

**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 THE REPLY OF RESPONDENT NO. 6 –
NAREDCO West Foundation**

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Tribunal Act, 2010)

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Yogesh Pratap Singh

... **APPLICANT**

AND

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

... **RESPONDENTS**

**REJOINDER TO AFFIDAVIT-IN-REPLY OF
RESPONDENT NO.6, (NAREDCO West Foundation)**

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 i.e. Respondent No. 6 – NAREDCO West Foundation (hereinafter addressed to as ‘The Answering 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. On the contrary, the Answering Respondent has traversed through points which are extraneous to the issues at stake and

evades to assail the specifics which have been traversed through in the Original Application.

6. The grounds taken by the Answering Respondent for assailing this Original Application is as under:

Ground No. 1:

Development Control Regulation is a delegated piece of legislation;

Ground No. 2:

Delegated piece of legislation cannot be challenged before this Hon'ble Tribunal;

Ground No. 3:

The issue raised in the Original Application is not covered under the Enactments mentioned in Schedule I of the National Green Tribunal Act, 2010;

Ground No. 4:

Excavation and redeployment of excavated earth for the purpose of construction does not amount to mining;

7. The above-mentioned grounds taken by this Respondent are rebutted in the following paragraphs:

8. GROUND NO. 1 – Development Control Regulation is a delegated piece of legislation:

This ground taken by the Answering Respondent is untenable because he has erred in inferring that the Applicant has challenged the Development Control Regulations. Instead, the Applicant has

traversed through larger questions, which go beyond the scope of the Development Control Regulations and that reliance to the Development Control Regulations is only collateral to the other major issues at stake.

At this juncture the Applicant would rely on the provisions of section 3 of the Environment Protection Act, 1986, which gives powers under the act to question an action detrimental to environment under any other law.

For the sake of convenience, the relevant part of the said provision is quoted hereunder:

3. POWER OF CENTRAL GOVERNMENT TO TAKE MEASURES TO PROTECT AND IMPROVE ENVIRONMENT

(1) Subject to the provisions of this Act, the Central Government, shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing controlling and abating environmental pollution.

(2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the following matters, namely:--

(i) co-ordination of actions by the State Governments, officers and other authorities--

(a) under this Act, or the rules made thereunder, or

(b) under any other law for the time being in force which is relatable to the objects of this Act;

... ..” (Emphasis supplied).

The Applicant submits that since the Environment Protection Act, 1986, confers powers to the Central Government to deal with **“any other law for the time being in force which is relatable to the objects of this Act”** accordingly, this Hon'ble Tribunal is conferred with jurisdiction to adjudicate any matter linked thereto.

The Applicant further submits that the Original Application is not just based on the Development Control Regulations, but far more than that, which is based on "substantial question relating to environment", which go beyond the scope of the Development Control Regulations. This can be appreciated from the following "substantial question relating to environment" raised by the Applicant in the Original Application:

(A) Mumbai an island vulnerable to rise in sea-level – Environment Impact Assessment necessary:

If unlimited basements are allowed in Mumbai, which is an island surrounded by the sea on all sides and thus is vulnerable to rise in sea level, was it not necessary to conduct an Environment Impact Assessment by defining the precise and elaborate "Terms of Reference"?

(B) Study on the Environment Impact on the geology imperative:

When unlimited basements were permitted was it not necessary to have conducted the impact it would have on the geology of Mumbai, which is an island surrounded by sea on all sides and extremely vulnerable to rise in sea levels due to climate change?

(C) Mumbai is in the medium risk Seismic Zone 3:

Mumbai being in a high-risk earthquake zone with certain parts of western coast being in the Zone 4 and Mumbai being in Zone 3, would not a tragedy await, when a major part of the city lands get excavated by deep unlimited basements and then the earthquake strikes?

(D) Sealing enormous basements upto six storied building sunk into the ground – Environment Impact on the roots of the surrounding trees:

- (i)** When unlimited basements are made and their concrete shells seal the ground below upto 60 feet on all sides and at the bottom also, will it not adversely affect the spreading of the massive roots of the existing enormous tropical trees, which are the local variety of trees in the high rainfall area of Mumbai?
- (ii)** Will it not constrain the spread of the roots of the legally mandated tree plantation of new trees within the plot and those of the neighbouring plots?
- (iii)** Will it not constrain the flow of nutrients and water into the roots of the trees which terminate at the basement walls or seek to move at the bottom of the basement to get water and nutrients?
- (iv)** Will it such enormous underground concretisation affect the water table which can inhibit the growth of existing and trees planted in future?

(E) Impact on ground water aquifers when six-storied high basements are sunk under the ground:

- (i) When unlimited basements of the depth of upto 60 feet are excavated and then sealed with concrete, would it not profoundly upset the existence of underground aquifers and disturb the equilibrium of ground water?
- (ii) Will not such disturbances in underground natural flow of ground water have an impact on the geology of the area as that could create hollows when water dries up.”

(E) Enormous enhancement of air pollution arising out of cement dust and dust blow from the excavated earth:

- (i) When unlimited basements are excavated in densely populated areas and columns and slabs are filled-up by dispensing ready mix concrete through the double-axed trucks, would it not enhance the level of dust and particle pollution arising when the remnants of concrete get dropped on the surrounding roads and they loosely dry up, thereby generating a cement and micro particle dust into the air, as tyres of innumerable vehicles drive over that dust lying on the roads.
- (ii) Will not such cement and micro particles be a risk to two-wheeler riders, as it may temporarily constrain the vision of two wheeler riders as the dust and micro particles, hit the eyes while driving and which may lead to road accidents.

(F) Heavy dumpers, concrete materials, and supply trucks to ready-mix concrete plants cause unending traffic jams in congested areas:

When enormous excavations are done in the densely populated areas clogging in traffic jams, and when for the excavation and construction of basements, tens of thousands concrete mixers, dumper trucks and excavator machines are moved into these dense areas, would it not lead to enhancement of traffic jams in the narrow roads?

(G) Enormous sound pollution caused by the hammering of the rocks by rock-breakers for excavating a six storied deep basements:

Mumbai is an island based around rocky shores. When giant rock-breakers are deployed to disintegrate the rocks, for basement excavations, it generates noise far in excess of the limits specified in the Noise Pollution (Regulation and Control) Rules, 2000. Should it not be necessary to curtail the use of rock breakers in densely populated areas in view of the provisions of Rule 3(4) of these Rules, 2000?

In this reference, it is further submitted that the Environment Impact Assessment Notification of 2006 is derived from a central legislation i.e. the Environment Protection Act, 1986, emanating out of an international treaty, and that Development Control Regulations are derived from the state Legislation i.e. the Maharashtra Regional and Town Planning Act, 1966. The Original Application elaborates the conflicts between the two. Since as per Article 254 in case of conflict the central legislation shall prevail, accordingly, that part of the Development Control Regulation which conflicts with the Environment Impact Assessment Notification of 2006, has to fail.

Since the interpretation of the Answering Respondent is incorrect, accordingly, this contention ought to be rejected.

9. GROUND NO. 2 –

Delegated piece of legislation cannot be challenged before this Hon'ble Tribunal:

The this Hon'ble Tribunal has got full jurisdiction to evaluate the Constitutional validity of the impugned Regulations, which are

enormously detrimental to environment. The Constitutional powers of the Tribunals are unfettered.

This issue was settled by the Constitutional Bench of the Hon'ble Supreme Court in the case of L. Chandra Kumar v. Union of India (27 (1997) 3 SCC 261 : 1997 INSC 288), where it was held as under:

“90. We may first address the issue of exclusion of the power of judicial review of the High Courts. We have already held that in respect of the power of judicial review, the jurisdiction of the High Courts under Article 226/227 cannot wholly be excluded. It has been contended before us that the Tribunals should not be allowed to adjudicate upon matters where the vires of legislations is questioned, and that they should restrict themselves to handling matters where constitutional issues are not raised. We cannot bring ourselves to agree to this proposition as that may result in splitting up proceedings and may cause avoidable delay. If such a view were to be adopted, it would be open for litigants to raise constitutional issues, many of which may be quite frivolous, to directly approach the High Courts and thus subvert the jurisdiction of the Tribunals. Moreover, even in these special branches of law, some areas do involve the consideration of constitutional questions on a regular basis; for instance, in service law matters, a large majority of cases involve an interpretation of Articles 14, 15 and 16 of the Constitution. **To hold that the Tribunals have no power to handle matters involving constitutional issues would not serve the purpose for which they were constituted.** On the other hand, to hold that all such decisions will be subject to the jurisdiction of the High Courts under Articles 226/227 of the Constitution before a Division Bench of the High Court within whose territorial jurisdiction the Tribunal concerned falls will serve two purposes. While saving the power of judicial review of legislative action vested in the High Courts under Article 226/227 of the Constitution, it will ensure that frivolous claims are filtered out through the process of adjudication in the Tribunal. The High Court will also have the benefit of a reasoned decision on merits which will be of use to it in finally deciding the matter.”

(Emphasis supplied).

The Applicant further submits that this ground taken by the Answering Respondent is further unsustainable because of the position decided by the Hon'ble Supreme Court, while deciding an appeal on the Order of the National Green Tribunal, where it had

quashed a similar Development Plan for the City of Shimla and which has been relied upon in the Original Application. While the Hon'ble Supreme Court, did not agree with the National Green Tribunal to quash the Shimla Development Plan, however, in doing so, it never stated that the National Green Tribunal had no jurisdiction in the matter.

In other words, the Supreme Court did not state that the National Green Tribunal does not have jurisdiction to quash a Development Plan.

In fact, the Hon'ble Supreme Court, stated that a provision detrimental to environment could always be challenged before an appropriate forum, which is the National Green Tribunal in this case.

More particularly, the Hon'ble Supreme Court in **Civil Appeal Nos. 5348 to 5349 of 2019, in the case of The State of Himachal Pradesh v. Yogendra Mohan Sengupta**, in Para 124 of the judgment observed as under:

“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.”

To reiterate that in this Order, the Hon'ble Supreme Court never questioned the jurisdiction or competence of the National Green Tribunal to quash a Development Plan. All it observed was that since the Shimla Development Plan had taken care of the precautions, hence the Development Plan could not be quashed. The

decision was on specific factual merits of the matter, but not on the question of jurisdiction.

10. GROUND NO. 3 –

The issue raised in the Original Application is not covered under the Enactments mentioned in Schedule I;

This contention of the Answering Respondent is incorrect for the reason that the Applicant has relied on the provisions of the case of *Deepak Kumar*, as decided by the Hon'ble Supreme Court in which it had mandated that for any extraction of minor minerals an Environment Clearance is required under the provisions of Environment Impact Assessment Notification of 2006.

Since the Environment Impact Assessment of 2006 has been issued under the provisions of Environment Protection Act, 1986, accordingly, this Hon'ble Tribunal has got full jurisdiction in the matter as this constituted Entry No. 5, in the Schedule-I of The National Green Tribunal Act, 2010.

Therefore, this contention taken by the Answering Respondent, on the very face of it, is incorrect.

11. GROUND NO. 4 –

Excavation and redeployment of excavated earth for the purpose of construction does not amount to mining;

The Applicant submits that this contention taken by the Answering Respondent is factually incorrect.

Excavation and redeployment of earth for foundation is one thing, but to excavate basements as deep as 5 floors below the

ground and of sizes of the area of several football fields, and in the process extract several lakh tonnes of stones and substrata materials, and then **not to fill them back but to dump the excavated material at distance places**, to say that this is not mining would be being naïve.

The Applicant reiterates that the act of excavating minor minerals for foundations, and filling them back again to secure the foundation, is radically different from the act of permanently hollowing out vast areas of grounds going as deep as 5 floors below the ground level.

It is further submitted that the question of mining is not user specific, but it is environment specific. Thus, if there is large scale extraction of minor minerals, then unless there are specific exceptions, whatever, be the purpose of extraction, the process of extraction itself would be environmentally harmful. Needless to add that there is no exception made whereby mining activity is permitted for excavation of basements and to create a permanent cavity on that part of the earth.

12. Considering the aforesaid, it is apparent that the contentions put forward by 'The Answering Respondent' are simply preposterous and ought to be rejected outright on the very face of it. Accordingly, the Applicant humbly submits that, such contentions of the Answering Respondent placed in his Affidavit-in-Reply be rejected and the prayers made in the Appeal be made absolute.

yogeshkratapip
APPLICANT

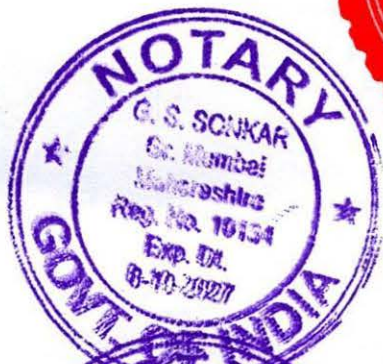
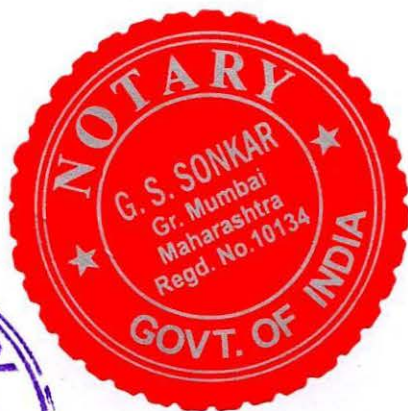
VERIFICATION

I, Yogesh Pratap Singh, the Applicant above-named, Yogesh Pratap Singh, having his address as 501, Harisiddhi Heights, Khan Abdul Gaffar 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: 10th October, 2023

PLACE: Mumbai



BEFORE ME

G. S. Sonkar
BA LI B
NOTARY GR. MUMBAI
MAHARASHTRA
(Govt. of India)

G. S. NOS. (Notary Govt. of India)	
NOTARIAL REGISTER	
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