

**BEFORE THE NATIONAL GREEN TRIBUNAL SITTING
AT PUNE**

MEMORANDUM OF APPLICATION

(Under Sections 14&15 read with Section 18 of The National
Green Tribunal Act, 2010)

APPLICATION NO. 39 OF 2023

Yogesh Pratap Singh ... APPLICANT

AND

Secretary, Environment Department, Government of
Maharashtra and others ... RESPONDENTS

**REJOINDER TO AFFIDAVIT-IN-REPLY OF
RESPONDENT NO.4, (Municipal Corporation)**

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**BEFORE THE NATIONAL GREEN TRIBUNAL SITTING
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(Under Sections 14&15 read with Section 18 of The National Green
Tribunal Act, 2010)

APPLICATION NO. 39 OF 2023

Yogesh Pratap Singh ... APPLICANT

AND

Secretary, Ministry of Environment, Forests and Climate Change
and others ... RESPONDENTS

**REJOINDER TO AFFIDAVIT-IN-REPLY OF
RESPONDENT NO.4, (Municipal Corporation)**

I, Yogesh Pratap Singh, the Applicant above-named, residing at Mumbai, do hereby solemnly affirm and state as under:

1. The Applicant, has gone through the copy of the Affidavit-in-Reply of the above-mentioned Respondent and tenders his Rejoinder as under:

2. At the very outset the Applicant submits that this entire Rejoinder is evasive and ***does not specifically address the 16 Specific legal points raised in the Original Application.***

Instead, the Answering Respondent has narrated his own presumptive position, which accordingly, defeats the essence of the rules of natural justice, where the issues raised have to be specifically addressed vis-à-vis the specific legal averments.

3. Equally pertinent is the fact that this, Affidavit-in-Reply of the Answering Respondent is assailed from the provisions contained in Order VIII of the Civil Procedure Code, 1908, the relevant part of which is quoted hereunder:

“3. Denial to be specific -- It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, **but the defendant must deal specifically with each allegation of fact of which he does not admit the truth**, except damages.

... ..“

“5. Specific denial – (1) Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, **shall be taken to be admitted except as against a person under disability:”**
(Emphasis supplied).

4. The Applicant submits that the Affidavit-in-Reply of the Answering Respondent has omitted to even touch upon the aforesaid referred to 16-specific law points, enumerated in a specific and self-contained manner. This conspicuous omission to even respond to these specific violations of law implicitly renders this Affidavit-in-Reply as being the one which implicitly admits the averments presented in the Original Application.

5. Be that as it may, the theme adopted by the Answering Respondent in his Affidavit-in-Reply is singular – that the Development Plan has been prepared by following due procedures, and since due procedures have been followed, hence none of the provisions of Development Control and Promotion Regulations for Greater Mumbai, 2034, can be held to be invalid.

6. In this reference, the Applicant submits that this contention by itself is wrong. In the past, numerous enactments and provisions of Delegated Legislations have been quashed by the Courts, on the

ground that they are ultra vires to the Constitution of India. For this reason, to adopt a line, that since the requisite procedure have been followed and so the Delegated Legislation is not ultra vires, this is a wrong reasoning.

7. The correct reasoning is that there are hundreds of provisions contained in the Development Control and Promotion Regulations for Greater Mumbai, 2034, and the Applicant has not challenged all such provisions. The Applicant has only challenged a singular provision related to basement excavations. Therefore, this challenge has to be evaluated independently on the touchstone of the Constitutional provisions and the related laws.

8. To buttress the above-mentioned submission, the Applicant would rely on the ruling of the Hon'ble Supreme Court in the case of *The State Of Himachal Pradesh v. Yogendra Mohan Sengupta* in CIVIL APPEAL NOS. 5348-5349 OF 2019, where in conclusion the Hon'ble Supreme Court held as under:

V. CONCLUSION 123.

We have gone through the development plan. The development plan has been finalized after taking into consideration the reports of various expert committees and the studies undertaken with regard to various aspects including environmental and ecological aspects. 124. We, however, clarify that we have not considered the development plan in minute details. Upon its prima facie consideration, we have come to a view that there are sufficient safeguards to balance the need for development while taking care of and addressing the environmental and ecological concerns. We may however not be construed as giving our imprimatur to the said development plan. At the same time, it cannot be ignored that the development plan has been finalized after various experts from various fields including those concerned with urban planning, environment etc., were taken on board. It also cannot be ignored that the development plan has been finalized after undergoing the rigorous process including that of inviting objections and suggestions at two stages, giving the hearing to such objectors and suggesters and after considering the same. **If any of the citizen has any grievance that any provision is detrimental to the**

environment or ecology, it is always open to raise a challenge to such an independent provision before the appropriate forum. Such a challenge can be considered in accordance with law. But, in our view, the development plan, which has been finalized after taking recourse to the statutory provisions and undergoing the rigors thereto, cannot be stalled in entirety thereby putting the entire developmental activities to a standstill.

9. From the aforesaid it is apparent that while the Development Plan in its entirety may not be subject to challenge but if ***“If any of the citizen has any grievance that any provision is detrimental to the environment or ecology, it is always open to raise a challenge to such an independent provision before the appropriate forum. Such a challenge can be considered in accordance with law.”***

10. The Applicant submits that this is what he has done in this case. He has not challenged the entire Development Plan, which contains hundreds of provisions, but he has only challenged just a very small part of it – the one which is related to construction of basements. Therefore, the act of the Applicant in challenging the impugned provisions is in consonance with the ruling of the Hon'ble Supreme Court quoted above.

11. It is further pertinent to note that the Answering Respondent ought to have also further reckoned the ruling of the Hon'ble Supreme Court in the case of *Deepak Kumar*, before he decided to permit unlimited basements. If the claim of the Answering Respondent that the procedure of preparing the Development Plan was so elaborate and credible, then why did they not consider this pivotal ruling of a landmark significance in the case of *Deepak*

Kumar as has been relied upon in the Original Application. In fact, this ruling was not even mentioned even in the passing in the Development Plan. This itself would tender the entire exercise of permitting unlimited basements involving a very elaborate destruction of ground water aquifers and extraction of hundreds of millions of tonnes from the eco-sensitive Island, where Mumbai is situate, as arbitrary in nature.

12. What is extremely critical to note is that the Answering Respondent did not even conduct any Environment Impact Assessment by permitted unlimited basements. If hundreds of millions of tonnes are mined within the Island, where Mumbai is situated and which is extremely eco-sensitive in nature, was it at least not necessary to have done the Environment Impact Assessment of such a mammoth exercise of hollowing out this eco-sensitive Island.

13. Further, was it not necessary for the Answering Respondent to have done an Environment Impact Assessment on the consequences, this mammoth mining activity in Mumbai shall lead to with respect to the ground water aquifers, which are destroyed irreversibly once basements are excavated and sealed through huge and thick concrete walls. Did the Development Plan reckon the consequences this would have on intensity of ground water and its impact on flooding during monsoons and the spectre of rising sea-levels.

14. In view of the above, it is clear and apparent that the reply of the Answering Respondent is cryptic and evasive. He has just done

a formality to tender an Affidavit-in-Reply and thus have not placed any cogent contents therein.

15. Accordingly, the contentions raised by the Answering Respondent be rejected and the Prayers made in the Original Application be made absolute.

Yogesh Pratap Singh
APPLICANT

DATE: 11thOctober, 2024

PLACE: Mumbai

VERIFICATION

I, Yogesh Pratap Singh, the Applicant above-named, Yogesh Pratap Singh, having his address as 1501, Harisiddhi Heights, Khan Abdul Gafiar Khan Road, Mumbai – 400030, hereby verify that the contents of aforesaid paras of this Rejoinder are true to my personal knowledge and belief and that I have not suppressed any material fact.

Yogesh Pratap Singh
APPLICANT

DATE: 11thOctober, 2024

PLACE: Mumbai

BEFORE ME

G. S. SONKAR
G. S. SONKAR
B.A LL B.
NOTARY GR. MUMBAI
MAHARASHTRA
(Govt. of India)

11 OCT 2024

G. S. NOSKAR (Notary Govt. of India)
NOTARIAL REGISTER
SR. No. 1982 2024

