

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA, WEST BENGAL FINANCE
CENTRE, 3rd FLOOR, NEW TOWN**

O.A No. 61 of 2024/EZ;

IA No. 28 of 2024/EZ

IN THE MATTER OF:

Hitesh Sharma

..... Applicant

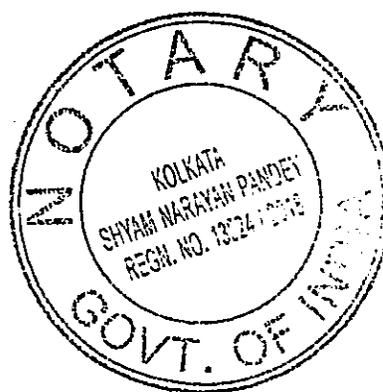
-Versus-

Sabyasachi Mullick Chowdhury&Ors.

..... Respondents

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Abhisek Baran Das
Advocate

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C/O Mr. ABHISEK BARAN DAS
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12 AUG 2024

SL. NO. 29 DT. 12.08.2024

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONAL BENCH, KOLKATA, WEST BENGAL
FINANCE CENTRE, 3RD FLOOR, NEW TOWN
ORIGINAL APPLICATION NO.61/2024/EZ
IA No. 28/2024/EZ**

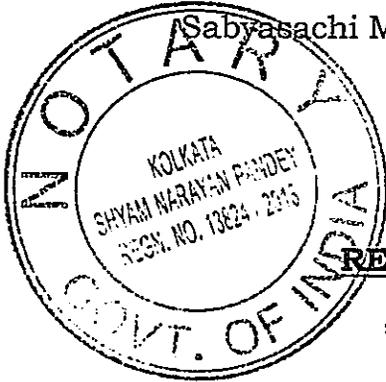
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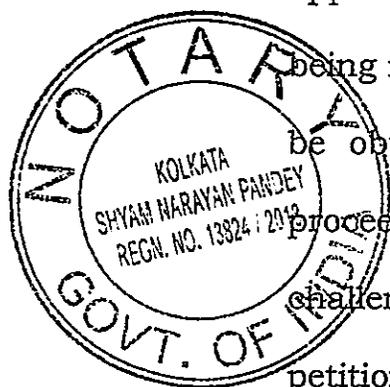
**REJOINDER AFFIDAVIT ON BEHALF OF THE APPLICANT
AGAINST THE COUNTER AFFIDAVIT FILED BY THE
RESPONDENT NO. 1**

I, Pawan Sharma, son of Sri Radheshyam Sharma, aged about 51 years, by faith Hindu, by occupation business, residing at CZ-4, Canal South Road, P.O. Dhapa, P.S. Pragati Maidan, Kolkata-700105, do hereby solemnly affirm and say as follows:

1. I am the Constituted Attorney of the applicant. I have made myself fully acquainted with the facts and circumstances of the present case. I am competent enough and duly authorized by the applicant to make and affirm this affidavit on his behalf.
2. I have read a copy of the counter affidavit served upon my Learned Advocate purportedly affirmed by Sabyasachi Mullick Chowdhury

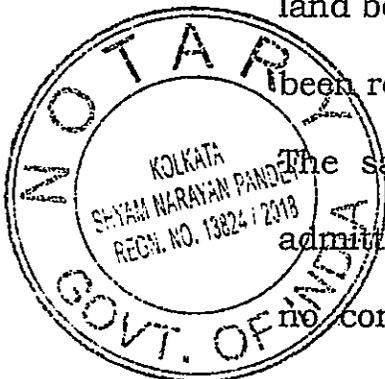
being the respondent no. 1 on June 28, 2024 (hereinafter referred to as the "said affidavit"). I have understood the meaning, contents and purport thereof.

3. The said affidavit suffers from suppression of material facts and/or tampering of the actual state of affairs.
4. Save and except what are matters of record and allegations to the contrary contained in the various paragraphs of the said affidavit are denied and disputed as if the same are in seriatim and specifically traversed.
5. With reference to the averments made in paragraph nos. 1 to 4 of the said affidavit, I deny and dispute the contentions raised therein save and except matters which are on record. I deny that no statutory provision of any act has been mentioned while preferring the instant application. I say that the applicant was again not made a party in W.P.A. No. 12605 of 2017 and as such, the order dated May 16, 2024 passed in W.P.A. No. 12605 of 2017 cannot bind the applicant in any manner whatsoever. The building sanction plan being issued in the name of the applicant, no circuitous order can be obtained by making the respondent no. 15 a party to a proceeding wherein the sanction plan of the applicant is under challenge. The Hon'ble Division Bench was pleased to permit the petitioner to agitate all points including the objections regarding



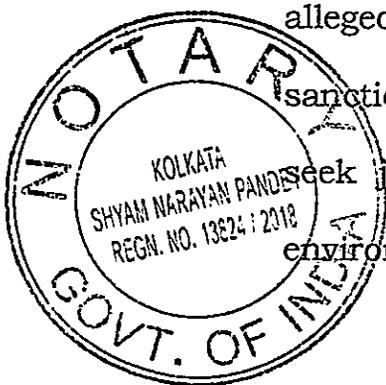
issuance of the notice under Section 397 of the Kolkata Municipal Corporation Act, 1980.

6. With reference to the averments made in paragraph nos. 5 to 8 of the said affidavit, I deny and dispute the contentions raised therein save and except matters which are on record. I say that the issue of my right to audience has been finally decided by the Hon'ble Supreme Court and as such no further arguments are required to be advanced to establish such right. It seems that the answering respondent seeks to reopen the issue already decided by the Hon'ble Supreme Court before this Hon'ble Tribunal which is otherwise impermissible under the law. Upon scrutinizing the fact that the association of owners, being the respondent no. 15 Society, had already represented the cause of the owners, The Hon'ble Supreme Court thought it fit to grant a liberty to the applicant to approach this Hon'ble Tribunal for the redressal of his grievances. I deny that any of the issue sought to be raised is barred by the principles of res judicata as alleged or at all. Moreover, the applicant's land being directly affected with the outcome of the report, none else is entitled to espouse the cause for the applicant without the permission of the applicant. I deny that the applicant's land being CZ/15A comprises of any portion of the land which has been reclaimed by way of filling up of wet land as alleged or at all. The said plot of land comprises of 5 dag nos. out of which admittedly there is no allegation with respect to 4 dag nos. Thus, no committee could have been formed and/or made operative

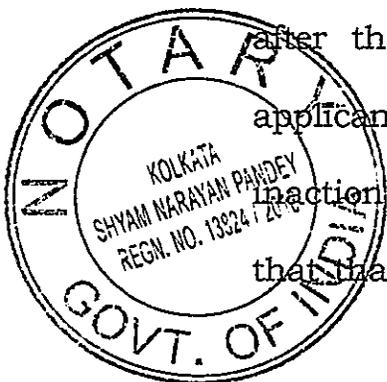


without hearing the applicant and first deciding as to which part of the impugned dag number the wet land existed and how much of such dag is within the land of the applicant. I say that the report of the 8 member committee is flawed factually as well as in law. I deny that there was no necessity to consider individual matters despite infringement of personal right as alleged or at all.

7. With reference to the averments made in paragraph no. 9 of the said affidavit, I deny and dispute the contentions raised therein save and except matters which are on record. I deny that the applicant has approached this Hon'ble Tribunal with unclean hands as alleged or at all. I deny that there is any suppression of material facts as alleged or at all. I deny that the applicant had ever given a false declaration before the Kolkata Municipal Corporation. I say that the land being no. CZ/15A comprising of 6 cottahs 3 chittaks 25 sq.ft. consists of R.S. Dag No. 87 in Mouza Dhapa, R.S. Dag No, 248, 186, 187 and 267 at Mouza Nimak Poktan. I say that the order dated April 23, 2018 was passed in a proceeding where the applicant was not made a party. Thus, there was no occasion for the applicant to be aware of the said order. I deny that any of the declaration as mentioned in the paragraphs under reference would indicate any malafide or suppression of material fact as alleged or at all. I deny that there is any occasion for cancelation of sanction plan as alleged or at all. Stray persons cannot come to seek judicial remedy by infringing civil rights in the garb of environment reforms.



8. With reference to the averments made in paragraph nos. 10 to 15 of the said affidavit, I deny and dispute the contentions raised therein save and except matters which are on record. I deny that any notice for site inspection of February 17, 2022 was served upon the applicant as alleged or at all. The representation of the respondent no. 15 is not a good service upon the applicant. Notice upon the society is not a good service upon the applicant and based on such logic, the Hon'ble Supreme Court had granted liberty to the applicant to approach this Hon'ble Tribunal. The acts and conducts of the respondent no. 15 cannot hold the applicant vicariously liable which is sought to be imposed upon by the answering respondent through the said affidavit. I deny that there is any illegal construction or filling up of water body as alleged or at all. I say that the applicant is no way instrumental or involved in any illegalities as complained by the answering respondent. The respondent no. 15 had sold the property to the applicant for which the state government had duly received the stamp duty. It is unfathomable as to how the state government has accepted stamp duty and registration fees on sale over a wet land as alleged. I say that the applicant cannot be held responsible for the inaction of the respondent no. 15 for not having informed its members. Moreover, after the Hon'ble Supreme Court has granted liberty to the applicant to pursue its cause before this Hon'ble Tribunal, the inaction of the respondent no. 15 become inconsequential. I deny that that the plot no. CZ/15A was created by filling up of water



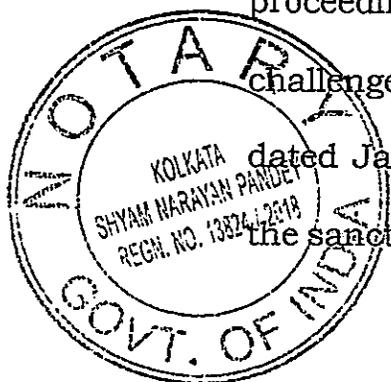
body as alleged or at all. I deny that the applicant had given false and misleading statements to obtain the sanction plan as alleged or at all. I say that the relevant document to dispute the reports filed by the ADM and DL&LRO had already been annexed to the application. I deny that the grievance of the applicant is not tenable and prima facie does not make out any case as alleged or at all.

9. With reference to the averments made in paragraph nos. 16 to 19 of the said affidavit, I deny and dispute the contentions raised therein save and except matters which are on record. I say that the final report of the 8 member committee is defective due to non-consideration of factual aspect which have been categorically canvassed in the application. I say that the initial part of the report does not match the later part of the report. The entire report is filled up with self-contradictory findings. The Kolkata Municipal Corporation had been included in all the meetings and inspections to disclose its stand as regards the proceedings conducted by the said Committee. It is the specific stand of the Corporation that four complaints had been lodged by the Corporation before the Pragati Maidan P.S under the relevant acts over the alleged properties but surprisingly, it was the Corporation which had issued the building sanction plan on the plot of the petitioner in the year 2021. It is significant to state that the from the municipal assessment book it shall be evident that the land of the petitioner being CZ/15A was classified as a vacant land till 2017. It is astonishing as to how suddenly the said land became a part of the wetland and which



was reclassified as 'beel'. I say there is no evidence coming forth as to how the pisciculture was being carried out on the said land of the petitioner when the entire property belonging to the society was butted and bounded 50 years back approximately.

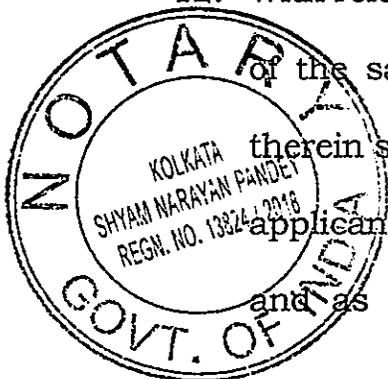
10. With reference to the averments made in paragraph nos. 20 to 25 of the said affidavit, I deny and dispute the contentions raised therein save and except matters which are on record. I say that dismissal of a Special Leave Petition does not give rise to a presumption that the judgment has been affirmed by the Hon'ble Supreme Court. The fact that by an order dated April 13, 2022, the Special Leave Petition was dismissed, does not give rise to a presumption that the order dated January 3, 2022 was affirmed by the Hon'ble Supreme Court. The said order dated January 3, 2022 having passed without making the applicant a party is now required to be revisited by virtue of the liberty granted by the Hon'ble Supreme Court in favour of the applicant. I say that the applicant was again not made a party in W.P.A. No. 12605 of 2017 and as such, the outcome of the said proceeding cannot bind the applicant in any manner whatsoever. The building sanction plan being issued in the name of the applicant, no circuitous order can be obtained by making the respondent no. 15 a party to a proceeding wherein the sanction plan of the applicant is under challenge. Moreover, after the order passed in MAT No. 239 of 2024 dated January 10, 2024, all points relating to CZ/15A including the sanction building plan has to be adjudicated before this Hon'ble



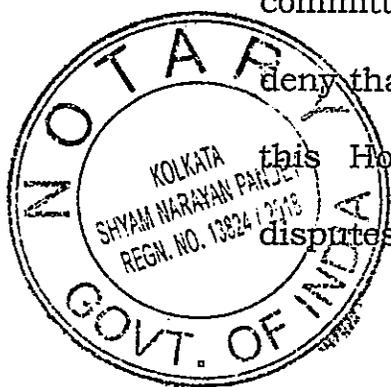
Tribunal. Thus, the issues raised in paragraphs under reference are inconsequential.

11. With reference to the averments made in paragraph nos. 26 to 29 of the said affidavit, I deny and dispute the contentions raised therein save and except matters which are on record. I deny that there is no requirement to consider the individual matters in this proceeding inasmuch as the orders passed in O. A. No. 25/16/EZ is in rem. I deny that any of the allegations made by the applicant has become infructuous as on date as alleged or at all. On the contrary, the order passed by the Hon'ble Supreme Court and by the two Hon'ble Division Benches of the Hon'ble High Court at Calcutta makes it abundantly clear that the cause of the applicant is required to be heard with gravity. I deny that there is no reasonable justification or explanation given while preferring the instant application. I deny that the application is bereft of any plausible reason as alleged or at all. I deny that there are enough rounds of interference by this Hon'ble Tribunal. I deny that the application deserves to be rejected as alleged or at all. I deny that the application is not in form.

12. With reference to the averments made in paragraph nos. 30 and 31 of the said affidavit, I deny and dispute the contentions raised therein save and except matters which are on record. I say that the applicant was not a party in Original Application No. 25/16/EZ and as such, the status quo order cannot be binding on the



applicant. I say that there cannot be any derivative notice in legal parlance and as such the respondent no. 15 had no authority to represent the applicant in any manner whatsoever. The respondent no. 15 is a distinct identity from that of the applicant and the applicant has its own cause to be espoused by way of this application. I deny that the applicant tried to circumvent any order passed by this Hon'ble Tribunal as alleged or at all. I deny that the applicant gave a false declaration regarding non pendency of any litigation as the applicant not being a part to any of the proceeding actually did not have notice regarding the said proceeding. I deny that the applicant has given any false declaration as alleged or at all. I deny that the applicant being a member of the respondent no. 15 was aware of the said proceeding as alleged or at all. It is denied that CZ/15A was created for filling up the water body in R.S. Dag no. 268 as alleged or at all. None of the portion of the applicant's land falls within R.S. Dag no. 268. In the earlier part of the said affidavit the answering respondent had indicated the applicant's land belong to R. S. Dag no, 267. Such averment shall be evident from paragraph 9(e) of the said affidavit. In the said affidavit, the answering respondent claims that the said land is situated at R. S. Dag no. 268. Thus, it is evident that the answering respondent is himself confused and accordingly has also made the 8 member committee confused with his deliberate misinformed averments. I deny that any issue regarding a private land can be dealt with by this Hon'ble Tribunal. There are issues involving boundary disputes as the land of the petitioner comprises of 5 dag nos. out



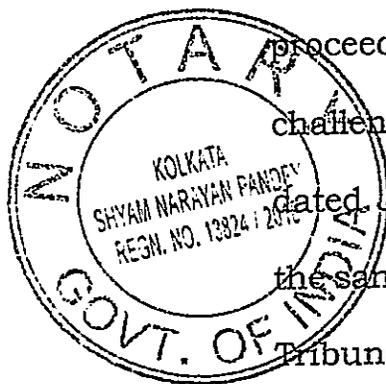
of which 4 dag nos. are admittedly not wetlands. Even the portion of R.S. Dag no. 267 which falls within the applicant's land is not demarcated. As such this Hon'ble Tribunal does not have jurisdiction to decide boundary disputes and the same has to be adjudicated before a Civil Court. I deny that the orders passed by this Hon'ble Tribunal in any of the proceeding is "in rem". The averments contained in the paragraphs under reference are repetition to the previous paragraphs and as such, the same are not dealt with at the cost of repetition.

13. With reference to the averments made in paragraph nos. 32 to 35 of the said affidavit, I deny and dispute the contentions raised therein save and except matters which are on record. I deny that any portion of the eight member committee report has been omitted. The said report was forwarded by the answering respondent before the Hon'ble Division Bench of the High Court at Calcutta and it is the same report that has been annexed in the application. The petitioner is not bothered with Dag No. 268 as none of the portion of his land fall within the said dag number. It has also not been demarcated as to which portion of his land falls within the said Dag No. 267. The classification of 'beel' is also fictitious inasmuch as in the previous report a different story was narrated. There is no cogent reason coming forth as to how the change of classification took place without even informing the stakeholders of the concerned land. I deny that the land of the petitioner is a result of filling up of a water body. I deny that any issue before



this Hon'ble Tribunal is in rem. I further say that this dispute as regards in rem proceedings take a back seat once the liberty granted by the Hon'ble Supreme Court to the petitioner surfaces. I say that from the purport of the orders passed by the Hon'ble Supreme Court and the Hon'ble Division Benches of the Hon'ble Court at Calcutta, the only thing that transpires is this Hon'ble Tribunal has to hear out the entire application filed by the petitioner and not to be relegated to any authority as sought to be argued by the answering respondent. I deny that the respondent No. 15 was ever authorized to represent the interest of all its members. It for this lack of understanding of the answering respondent that this problem is subsisting till date.

14. With reference to the averments made in paragraph nos. 36 to 41 of the said affidavit, I deny and dispute the contentions raised therein save and except matters which are on record. I say that the applicant was again not made a party in W.P.A. No. 12605 of 2017 and as such, the outcome of the said proceeding cannot bind the applicant in any manner whatsoever. The building sanction plan being issued in the name of the applicant, no circuitous order can be obtained by making the respondent no. 15 a party to a proceeding wherein the sanction plan of the applicant is under challenge. Moreover, after the order passed in MAT No. 239 of 2024 dated January 10, 2024, all points relating to CZ/15A including the sanction building plan has to be adjudicated before this Hon'ble Tribunal. I say that none of the proceedings were informed to the



petitioner at any point of time and thus there is no question of passing on false information to any authority by the petitioner as alleged or at all. I say that if the information is not false then the question of revoking any plan does not arise. I say that prior to the adjudication of the rights of the petitioner in this proceeding, it is impossible to comment on the fate of the sanction plan. Hence, the prior adjudication of this proceeding is of utmost importance. I say that the annexures to the report of the 8 member committee was not available with the applicant. The report is under challenge in the instant application and as such, shall be dealt with appropriately at an appropriate stage. I deny that the application is misconceived or purposive or liable to be dismissed as alleged or at all. I deny that facts of the case do not warrant any prayer as made.

Prepared in my office

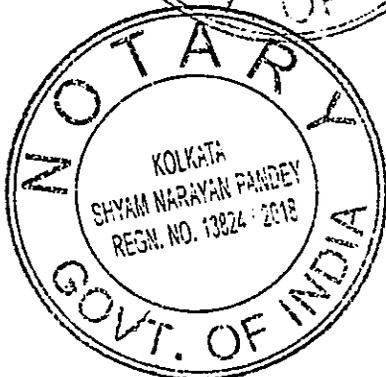
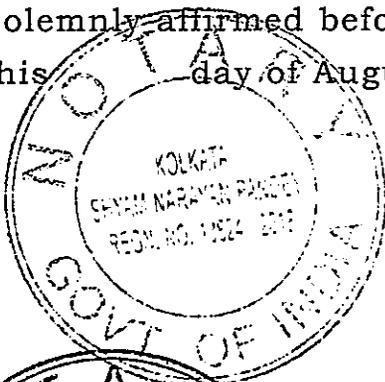
Atchishik Baran Ban
Advocate

Ramesh Kumar
Deponent is known to me

Clerk to:

Advocate

Solemnly affirmed before me on
this day of August, 2024



BEFORE ME

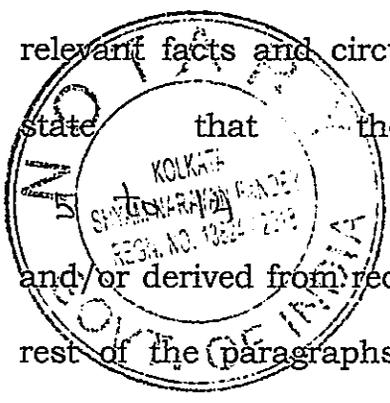
NOTARY

VERIFICATION

I, Pawan Sharma, Son of Radheshyam Sharma, aged about 50 years, by faith-Hindu, by occupation- Business, residing at CZ4, Canal South Road, P.O. Dhapa, P.S. Pragati Maidan, Kokata- 700105, being the Constituted Attorney of the Applicant herein and being well acquainted with and fully aware of the

relevant facts and circumstances of this instant case, do hereby verify and state that the statements made in paragraphs

hereinabove are true to my knowledge and/or derived from records and believed by me to be true and those made in rest of the paragraphs are my respectful submissions before this Hon'ble Tribunal.



Prepared in my office
Abhinav Baran Das
Advocate

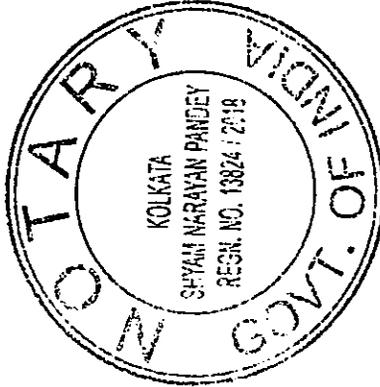
Pawan Sharma
DEPONENT

Solemnly Affirm & Declared
Before Me on Identification
of Ld. Advocate
Shyam Narayan Pandey
SHYAM NARAYAN PANDEY
NOTARY, GOVT. OF INDIA
REGN. NO. 13824/2018
12.08.2024

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