

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

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FILED BY:



DECREE HOLDER/APPLICANT

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PLACE: NEW DELHI

DATE: 6-5-2024

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REJOINDER ON BEHALF OF DECREE HOLDER/APPLICANT TO THE REPORT
OF HARYANA STATE POLLUTION CONTROL BOARD FILED BY REGIONAL
OFFICER, FARIDABAD

MOST RESPECTFULLY SHOWETH:

1. That the present Rejoinder is being filed in response to the Report filed by Haryana State Pollution Control Board 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. 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.
3. 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.
4. 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.

5. 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 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.
6. 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.
7. 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.
8. 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.

9. 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.
10. 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 as per the Factual report submitted by the Haryana State Pollution Control Board the Deputy Commissioner has directed Senior Town Planner Faridabad and Regional Office Faridabad to submit Joint factual Action Report dated 12.01.2024. It is submitted that the Joint Factual Action Taken report dated 12.01.2024 was not placed by the Authority before the Hon'ble Tribunal.

2. Further, Deputy Commissioner, Faridabad has issued a letter to the District Town Planner, enforcement, Faridabad dated 09.02.2024 and requested to take necessary action on said matter as per directions of Hon'ble Tribunal and submit report. It is submitted that no action had been taken by the District Town Planner for demolition of illegal Structure in the Green belt area.

PRAYER

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

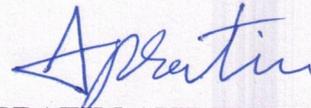
- a) Allow the present execution application of the Applicant/Decree Holder and take necessary actions against the Respondents for non-compliance of the directions of this Hon'ble Tribunal passed in Order dated 25.08.2023.
- b) Pass any other order / direction as deemed fit and proper in the given facts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

FILED BY:



DECREE HOLDER/APPLICANT

THROUGH



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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.

06 MAY 2024

Verified at New Delhi on this the _____ day of May, 2024
I Identify the Deponent
who has signed in my Presence

[Signature]
DEPONENT

06 MAY 2024



Certified That the Deponent
Shri/Smt. *[Signature]*
S/o, W/o, D/o. Shri. *[Signature]*
R/o. *[Signature]*
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.

[Signature]
Oath Commissioner, New Delhi

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

MOST RESPECTFULLY SHOWETH:

1. That the Applicant/Decree Holder has filed the accompanying Rejoinder to the Report of Haryana State Pollution Control Board filed by Regional Officer, Faridabad. 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:

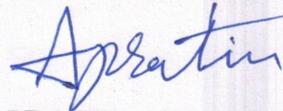
1. Condone the delay of 47 days in filing of the Rejoinder by allowing the present Application; and
2. Grant such other or further relief which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case may also be granted to the Applicant/Decree Holder.

FILED BY



DECREE HOLDER/APPLICANT

THROUGH



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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.



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 by the deponent
I identify the deponent
who has signed in my presence

Delhi on this the _____ day of May, 2024

DEPONENT

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

06 MAY 2024