

BEFORE THE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH, PUNE

ORIGINAL APPLICATION NO.76 OF 2025 (WZ)

IN THE MATTER OF:

Kalpesh Chandrakant Yadav

...Applicant

Versus

Union of India & Ors.

...Respondent(s)

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PLACE: Nagpur, Maharashtra

DATE: 04.02.2025

THROUGH

Shri Pushkal Mishra

Advocate, MoEF&CC

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**COUNTER AFFIDAVIT ON BEHALF OF THE MINISTRY OF
ENVIRONMENT, FOREST AND CLIMATE CHANGE.**

MOST RESPECTFULLY SHOWETH:

I, Dr. Purushottam Sakhare, Shri Ramdas Sakhare, aged about 57 years, working as Scientist 'E' at the Ministry of Environment, Forest & Climate Change (MoEF&CC), Regional Office (WCZ), Ground Floor, East Wing, New Secretariat Building, Civil Lines, Nagpur- 440001, do hereby solemnly affirm and state as under :-

1. That I am authorized to swear the present affidavit on behalf of the Ministry of Environment, Forest & Climate Change (MoEF&CC).



2. That the present Original Application has been filed seeking issuance of directions against Respondent No.10, M/s Grow India Realcon LLP, the Project Proponent, for demolition of the alleged illegal structures raised at Survey No. 282/2, admeasuring 8080 sq. mtrs., situated at Village Maan, Taluka Mulshi, District Pune, on the ground that the said construction has been carried out in violation of Condition No.35 of the Commencement Certificate dated 28.02.2024.
3. That, the applicant has further stated that under the earlier approved layout, a total built-up area of 17,236.69 sq. mtrs. was permitted without requiring a No Objection Certificate from the Environment Department. However, pursuant to the revised proposal submitted by applying the Transit-Oriented Development Regulations, the total built-up area has increased to 25,738.08 sq. mtrs., thereby making it mandatory to obtain an Environmental NOC prior to commencement of construction beyond the earlier approved area. The applicant alleges that construction has been undertaken without obtaining the mandatory Environmental NOC and is therefore liable to be treated as unauthorized.
4. That the applicant has also stated that the construction activities undertaken by Respondent No.10 have resulted in environmental



damage and has accordingly sought directions for imposition of Environmental Damage Compensation. It is further contended that the Consent to Establish dated 05.12.2024 granted by Respondent Nos.5 and 6, Maharashtra Pollution Control Board, is liable to be revoked on the ground that the same was obtained on the basis of false and misleading information and in non-compliance with its conditions, particularly Conditions Nos.14 and 15, which mandate obtaining Environmental Clearance prior to commencement of construction and submission of an affidavit regarding compliance with Consent to Establish and Environmental Clearance requirements.

Applicable provisions for grant of Environmental Clearance

5. It is submitted that the answering respondent has issued Environmental Impact Assessment (EIA) Notification number S.O. 1533 E dated 14th September, 2006. The EIA Notification, 2006 as amended regulates developmental projects in respect of construction of new projects/activities/expansion or modernization of existing projects in different parts of the country for grant of prior Environmental Clearance under Section 3(3) of the Environment (Protection) Act, 1986, as per the procedure specified therein.



6. That, it is respectfully submitted that the EIA Notification, 2006 as amended covers 39 projects/activities in its Schedule which inter-alia includes different types of infrastructure projects viz. Airports, Ports, Highways, and Building & Construction Projects etc. as specified and classified in the schedule of the said notification. All such projects/activities shall require prior Environmental Clearance from the concerned regulatory authority, e.g., MoEF&CC in the Central Government for matters falling under Category 'A' in the Schedule and the State Environment Impact Assessment Authority (SEIAA) at State level for matters falling under Category 'B' in the said Schedule, before starting any construction work. Broadly, following categories projects/activities are covered under the ambit of EIA Notification, 2006 as amended:

- a. All new projects or activities listed in the Schedule to this notification;
- b. Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;



- c. Any change in product - mix in an existing manufacturing unit included in Schedule beyond the specified range.
7. That under the provisions of the EIA Notification, 2006 as amended, Environment Clearance for Building and Construction Projects & Township and Area Development Projects are covered under entry 8 (a) & (b) of the Schedule to the EIA Notification, 2006. The entry 8(a) and 8(b) of the Schedule of EIA Notification 2006 provides as follows;
- “8(a): Building and Construction projects - >20000 sq. m and <150000 sq. m of built-up area require EC.
- 8(b): Townships and Area Development projects - Covering an area >50 ha. And or built up area >150000 sq. m- require EC.”
8. That the aforementioned entries under item 8(a) and 8(b) are qualified as category ‘B’ projects under the EIA Notification, 2006 and requires appraisal by the State Level Expert Appraisal Committees (SEACs) and approved by the State Level Environment Impact Assessment Authorities (SEIAAs). Further, that as per the EIA Notification, 2006, in the absence of a duly constituted SEIAA/SEAC, a category ‘B’ project shall be considered at the Central Level as category ‘B’ project.” It is most respectfully submitted that the requirement of taking



Environment Clearance for any building construction project is governed by the aforesaid provisions, stated in paras above.

9. It is further submitted that the Respondent No.1 has issued O.M. dated 29.03.2022 setting out those activities that can be undertaken by the Project Proponent prior to the grant of Environmental Clearance subject to certain conditions set out therein. These activities are:
- i. Fencing of the project site by boundary wall using civil construction, barbed wire or precast/prefabricated components
 - ii. Construction of temporary sheds using pre-fabricated/modular structure, for site office/guards and storing material and machinery,
 - iii. Provision of temporary electricity and water supply for site officer/guards only

A true copy of the OM dated 29.03.2022 is marked and annexed herein as **ANNEXURE- R1/1**.

10. It is respectfully submitted that the project in question, as described in the Appeal, pertains to a building construction/township and area development activity, which is covered under Item 8(a) and 8(b) of the Schedule to the Environmental Impact Assessment Notification, 2006.



Such projects are categorised as Category 'B' projects under the EIA Notification, 2006.

11. It is further submitted that appraisal and grant of Environmental Clearance in respect of Category 'B' projects fall within the jurisdiction of the State Level Expert Appraisal Committee (SEAC) and the State Environment Impact Assessment Authority (SEIAA) concerned, in accordance with the procedure prescribed under the EIA Notification, 2006. The Ministry of Environment, Forest and Climate Change does not appraise or grant Environmental Clearance for Category 'B' projects where a duly constituted SEIAA exists.

12. It is submitted that in view of the foregoing facts and submissions, this Hon'ble Tribunal may be pleased to take the present affidavit on record and pass such other order(s) as may be deemed fit in the interest of justice, which the answering respondent shall duly comply with.

13. The answering Respondent craves liberty to file additional information, if any, till *pendente lite*.



DEPONENT
 (Dr. F. R. Sakhere)
 वैज्ञानिक 'ई' / Scientist 'E'
 पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय
 Ministry of Environment, Forest & Climate Change
 क्षेत्रीय कार्यालय, नागपुर-४४०००१
 Regional Office, Nagpur-440001



VERIFICATION

Verified at Nagpur on this 04th day of February, 2026 that the contents of this affidavit based on official record(s) maintained and information available in the office are true and correct, no part of it is false and nothing has been concealed there from.

[Handwritten Signature]
Sakhare

DEPONENT

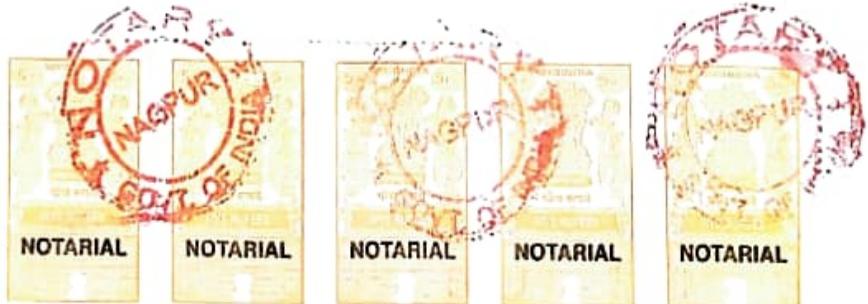
(डॉ. पी. आर. साखरे)
(Dr. P. R. Sakhare)
शैक्षणिक 'ई' / Scientist 'E'
पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय
Ministry / Environment, Forest & Climate Change
राज्य कार्यालय, नागपुर - ४४०००१
Regional Office, Nagpur-440001

NOTARIAL RECORD
REGISTRY No. 3465
DATE 4/2/2026



APPEAR BEFORE ME ON THIS 4th DAY OF Feb 2026 AT NAGPUR BY SHRI / SMT/KU. Dr. Purushottam R/O NAGPUR WHO HAS BEEN IDENTIFIED BY SHR / SMT. [Signature] ADVOCATE, NAGPUR.

Mrs. S. R. MATTA
ADVOCATE & NOTARY
918-B, Clarke Town, Nagpur-14



F. No. IA3-22/10/2022-IA.III [E 177258]

Government of India
Ministry of Environment, Forest and Climate Change
(Impact Assessment Division)

Indira Paryavaran Bhawan
Aliganj, Jorbagh Road
New Delhi-110 003

Dated: 29th March, 2022

OFFICE MEMORANDUM

Subject: Clarification regarding activities which can be undertaken for securing the land prior to grant of Environmental Clearance-regarding.

As per the provisions of Environment Impact Assessment (EIA) Notification 2006, the project or activities [New/Expansion/ Modernization/ change of product-mix or raw material mix] listed in the Schedule to the said Notification would require prior Environment Clearance (EC) from the concerned Competent Authority before undertaking any construction work or preparation of land by the project proponent, except for securing the land.

2. In this regard, Office Memorandum No. J-11011/41/2006-IA.II(I) dated 19/08/2010 clarified that while securing the land, no activity relating to any project covered under EIA Notification, 2006 including civil construction can be undertaken at the site without prior EC except fencing of the site to protect it from getting encroached and construction of temporary shed(s) for the guard(s).

3. Over a period of time, various options other than conventional barbed wire and wall fencing, have come into existence, viz., use of pre-fabricated structures, pre-cast compound wall etc. Further, in order to secure the land, the project proponent may need to have water and electricity connection. In view of the same, it has been decided by the Competent Authority in the Ministry to explicitly clarify that following activities can be undertaken by the project proponent for securing the land.

- i. Fencing of the project site by boundary wall using civil construction, barbed wire or precast/ prefabricated components.
 - ii. Construction of temporary sheds using pre-fabricated / modular structure, for site office/guards and storing material and machinery.
 - iii. Provision of temporary electricity and water supply for site office/guards only.
4. The above activities shall be undertaken subject to the following:

- i. The land should be in the legal possession of the project proponent and all statutory approvals in respect of the project site should have been obtained.
 - ii. In case of involvement of any forest land, no activity shall be initiated at the site till the Stage II Forest Clearance is obtained under the relevant provisions of Forest (Conservation) Act, 1980. In case of applicability of Wildlife Clearance, necessary permission from Standing Committee for National Board for Wildlife (SCNBWL) shall be obtained under the provisions of Wildlife Protection Act, 1972.
 - iii. In case of felling of trees if any, requisite permission from the Forest Department/Statutory Authorities of the concerned State Government shall be obtained.
 - iv. The investment made by the Project Proponent on the above, in anticipation of the applicable clearances under the relevant provisions of the Acts/Rules, shall be entirely at the cost and risk of the proponent.
5. However, the above dispensation would not entitle the project proponent to claim ***fait accompli*** with regard to grant of EC or any other applicable permission from any concerned statutory authority and further, the works of the aforesaid nature shall have no bearing on appraisal of the project for grant of EC which shall follow the due process and procedure as laid down in EIA Notification 2006, as amended.
6. This O.M. is being issued in supersession of the earlier O.M. dated 19/08/2010 and with the approval of the Competent Authority.

(A.K. Agrawal)
Director

To

1. Chairman, Central Pollution Control Board (CPCB)
2. Chairman of all the Expert Appraisal Committees
3. Chairperson/Member Secretaries of all the SEIAAs/SEACs
4. Chairpersons/Member Secretaries of all SPCBs/UTPCCs
5. All the Officers of I.A. Division

Copy for information to:

1. PS to Hon'ble Minister for Environment, Forest and Climate Change
2. PS to Hon'ble MoS (EF&CC)
3. PPS to Secretary (EF&CC)
4. PPS to DG (FC) & SS
5. PPS to AS(TK) / AS (NPG)/ AS(RS)
6. PPS to JS (SKB)
7. Website, MoEF&CC/Guard file.