

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH

ORIGINAL APPLICATION No. 87 of 2023

Vanashakti & Anr

...Applicant

Versus

MCGM &Ors.

....Respondents

**REJOINDER AFFIDAVIT ON BEHALF OF RESPONDENT NO.1 TO THE  
AFFIDAVIT IN REPLY FILED BY RESPONDENT NO. 9 i.e. AAREY  
AUTHORITY**

I, Sudhakar Bhivsan Nanote, Age: 54 years, Occupation – Service as Executive Engineer – SWM Department Zone – 6, of Municipal Corporation of Greater Mumbai, the authorized signatory for MCGM, having office at Pantnagar Garage Building, near BEST Colony, Ghatkopar – East, Mumbai – 400075, do state on solemn affirmation as under:



1. This rejoinder is being filed by the Applicant for assisting Hon'ble Tribunal for better appreciation of facts and arriving at logical conclusion.
2. That I am the Respondent No. 1 in the present application and am well acquainted with the facts and circumstances of the present case and as such, competent to make and affirm the present rejoinder affidavit. I have gone through the Reply filed by Respondent No. 9 i.e. Aarey Authority and the reply to the same is as under.
3. I say that;in receipt of copy of reply filed by Aarey Milk Colony and exhibits attached thereof, some clarification is to be submitted.The overview of facts is as follows. On 08-11-22, first instance of dumped material was observed by Aarey security staff and report was submitted by them to Aarey Milk Colony office. On 21-11-22,second instance of dumped material was observed by Aarey security staff and report was submitted by them to Aarey Milk Colony office. On 09-12-22,third instance occurred when site visit was done byAarey security staff when vehicles with debris were plying and did not dump after sighting Aarey security staff. On 13-01-23, CEO, Aarey Milk Colony informed Aarey Police Station regarding the issue and requested to lodge complaint against unknown persons through their security staff.On 11-02-23, fourth



instance occurred when site was again visited by Aarey security staff and report was submitted by them to Aarey Milk Colony office. On 15-02-23, statement was submitted by Aarey security staff to Aarey Police Station. On 15-02-23, F.I.R. was registered at Aarey police station. On 21-02-23, Aarey security staff informed Aarey Milk Colony officer regarding registering of police complaint. On 11-05-23, MCGM's S ward office also informed the issue to Aarey Milk Colony.

4. I say that; it can be seen from the timeline of events as overviewed in pt. no.6 above that, from 8<sup>th</sup> November 2022 to 21<sup>st</sup> February 2023 i.e., for more than 3 months, Aarey Milk Colony was doing its internal paperwork regarding dumping of material at said site in their premises, as government department being land owner would do in such incidents, but it did not take any concrete steps/practical actions such as barricading the site, deploying security cover, etc. to stop the illegal dumping as soon as it was observed by them, which ought to have been done simultaneously. On 19-05-23, the issue appeared in Times of India newspaper, after which Aarey informed MCGM regarding the same stating that it had filed F.I.R. and requested to inquire whether debris generated in MCGM premises is being dumped at said site or not and take action if said is being



done. Then, after applicants approached Hon. NGT, hearings were conducted, MCGM represented its side and now Aarey Milk Colony is trying to blame MCGM for the issue.

5. I say that;even after passage of considerable time of more than 3 months since situation was first observed by Aarey security in November 2022, no concrete steps/practical actions seem to be taken by Aarey Milk Colony to stop the illegal dumping in their premises, but instead it is busy doing paperwork with other respondents; this can be seen from their reply's pt. no. xi wherein it is stated that after realizing that illegal debris, mud, dumping was continuing unabated they issued letters to MCGM in May 2023 instead of practically stopping dumping on their land and not allowing further dumping to happen for so many months from November 2022 to May 2023.
6. I say that;the brief remarks to the points on the Reply filed by the Respondent No. 9 i.e. Aarey Authority in tabulated form is as under

Para No.	Respondent No. 9 i.e. Aarey Authority Para	Remarks of MCGM
3(i)	The area under the Aarey Milk Colony administration	The said land is owned, maintained and in Possession





	<p>admeasures 3162.32 Acre. It was established in 1949 for the purpose of dairy farming. There are about 30 Units engaged in Dairy farming across the 1165.10 Acre. These dairy units and other establishments are connected by the internal roads of Aarey milk colony. About 708.51 Acre area is declared as reserve forest and remaining in 1997.05 Acre area is allotted to other organization.</p>	<p>of Respondent No. 9 i.e. Aarey Authority</p>
3(ii)	<p>In the year 1979 land from Aarey was given to Public Work Division (PWD) for construction of Vikhroli Jogeshwari Link road (JVLR), which is now in the jurisdiction of MCGM for the maintenance. This road cuts through Aarey and dissects the boundary of Aarey Milk colony into either side of the road.</p>	<p>The land is given to any other agency for any work or is maintained by any other agency, it does mean that the land owner i.e. Aarey Milk Colony can run away from its responsibility to protect their own land from illegal dumping or any other encroachment.</p>
3(iii)	<p>The internal roads of Aarey which are open to the general public barring heavy vehicles is the Goregaon Powai Road and</p>	<p>The land on which dumped material exists is owned by Aarey Milk Colony. Why the dumping happen in the first</p>

	<p>the Aarey Marol road. Movement of heavy vehicles is strictly prohibited and truck/dumper movement is restricted inside all of the roads that pass through Aarey milk colony except Jogeshwari Vikhroli Link Road which is under the Jurisdiction of respondent No.1 i.e. MCGM. Hereto annexed and marked <b>Exhibit "A"</b> is a copy of a google earth satellite imagery that shows the section of Aarey that has been separated by the JVLR.</p>	<p>place and also why the same is continued to happen even after it was noticed by Respondent No. 9 i.e. Aarey Authority. Further it is to notice that the Respondent No. 9 i.e. Aarey Authority has its own security force for protecting their land, the incidence of illegal dumping shows failure on their part to protect their land.</p>
3(iv)	<p>I respectfully submit that all the roads that are inside Aarey colony are well secured and there has been no dumping of debris or mud inside the section which is on the roads inside Aarey.</p>	<p>The land on which dumping of debris has happened is owned by Aarey Milk Colony. Even if they claim they have secured internal premises but they failed to secure the entire land owned and maintained by them.</p>
3(v)	<p>The JVLR is a public use road that has very high volume of traffic and the same is maintained and operated by MCGM i.e. respondent No. 1. Vehicles of all</p>	<p>Respondent No. 9 i.e. Aarey Authority has its own security department and in their letter to police, it is stated that the said dumping had occurred</p>





	<p>sizes and dimensions pass through this road. It is used by police, municipal and general public throughout the day and night. An illegal activity happening next to this busy road could not have escaped the attention of the Police beat marshals and patrols that are using this road. Besides the site is close to SEEPZ a heavy security zone and it is hard to understand why this large scale dumping activity was not detected or stopped by the concerned authorities of MCGM and Police. The administration of Aarey milk colony has absolutely no control over the movement of vehicles or use of JVLR.</p>	<p>during night time. Since November, 2022 till February 2023; when Aarey's security staff first observed and reported this matter to Respondent No. 9 i.e. Aarey Authority office and till the filing of Police complaint, Respondent No. 9 i.e. Aarey Authority has not taken any action to stop the illegal dumping activities on their own land. Respondent No. 9 i.e. Aarey Authority should have immediately deploy necessary resources to stop further illegal dumping after noticing it at the first instance.</p>
3(vi)	<p>Respondent No. 1 has made huge retaining walls on the Mithi River that flows through the vegetated areas of Aarey. These walls hamper the movement of humans from one side of the</p>	<p>This cannot be a reason by Aarey to ignore illegal dumping in land owned by them. Then, to protect their land, Respondent No. 9 i.e. Aarey Authority should have made</p>



	<p>river to the other. In earlier years security personnel could walk through the river bed and reach the other side and the slopes were clearly visible from the Tapeshwar Mandir side of Mithi River.</p>	<p>arrangements to access the said site.</p> <p>If Aarey does not consider it its own responsibility to take action on dumping of debris on their land, then, why is it giving reasons to explain that their security could not properly access said site. Aarey Authority cannot escape its liability and responsibility to take action on dumping of debris on their land.</p>
3(vii)	<p>The land which is the subject matter of the Application before this Hon'ble Tribunal was covered with dense vegetation making it difficult to spot any dumping that was happening on the JVLR side. However when the proportion of dumping reached massive levels, it was spotted by the Aarey administration. On Jan 2023 a letter was sent to the Aarey Police station and the respondent No. 1 as also intimated about illegal dumping</p>	<p>The Respondent No. 9 i.e. Aarey Authority lodged police complaint against said illegal dumping which clearly shows that Respondent No. 9 i.e. Aarey Authority is well aware of its responsibility to protect its land from encroachment.</p> <p>Aarey Milk Colony's submission in pt.viii also shows their efforts as per their due procedure owing to their responsibility.</p>

	<p>of mud that was happening inside the area in conjunction with JVLR and between the Mithi River wall. Hereto annexed and marked <b>Exhibit "B"</b> is a copy of a satellite image that shows the section which has been dumped on and destroyed. Again on Feb 2023 when the dumping had not stopped, the security officer duly intimated the violation to the administration which filed a FIR in the Aarey police station which was registered against unknown persons as the identity of the culprits was and is not clear. The dumping had started on the other side of the JVLR as well and it was seen that huge amounts of Debris and mud was dumped on side of the JVLR road on lands belonging to the Aarey Milk Colony jurisdiction.</p>	
3(viii)	I say that on 13/01/2023 Chief Executive Office Aarey Milk Colony issued letter to the Senior Police Inspector Aarey Milk	The correspondence made by Respondent No. 9 i.e. Aarey Authority with its Security department and Police





	<p>Colony and Security officer Aarey Milk Colony to lodge FIR regarding incident on 08/11/2022 unauthorized dumping debris and stones with soil in the government premises on Bank of Mithi River near the Jogeshwari Vikroli Link Road (adjacent to the protection wall of the petrol pump) was brought to the notice of the security department of Aarey Milk Colony. After investigation Security Officer of Aarey Milk Colony submitted his report on 21/02/2023 to the Chief Executive Office Aarey Milk Colony. And on 15th Feb 2023 FIR was lodged against unknown person.</p>	<p>department clearly shows that, Aarey is doing its part as government department being land owner would be doing in such case. Aarey should have taken the process further by taking necessary action for stopping the illegal dumping, making arrangements to avoid such incidents in future, follow up with Police to find the culprits and remove the illegal dumping.</p>
3(ix)	<p>I say that Aarey Milk Colony was declared as an Eco-sensitive Zone in the Gazette of India on 5th December 2016 by Ministry of Environment, Forest and Climate Change Notification. The said notification has already</p>	<p>Aarey Milk Colony can't run away from its responsibility to protect their own land from illegal dumping or any other encroachment. Since it is Eco-sensitive zone, i.e. Aarey Milk Colony cannot run away from</p>

	<p>been annexed in the application by the Applicants. The Chairperson of the Committee is the respondent No.1 i.e. MCGM and also other departments excluding Aarey Administration officials.</p>	<p>its responsibility to protect their own land from illegal dumping or any other encroachment and should have taken extra precautions to protect Eco-sensitive zone.</p>
3(x)	<p>I respectfully submit that Respondent No.1 MCGM has special squads that are deputed to detect illegal dumping along the roads owned/operated by them. However it has been seen that no action against illegal dumping on the Aarey stretch abutting the JVLR. The Aarey colony administration is severely hampered by shortage of manpower, yet it has successfully protected Aarey lands from being used for illegal dumping of mud or debris.</p>	<p>The reason of shortage of manpower does not justify Aarey's consent to illegal dumping on their land. Respondent No. 9 i.e. Aarey Authority should have availed resources to protect its Eco-sensitive zone. MCGM squads are not deputed to detect such activities at night time and Aarey Milk Colony in their own letter to Police has mentioned that, said dumping had occurred during night time. Aarey's claim of successfully protecting its land is countered by actual reality i.e., mounds of debris on their land.</p>
3(xi)	<p>I say that after realizing that the</p>	<p>Respondent No. 9 i.e. Aarey</p>



	<p>illegal debris, mud, dumping activity was continuing unabated, the CEO office Aarey Milk Colony issued letters on 25/05/2023 to the Assistant Commissioner "S" Ward and Assistant Commissioner "K" Ward Brihanmumbai Mahanagar Palika and requested for strict action to be taken against the guilty.</p>	<p>Authority must have kept proper watch and vigil to avoid dumping in the first place, but failure to do so resulted in dumping.</p> <p>Even after noticing the dumping way back in November 2022, it ought to have made security arrangements 24x7, trace the culprits while dumping was continuing unabated and then taken measures to stop further dumping.</p> <p>After passage of so many months, Aarey is expecting others to take action. Aarey Milk Colony is focusing on where the debris was being generated and from where the debris was coming; instead it should have avoided debris from being dumped on their land.</p>
3(xii)	I respectfully submit that despite the humongous amount of illegal dumping that had taken place at	K/East ward had visited site in their ward boundary and learnt that land filling was being done



	<p>the sites, on 28/06/2023 Brihanmumbai Mahanagar Palika filed their reply and informed that "during the inspection at the said place, they are not found any kind of debris in the Aarey Milk Colony area of J.V.L.R.They clearly submitted that no reclamation or destruction was seen. Hereto annexed and marked Exhibit "E" is a copy of letter dated 28/06/2023 issued by BMC K/East Ward.</p>	<p>by Metro authority with Metro Car Shed work and they had relevant permission to do it. Hence, K/East ward had informed Aarey Milk Colony to check for debris dumping in their premises.</p>
3(xiii)	<p>I say that CEO Aarey Milk Colony held meeting on 26/05/2023 to resolve the municipal waste/garbage problems. In this meeting it was also discussed regarding unauthorized dumping of debris near the bridge on the Jogeshwari-Vikroli road in the area of Mithi river. In that meeting the officers/employees of Brihanmumbai Municipal Corporation's P/South and K/East Division officers and</p>	<p>This meeting was conducted after the issue was published in Times of India. In this meeting as well as in letters given by Aarey to ward offices, Aarey informed MCGM regarding the same stating that it had filed F.I.R. and requested to inquire whether debris generated in MCGM premises is being dumped at said site or not, and to take action if said is being done. Also in pt.no.3(xi) above,</p>

	<p>license holders of Aarey Milk Colony and representative of NGO's were present. Hereto annexed and marked Exhibit "F" is a copy of minutes of meeting along with signature of officers.</p>	<p>Aareyhas stated that after realizing that illegal debris, mud, dumping was continuing unabated they issued letters to MCGM in May 2023 instead of practically stopping dumping on their land and not allowing further dumping to happen for so many months from November 2022 to May 2023.</p>
3(xiv)	<p>I say that on 01/08/2023 CEO office again issued letter to the Deputy Chief Engineer (SWD) of Brihan Mumbai Municipal Corporation and informed regarding unauthorized dumping of debris near the bridge on the Jogeshwari Vikroli road in the area of Mithi river and informed to them regarding news published in Mid-Day and Times of India Daily. The Brihan Mumbai Municipal Corporation i.e. respondent No. 1 has not taken any action despite letters issued by CEO office Aarey Milk</p>	<p>Prior to news published in the in Mid-Day and Times of India Daily; the Office of "S" ward of MCGM had informed the Aarey in May 2023 regarding the unauthorized dumping of debris near the bridge on the Jogeshwari Vikroli road in the area of Mithi river.</p> <p>The Respondent No. 9 / Aarey is only interested in the origin of debris and how it is being transported instead of concentrating on stopping debris from being dumped on their land and removing the already dumped debris.</p>



	Colony.	
3(xv)	<p>I say that on 06/09/2023 Brihan Mumbai Municipal Corporation again issued letter to CEO Aarey Milk Colony without following the order passed by this Hon'ble Tribunal and continually contempt the order passed by this Hon'ble Tribunal. I further say that on 07/08/2023 this Hon'ble Tribunal passed order and directed to the Respondent No.1/MCGM for coordinate with the Respondent No.3, 8 and 9 but they failed to coordinate and contempt the order dated 07/08/2023. As per last hearing was held on 29.08.2023 and court was given direction to Respondent No.1 that is "grant two weeks' time to ensure that the said debris is cleared in co-ordination with other authorities and submit a report by the next date", but till date no follow up taken by the Respondent No.1</p>	<p>To coordinate with Respondents per Hon. NGT's orders, BMC sent letter to Aarey regarding same with copy to other respondents. In compliance of order dated 07.08.23 and 29.08.23; a co-ordination meeting was conducted in the Office of MCGM on 09.10.2023, wherein all concerned stake holder called for. However only representative of Respondent /MPCB was present. Hence, there is no contempt of court orders. The Respondent No. 09 must understand that being land owner it is their responsibility to clear the debris and not Respondent MCGM. MCGM is already extending its support to help Aarey in present issue.</p>



	<p>even they failed to follow order passed by this Hon'ble Tribunal on 07/08/2023 and 29/08/2023.</p> <p>The Respondent No.1 not ready to take responsibility to clear the debris.</p>	
3(xvi)	<p>I say that debris and mud that has been found on the sides of JVLR along the banks of Mithi River in the Aarey has not been generated inside the Aarey Milk Colony, nor is any work going under authority of CEO Aarey Milk Colony that would result in the generation of debris or excavated material. I further say that all developmental works are continuously going on in the MCGM area and the debris generation is in the course of the development activity undertaken by MCGM/ private developers outside Aarey colony. Once again I respectfully reiterate that movement of dumpers/trucks is prohibited inside Aarey Colony</p>	<p>Whether any activity happens inside or outside of Aarey premises, the Respondent No. 09 must focus on protecting their land by making arrangements to stop the illegal dumping and then remove the material.</p> <p>But, here Respondent No. 09 is only interested to divert the attention to from where debris was generated and from where debris are coming, instead of preventing and removing debris dumped on their land.</p> <p>It seems that Respondent No. 09 is just watching as a spectator allowing the dumping to happen on their land.</p>



	and on the roads inside it and a strict restriction is in place.	
3(xvii)	<p>I further say that the Municipal Corporation of Greater Mumbai has a proper system of collection and disposal of solid waste/construction waste across of the city of Mumbai. MCGM has designated sites for dumping of Construction Debris and mud. Strict vigil and heavy fines are imposed by the MCGM for illegal dumping at non designated sites. The respondent No. 1 is an organization well equipped with the funds and man power and has the responsibility to enforce, the laws pertaining to disposal of waste. The sites near the Mithi River under administrative jurisdiction of Aarey CEO are not among the designated sites to dispose off mud/debris and construction waste.</p>	<p>BMC is not responsible to deploy resources to protect land owned by Aarey milk Colony.</p> <p>BMC takes action for illegal dumping at non designated sites in BMC premises on roads and not on private land or land owned by Aarey/other govt. agencies.</p> <p>If Aarey Milk Colony deems that it is short staffed, it could have availed security cover to stop illegal dumping at said site; but no options seem to be explored. It does not matter whether said site in Aarey Milk Colony is designated for dumping or not, as the said site is owned by Aarey and not by BMC, hence, its Aarey's responsibility to look after its land.</p>
xviii)	I say that the Chief Executive	If Aarey does not have



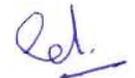


<p>Office has no machinery, hardly any manpower or resources to clear the debris on their own. I further say that Municipal Corporation of Greater Mumbai have a system collection disposal of solid waste/construction waste across of the City of Mumbai. It also has the power to impose fines and penalize offenders. Despite repeated requests from the Aarey CEO office, no action was initiated by</p>	<p>resources then they should have availed/hired machinery, manpower, resources, etc. from state government to clear the debris and protect its land from further illegal dumping. The question is why did dumping happen on land owned by Aarey, why did it continue to happen even after being noticed by Aarey and why did Aarey not make any arrangement to stop and remove the illegal dumping. There is no connection of BMC and the dumping found in Aarey. It can be seen that, Aarey had initiated action by lodging police complaint and now they need to take further steps to logically conclude the case by removing the debris and making arrangements to avoid such incidents from being repeated.</p>
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7. I say that; the Respondent- MCGM most respectfully submits that as the site in question is owned by and under possession of Respondent No.9/Aarey Authority, therefore Respondent No.9 is the authority to remove the debris from the site at their expense, take action against illegal dumping, coordinate with other respondents and grant permission/consent for dumping of debris on their land.
8. It is most respectfully submits that in view of the facts stated above, Respondent No.9/ Aarey Authority is the authority for removing the debris from the site in question and coordinating with other respondents.

Date:

Mumbai



Respondent No. 1

Exec. Eng.  
(SWM)

### VERIFICATION

I, Sudhakar Bhivsan Nanote, Age: 54 years, Occupation – Service as Executive Engineer – SWM Department, Zone – 6, of Municipal Corporation of Greater Mumbai, the authorized signatory for MCGM, do

hereby state on solemn affirmation that what is stated in above paras are true and correct to my own knowledge and belief.

Solemnly Affirmed at Mumbai

- 4 APR 2024

This day of, April 2024

*Ed.*  
Respondent No.1

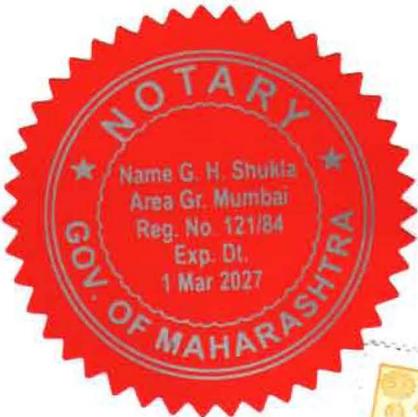


*Dij*  
Advocate for Respondent No.1

**BEFORE ME**

*[Signature]*  
**G. H. SHUKLA**  
**NOTARY GREATER MUMBAI**  
Jagdamba Bhaven, Ground Floor,  
Ganpatrao Kadam Marg, Lower Parel,  
MUMBAI - 400 013.

- 4 APR 2024



**NOTED & REGISTERED**  
Sr. No. 62152 Page No. 25  
Book No. 22 Date. - 4 APR 2024

