, Opp. Jagannath Darshan, MD Keni Rd, Nahur (E), Mumbai - 400 042 and also at Govind Kalan, Salkunj Banglow, Sagarli Road, Near Parvati Mahadev Mandir, Azad Pada, Kalyan, Thane – 421 203, do hereby solemnly state that I am filing this common affidavit-in-rejoinder as a response to the affidavits-in-reply filed by all of the 5 Respondents.

1. At the outset, I deny each and every statements, allegations and averments made in each of the respective replies of the Respondents unless stated otherwise and that nothing should be deemed to have been admitted by me for lack of specific denial unless the same is specifically admitted by me herein.
2. I say that I shall now deal with each of the Affidavits-in-reply individually.
3. **I. Affidavit-in-Reply dated 21.03.2023 filed by MIDC (Respondent No. 1)**
I say that Respondent No. 1- MIDC has raised certain preliminary objections in its affidavit which are identical to the objections raised by Respondent No.



5 in its IA No. 38 of 2023 and the same are responded hereinafter in a concise manner:

4. I say that Para 1 of the Reply is formal in nature and does not warrant an immediate response.
5. With respect to Para 2 of the Reply, I say that MIDC itself states therein that it has been established for the purpose of setting up industrial areas in Maharashtra in an 'orderly' and a 'planned' manner. However, the facts presented before this Hon'ble Court in the instant proceedings clearly demonstrate that the situation in Dombivali Industrial Areas – Phase I & II is contrary to a planned and an orderly development as atleast more than 200 industries are found to have carried out serious encroachments into open spaces by erecting unregulated, unsystematic and dangerous boiler plants, extended chemical processing units, cooling towers, scrubbing structures, hazardous units, chemical and acid tanks, etc. that are amenable to causing grave industrial accidents and thereby has a potential to seriously affect the surrounding environment adversely.
6. I say that Paras 3 & 4 of the Reply deal with Development Control Regulations (DCR) of MIDC and its provisions concerning open spaces, regularization and acquisition powers, which the Applicant does not dispute.
7. With respect to Paras 5 & 6 of the Reply, I deny the contents thereof as incorrect, misleading and false and the same is responded to and dealt with in detail in the subsequent paras.
8. With respect to Para 7(a)(i) of the Reply, I deny the contents therein as false and incorrect. I say that subsequent to the filing of the instant OA, the Applicants have been informed by R-5 that the order dated 25.06.2021 has been stayed by the Apex Court which the Applicant was not made aware of by any Respondent authorities, despite having sought specific information



relating to O.A No. 134 of 2021 through RTIs before filing of the instant OA and made various representations and in light of the same, the applicant, being the *Dominus Litis*, shall not be pressing prayer clause (iii) at this stage. I say that the primary prayer clauses (i) and (ii) shall continue to lie in light of the existing data and documents pertaining to illegal actions of members of R-5 and continuing and active negligence of officers of Respondent authorities in not taking any action despite the glaring illegalities.

9. I say that it is most unfortunate and a case of serious dereliction of duties on the part of Respondent authorities to turn a blind eye to the glaring illegalities in Dombivali Industrial Area – Phase I & Phase II and raise frivolous objections to the instant judicial proceedings that are suspiciously identical to the plea of Respondent No. 5; an association of private industries of the industrial area.
10. With respect to Para 7(a)(ii) of the Reply, I deny the contents thereof as misleading and an attempt to misguide this Hon'ble Tribunal. Apart from the fact that not even an attempt is made by R-1 to substantiate its contention by attaching a copy of the Writ Petition No. 8372 of 2017 to demonstrate similarities or dissimilarities between the Writ and the present proceedings, I say that notwithstanding the fact that the earlier Writ Petition was withdrawn with liberty to file an appropriate Public Interest Litigation, the cause of action in the Writ Petition before the High Court was entirely in the nature of seeking closure of those industries that have not received any "completion certificate" under the applicable developmental laws (*at Pg. 436*) whereas the instant proceedings are entirely on a different footing whereby what is sought here is the demolition/removal of illegal industrial encroachments that are apprehended to cause discharge of environmental pollution and further industrial accidents, which is required to be immediately prevented on the basis of identification of large-scale and serious industrial encroachment by the planning authority (Respondent No. 1 – MIDC).

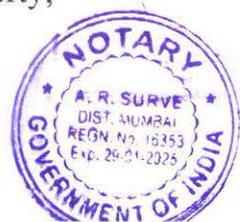


11. With respect to the frivolous contention that Writ Petition No. 8372 of 2017 is filed on the same cause of action as the instant OA, I say that a perusal of the prayer clauses of the Writ Petition at Pg. 445 clearly show that the following was sought by the Applicant before the High Court:

- (a) shut-down of all industries for those industries that are operating “*without any completion certificate*”
- (b) sought an enquiry report on a “*specific*” incident of boiler blast that took place at an industrial unit called Probace Enterprises, which killed 12 people;
- (c) sought registration of FIRs on all “*non-compliant units that do not have completion certificates*”

12. The above clearly indicates the cause of action has arisen out of a single incident of boiler blast in May, 2016 alone at the industrial unit known as Probace Industries, which killed 12 people for which it was alleged that there are no “*completion certificates*” have been issued. I say that that instant OA seeks “*demolition of illegally occupied and unlawful industrial structures that have been constructed over open marginal spaces with illegal additions/extensions in their industrial premises*” on the basis of notices of massive encroachment issued by MIDC in the Dombivali Industrial Area wherein MIDC had detected illegal boilers that store toxic/hazardous gases and unauthorized processing of chemicals and sheds in marginal open spaces and other areas on the plot. That such encroachments have already led to various industrial accidents in the past and have a serious potential to cause even further accidents, which in itself is a violation of Sections 8 & 9 of Environment Protection Act, 1986 (“**EPA, 1986**”), Section 21 of the Air Act, 1981 and Section 25 of The Water Act, 1974.

13. I say that the present cause of action has arisen under the polluter pays principle on account of continuing industrial encroachment in the Dombivali Industrial Area, which has the potential to afflict huge loss of life, property,



public health and the air and water environment and in light of the settled legal position that this Hon'ble Tribunal is a *sui generis* body that has the power to take preventative and remedial steps to avoid any further industrial accidents, especially when serious mass violations have been reported by a governmental body. That this Hon'ble Tribunal has been held to be a body to safeguard rights under Article 21 of the Constitution of India having encompassing jurisdiction to handle multi-dimensional environmental issues.

14. I say and reiterate that the cause of action in the instant application has arose on the basis of industrial illegalities and industrial encroachments that have been causing widescale industrial accidents and has further led to a rise in such accidents continuously in the Dombivali Industrial Area, atleast upto 03.05.2022 as per the list provided by the Fire and Emergency services of Kalyan-Dombivali Municipal Corporation. I say that by no stretch of imagination can the two proceedings be equated in light of the above and therefore, there is no suppression of any material facts whatsoever and that the HC proceedings, which stand disposed as withdrawn, have no relevance whatsoever to the instant application.

15. With respect to Para 7(b) of the Reply, I deny the contents thereof as incorrect and false and I say that it is a settled position in law that whenever a wrong or offence is committed and ingredients are satisfied and repeated, it evidently would be a case of 'continuing wrong or offence' and of 'recurring cause of action'. Just as using the factory without registration is an offence every time the premises were used as a factory, if the boilers are being used without any consents or if there is an encroachment in the open marginal spaces under the DCR by setting up sheds that store hazardous chemicals or expand its chemical units without any permission from MPCB and MIDC, then it amounts to an offence every time such illegal boilers or extensions are used.



16. I further say that in the facts of the present case, the illegal industrial encroachment by construction of illegal boilers, storages and sheds still stands, which has been extensively been documented and corroborated by MIDC since 2017 subsequent to which industrial accidents have continued to occur till as late as May, 2022 for which R-1 and R-5 has no answer at all. I say that the wrongs committed by R-5's industries are continuing till date with absolutely no action taken whatsoever by the concerned officers of R-1 and as per the settled position in law, a fresh period of limitation begins to run at every moment of time during which the breach or the tort, as the case may be, continues. Therefore, continuing the breach, act or wrong would culminate into the 'continuing cause of action' or 'recurring cause of action'. In light of the above, I say that the present OA is within the limitation period under Section 14 of the NGT Act, 2010.
17. With respect to Paras 7(c) of the Reply, I say that this Hon'ble Tribunal has jurisdiction to entertain all such issues that raises substantial questions of environment, even if such environmental issues overlap or are intertwined with laws of development, planning and governance. I say that Environment Protection Act, 1986 ("**EPA, 1986**") is an umbrella legislation that defines the words "environment" under Section 2(a), "environmental pollutant" under Section 2(b), "environmental pollution" under Section 2(c), "handling" under Section 2(d), "hazardous substances" under Section 2(e) and "occupier" under Section 2(f) in a broad manner and that the true spirit in applicability of Sections 3, 5, 8, 9, 10 and 15 can be ensured when environmental consequences are relatable to violation or non-compliance of other development laws, as long as the consequences of any such violation affect the overall "environment" of an area.
18. With respect to Paras 7(d) & 7(e) of the Reply, I adopt the contents as stated in the foregoing paras to avoid repetition.



19. With respect to Para 7(f) of the Reply, I deny the contents thereof as unsubstantiated and vague. I say that the Applicants have clearly provided that they live in the Dombivali region and are directly affected by the lingering dangers of more industrial accidents that are apprehended to occur in light of mass violations in the nature of illegal encroachments and setting up of unregulated chemical boilers, sheds, factories and other dangerous infrastructure which are functioning without any statutory oversight due to lack of consent to operate and establish. I say that Para 7(f) does not deserve to be responded in light of the fact that the allegations therein are utterly vague and incorrect.

20. With respect to Paras 8 to 10, I deny the contents thereof as devoid of any scientific rationality, environmental logic and legally incorrect as regards the applicability of environmental legislations such as the EPA, Water Act and the Air Act. I say that it is shocking that a governmental agency that is required to set up industries in a sustainable manner has no understanding of how various industrial accidents with disastrous environmental consequences are outcomes of unregulated, unplanned and unsystematic industrial activities. I say that MIDC is the planning authority for all designated/acquired lands for industrial areas in the State and once such lands are vested directly with the MIDC, it leases such industrial lands/plots to various industries or group of industries for further disposal. Therefore, by virtue of being a Special Planning Authority under the Maharashtra Regional and Town Planning Act, 1996, MIDC has all the powers to remove unauthorised constructions over its lands. To say the least, it is shocking that MIDC, as a Planning Authority, has stated that it has no powers whatsoever to remove/demolish any industrial encroachment. Further, I say that the unauthorised and unregulated encroachment by industries is not merely a civil dispute as the consequences of continuing illegalities in industrial encroachment can lead to extremely serious environmental disasters.

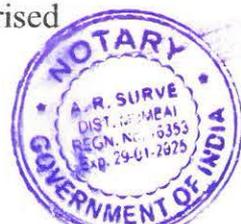


21. With respect to Paras 11 to 13 of the Reply, I deny the contents thereof as vague, incorrect and false. I say that the stand of MIDC that there is no real, eminent or potent threat to the environment on account of alleged encroachment is extremely dangerous demonstrates the casual manner in which an important governmental authority is functioning today. I say that it is clear from the above that R-1 is simply waiting for few more disasters to occur in Dombivali before taking any affirmative steps whatsoever in spite of its own survey that has been undertaken. In light of such reckless submissions made by an officer of MIDC, I pray that the deponent herein, Mr. Rajesh Muley – Executive Engineer (MIDC, Dombivali Division) be issued summons to remain present before this Hon'ble Tribunal to enquire as to the manner in which encroachments by industries are being dealt with in Dombivali Industrial Area – Phase I and II.

22. I say that it is pertinent to note that the website of MIDC – R1 itself states that it has an Environment Department, which ensures the following:

- (i) Circulating guidelines covering environmental protection, CETP, CHWTSDF, ST, Environmental clearance for new MIDC, CRZ clearance for treated industrial effluent disposal pipeline, Solid Waste Disposal *enforcing environmental legislation; monitoring environmental quality in MID industrial areas.*
- (ii) *Advising on the environmental implications of town planning and new policies; handling pollution complaints and incidents;* and raising awareness and support.
- (iii) Scrutiny of Priority Land application from environmental perspectives.

Annexed and marked hereto as **ANNEXURE R-1** is a copy of the screenshot of MIDC's website dated 29.06.2023. Therefore, R-1's contention to the effect that (a) MIDC has no role whatsoever to consider removal of unauthorised construction under any of its powers and (b) such unauthorised



construction pose no environmental hazards directly militate against its own Environment department's objectives which define the powers of MIDC to include 'enforcement of environmental legislations, monitoring of environmental quality, handling pollution complaints and incidents and advising on environmental implications of town planning and new policies.' In fact, this resonates and follows the true spirit of the preamble of MID Act, 1962, which states that the object for the establishment of the MIDC is to secure the orderly establishment of industries within the designated industrial area and the provision of amenities and common facilities. It is submitted that this would include the provision of facilities for the establishment of well-regulated industries from the standpoint of complying with mandatory environment pre-requisites. Therefore, MIDC is the authority responsible for the provision and upkeep of industrial areas alongwith Respondent No. 2 herein - MPCB.

23. With respect to Paras 14 and 15 of the Reply, I deny the contents thereof as incorrect and false and I say that it is shocking that MIDC equates illegal establishments and legal establishments of Dombivali Industrial Area at the same pedestal without acknowledging the fact that illegal establishments could clearly compromise the quality of substances used for constructing dangerous illegal units, machineries, boilers, sheds and industrial extensions as the same are unregulated and constructed without having undergone the process of inspection and have been established without the Consent to Establish & Operate.
24. With respect to Para 16 of the Reply, I deny the contents thereof as factually incorrect as the issue raised in the present proceedings is not one of erection of 'irregular' boiler plants but one of illegal construction *inter alia* of boiler plants, which has remained completely out of the purview of any regulation till date.



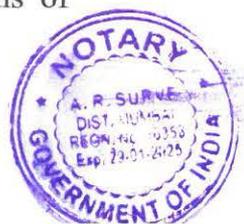
25. With respect to Paras 17 to 18 of the Reply, I deny the contents thereof as incorrect in law. While adopting the contents of the foregoing paras, I further say that Section 44(1) of MID Act is applicable over all illegal alterations that have been made by any person in an industrial area and therefore, once it is factually clear from the survey undertaken by MIDC that illegal alterations have, in fact, been made by industries (which consequently is apprehended to cause environmental pollution in any case), MIDC is required in law to invoke its extant provisions under MID Act read with Section 53 of Maharashtra Regional and Town Planning Act, 1966. I say that such powers have already been invoked by R-1, which can demonstrably be seen at Annexure A-12 of the OA and in spite of the same, it is absolutely extraordinary, in the most contradictory sense, that MIDC now seeks to state that it has no powers to de-erect or demolish any such unauthorised construction, which eventually has the potential to cause grave and serious environmental accidents and release large amounts of environmental pollutants.

26. I say that contents of Para 19 of the Reply are denied as wholly unsubstantiated and vague and R-1 ought to demonstrate with reasons and corroborating documents for its own doubts.

27. With respect to Paras 20 to 22 of the Reply, I deny the same for the reasons already stated hereinabove and to avoid repetition.

II. Affidavit-in-Reply dated 25.01,2023 filed by MPCB (Respondent No. 2)

28. I say that the entire affidavit of MPCB (R-2) only pertains to the order dated 25.06.2021 in O.A. No. 134 of 2021 having been stayed by the Apex Court without paying any heed to the protective role that the Authority has under the Water Act and the Air Act, which is appalling to say the least. I say and reiterate that the primary prayer clauses (i) and (ii) shall continue to lie in light of the existing data and documents pertaining to illegal actions of



members of R-5 and continuing and active negligence of officers of R-1 & R-2 in not taking any action despite the glaring illegalities. I say that the officers of R-1 & R-2 ought to be personally held liable and costs may be imposed on such officers for clear dereliction of duties.

29. I say that it is most surprising that despite the zonal officers of R-2 having been delegated with powers to take appropriate steps under Section 24 of the Air Act, 1981 read with the EPA, 1986, R-2 has completely turned a blind eye towards its responsibilities. In light of the same, I say that the deponent of R-2 be made liable for the casual manner in which it has performed its duties as not even a single word on affirmative action to prevent any future industrial disasters have been placed on record.

III. Affidavit-in-Reply dated 17.01.2023 filed by Joint Director, Industrial Safety and Health (Respondent No. 3) & Affidavit-in-Reply dated 31.01.2023 filed by Regional Director, CPCB (Respondent No. 4)

30. I say that once again, the affidavits of R-3 & R-4 follow the same arguments of R-2 concerning stay of the NGT order dated 25.06.2021 in O.A. No. 134 of 2021, which, as explained above, has a limited role in the cause of action espoused by the Applicants herein. I say that I deny the contents of the two affidavits *in toto* and entirely adopt all what is stated in the aforesaid paragraphs as a response herein, to avoid prolixity and repetition.

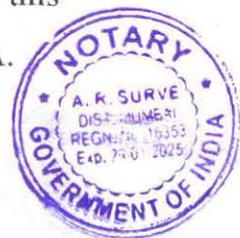
IV. Affidavit-in-Reply dated 08.03.2023 filed by Kalyan Ambernath Manufacturers Association (Respondent No. 5)

31. At the outset, I say that R-5 has filed an IA No. 38 of 2023 raising certain preliminary objections. I say that I have filed a detailed affidavit dated 21.03.2023 providing a response to each of the said contentions. Therefore, I



say that the said affidavit dated 21.03.2023 be treated as a part and parcel of the instant affidavit.

32. With respect to Paras 1 to 5 of the affidavit, I say that R-5 has raised identical contentions on this Hon'ble Tribunal's jurisdiction and non-joinder of parties as stated earlier and therefore, I deny the same *in toto* and reiterate what is stated in the aforesaid paras.
33. With respect to Paras 6 to 17 of the affidavit, I say that R-5 admits to being a registered association representing industries in the Dombivali Industrial Area and is therefore fit to respond to the contentions put forth by the Applicant towards its industrial members. I say that R-5 has attempted to show the positive steps that the Association has taken over a period of time, which may be commendable. However, that does not give a license to its members to start erecting unauthorised and environmentally hazardous structures that are dangerous and apprehended to cause environmental disasters.
34. With respect to Paras 18 to 24 of the affidavit, I say that the contentions therein are denied as extremely vague as no sincere attempt has been made by R-5 in its affidavit to show which industries do not form a part of its association. As regards the contention on jurisdiction vis-à-vis implementation of DCR and Boilers Act, I adopt the contents stated in the aforesaid paras and in the affidavit dated 21.03.2023.
35. With respect to Paras 25 to 29 of the affidavit, I deny the contents therein as false, misleading and vague as R-5 seeks to now question the authenticity of the documents of MIDC and Fire Department without providing any contrary corroborating documents. I say that in environment matters, the burden of proof is on the Respondents to show that its activity is environmentally benign after sufficient documents are placed by the Applicant. I say that this is a fit case to impose heavy costs on R-5 while allowing the present OA.



36. With respect to Paras 30 to 35 of the affidavit, I adopt the contents in the aforesaid paras and the affidavit dated 21.03.2023 as response to the said paras, to avoid prolixity and repetition.

37. In light of what is stated hereinabove, I say that the instant deserves to be allowed with heavy costs on the officers of Respondent authorities and R-5 and that prayer clauses (i) and (ii) be allowed to protect the environmental sanctity of Dombivali Industrial Area – Phase I and Phase II and to avoid any future industrial accidents.

Solemnly affirmed at Mumbai)

Dated this 30th Day of June, 2023)

Advocate for the Applicant

Applicant No. 1



Before Me

BEFORE ME

A. R. SURVE
ADVOCATE & NOTARY
GOVT. OF INDIA
REG. No. 16353

Seen Original
PAN / Aadhar / Election
Card / Driving license / I-
Card - Passport / POA
Bearing No. 263472932766

Dated: 30 JUN 2023

For Verification _____

NOTED & REGISTERED
Page No. 13 / 4377
Date 30 JUN 2023



MAHARASHTRA INDUSTRIAL DEVELOPMENT CORPORATION



Government of Maharashtra



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Accounts & Finance (A&F) Department	+
Engineering & Maintenance (E&M) Department	+
Environment Department	-



Environment Department of MIDC is responsible for following activities

Formulating guidelines covering environmental protection, CETP, CHWT/SDF, STP, Environmental clearance for new MIDC, CRZ clearance for treated industrial effluent disposal pipeline, Solid Waste Disposal enforcing environmental legislation; monitoring environmental quality in MIDC industrial areas.

Advising on the environmental implications of town planning and new policies; handling pollution complaints and incidents; and raising awareness and support.

Reviewing the routine of Priority Land application from environmental perspective

True COPY
[Signature]

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**COMMON AFFIDAVIT IN REJOINDER
BY APPLICANT**

Dated this 30th Day of June, 2023

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Advocate for the Applicant

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