

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL  
WESTERN ZONE BENCH, PUNE  
Miscellaneous Application No. 11/2023(WZ)

Earlier Execution Application No. 13 of 2023(WZ)

In

Original Application No. 194 of 2018(PB)  
(Earlier O.A. No. 17/2018 (WZ))  
(Disposed of on 16.12.2020)

IN THE MATTER OF:

Ashish Rohidas Shinde & Anr.	...	Applicants
	Versus	
Lonavala Municipal Corporation & Ors.	...	Respondents

**REJOINDER ON BEHALF OF THE APPLICANTS TO THE  
REPLY DATED 03.10.2023 FILED BY THE RESPONDENT  
NO.5**

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Drawn on: 04.10.2023  
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Lonavala Municipal Corporation & Ors. ... Respondents

**REJOINDER ON BEHALF OF THE APPLICANTS TO THE REPLY  
DATED 03.10.2023 FILED BY THE RESPONDENT NO.5**

IT IS MOST RESPECTFULLY SHOWETH:

1. At the outset, all the contentions, allegations and statements made by the Respondent No.5 in the reply dated 03.10.2023 filed by the Respondent No.5 are denied and nothing therein shall be deemed to be admitted by the Applicants, by reason of non-traverse or otherwise, unless specifically admitted herein. It is submitted that the reply dated 03.10.2023 filed by the Respondent No.5 is devoid of any merit and therefore, liable to be dismissed.
2. The Applicants herein have filed the present Miscellaneous Application No.11 of 2023 seeking the compliance of the order dated 16.12.2020 in Original Application No. 194 of 2018 and order dated 19.01.2023 in Execution Application No. 11 of 2022 passed by this Hon'ble Tribunal.
3. The Applicants had filed the OA No. 194 of 2018 u/s 14, 15 r/w Section 18 of the National Green Tribunal Act, 2010 challenging the illegal

dumping and earth-filling undertaken by the Respondent No.5 in the natural flow of River Indrayani at Sr No. 24, Village- Bhushi, Lonavala, Taluka-Maval, District-Pune. This Hon'ble Tribunal after considering the Joint Committee Report dated 01.01.2020 vide its order dated 16.12.2020 in OA No. 194/2018 upheld the Joint Committee Report and directed that the said Report had to be acted upon. Further, the Hon'ble Tribunal directed the Joint Committee to take remedial actions in terms of the Report dated 01.01.2020. Thus, a total encroachment of 257 sq. mts. was to be removed from Survey No.24 from river Indrayani.

4. Since the Respondent No.1 failed to comply with the order dated 16.12.2020 in OA No.194 of 2018, the Applicants approached this Hon'ble Tribunal vide Execution Application No. 11 of 2022 under section 25 of the National Green Tribunal Act, 2010 seeking compliance of the direction of this Hon'ble Tribunal to remove 257 Sq. Mtrs of earth-filling from River Indrayani. The EA No. 11 of 2022 was listed before the Hon'ble Tribunal on 19.01.2023 whereby this Hon'ble Tribunal vide its Order, while disposing of the EA No. 11 of 2022, in view of the prayer made by the Respondent No. 5, **granted Respondent No. 5 the permission to transplant the trees at the Impugned property within a period of one month, failing which an adverse order would be invited by the Respondent No.5.** Thus, the Respondent No.5 was directed to undertake the work of transplantation of trees from the Impugned Property by 19.02.2023. Apart from it, the Respondent No. 1 was directed to complete the task of removal of complete encroachment within a period of two weeks thereafter and submit a report in the Registry of this Hon'ble Tribunal after the exercise is complete. Thus, the Hon'ble Tribunal vide order dated 19.01.2023 had directed the Respondent No. 1 and 5 to complete the entire task of removal of illegal encroachment by 05.03.2023.

5. However, due to brazen violation of the Orders dated 16.12.2020 and 19.01.2023 by the Respondent No.1 and 5, the Applicants herein were again constrained to approach this Hon'ble Tribunal vide EA No. 13/2023. The Execution Application was listed before the Hon'ble Tribunal on 29.08.2023 whereby this Hon'ble Tribunal vide its order was pleased to issue notice to the Respondents returnable within 2 weeks and directed the Respondents to submit their Reply Affidavits within 3 weeks and listed the Application on 27.09.2023 and also directed the registry of this Hon'ble Tribunal to convert the Execution Application into a Miscellaneous Application bearing No. 11/2023 and was further pleased to admit the said Application.
6. Thereafter, the present Execution Application was last listed on 27.09.2023 whereby this Hon'ble Tribunal granted two days time to the Applicant to file the Rejoinder to the Reply dated 26.09.2023 filed by the Respondent No. 1 and granted time to the Respondent No.5 to file its Reply. In view thereof, the Respondent No.5 on 03.10.2023 has filed a Reply to the present Miscellaneous Application, to which the Applicants are filing the present Rejoinder before this Hon'ble Tribunal.

#### **7. PARA WISE REJOINDER**

- i. The Respondent No.5 in Para 1 & 2 of its Reply dated 03.10.2023 is trying to portray an image of himself as a social worker performing work for the betterment of the society and also trying to convey that the Respondent No.5 is an agriculturist, ecologist and planted lakhs of trees due which flora and fauna and ecological balance of the country is maintained. However, the truth is that the Respondent No.5 is involved in illegal activities like earth filling in River Indrayani thereby affecting the natural flow of river Indrayani.
- ii. The Respondent No.5 in Para 3,4 and 5 of its Reply dated 03.10.2023 is falsely trying to connect the Applicants with some other people of the

District Lonavala relying on some FIRs which have no concern with the Applicants. The Respondent no.5 in paras 3,4 and 5 has made baseless allegations against the Applicants which are defamatory and have no concern whatsoever with the issue in the present Miscellaneous Application. Thus, the Respondent No.5 is unnecessarily trying to derail from the issue at hand to misguide this Hon'ble Tribunal. Further, the Respondent No.5 is just trying to divert the mind of this Hon'ble Tribunal, as the present Miscellaneous Application is filed by Mr. Ashish Rohindas Shinde (Applicant No.1) and Mr. Suresh Pujari (Applicant No.2), and has no concern with the persons namely Nitin Vishwanath Agarwal and Suraj Agarwal.

- iii. Further, in Para-5 of the reply, the Respondent No.5 is trying to re-agitate the issue pertaining to the measurement of the illegal encroachment of 257 Sq mtrs. in River Indrayani undertaken by the Respondent No.5. The issue pertaining to encroachment of 257 sq mtrs. at Survey No. 24 in River Indrayani was dealt by this Hon'ble Tribunal in O.A No. 194/2018 wherein this Hon'ble Tribunal vide its final order dated 16.12.2020 was pleased to uphold the findings of the Joint Committee Report Dated 01.01.2020 which had found 257 sq mtrs. of illegal encroachment to have been undertaken by Respondent No.5 at Survey No. 24 in River Indrayani. The Civil Appeal No. 4460/2021 and Civil Appeal Diary No. 5020/2023 challenging the order dated 16.12.2020 passed by this Hon'ble Tribunal have been dismissed by the Hon'ble Supreme Court vide its orders dated 09.08.2021 and 20.02.2023. Therefore, it does not lie in the mouth of the Respondent No. 5, at this stage to challenge the findings of the Joint Committee report dated 01.01.2020, as upheld in the order dated 16.12.2020 passed by this Hon'ble Tribunal.

- iv. The Respondent No.5 in para 6 of its reply is falsely alleging the Applicant No.2 for stealing records and files of Respondent No.5 from the Government Office. With regards to this the Applicants submits that the allegations made by the Respondent No.5 is baseless and the Respondent no.5 had not shown any proof to the said allegations. Further, the allegations made by the Respondent No. 5 are defamatory in nature, for which the Applicants reserve their right to take appropriate remedy in accordance with Law.
- v. The contentions raised by the Respondent No.5 in Para 7 are not only false and baseless, but have no bearing to the present case and therefore need no reply. The contention raised in Para 7 by the Respondent No.5 is merely to portray a good image of the Respondent No.5 before this Hon'ble Tribunal.
- vi. Para 8 of the reply dated 03.10.2023 filed by the Respondent No.5 needs no reply.
- vii. The Respondent No.5 in para 9 and 10 of its reply dated 03.10.2023 is relying on the Order dated 20.02.2023 passed by the Hon'ble Supreme Court in Civil Appeal Diary No. 5020/2023 stating that the Hon'ble Apex Court while considering a challenge to the order dated 16.12.2020 in O.A No. 194/2018 passed by this Hon'ble Tribunal had directed the entire dispute to be decided by the District Collector. Thus, the Respondent No.5 is suggesting this Hon'ble Tribunal to keep their hands off from the present issue pertaining to execution of the order dated 16.12.2020 in O.A No. 194/2018 and order dated 19.01.2023 in E.A No. 11/2022. It may be noted that the interpretation of the Respondent No.5 with regard to the order dated 20.02.2023 in Civil Appeal Diary No. 5020/2023 is completely erroneous as the Civil Appeal No.5020 of 2023 filed by the Respondent No.5 was dismissed by the Hon'ble Apex Court vide its Order dated 20.02.2023, upholding

the order dated 16.12.2020 passed by this Hon'ble Tribunal. The Hon'ble Apex Court had clarified that the recommendation of the Joint Committee has to be enforced and action has to be taken in accordance with law and in case any dispute arises on the implementation of the Joint Committee Report, the Respondent No.5 will be at a liberty to approach the District Collector, Pune. The Respondent No.5 has falsely interpreted the Judgment of Hon'ble Apex Court just to safeguard himself from the proceedings of this Hon'ble Tribunal.

- viii. The Applicants herein are in receipt of the reply Affidavit of the Respondent No.6 dated 04.10.2023 filed before this Hon'ble Tribunal wherein the Respondent No.6 has categorically stated that in terms of the order passed by the Hon'ble Supreme Court as well as this Hon'ble Tribunal, the Respondent No.5 has no authority to conduct an enquiry, unless there is dispute in implementing the orders of this Hon'ble Tribunal. Thus, the stand of the Respondent No.5 that the District Collector is the authority for final execution is contrary to the orders of this Hon'ble Tribunal as well as Hon'ble Supreme Court.
- ix. The Respondent No.5 in its Para 11 of the Reply has stated that the Respondent No.1 has already undertaken the Execution of the Order of this Hon'ble Tribunal of encroachment to the extent of 100 sq mts. out of 257 sq. mts. The said statement of the Respondent No. 5 cannot be relied upon as the Respondent No.1 has merely made a bald statement before this Hon'ble Tribunal on 19.01.2023 that encroachment to the extent of 100 sq mtrs. has been removed from the impugned property. However, the Respondent No.1 has not brought on record any piece of evidence to depict as to how the exact quantity of 100 sq mtrs. has been removed from the impugned property. The Respondent No.1 from the Survey map dated 24.12.2019 has not identified the area wherefrom the alleged earth-filling has been removed. Further, the Respondent No.1

- has failed to provide any scientific material to prove the removal of encroachment to the extent of 100 sq mtrs from the impugned property. Thus, the said statement of the Respondent No.1, which is being accepted by the Respondent No.5 as gospel is nothing but a farce to create a false impression before this Hon'ble Tribunal. Be that as it may, since the Applicants were not intimated about the removal of the illegal encroachment undertaken on 29.12.2022, the Applicants shall not be in a position to comment upon the extent of encroachment, if at all removed by the Respondent No.1 as on 29.12.2022. It is further the stand of the Respondent No.5 that there are 8 mango and chikkoo trees which are deeply rooted and fully grown up to the height of 20ft, which ought to be relocated from the impugned property. With respect to this, the Applicants submit that, this Hon'ble Tribunal vide its Order dated 19.01.2023 had recorded the undertaking of the Respondent No.5 seeking to transplant the 8 trees from the impugned property. Relying on the said stand of Respondent No.5, the Hon'ble Tribunal vide its order dated 19.01.2023 in E.A No. 11/2022 had permitted the Respondent No.5 to transplant the trees within a period of 1 month, failing which adverse order would be invited by the Respondent No.5. However, even after such unambiguous and stringent order being passed by this Hon'ble Tribunal, the Respondent No.5 even after a lapse of almost 9 months is re-agitating the same issue before this Hon'ble Tribunal. Such negligent and careless approach of the Respondent No.5 depicts that it was never the intention of Respondent No.5 to abide by the orders of this Hon'ble Tribunal.
- x. In Para-12, the Respondent No.5 is once again trying to question the measurement of encroachment of 257 sq mtrs. which was found on the basis of a Survey of the Joint Committee at the impugned site. The Joint Committee on the basis of its survey had prepared a Survey Map dated

24.12.2019 depicting the encroachment by the Respondent No.5. On the basis of this Survey Map dated 24.12.2019, the Joint Committee in its report dated 01.01.2020 had concluded that the Respondent No.5 had undertaken an encroachment of 257 sq mtrs partially towards North-West boundary, North Boundary and South-East boundary in survey No. 24 of River Indrayani. The said joint Committee report has been upheld not only by this Hon'ble Tribunal but also by the Hon'ble Supreme court directing implementation of the recommendations of the Joint Committee. It is therefore submitted that the Respondent No.5 in Para-12 of the reply dated 03.10.2023 is unnecessarily raising baseless and frivolous arguments to pre-empt compliance of the orders of this Hon'ble Court. . A copy of the Survey Map dated 24.12.2019 prepared by Taluka Inspector of Land Record is marked and annexed herewith as **Annexure -1**.

- xi. That with regard to the contentions raised by the Respondent No.5 in Para-13 the same have been aptly answered in the aforementioned Paras and therefore the contents therein are not repeated for the sake of convenience and brevity.
- xii. The Respondent No.5 in para 14 and 15 of the reply is relying on the representation made by Respondent No.5 to the District collector. In this regard it is submitted that already stated hereinabove, once the findings of the Joint Committee Report dated 01.01.2020 have been upheld by this Hon'ble Tribunal as well as the Hon'ble Supreme Court, in terms of the order dated 16.12.2020 in O.A No. 194/2018 it is only in the case of a dispute in the implementation of the order, that the District Collector is permitted to intervene. Thus, the stand of the Respondent No.5 that a representation is pending before the District Collector is of no consequence. Thus, by raising contentions in Para 14 and 15, the Respondent No.5 is trying to baffle this Hon'ble Tribunal to safeguard

the property of Respondent No.5 and trying to prolong the proceedings pending before this Hon'ble Tribunal.

- xiii. In the para 16 of the Reply filed by the Respondent No.5, the Respondent No.5 states that the Respondent No.6 i.e. the Collector has not replied to the representation dated 11.04.2023 filed by the Respondent No.5 because the Respondent No.6 is involved in the corruption of Rs.50 crore in mining scam unearthed by the Respondent No.5. The Applicants submit that the Respondent No.5 is raising false and baseless allegations and trying to portray himself like is a man who is against the corrupt practices. However, the contentions raised in Para-16 have no bearing to the present case.
- xiv. The Respondent No.5 in Para-17 is seeking to portray as saviour of River Indrayani. The Respondent No.5 in the reply dated 03.10.2023 has annexed multiple photographs to depict the greenery around River Indrayani. It is submitted that assuming but not admitting that the Respondent No.5 has undertaken any afforestation, the same does not takeaway the illegality in the encroachment undertaken by the Respondent No. 5 in River Indrayani. Thus, the photographs annexed with the reply have no relevance to the present case and the encroachment of 257 sq mtrs. at Survey No. 24 undertaken by the Respondent No. 5 ought to be demolished immediately.
8. The Respondent No.5 in para 18 of the Reply is suggesting that in case of any dispute arising in respect to the encroachment, the Respondent No.1 and 2 can take the possession of the encroached area to their satisfaction and the Respondent No.5 would erect a compound wall excluding the encroached area, so that the dispute would be resolved forever for the satisfaction of the Applicants. The Applicants with regards to the contentions of Para 18 states that once the encroachment of 257 sq mtrs. at Survey No. 24 is removed in terms of the Survey Map dated 24.12.2019, the

Respondent No.5 may undertake whatever construction without encroaching upon River Indrayani. Further, the Applicants reserve their right to approach this Hon'ble Tribunal in case any further encroachment in River Indrayani is undertaken by Respondent No.5.

9. Lastly, it is submitted that since this Hon'ble Tribunal in its order dated 19.01.2023 in E.A No. 11/2022 had directed that the failure of the Respondent No.5 to transplant the trees from the impugned property within a period of 1 month would entail adverse orders being passed against the Respondent No.5, therefore the Applicants humbly pray before this Hon'ble Tribunal to pass strict and stringent orders, including but not limited to imposition of costs upon the Respondent No. 5 for the non-compliance of the Order dated 16.12.2020 in Original Application No. 194 of 2018 and order dated 19.01.2023 in Execution Application No. 11 of 2022 passed by this Hon'ble Tribunal.



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DATE. 04/10/23

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL  
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IN THE MATTER OF:

Ashish Rohidas Shinde & Anr. ... Applicants  
Versus  
Lonavala Municipal Council & Ors. ... Respondents

**AFFIDAVIT**

I, Suresh M. Pujari, Age: 46 yrs, Occ: Business, R/at: Plot No.106, Building No. F-20, Durvakur Housing Society, Chikhli Pradhikaran, Pune- 62 Maharashtra, do hereby solemnly affirm and state as under:-

1. That I am one of the Applicants in the above mentioned Execution Application as such am conversant with the facts and circumstances of the case and am competent to swear to this affidavit.
2. That I have read the contents of the accompanying Rejoinder, the same being drafted by my counsel under my instructions and that the contents of Paras 1to 9of Rejoinder are facts true to my knowledge in brief and that I have not suppressed any material fact.
3. That the annexures filed along with the Rejoinder are the true copies of their respective originals.

DEPONENT

**VERIFICATION**

Verified at Lonavala on this 4<sup>th</sup> day of October 2023 that the contents of the present affidavit are true and correct and nothing

DEPONENT



Sworn before me on this day of 04/10/2023 at Pune (Lonavala) material has been concealed therefrom.  
Shri/Smt./Ku. Suresh M. Pujari  
R/o..... who has been identified by Shri/Smt. Adv. Pooja Dubey  
Advocate, Pune (Lonavala).

Adv. Pooja Dubey  
NOTARY  
Govt. of India  
Pune (Lonavala) (M.S.) India  
04/10/23



10/4/23, 8:15 PM

Gmail - Rejoinder to the reply dated 03.10.2023 filed by the Respondent No.5 in MA No. 11 of 2023 between Ashish Rohidas Shin...



Teerthesh Bhariya &lt;advteertheshbhariya@gmail.com&gt;

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**Rejoinder to the reply dated 03.10.2023 filed by the Respondent No.5 in MA No. 11 of 2023 between Ashish Rohidas Shinde & Anr. V. Lonavala Municipal Council & Ors.**

1 message

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**Samridhi Jain** <samridhi12318@gmail.com>

4 October 2023 at 20:10

To: ajaygadegaonkar@yahoo.in, Manasi Joshi <adv.manasi.joshi@outlook.com>, aniruddha1488@gmail.com, Saurabh Kulkarni <sdkadvocate@gmail.com>, "Adv. Saurabh Kulkarni NGT" <kulkarnisaurabhd@gmail.com>, sdomaval-mh@gov.in  
Cc: Teerthesh Bhariya <advteertheshbhariya@gmail.com>

Sir/Ma'am

With reference to the aforesaid matter, PFA herewith Rejoinder to the reply dated 03.10.2023 filed by the Respondent No.5 in MA No. 11 of 2023 between Ashish Rohidas Shinde & Anr. V. Lonavala Municipal Council & Ors.  
Kindly consider the same as service on behalf of the Applicants.

Thanks & Regards,  
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Advocate-on-Record  
Supreme Court of India  
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**Rejoinder to the reply dated 03.10.2023 filed by the respondent no.5.pdf**  
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