

332

BEFORE THE NATIONAL GREEN TRIBUNAL AT PRINCIPAL BENCH, NEW  
DELHI

EXECUTION APPLICATION NO 48/2023

IN

ORIGINAL APPLICATION NO 427/2023 (IA NO 873/2023)

IN THE MATTER OF

ASHOK CHANDRA GAUTAM

...DECREE HOLDER/APPLICANT

VERSUS

GOVERNING BODY MEMBERS OF PIYUSH HEIGHTS RESIDENTS WELFARE  
ASSOCIATION & ORS

...JUDGMENT DEBTORS

INDEX

S.NO.	PARTICULARS	PAGE NO
1.	REJOINDER ON BEHALF OF DECREE HOLDER/APPLICANT TO THE REPLY FILED BY DISTRICT TOWN PLANNER, ENFORCEMENT, FARIDABAD, ALONG WITH SUPPORTING AFFIDAVIT.	1-11
2.	APPLICATION FOR CONDONATION OF 47 DELAY ALONG WITH SUPPORTING AFFIDAVIT.	12-15

FILED BY:



DECREE HOLDER/APPLICANT

THROUGH



APRATIM ANIMESH THAKUR

(Counsel for the Decree Holder)

E-444, Lower Ground Floor, Greater Kailash- II

New Delhi - 110048

Phone: +919810817397

Landline No: +911146520678

E-mail: apratimanimesh@gmail.com

PLACE: NEW DELHI

DATED 6-5-2024

BEFORE THE NATIONAL GREEN TRIBUNAL AT PRINCIPAL BENCH, NEW  
DELHI

EXECUTION APPLICATION NO 48/2023

IN

ORIGINAL APPLICATION NO 427/2023 (IA NO 873/2023)

IN THE MATTER OF

ASHOK CHANDRA GAUTAM

...DECREE HOLDER/APPLICANT

VERSUS

GOVERNING BODY MEMBERS OF PIYUSH HEIGHTS RESIDENTS WELFARE  
ASSOCIATION & ORS

...JUDGMENT DEBTORS

REJOINDER ON BEHALF OF DECREE HOLDER/APPLICANT TO THE REPLY  
FILED BY DISTRICT TOWN PIANNER, ENFORCEMENT, FARIDABAD

MOST RESPECTFULLY SHOWETH:

1. That the present Rejoinder is being filed in response to the Reply filed by District Town Planner to the Execution Application preferred by the Applicant seeking Execution of assurances and commitments made by the District Town Planner, Faridabad and Judgment Debtor/Respondent No 18 in Join Factual and Action Taken Report (registered as M.A No 65/2023 in O.A No. 296/2023) based on which this Hon'ble Tribunal passed an Order dated 25.08.2023 thereby disposing both the O.A No 427/2023 and O.A 296/2023.
2. That the contents of the Execution Application shall be read as part and parcel of the present Rejoinder and the same are not reiterated herein for the sake of brevity. The present Rejoinder supplements the assertions made in the Execution Application and shall be read conjointly with the Execution Application and not to the contrary.

3. That it is most respectfully submitted that all the allegations and assertions made in the Reply by the Respondents are vehemently denied. The Applicant states that no statement made in the Reply is admitted, or should be deemed to be admitted, for the mere want of specific non-transverse.
4. That the Applicant also craves leave of this Hon'ble Tribunal to file further submission and/or documents as maybe necessary through the course of these proceedings.

#### PRELIMINARY OBJECTIONS

1. That the present Execution Application has been filed by the Applicant seeking execution of Joint Factual and Action Taken Report (registered as M.A No 65/2023 in O.A No. 296/2023) by the District Town Planner, Faridabad and Judgment Debtor/Respondent No. 18, based on which this Hon'ble Tribunal passed an Order dated 25.08.2023 thereby disposing both the O.A No 427/2023 and O.A 296/2023.
2. At the outset it is submitted that the District town planner, Enforcement Faridabad rather than executing/complying the order dated 25.8.2023 of this Hon'ble Tribunal is trying to somehow delay the execution of the said order of this Hon'ble Tribunal by accepting/considering baseless and unauthorised letter dated 14.8.2023 from the Piyush heights residents welfare Association which has several defects as per the applicable provisions of Law.
  - a. The Project of Piyush heights sector 89 Faridabad is an incomplete project without completion certificate and hence, the builder (Piyush buildwell) is still the owner of the project and therefore, the Piyush Heights Residents Welfare Association is not at all authorised/competent to write any letter for modification of the master plan of the Piyush height project.
  - b. The District Town planner, enforcement, Faridabad did not find it relevant to check the competency/authority of the Piyush Heights Residents Welfare Association to write such unauthorised letter dated

14.8.2023 for modification of the master plan of the Piyush heights sector 89 Faridabad.

- c. As it is case of encroachment and illegal construction on the Green area of Piyush Heights and therefore, is breach of the conditions of the green area in Piyush heights project and cannot be rectified under the provisions of Haryana Scheduled Roads and controlled Area Restriction Act of the Unregulated development Act 1963 or any other Act as requested by the respondent no. 1 vide unauthorised letter dated 14.8.2023.
- d. The provision of Haryana Scheduled Roads and controlled Area Restriction Act of the Unregulated development Act 1963 does not apply to the instant project for granting approval for the illegal construction in the green area of the Piyush heights housing society. Moreover, the said area is not mentioned in the schedule of the said Act.
- e. If such letters like letter dated 14.8.2023 requesting approval of construction of illegal structures in the green area is entertained after deliberate construction of the illegal structure on green area it will only lead to further encroachment of the green area and construction of illegal structure on the green area for one or the other reason. This shall lead to complete failure all the statutory compliance for construction of any structure. There are several judgments of this Hon'ble Tribunal and the apex Court enforcing the Rule of Law in this regard thereby not allowing the illegal encroachment of the green area or illegal construction on the green area.
- f. Despite the letter dated 12.1.2024 of the Deputy commissioner, Faridabad to the Senior town Planner, Faridabad and RO HSPCB, Faridabad to submit joint action taken report regarding the action against the temple building constructed on the open space/green area the District Town Planner enforcement, Faridabad ignored the said

letter dated 12.1.2024 of the Deputy commissioner acted in tangent to letter of the Deputy commissioner , Faridabad.

In view of the aforesaid submissions it is evidently clear that the District Town Planner, Enforcement, Faridabad has acted as an interested party and has without application of legal mind considered the unauthorised letter dated 14.8.2023 and also forwarded the same to the Director town and country Planning only to confuse and mislead this Hon'ble Tribunal and thereby delay the execution proceedings. Surprisingly the builder himself could not obtain the approval for a school constructed by him at the same place and was demolished by the order of this Hon'ble Tribunal but the respondents in an unauthorised manner are trying to justify their illegal action by writing the letter dated 14.8.2023. This also highlights the audacity of the respondent no. 1 to 16 to encroach upon the same green area and construct an illegal structure knowing fully well the demolition of the school constructed by the builder in the same green area. It will not be out of place to submit that the reply of the District town Planner enforcement, Faridabad is only an tactic with some understanding with the respondent no. 1 to 16 to somehow delay the execution proceedings.

3. That, after the order was passed, Respondents No. 1 to 16 had submitted the representation/ application for regularization of temple duly supported with the survey plans & area details and accordingly Respondent's Society Association re submitted the application dated 29.12.2023 to the Senior Town Planner which was marked as ANNEXURE R-2 @ Page No 6 of the Reply by District Town Planner.
4. That the documents submitted by the RWA, Piyush Heights were examined by the office of Senior Town Planner, Faridabad and subsequently the report along with representation of RWA were forwarded by Senior Town Planner, Faridabad to the Office of Director, Town & Country Planner Haryana Chandigarh with request for taking a decision for composition of the existing temple building in Piyush Heights, Sector 89- Faridabad vide office memo dated 08.01.2024 which was marked as ANNEXURE R-3 @ Page No 7 of the Reply by District Town Planner.

5. The Authorities despite taking actions to comply with the directions passed in Order dated 24.08.2023, kept delaying the process by imposing the work to another authority.
6. That this process of delaying further can be inferred from the fact that when this Hon'ble Tribunal passed the order dated 22.12.2023 whereby Notice was issued to the Respondents, the Deputy Commissioner had clearly directed the Senior Town Planner Faridabad and Regional Office Faridabad to submit joint factual action Report dated 12.01.2024 which was marked as ANNEXURE R-1 in factual report filed by the Haryana State Pollution Board. Despite the said letter dated 12.1.2024 of the Deputy commissioner, Faridabad the District town Planner, enforcement Faridabad acted in tangent to letter of the Deputy commissioner, Faridabad.
7. Consequently, the Deputy Commissioner, Faridabad has issued a letter dated 09.02.2024 to the District Town Planner, Enforcement, Faridabad and requested to take necessary action on said matter as per the directions issued by the Hon'ble National Green Tribunal.
8. After the District Commissioner *vide* Letter dated 09.02.2024 addressed to the District Town Planner, Enforcement, Faridabad requested to take necessary action as per directions of Hon'ble Tribunal. The District Town Planner, ignorant of its duties, did not take any action to comply with the directions issued by this Hon'ble Tribunal.
9. That the Senior District Town Planner had intentionally failed to take actions. It is submitted that when the directions were issued by this Hon'ble Tribunal *vide* its Order dated 25.08.2023, the Senior Town Planner did not take any action despite the directions by this Hon'ble Tribunal and forward the report to the Director for the composition of the illegal structure. Thereafter, when the notice was issued to the Respondents in the present Execution Application, the Deputy Commissioner had directed the Senior Town Planner Faridabad and Regional Office Faridabad to submit a joint factual action Report dated 12.01.2024. Consequently, the Deputy Commissioner, Faridabad has issued a letter dated 09.02.2024 to the District Town Planner, Enforcement, Faridabad and requested to take necessary action on said

matter as per the directions issued by the Hon'ble National Green Tribunal. Therefore, it can be inferred that the Senior Town Planner despite the directions issued by this Hon'ble Tribunal kept delaying the process and being ignorant of its duties kept moving around the documents.

10. It is submitted that it is the admitted position by the Respondents No. 1 to 16 that the temple constructed by the residents in the open area, measures around 136 sq. metres after full and final consideration, including alleged protrusion of 40 sq.m. into the green area, which is 0.12% of the total green area of the society. With respect to the area reserved for 'green belt/park', it has been repeatedly held by Hon'ble Supreme Court that such spaces cannot be changed to residential or commercial use.
11. That the Hon'ble National Green Tribunal, Special Bench in case titled as Girja Shankar Rai & Ors vs State of Uttar Pradesh & Ors, OA/165/2021 had made observations concerning the green belt/park in Paras 18 and 19:

*18. In Lal Bahadur v. State of UP & Others, (2018)15SCC407, change of master plan and converting green area into residential one was considered. The issue was, whether such conversion is conducive to protection of the environment or not. In the master plan of 1995 of Lucknow, area in dispute was reserved as green belt. In master plan 2021, the same area, shown earlier as green belt, was converted as residential. This part of master plan 2021 was challenged before Lucknow bench of Allahabad High Court. Writ petition was dismissed. The matter came in appeal before Supreme Court. Court held in para 12 of judgment that change of area from green belt to residential is in violation of Article 21, 48A and 51A(g) of the Constitution. Reliance was placed on Bangalore Medical Trust v B.S. Muddappa & Others, (1991)4SCC54, wherein Court had said that protection of environment, open spaces for recreation and fresh air, playground for children, promenade for the residents and other conveniences or amenities are matters of great public concern and a vital interest to be taken care of in a development scheme. Public interest in the reservation and preservation of open spaces for parks*

and playgrounds cannot be sacrificed by leasing or selling such sites to private persons for conversion to some other use. Court also relied on an American Supreme Court Judgment *Agins vs. City of Tiburon*, [447 us 255 (1980)], wherein Court said: ‘... it is in the public interest to avoid unnecessary conversion of open space land to strictly urban uses, thereby protecting against the resultant adverse impacts, such as ..... pollution, .... destruction of scenic beauty, disturbance of the ecology and the environment, hazards related geology, fire and flood, and other demonstrated consequences of urban sprawl’.

19. In para 15, Court said that, “This Court had clearly laid down that such spaces could not be changed from green belt to residential or commercial one. It is not permissible to the State Government to change the parks and playgrounds contrary to legislative intent having constitutional mandate, as that would be an abuse of statutory powers vested in the authorities. Court also observed, when master plan was prepared earlier and authorities found importance of such space, it was their bounden duty not to change its very purpose when they knew very well the importance of this place to be kept as open space. Court said,

“The importance of park is of universal recognition. It was against public interest, protection of the environment and such spaces reduce the ill effects of urbanisation, it was not permissible to change this area into urban area as the garden/ Greenbelt is essential for fresh air, thereby protecting against the resultant impacts of urbanization, such as pollution etc. The provision of the Act of 1973 and other enactments relating to environment could not be permitted to become statutory mockery by changing the purpose in the master plan from green belts to residential one. Authorities are enjoined with duty maintain them as such as per doctrine of public trust.”

**PARAWISE REPLY:**

1. That the contents of the paragraph 1 and 2 are part of formal pleadings and hence on merits needs no reply.

2. In reply to the Paragraph 3, it is submitted by the Applicant that the RWA, piyush heights had submitted an unauthorised letter /application dated 14.8.2023 with detailed survey plan with area calculation of the available green area within their group housing colony for regularization of the temple Building. The said application /letter dated 14.8.2023 of the respondent no. 1 is without any legal basis and therefore, the illegal structure built in Green belt area cannot be regularized and the illegal structure has to be demolished.
3. In reply to the Para 4 of the Reply, it is submitted that the authorities did not take any responsibility and they just kept forwarding the documents from one department to other. The authorities did not comply with the directions issued in OA/427/2023 order dated 24.08.2023.
4. In reply to the Para 5 of the Reply, It is submitted that Authorities (including the District Town Planner) just kept delaying the execution regarding demolition of illegal structure by forwarding documents from one department to another and just kept on sitting on the directions passed by the Hon'ble Tribunal.

**PRAYER**

It is most humbly prayed that this Hon'ble tribunal be graciously pleased to:

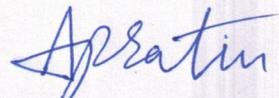
- a) Allow the present execution application of the Applicant/Decree Holder and take necessary actions against the Respondents for non-compliance of the directions of this Hon'ble Tribunal passed in Order dated 25.08.2023.
- b) Pass any other order / direction as deemed fit and proper in the given facts and circumstances.

**FILED BY:**



**DECREE HOLDER/APPLICANT**

**THROUGH**



**APRATIM ANIMESH THAKUR**

(Counsel for the Decree Holder)

341

9

E-444, Lower Ground Floor, Greater Kailash- II

New Delhi -110048

Phone: +919810817397

Landline No: +911146520678

E-mail: apratimanimesh@gmail.com

PLACE: NEW DELHI

DATE: 6-5-2024

BEFORE THE NATIONAL GREEN TRIBUNAL AT PRINCIPAL BENCH, NEW  
DELHI

EXECUTION APPLICATION NO 48/2023

IN

ORIGINAL APPLICATION NO 427/2023 (IA NO 873/2023)

IN THE MATTER OF

ASHOK CHANDRA GAUTAM

...DECREE HOLDER/APPLICANT

VERSUS

GOVERNING BODY MEMBERS OF PIYUSH HEIGHTS RESIDENTS WELFARE  
ASSOCIATION & ORS

...JUDGMENT DEBTORS

**AFFIDAVIT**

I, Ashok Chandra Gautam aged 74 years, S/o Sh. Roop Ram, R/o L-913, Piyush Heights, Sector-89, Faridabad, Haryana-121002, presently at New Delhi, do hereby solemnly affirm and declare as under:

1. That I am the Decree Holder in the captioned matter and as such I am fully conversant with facts of the present case and hence, I am competent to swear the present affidavit.
2. That the contents of the accompanying Rejoinder be read as part and parcel of the present affidavit and the same are not being reproduced here for the sake of the brevity and in order to avoid prolixity.
3. That the contents of the accompanying Rejoinder has been drafted under my instructions which are true and correct to the best of my knowledge and belief and the same are not reproduced herein for the sake of brevity and in order to avoid prolixity.
4. I state that I have pursued the accompanying Rejoinder and nothing material has been suppressed or concealed there from. Legal submissions are all based on Legal advice.



  
DEPONENT

**VERIFICATION**

I, the Deponent above named, do hereby verify that the contents of paras 1 to 4 of my above affidavit are true to my knowledge, no part of it is false and nothing material has been concealed there from.

Verified at New Delhi on this the \_\_\_\_\_ day of May, 2024

06 MAY 2024

06 MAY 2024

*Identify the deponent who has signed in my presence*

*[Signature]*

DEPONENT

**Certified That the Deponent**

Shri/Smt..... *Asheesh Kumar*  
S/o, W/o, D/o. Shri.....  
R/o.....  
Identified by Shri..... *[Signature]*  
has solemnly affirmed before me at New Delhi  
On..... that The contents of this affidavit  
which has been read over & explained to him/are true  
& correct to his knowledge.



Oath Commissioner, New Delhi

*[Signature]*

BEFORE THE NATIONAL GREEN TRIBUNAL AT PRINCIPAL BENCH, NEW  
DELHI

EXECUTION APPLICATION NO 48/2023

IN  
ORIGINAL APPLICATION NO 427/2023 (IA NO 873/2023)

IN THE MATTER OF

ASHOK CHANDRA GAUTAM

...DECREE HOLDER/APPLICANT

VERSUS

GOVERNING BODY MEMBERS OF PIYUSH HEIGHTS RESIDENTS WELFARE  
ASSOCIATION & ORS

...JUDGMENT DEBTORS

APPLICATION FOR CONDONATION OF 47 DAYS DELAY IN FILING THE  
REJOINER ALONG WITH AFFIDAVIT

MOST RESPECTFULLY SHOWETH:

1. That the Applicant/Decree Holder has filed the accompanying Rejoinder to the Reply by District Town Planer. The contents of the accompanying Rejoinder may kindly be read as part of the instant application as well as the same are not being reproduced here for the sake of brevity.
2. That the present Application has been preferred by the Applicant seeking a condonation of delay in filing of the Rejoinder as there has been a delay of 47 number of days in filing of the Rejoinder before this Hon'ble Tribunal.
3. That the delay in filing of the Rejoinder has not been caused due to the wilful default of the Applicant/Decree Holder. The delay is attributable to the fact that the Applicant was not well. The Associate of the Applicant's Counsel met with an accident and had surgery in the left leg.

4. That the instant Application is being filed *bona fide* and in the interest of justice. It is submitted that grave prejudice and irreparable injury would be caused to the Applicant/Decree Holder if the relief prayed herein in the present Application is not granted. Further, the balance of convenience is in favour of the Applicant/Decree Holder and the Applicant/Decree Holder has a *prima facie* case.

**PRAYER**

UNDER the circumstances stated above it is, therefore in the interest of justice most respectfully prayed that this Hon'ble Tribunal may graciously be pleased to:

1. Condone the delay of 47 days in filing of the Rejoinder by allowing the present Application; and
2. Grant such other or further relief which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case may also be granted to the Applicant/Decree Holder.

**FILED BY**



DECREE HOLDER/APPLICANT

**THROUGH**



APRATIM ANIMESH THAKUR

COUNSEL FOR DECREE HOLDER/APPLICANT

E-444, LOWER GROUND FLOOR, GREATER KAILASH -II

NEW DELHI-110048

MOB: +919810817397

EMAIL ID: apratimanimesh@gmail.com

**PLACE: NEW DELHI**

**DATE: 6-5-2024**

BEFORE THE NATIONAL GREEN TRIBUNAL AT PRINCIPAL BENCH, NEW  
DELHI

EXECUTION APPLICATION NO 48/2023

IN

ORIGINAL APPLICATION NO 427/2023 (IA NO 873/2023)

IN THE MATTER OF

ASHOK CHANDRA GAUTAM

...DECREE HOLDER/APPLICANT

VERSUS

GOVERNING BODY MEMBERS OF PIYUSH HEIGHTS RESIDENTS WELFARE  
ASSOCIATION & ORS

...JUDGMENT DEBTORS

**AFFIDAVIT**

I, Ashok Chandra Gautam aged 74 years, S/o Sh. Roop Ram, R/o L-913, Piyush Heights, Sector-89, Faridabad, Haryana-121002, presently at New Delhi, do hereby solemnly affirm and declare as under:

1. That I am the Decree Holder in the captioned matter and as such I am fully conversant with facts of the present case and hence, I am competent to swear the present affidavit.
2. That the contents of the accompanying Application for condonation of 47 days delay be read as part and parcel of the present affidavit and the same are not being reproduced here for the sake of the brevity and in order to avoid prolixity.
3. That the contents of the accompanying Application has been drafted under my instructions which are true and correct to the best of my knowledge and belief and the same are not reproduced herein for the sake of brevity and in order to avoid prolixity.
4. I state that I have pursued the accompanying Application and nothing material has been suppressed or concealed there from. Legal submissions are all based on Legal advice.



*(Signature)*

DEPONENT

VERIFICATION

I, the Deponent above named, do hereby verify that the contents of paras 1 to 4 of my above affidavit are true to my knowledge, no part of it is false and nothing material has been concealed there from.

06 MAY 2024

Verified at New Delhi on this the \_\_\_\_\_ day of May, 2024

*[Signature]*

DEPONENT

I-Identify the Deponent who has signed in my Presence

06 MAY 2024



Certified That the Deponent  
Shri/Smt.....  
S/o,W/o,D/o. Shri.....  
R/o.....  
Identified by Shri.....  
has solemnly affirmed before me at New Delhi-  
On.....that The contents of this affidavit  
which has been read over & explained to him are true  
& correct to his knowledge.  
Oath Commissioner, New Delhi