

BEFORE THE NATIONAL GREEN TRIBUNAL,
EASTERN ZONE BENCH, KOLKATA

O.A No. 92/2023/EZ

Dr. Ganesh Das & Ors.

....Applicants

Versus

M/s Arya Erectors Pvt. Ltd. & Ors.

....Respondents

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Filed by:

Vikram Rajkhowa

Vikram Rajkhowa

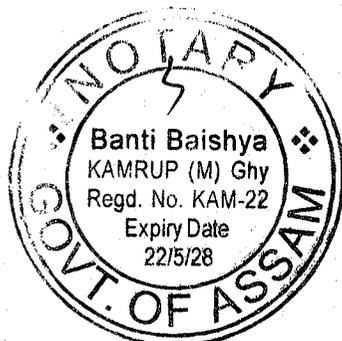
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IN THE MATTER OF:

Dr. Ganesh Das & Ors.

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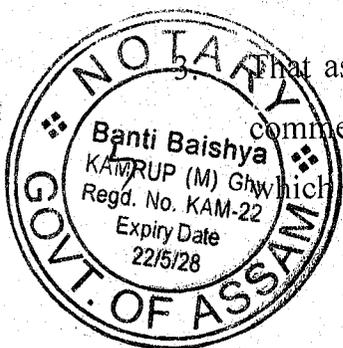
....Respondents

REJOINDER AFFIDAVIT ON BEHALF OF THE APPLICANTS TO THE
COUNTER AFFIDAVIT OF RESPONDENT NO. 3 MINISTRY OF
ENVIRONMENT, FOREST AND CLIMATE CHANGE.

I, Dr. Ganesh Das, son of Sri. Dijendra Chandra Das, aged around 52 years, resident of Flat No. 5A, Madhabdevpur, Rehabari, Guwahati 781008, Kamrup(M) district, Assam, do hereby solemnly affirm and state as under:

1. That I am the applicant No. 1 in the above mentioned application, hence I am fully conversant with the facts and circumstances of the case and I am competent and duly authorized to swear this affidavit.
2. That save and except what has been specifically admitted in this affidavit and what appears from the records, the deponent categorically denies the rest of the statements and submissions made in the Counter Affidavit.

3. That as regard the averments made in Para 1 and 2, the same requires no comment from the deponent. However the deponent do not admit anything which is contrary or inconsistent to the records.

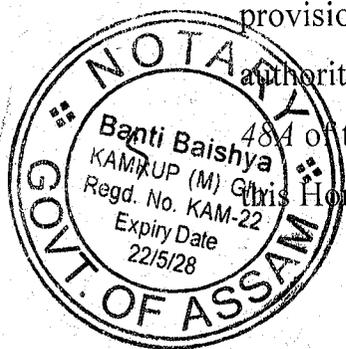


4. That as regard the averments made in Para 3, the deponent begs to state that the Hon'ble Apex Court in a catena of cases has held that - "*if averments are not controverted by the respondents, it should be presumed to be admitted.*"
5. That as regard the averments made in Para 4, the deponent begs to state that the application is being filed not only because of non-compliance of the conditions stipulated in the E.C dated 21.01.2014, including the violations of the Environment (Protection) Act, 1986; The Water (Prevention and Control of Pollution) Act, 1974; among other laws. But also the non-action of the respondent authorities, including Respondent No. 3 MoEF&CC, in taking necessary action against the project proponent for number of violations.

The Hon'ble Apex court in M.C Mehta vs. Union of India & Ors., observed as follows:

"If this Court finds that the authorities had not taken action required of them by law and that their inaction is jeopardising the right to life of the citizens of the country or any section thereof, it is the duty of this Court to intervene".

6. That as regard the averments made in Para 5 to 9, the deponent do not admit anything, which is contrary or inconsistent with the records. The deponent further states that the respondent authorities who are empowered to monitor and implement the provisions of the E.C conditions and EIA Notification, 2006, and amendments made therein, did not take any action against the project proponent, even after number of violations of the statutory provisions came to light. Therefore the said non-action of the concerned authorities is a failure of the State authorities as enumerated under *Article 484* of the Constitution of India, and hence required to be interfered with by this Hon'ble Court.



7. That as regard the averments made in Para 10, the deponent begs to state that Part – B: General Conditions at Sl.No. 9 states that –

“The proponent shall upload the status of compliance of the stipulated EC conditions, including results monitored data on the website and shall update the same periodically. It shall simultaneously be sent to the SEIAA and Regional Office of MoEF. The criteria pollutant levels namely PM₁₀, PM_{2.5}, SO₂, NO₂, etc. (ambient levels as well as stack emission) of critical sectors, parameters, indicated for the project shall be monitored and a record be maintained for the public domain.”

It is clear from the above provision that the project proponent is required to upload the status of compliance of stipulated EC conditions both with SEIAA Assam, as well as with the Regional Office of MoEF. Thereby it is the duty of both SEIAA Assam as well as MOEF to monitor said EC conditions and take necessary action against any violations. But in the instant case the project proponent did not submit a single status of compliance of the stipulated EC conditions, and thereby managed to hide their violations under a veil, so that the affected people or conscientious citizens are kept in the dark.

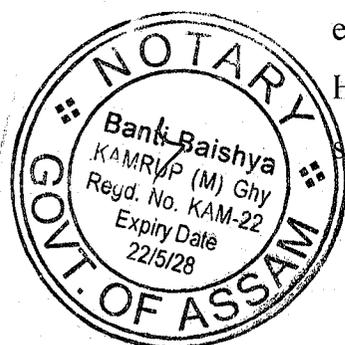
Be it stated that, if violations and non-compliance of EC conditions are not required to be complied with, as in the instant case, then the entire purpose of Environmental Clearance, which flows from the EIA Notification, 2006, and therefore the Environment (Protection) Act, 1986 and Rules framed thereunder is frustrated. Therefore this is a fit case for the interference of this Hon'ble Court.

8. That as regard the averments made in Para 11, the deponent begs to state that SEIAA Assam, being authorized by Respondent No. 3 MOEF&CC, to



grant EC, choose to turn a blind eye against the project proponent for the following, among other violations:

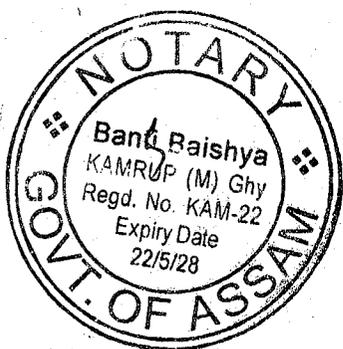
- (i) **Non-submission of Six-Monthly Compliance Reports:** A compliance report under the EIA Notification, 2006, provides the status of compliance with conditions stipulated in the environmental clearance letter and is to be submitted every six months from the grant of environment clearance to a project till its completion. The hard copy of the compliance report is to be submitted with the regulatory authorities and the soft copy is to be uploaded in the environmental clearance portal of MOEF&CC. It is mandatory to submit the compliance report online, which is a public document, so as to bring more transparency in the compliance and monitoring regime. The project proponent by evading submitting the said six-monthly compliance reports have evaded the scrutiny of the public as well as the authorities.
- (ii) **Non-submission of Environmental Statement:** The project proponent did not submit the annual Environmental Statement in Form-V with SEIAA and State Pollution Control Board, including with MOEF&CC Regional Office as mandated under the Environment (Protection) Rules, 1986, as amended thereafter.
- (iii) **Non-renewal of Environmental Clearance:** The project proponent received E.C on 21.01.2014 with a validity for a period of 5 years, i.e., till around 21.01.2019, which got automatically extended to 7 years, i.e., up to 21.01.2021 due to O.M dated 12.04.2016 of MOEF&CC. Thereafter, the project proponent was required to extend their Environmental Clearance as it's an ongoing project. However the concerned regulatory authorities, being aware of the said non-renewal of EC remained a mute spectator.



(iv) **Invalid Consent to Operate (CTO):** According to PCB Assam, the CTO was valid till 31.03.2023, which mean it was granted a year earlier, i.e., on 01.04.2022, and thereafter the same was not renewed. However, the E.C of the project proponent got over on 21.01.2021, and therefore PCB, Assam, could not have granted the CTO without a valid EC. But SEIAA and PCB Assam, did not take any action.

(v) **Non-action on the 'Inspection Report dated 14.09.2023'** which highlighted following violations among others:

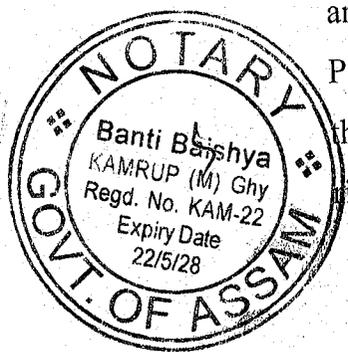
- (i) The unit has failed to obtain permission from Central Ground Water Board (CGWA) for extraction of ground water.
 - (ii) The Sewage Treatment Plant (STP) was found non-operational during the inspection.
 - (iii) The inspection found potential issues related to the proper gradient, flow capacity of rainwater, and the adjustment of carrying capacity with the final load bearing drainage system.
 - (iv) The stormwater drain exhibited a greyish to blackish colour, indicating potential neglect in maintenance by the housing entity, possibly due to blocked drains.
- (vi) **Non-treatment of Grey Water:** As highlighted above the STP was found non-functional during inspection. Furthermore the STP is only for the treatment for Black water and there is no STP for the Grey Water emitting from the bathrooms, washrooms, etc. The said untreated grey water gets mixed with the storm water in the drain, and during flooding it overruns across the township and neighbouring areas, including Brahmaputra river around 700 metres away.



- (vii) **Inclusion of additional area and expansion of project without obtaining fresh Environmental Clearance:** The project proponent was granted EC for a plot area of 38,106 sq.m, which is around 28 Bighas 4 Lechas. Be it stated that according to an Affidavit dated 19th January 2024 by the Managing Director of M/s Arya Erectors India Private Limited, submitted before the Real Estate Regulatory Authority, Assam, the project proponent subsequent to EC dated 21.01.2024, included an additional 2 Bighas of land into the project wherein Club House and Swimming Pool has been constructed and thereby increasing the total land area of the project to 30 Bighas 4 Lechas. Be it stated that Para. 2 of the EIA Notification 2006 states that 'prior EC' is required if there is any expansion or modernization of existing projects or activities listed in the Schedule to the notification. It is further state that even the Hon'ble Apex Court has held that a fresh Environmental Clearance is necessary for the expansion of a project beyond the limits approved by the prior EC.

A copy of the above-mentioned Affidavit dated 19th January 2024 is annexed as **Annexure – A/1**.

That, even though there was specific directions of this Hon'ble Court to SEIAA, Assam, (the authority authorized by MoEF&CC) to look into the grievances of the applicants but the concerned authority failed to take any action and address the same, even after numerous violations of the project proponent having come to light. Even otherwise also, it is the duty of the regulatory authorities as mandated under *Article 48-A* of the Constitution of India, as well as the statutory mandate under the various provisions of the Environment (Protection) Act, 1986; Water (Prevention and Control of Pollution) Act, 1974; Air (Prevention and Control of Pollution) Act, 1981, and the Rules framed thereunder. Therefore, due to the non-action of the concerned authorities, is hampering the applicants right to a clean and healthy environment, therefore applicants have no



other alternative but to approach this Hon'ble Court seeking adequate relief. It is also the duty of the applicants as a citizen under Article 51-A(g) of the Constitution of India to protect and improve the natural environment.

9. That as regard the averments made in Para 12, the deponent begs to refer and rely upon Para 4 of the instant affidavit.

10. That the statements made in this affidavit and in paragraphs – 1 to 9 – are true to the best of my knowledge and belief, and those made in paragraph 8 (Part) are matter of records, which I believe to be true and the rest are my humble submissions before this Hon'ble Court.

And I sign this affidavit on this 16th day of July, 2024 at Guwahati.

[Handwritten signature]

DEPONENT

VERIFICATION:

I, the deponent above-named, do hereby verify that the contents of the above rejoinder affidavit is true and correct to the best of my knowledge and belief and nothing material has been concealed there from.

Verified at Guwahati, Assam on this 16th day of July, 2024.

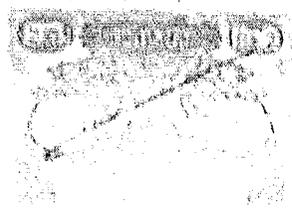


[Handwritten signature]

DEPONENT PUBLIC : OATH COMMISSIONER

Solemnly affirmed before me this day, I Certify that I read over and Explained the contents to the declarant and that declarant seemed perfectly to understand them.

[Handwritten signature]
Banti Baishya
16 NOTARY, GOVT. OF ASSAM
KAMRUP (Metro) Guwahati
Regd. No.: KAM-22



1255.....
14/11/24.....

BEFORE THE REAL ESTATE REGULATORY AUTHORITY, ASSAM

No. RERA/ASSAM/COM/2022/11/115

DR. Mrinmoy Borkataki & others

...COMPLAINANTS

-Vs-

Arya Erectors India Private Limited

...RESPONDENT

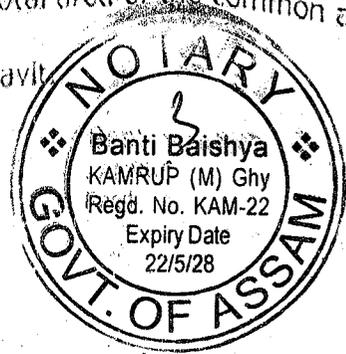
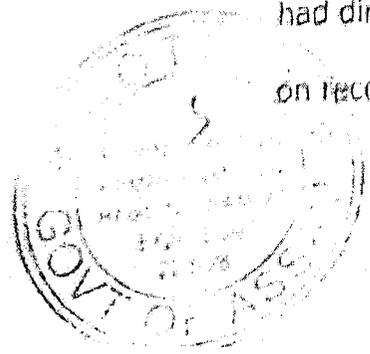
AN AFFIDAVIT TO BRING ON RECORD THE TOTAL AREA OF THE PROJECT

AND OF THE COMMON AREAS:

I, Shri Anil Kumar Sarma, S/o --Late Pabindra Nath Sarma, R/o
- House no. 20, Happy Villa, Barowari, P. O. — Silpukhuri, Guwahati - 03, aged
about 66 years do hereby solemnly affirm and say as follows.

1. That I am the Managing Director of the respondent in the instant
case and as such, fully conversant with the facts and circumstances of the case.
I am competent to swear this affidavit.

2. That the respondent states that the present affidavit is being filed
in compliance of the Order dated 01.09.2023 whereby this Hon'ble Authority
had directed that the total area of the common areas in the Project be brought
on record vide an affidavit.

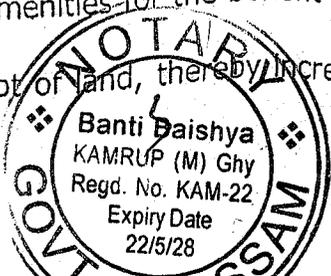
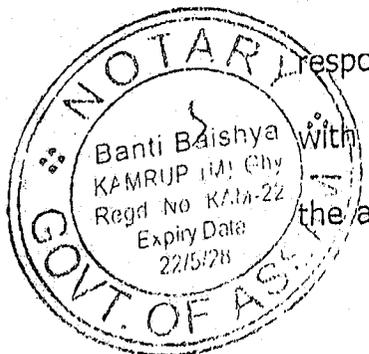


For & behalf of
Indira Devi
Kamrup

3. That, the respondent states that initially NOCs were granted by the concerned authorities for construction of the Arya Smart Living Project over a total plot of land measuring 28 Bighas 4 Lechas, out of which Phase 1 consisted of 23 Bighas 4 Lechas and Phase 2 consisted of 5 Bighas 1 Katha 4 Lechas.

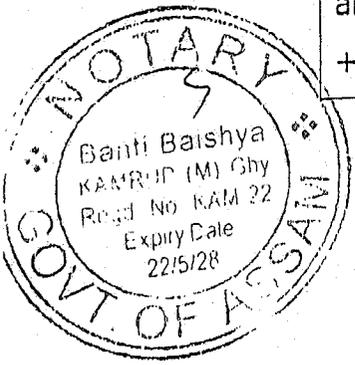
4. That in Phase 1 of the project which consisted of 23 Bighas 4 Lechas, villas that were sold to the buyers of the concerned phase were constructed over 11 Bighas 4 Kathas 11 Lechas and in Phase 2 of the project, villas that were sold to buyers of the concerned phase were constructed over 2 Bighas 3 Kathas 8 Lechas. Be it stated herein that the total land sold to the individual buyers includes the area of the constructed villa, as well as, their respective open spaces exclusive to those villas. Therefore, out of the total land of 28 Bighas 4 Lechas, common area would be the balance area of 13 Bighas 2 Kathas and 5 Lechas.

5. That, subsequently, the respondent who was the owner of a plot of land measuring 2 Bighas contiguous to the aforementioned total plot of land measuring 28 Bighas 4 Lechas, decided to include this additional 2 Bighas of land into the project without any additional cost on the buyers and thereby increasing the total land area of the project to 30 Bighas 4 Lechas. The respondent had further decided to provide the residents of ARYA Smart Living with additional amenities for the benefit and enjoyment of the residents upon the additional plot of land, thereby increasing the total common areas to 15



Bighas 2 Kathas and 5 lechas, which is more than 50% of the total area, The total land calculation is herein laid down in a tabular form:

| DESCRIPTION OF PHASE/LOCATION | BIGHAS | KATHAS | LECHAS | Total area in Lechas | |
|--|--------|--------|--------|----------------------|-----|
| | (B) | (K) | (L) | | |
| Initial total land of the entire project consisting of the villas and common areas (Phase 1 + Phase 2) | 28 | 0 | 4 | 2804 | |
| Land area of Phase 1 upon which the villas are constructed | 11 | 4 | 11 | 1191 | (A) |
| Land area of Phase 2 upon which the villas are constructed | 2 | 3 | 8 | 268 | (B) |
| Total land area upon which the villas are constructed (A + B) | 14 | 2 | 19 | 1459 | |
| Common Area as per NOCs of Phase 1 and Phase 2 | 13 | 2 | 5 | 1345 | (C) |
| Additional land subsequently included with added amenities for the residents | 2 | 0 | 0 | 200 | (D) |
| TOTAL Common Areas of ARYA Smart Living with added amenities for the residents (C + D) | 15 | 2 | 5 | 1545 | |



6. That this additional affidavit has been filed bona fide and for the interest of justice.

7. That the statements made in paragraphs 1 to 6 of this additional affidavit are true to my knowledge, record and belief, which I believe to be true.

OATH

I swear that this my declaration is true, that it conceals nothing and that no part of it is false, so help me God.

And I sign this affidavit on this 19th day of January 2024.

For & behalf of Arya Engineers
India Private Limited

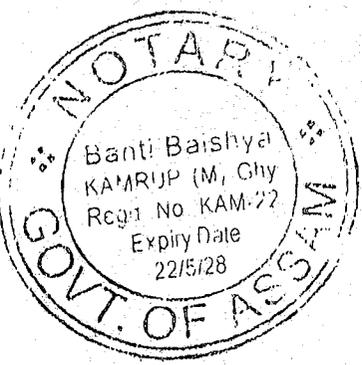
Anil Kumar Sarma
Managing Director

DEPONENT

Identified by me

Abhik Nep Samah

(Advocate)



M. K. Sarma
19/1/24
Banti Baishya
NOTARY, GOVT. OF ASSAM
Kamrup (Metro), Guwahati
Regd. No.: KAM-22

NOTARY PUBLIC: OATH COMMISSIONER
Solemnly affirmed before me this 19th day of January 2024.
Certify that the contents of the above affidavit are true to the best of my knowledge and belief.
The contents of the above affidavit are true to the best of my knowledge and belief.
Under my hand and seal this 19th day of January 2024.