BEFORE THE NATIONAL GREEN TRIBUNAL SITTING AT PUNE

Original Application No. 168 of 2023 (WZ)

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

Pratap Lal Teli ... **APPLICANT**

AND

Member-Secretary, State Level Environment Impact Assessment Authority and others ... **RESPONDENTS**

REJOINDER TO THE AFFIDAVIT-IN-REPLY GIVEN BY RESPONDENT NO. 6 (Developer – K. Raheja Pvt. Ltd.)

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

1. The Applicant has gone through the copy of the Affidavit-in-Reply of Respondent No. 6, i.e. the Developer, namely, K. Raheja Pvt. Ltd. Before the Applicant tenders his Rejoinder, with reference to this Affidavit-in-Reply, he reiterates that nothing which has not been denied specifically should be construed as any admission to any fact which inimical to the cause of this Original Application. The Applicant further submits that, in this Rejoinder, he shall traverse through the core points which are pertinent to the issues at stake. Accordingly, whatever has not been denied specifically, be construed as being an admission which shall undermine cause of this Original Application.

2. At the outset, the Applicant submits that in the Original Application he has raised 6 specific and distinct grounds. However, this Respondent does not seem to have any specific reply to these specific grounds and instead has sought to divert the attention of this Hon'ble Tribunal to issues which are extraneous to this Original Application.

3. More specifically, the Applicant had raised the following grounds which are shown in the Table as under and this Respondent has not specifically replied to them at all:

GROUND RAISED BY THE APPLICANT	REPLY OF THE RESPONDENT
1. GROUND NO. 1: Serious violation of condition for conversion of land from Industrial to Residential – No Segregating Distance provided at all, which ought to have been planted with 1 tree for every 20 square metres of area.	***NO REPLY***
2. GROUND NO. 2: Under the law, 20% of the entire holding had to be surrendered to the Municipal Corporation out of which half of the area had to be a public garden – Project Proponent	***NO REPLY***

violated the law and did not provide the area.	
3. GROUND NO. 3: Environment Clearance condition that only trees on the ground shall be counted and not those on podium – condition violated.	***NO REPLY***
4. GROUND NO. 4: The Project Proponent did not provide open spaces meant for light and ventilation and tree plantation as side and rear setbacks – Against the minimum open space of 20 metres required to be kept on all the sides, the Project Proponent has kept an open space of just 6 metres at the ground level and which gets reduced to 4.0 metres considering overhang at the upper levels.	***NO REPLY***
3.5 GROUND NO. 5:	***NO REPLY***

No relaxation on open spaces and tree plantation can be given by the Municipal Commissioner as such an act leads to increase in such poisonous gasses which can be neutralised by the trees.	
3.6 GROUND NO. 6: The Project Proponent has concretised almost the entire layout. It is impossible to comply with the Orders of the High Court and also that of the National Green Tribunal, that soil of at least 1 metre be exposed to the elements around the tree.	NO REPLY

The Applicant submits that since this Respondent has not given any reply to the specific grounds raised in the Original Application, accordingly, this entire Affidavit-in-Reply is required to be outrightly rejected.

In this reference, the Applicant craves leave to refer to the following excerpts from ruling of the Hon'ble Supreme Court, which is quoted hereunder:

Asha vs B.D.Sharma University Of Health Sciences ... on 10 July, 2012 – Civil Appeal No. 505 of 2012

"18. From a bare reading of the reply filed by the respondents, it is clear that there is no specific denial of the above-noted averments made by

the appellant. It is a settled principle of the law of pleadings that an averment made by the appellant is expected to be specifically denied by the replying party. **If there is no specific denial, then such averment is deemed to have been admitted by the respondent.** In the present case, it is evident that the above-noted averments in the writ petition were relevant and material to the case. In fact, the entire case of the appellant hinged on these three paragraphs of the writ petition. It was thus, expected of the respondents to reply these averments specifically, in fact to make a proper reference to the records relevant to these paragraphs. In view of the omission on part of the respondents to refer to any relevant records and failure to specifically deny the averments made by the appellant, we are of the considered view that the appellant has been able to make out a case for interference." (Emphasis supplied).

This disposition of this Respondent to omit to specifically deny the 6 points of averments referred in the foregoing is also assailed by 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).

Thus, it is reiterated that the entire Affidavit-in-Reply, which evades the specific above-mentioned 6 violations of law, makes this Reply untenable in law and thus the prayers made in the Original Application ought to succeed.

The Applicant further submits that almost entire Affidavit-in-Reply of this Respondent is based on the following:

(A) That the matter is pending with the Supreme Court – Completely wrong assertion:

This Respondent has stated in his Affidavit-in-Reply that the matter related to Recreation Ground at the ground level or the podium is pending with the Hon'ble Supreme Court. The Applicant submits that this is an absolutely unrelated reference because the Applicant in this Original Application has not made any challenge to the fact that the Recreation Ground has been placed on the podium. When the Applicant has not made any averment by stating that the Recreation Ground is placed at the podium, the copious and tedious reference of this Respondent to state that the matter is pending with the Supreme Court, is an attempt to wrongly divert the issues at stake.

The Applicant thus strongly reiterates that the above-mentioned 6 violations of law, which the Applicant has averred in the Original Application, are completely different and distinct and are not linked to the question of placing the Recreation Ground at the podium.

(B) Untenable claim that the matter is hit by limitation:

This Respondent in his Affidavit-in-Reply has further stated that this Original Application is hit by limitation because the building is complete and the flats have been sold.

In this reference, the Applicant submits his Original Application is based on the matters linked to violation of Environment Clearance conditions. Till the time the violations exist, it would keep causing environmental harm to the people, including the Applicant.

It is thus the case of continuing wrong, and which gives rise to a recurring cause of action as has been provided in section 22 of the Limitation Act, 1963 and the rulings of various Courts.

The Applicant also submits that the pollution level in the city has gone up very substantially and therefore, there is dire need for plantation of large tropical trees of an indigenous variety. Thus, till the time the Project Proponent does the plantation of the requisite

number of large tropical trees in the prescribed manner, the cause of action shall sustain.

It is thus reiterated that till the time this Respondent i.e. the Project Proponent purges the following violations of law, the cause of action shall sustain:

1. GROUND NO. 1: Serious violation of condition for conversion of land from Industrial to Residential – No Segregating Distance provided at all, which ought to have been planted with 1 tree for every 20 square metres of area.
2. GROUND NO. 2: Under the law, 20% of the entire holding had to be surrendered to the Municipal Corporation out of which half of the area had to be a public garden – Project Proponent violated the law and did not provide the area.
3. GROUND NO. 3: Environment Clearance condition that only trees on the ground shall be counted and not those on podium – condition violated.
4. GROUND NO. 4: The Project Proponent did not provide open spaces meant for light and ventilation and tree plantation as side and rear setbacks – Against the minimum open space of 20 metres required to be kept on all the sides, the Project Proponent has kept an open space of just 6 metres at the ground level and which gets reduced to 4.0 metres considering overhang at the upper levels.
3.5 GROUND NO. 5:

NOTARY ★ M. A. GAUTAM ★ GOVT. OF INDIA
REGD. NO. 6069 MUMBAI MAHARASHTRA

No relaxation on open spaces and tree plantation can be given by the Municipal Commissioner as such an act leads to increase in such poisonous gasses which can be neutralised by the trees.
3.6 GROUND NO. 6: The Project Proponent has concretised almost the entire layout. It is impossible to comply with the Orders of the High Court and also that of the National Green Tribunal, that soil of at least 1 metre be exposed to the elements around the tree.

7. Thus the Applicant submits that considering the submissions made by the Appellant as above, it is humbly prayed that the Affidavit-in-Reply of these Respondents be reckoned as untenable, and accordingly, the Prayers made in the Original Application be made absolute.

APPLICANT

DATE: 6th January, 2025

PLACE: Mumbai

VERIFICATION

I Pratap Lal Teli, the Applicant in this Original Application, do hereby verify that the contents of aforesaid paras of this Rejoinder which are true to the best of my knowledge and that I have not suppressed any material fact.

APPLICANT

BEFORE ME

BEFORE ME
06/1/25
M. A. GAUTAM
Regn. No. 6089 B.A.LL.B
NOTARY, GOVT. OF INDIA
Resi: Adenwala Compound, R. No. 132,
M J. Marg, Parel Village,
Mumbai 400 012.

NOTED & REGISTERED
Sr No 47 Pg No 235
Date 06/01/2025