

BEFORE THE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
O.A. NO. 391 OF 2022

IN THE MATTER OF:

Brigadier Paramjit Singh & Ors. ...Original Applicants

Versus

State of Haryana & Ors. ...Respondents

INDEX

S.NO.	PARTICULARS	PG. NO.
1.	REJOINDER AFFIDAVIT ON BEHALF OF THE APPLICANTS IN REPLY TO REPLY DATED 31.12.22 FILED ON BEHALF OF RESPONDENT NO.3 HARYANA SHEHRI VIKAS PRADHIKARAN (HSVP).	1-10
2.	ANNEXURE- A/8 Photographs of flooding caused in the areas adjoining the pond.	11-21

Through



**KUSHAL CHOUDHARY
ANGAD AHLUWALIA**

Advocates for the Petitioners
211, Surya Kiran Building,
19, K.G. Marg, New Delhi-110001

Email:

kushal@ahluwalialawpractice.com
angad@ahluwalialawpractice.com

Ph. No. +91-9999502544
+91-858800291

stakeholders involved in and being affected by the developments in the present matter, including the residents of South City-1 as well as the residents of Silokhra Village and the Harijan Basti.

PRELIMINARY OBJECTIONS

4. The reply filed by Respondent No.3 reiterates and affirms the existence of a *johad* (pond) at Khasra No. 26/2. The submissions of the said Respondent also acknowledge in its reply that the said land has now become devoid of any water and is being actively used as a dumping ground by various nefarious elements. The said Respondent has thus, admitted its violation of the doctrine of public trust, while reiterating the fact that the said pond has not existed for a long time and that, before the filing of the present original application, no active steps had been taken by the answering Respondent for the restoration of the same.

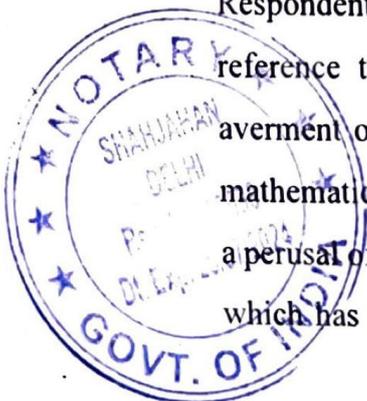
5. It is stated that a bare reading of the reply dated 31.12.22 as well as the short reply dated 22.11.22, filed by R3 reveals that [i] There was a *johad* which existed at Khasra No. 26/2 plot of land; [ii] The said pond has ceased to exist on account of the illegal activities by various nefarious elements who have used the said land as a dump-yard; & [iii] Respondent No.3 has failed to take any action in respect of the restoration of the said water body or against the nefarious elements illegally encroaching upon the area, and it is only after the filing of the present Original Application before this Ld. Tribunal that the slumbering state machinery



has been throttled back into motion in order to remove the said illegal occupation of the land, otherwise allotted towards community resource.

It is further stated that the reply of R3 reveals that the development of certain showrooms as well as one commercial complex is contemplated in the area around the pond as per its revised layout plan. It is admitted in Pr. 7 of the reply that showroom nos. 6 & 7 are encroaching upon the area wherein the green-belt (catchment) surrounding the pond existed. In the same breath the said Respondent also admits that the said green-area has thus, been reworked to go around the showrooms and not vice-versa, laying bare before this Ld. Tribunal the order of priority of the said Respondent. R3 has actively placed development of the commercial complex before the restoration of the water body and its green-belt first, and then developing the commercial complex/showrooms around that area in a sustainable manner.

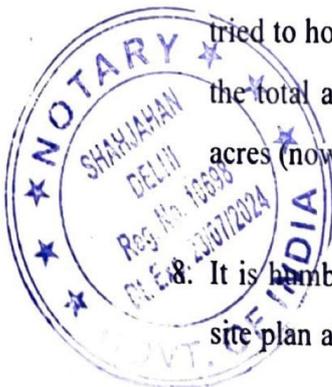
6. It is further pertinent to state R3 has laid considerable emphasis on the fact that the original area for the pond was contemplated to be 3.1 acres which has now been increased to 4.4 acres in their revised layout plan, placed by the said Respondent at Annexure C-2 of its reply. It is stated in reference to the above that although, at first blush the averment of R3 may sound reasonable with there being a mathematical increase in the area of land allotted, however, a perusal of the revised site plan reveals that the excess area which has been allotted as catchment area for the pond is



completely disjointed from the said water body and is not effective catchment for the same. The area has been merely increased on paper by allotting excess land on the fringes, which was, in any case, not allotted towards the development of the commercial complex of the adjacent showrooms. The order of priority for R3 is yet again revealed from the present approach. There has been an instant breach of not only the doctrine of public trust by R3, but also a breach of Articles 21, 48A & 51A(g) of the Constitution of India, 1950.

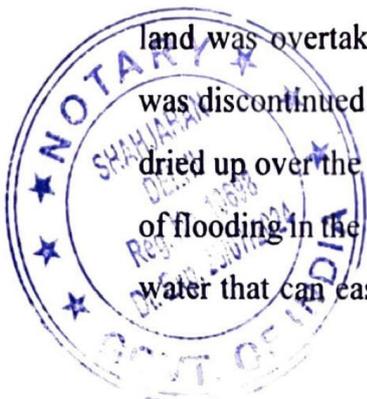
7. It is also pertinent to note that R3 has actively contended that the area of the pond is 3.1 acres. Yet a perusal of the revised layout plan reveals that the pond itself is shown only as tiny dot in the middle of plot of land around which the catchment area is contemplated. It is pertinent to note herein that the revenue records clearly mention existence of a *johad* at the said Khasra. The meaning of the word *johad* is pond. Thus, it is the pond which is to be at least 3.1 acres, without including the catchment area around it. It is humbly submitted that the catchment area is over and above the land already allotted towards the pond, considering that a pond cannot survive without an effective catchment area around it to catch the rain water and rejuvenate it. R3 has actively tried to hoodwink this Hon'ble Tribunal into believing that the total area of the catchment along with the pond is 3.1 acres (now purportedly increased to 4.4 acres).

8. It is humbly submitted that a close scrutiny of the revised site plan also reveals that the commercial complex touches



upon the outer boundary of the catchment area of the pond and is, in fact, in the middle of disjointed patches of the green-belt area. It is stated that the said land is situated in Gurugram, which is a region well-known to have been battling with the problem of constantly depleting water table. It is in such an area that R3 has considered it apposite to construct a concrete structure in the middle of otherwise porous land, which shall necessarily impede the seepage of water back down to the water table. It is further pertinent to note that a pond requires 'breathing room' for which purpose, an unimpeded green-belt surrounding the same is required, so that on rainy days, water can replenish the surrounding area, as well as be redirected to flow into the pond in order to rejuvenate it. However, the said flow of water has to be without any hindrances, and placing a concrete structure in the middle of such an area defeats the very purpose of existence of the pond as well as the surrounding green belt.

9. It is stated that Khasra No. 26/2 formed a part of panchayat land, the adjoining area of which was allotted to M/s Unitech. During the relevant time, water was being pumped through motors into the storm water drains, which were connected to Sector 41 and other areas adjoining the pond, by M/s Unitech. This water was redirected from these adjoining areas directly into the pond. After the control of land was overtaken by the Respondents, the said practice was discontinued and the said storm water drains have now dried up over the decades. This has aggravated the problem of flooding in the adjoining areas, when in fact, it is the same water that can easily be redirected towards rejuvenation of



the pond and at the same time, rid the residents of the menace of excessive flooding during rains. The Respondents have categorically failed to take notice of this easy measure, which was also being employed in the past, which has lead to extreme agony being caused to the residents of the area adjoining the pond, and has at the same time, lead to the pond drying up.

Hereto annexed and marked as **Annexure A/8** are photographs of flooding caused in the areas adjoining the pond.

10. Although there has to be continuous development of the city, however, the said development cannot be at the peril of natural community resources. Said development has to necessarily be within the contours of the concept of sustainable development.

11. It is settled position of law that 'ponds' area a public utility meant for common use and that they cannot be allotted or commercialized by the State. It is important to notice that the material resources of the community like ponds are nature's bounty. They maintain delicate ecological balance.

Thus, they need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution. (*Hinch Lal Tiwari v. Kamala Devi*, (2004) 6 SCC 496)



12. It is also settled law that since time immemorial, certain common lands have vested in village communities for their collective benefit and that, except in exceptional

circumstances when used exclusively for the downtrodden. these lands are inalienable. (*Jagpal Singh v. State of Punjab*, (2011) 11 SCC 396)

13. The Hon'ble Apex Court in *Jagpal Singh supra* places a strict restriction on the non-alienation of common water-bodies as long as, the ground for exception does not fall under the limited class of grants to "*landless labourers or members of the Scheduled Castes/Scheduled Tribes, or where there is already a school, dispensary or other public utility on the land*". Allotment of land for the development of commercial complexes / showrooms / multiplexes is without any rationale classification, unlike the narrow class exempted, and it does not serve a social public purpose or benefit the local people, and is thus hit by the inalienability bar.

14. Even otherwise, the actions of the R3 are in contravention of its Constitutional obligations. Article 48-A of the Constitution casts a duty on the State to "*endeavor to protect and improve the environment and to safeguard the forests and wild life of the country*", and Article 51-A(g) expects every citizen to perform his fundamental duty to "*protect and improve the natural environment*". A perusal of the Constitutional scheme and judicial development of environmental law shows that all persons have a right to a healthy environment. It would be gainsaid that the State is nothing but a collective embodiment of citizens, and hence collective duties of citizens can constructively be imposed on the State. There, therefore, remains no doubt that it is the



responsibility of the respondents to ensure the protection and integrity of the environment, especially one which is a source for livelihood for rural population and life for local flora and fauna.

15. It is humbly submitted that Protection of such village-commons is essential to safeguard the fundamental right guaranteed by Article 21 of our Constitution. These common areas are the lifeline of village communities, and often sustain various chores and provide resources necessary for life. Waterbodies, specifically, are an important source of fishery and much needed potable water. Many areas of this country perennially face a water crisis and access to drinking water is woefully inadequate for most Indians. Allowing such invaluable community resources to be taken over by a few is hence grossly illegal.

PARA WISE REPLY:

16. In response to Pr. 4-6 & 8, it is stated that there has been a categorical admission by R3 that the revenue records do contemplate presence of a pond at Khasra No. 26/2 and that, the said pond has dried and vanished over the years. It is further admitted by R3 that a commercial complex and showrooms a/w parking are now being built in the vicinity of the said pond-area.

17. In response to Pr. 7, it is submitted that the language employed in the said paragraph indicates the intent of the said Respondent to re-work the pond and its surrounding catchment around the Commercial Complex and not vice-



versa. Emphasis has to be laid at the words "*the planning of Showroom No. 6 & 7 (measuring 30 x 20M) are affected with the pond area*" indicating that the pond and its catchment are encroaching upon the showrooms. It is further averred in the said para that the area of land allocated for the restoration of the pond has been increased from the originally allotted 3.1 acres to 4.4 acres of land. It is stated that the said allotment of land has been done mechanically without any application of mind. The increase in land allotted towards the betterment of the water body is only mathematical and academic, and does not substantially contribute towards very purpose for the existence of a catchment area around a pond.

18. In response to Pr. No. 9, it is stated that R3 has already released an e-auction for the purpose of construction of the commercial complex and its adjoining showrooms and parking area, however, the tender for the restoration of the water body is yet to be issued, the issuance of which, is to take a risible 9-10 months. This undrapes the real object and intent of the R3 in prioritizing the commercial projects before environmental ones, in gross violation of public trust.

19. Thus, in view of the foregoing, it is lucid that [i] The revenue records contemplate a pond at Khasra No. 26/2, not including its catchment area, which is to be developed in addition to the pond area; [ii] R3 has actively placed the development of commercial projects over the restoration of environmental resources; [iii] R3 has actively tried to disguise its actions as pro-environment, when in fact, closer



scrutiny reveals a completely contrary picture: [iv] There has been gross violation of public trust by the Respondents along with violation of Articles 21, 48A & 51A(g) of the Constitution of India. It is therefore prayed before this Hon'ble Tribunal that it may be pleased to allow the present Original Application and be pleased to grant the reliefs as prayed for.

[Handwritten Signature]

DEPONENT

VERIFICATION:

11 MAR 2023

I, Brigadier Paramjit Singh (Retd.) , Aged Adult, S/o Late Col. Ranbir Singh, R/o C-108, South City-1, Gurugram. Haryana, do hereby verify that the contents of the above affidavit from para no. ___ to ___ are true and correct to the best of my knowledge and belief.

Verified at New Delhi on _____ of _____ 2023.

[Handwritten Signature]

D/2058/2020

I identified the deponent who has signed/put in my presence.

[Handwritten Signature]

DEPONENT



11 MAR 2023

NOTARIFIED THAT THE DEPONENT S/o _____ the _____ has signed/put in my presence that the contents of the _____ have been read & explained to him and are true and correct to his & _____ knowledge
[Handwritten Signature]
Notary Public



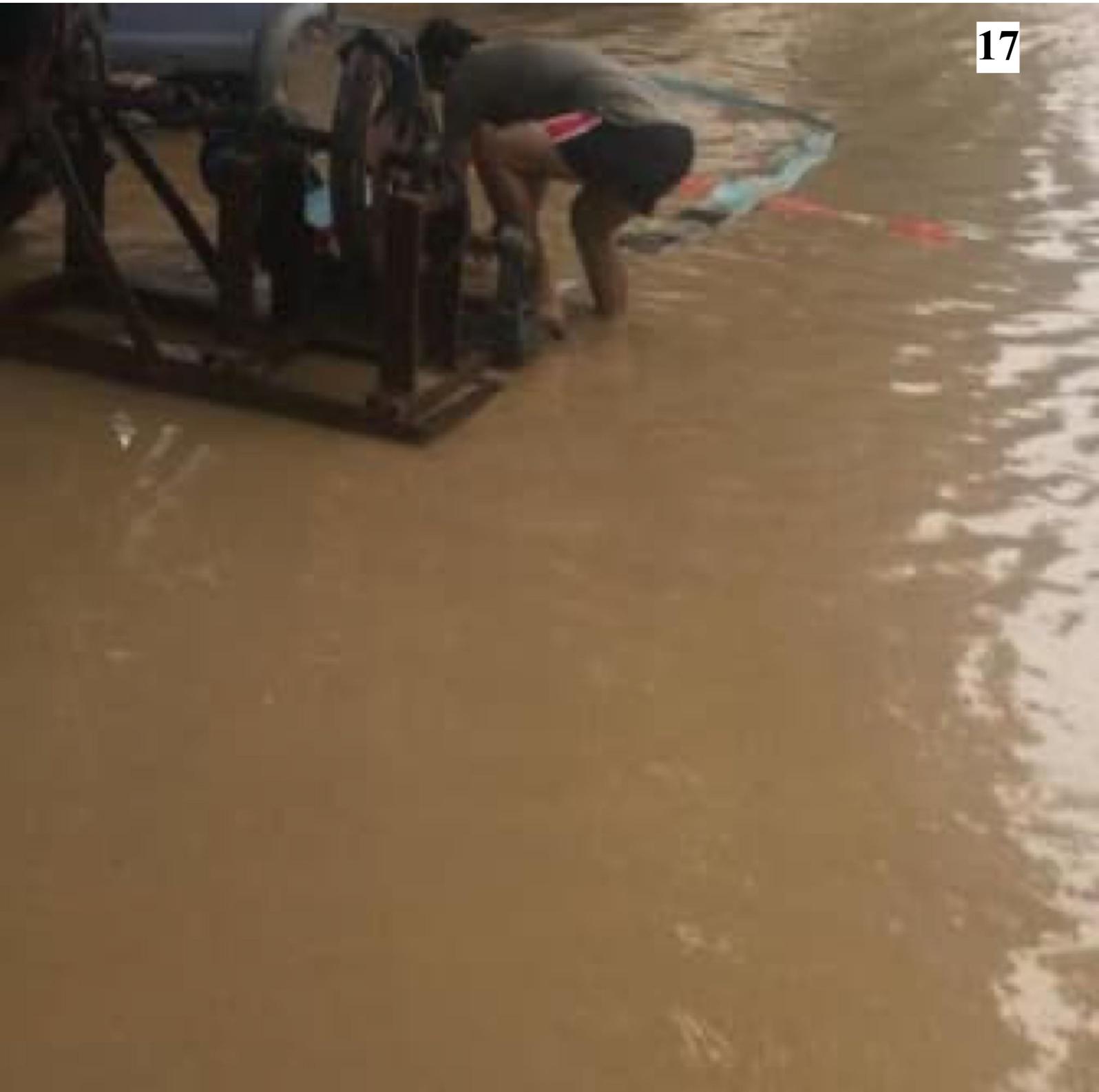














18







128

From: SHWETA MARATHE shwetamarath98@gmail.com
Subject: Advance Service of Rejoinder in the matter of Brigadier
Paramjit Singh & Ors vs State of Haryana & Ors
Date: 11-Mar-2023 at 3:28:53 PM
To: noopur4@gmail.com, cmc@mcg.gov.in,
rkhurana2507@gmail.com

Respected Sir/Madam.
Greetings for the day!

Please consider this mail as an advance service of the Rejoinder in the matter of Brigadier Paramjit Singh & Ors vs State of Haryana & Ors (O.A. NO. 391 of 2022) before the National Green Tribunal, Principal Bench, New Delhi.

Please check the pdf attached for your kind perusal.

Regards,
Kushal Choudhary| Angad Ahluwalia
Advocates for the petitioners

[Tap to Download](#)

Final Rejoin...h_NGT.pdf

6.6 MB