

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH AT NEW DELHI
ORIGINAL APPLICATION NO. 710 OF 2023

IN THE MATTER OF:

SUSHIL RAGHAV

... APPLICANT

VERSUS

STATE OF UTTAR PRADESH & ORS.

... RESPONDENTS

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THROUGH



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PLACE: NEW DELHI

DATE:- 08.07.2025

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
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**REJOINDER TO THE REPLY BY RESPONDENT NO. 12 ON BEHALF OF THE
APPLICANT**

MOST RESPECTFULLY SHOWETH:

1. That the above-titled Original Application has been filed by the Applicant raising the grievance raised that illegal constructions such as road/pathway, industrial drain and other structures were being undertaken on the park earmarked at Rajendra Nagar Industrial Colony on G.T. Road Mile 8/7, Sahibabad, Ghaziabad by the Ghaziabad Municipal Corporation.
2. That the Respondent No. 12 has filed the Reply to the Original Application on 4.07.2025. At the outset, the Applicant denies all the contentions and averments made in the above-mentioned Reply dated 4.07.2025 unless expressly admitted or are a matter of record. The Applicant further reiterates that all facts and submissions made in the Original Application, Reply to the I.A. No. 480 of 2024 and Reply to the I.A. No. 36 of 2025 in the above-titled Original Application to be true and correct and same may be read as part of the instant Rejoinder and are not being repeated for the sake of brevity.

REJOINDER TO THE REPLY BY RESPONDENT NO. 12 ON BEHALF OF THE APPLICANT:

a. Reply to the contention that the Application is time barred:

3. It is submitted that the contention of the Respondent No. 12 that the present Application is time barred is baseless and incorrect. The Applicant moved the present Original Application only after observing construction activities on the concerned park land in the month of September, 2023 wherein as per the law, no construction is permissible on any park spaces.
4. It is baseless to state that the Applicant is time barred considering the fact that before filing of the present Original Applicant, no permanent construction activities had taken place on the park land. Hence, the cause of action only arose in September, 2023, and the present application was filed in the month of November, 2023 which is within the time limit prescribed under Section 14 of the National Green Tribunal Act, 2010. Further, the Applicant has also sought restoration of the concerned park which is also within the limitation of Section 15 of the said Act.
5. That further, the actions of the Respondent No. 12 of using the 'park' land for road purposes also constitutes a continuing cause of action as per the ***Forward Foundation v. State of Karnataka & Ors. [2015 SCC OnLine NGT 5]*** which states that:

"27. A recurring or continuous cause of action may give rise to a fresh cause of action resulting in fresh accrual of right to sue. In such cases, a subsequent wrong or injury would be independent of the first wrong or injury and a subsequent, composite and complete cause of action would not be hit by the expression 'cause of action first arose' as it is independent accrual of right to sue. In other words, a recurring cause of action is a distinct and completed occurrence made of a fact or

blend of composite facts giving rise to a fresh legal injury, fresh right to sue and triggering a fresh lease of limitation. It would not materially alter the character of the preposition that it has a reference to an event which had occurred earlier and was a complete cause of action in itself. In that sense, recurring cause of action which is complete in itself and satisfies the requisite ingredients would trigger a fresh period of limitation."

6. That therefore, in the present Application, although the cause of action first arose when the Applicant observed violations and illegal construction, this is a continuing cause of action because the illegality is continuing which construes a fresh cause of action and hence, the Application is not time barred and well within the limitation period.

b. Reply to the contention that the map relied on by the Applicant and the Respondent No. 1 is incorrect:

7. It is submitted that as per the 1962 approved map of the Rajendra Nagar Industrial Colony on G.T. Road, there is no road marked on the said map. That the said map is an approved layout map which was annexed by the Applicant and confirmed by the Chief Secretary, State of U.P. in its Affidavit dated 30.09.2024. The Affidavit submitted by the Chief Secretary, State of Uttar Pradesh states that:

*"15. That the above-mentioned committee comprising of the Special Secretary, Urban development department, District Magistrate, Ghaziabad, Development Authority Ghaziabad and Municipal Corporation, Ghaziabad Nigam did a comprehensive survey/inspection of the site 22nd August 2024. **It is also submitted during the site-visit, that the history of the land, Lay-out Map and District Magistrate's report dated 18.07.2024 were taken into account and a comprehensive report was submitted with the conclusion that:***

...

A. Adjacent Factory owners have constructed a road on the park land, which has an area of 864 sq. mt. In the original layout map, plots numbers 79 and 80 have been subdivided into small industrial plots and factories re running on that site. The

factories which have opened their gates towards the park, are using this road to go to the main road. Apart from the abovementioned route, they do not have an exit on the road (except the corner plot)."

8. That further, the Affidavit submitted by the Chief Secretary, State of Uttar Pradesh dated 30.09.2024 has also annexed a status report dated 18.07.2024 wherein at Page 289, it is stated that:

"... The encroachment free land shown in Annexure-2 is 9940.8 sq yard (8311.8 sq. m) and 1033.6 sq. yard (864.2 sq. m) is being illegally used as a road by factory operators. ..."

9. It is submitted that as per the above submissions, it is clear that the State itself has recognized and accepted the layout map and hence, no relief can be granted to the Respondent No. 12, since its clear from the record that the said Respondent has illegally encroached upon the park. Further, the map relied on by the Respondent No. 12 cannot be accepted as there is reasonable apprehension and real likelihood of bias of the map being in favour of the Respondent No. 12.
10. That further the shortcomings mentioned by the Respondent No. 12 regarding the different Reports of the Joint Committee and other authorities at Para 27 (a) to (e) are required to be responded by the Chief Secretary, State of U.P.

c. Reply to the contention that the Hon'ble Tribunal may not rely on the findings of the Committee Reports:

11. That the argument raised by the Respondent No. 12 cannot be accepted due to the fact that the State Respondents have themselves conducted a site inspection, and submitted by the Chief Secretary, State of U.P., and nothing contrary has been stated to disregard the points made by the Applicant. The

findings of the State Respondents clearly conclude that the concerned area is indeed a park, and hence, no construction is permissible in that area.

d. Reply to the Preliminary Submission that Respondent No. 12 has the Right of Way:

12. That the Respondent No. 12 claims to have Right of Way to the park land by claiming that a 30 ft wide path exists on the 'park' land and it was being used by them since 2004. The Applicant submits that as per the approved map of the Rajendra Nagar Industrial Colony on G.T. Road, there is no 30-foot wide path that has been marked on the said map. Such road is a fictional road, and has been informally and illegally used by the industries facing toward the park land including the Respondent No. 12.

13. That further, the Sale Deed referred to by the Respondent No. 12 in I.A. No. 480 of 2024 also refers to the alleged road as below:

" South-Colony Park/Road 10 ft. wide.....side 18 feet"

However, it is pertinent to note that nowhere in the submissions and official documents presented by the authorities during the course of the hearing in the above-mentioned Application, mention any kind of '30 feet road' that is legally present on the park land. All the authorities indicate the same concern that the industries have constructed an illegal road for transport purposes. It is submitted that the Sale Deed does not create rights of the owner to use public space as part of a private road.

14. That from the above, it is clear that the approved layout map of the Rajendra Nagar Industrial Colony on G.T. Road does not have mentioning of any '30 feet wide path', and it is the factories that have illegally used the alleged road on

park land. It is submitted that the Respondent No. 12 ought to have constructed an alternative pathway for transport when the Sale Deed was created in 2004, as the Respondent No. 12 was aware about the land being a park land, as clearly mentioned in the Sale Deed. Further, the precedent on requirement of preservation of parks and open spaces are quite clear that no construction is permissible on park and open spaces.

e. Reply to the contention regarding protection of constitutional right of Respondent No. 12:

15. That the Respondent No. 12 states that it has a right to practice any profession or carry out any occupation, trade or business under Article 19 and also lead a dignified and respectable life under Article 21. In response to that the Applicant submits that the constitutional right of the Respondent No. 12 is not absolute and the Respondent No. 12 is required to follow other laws as well wherever applicable.

f. Reply to Para Wise Replies

16. That the contents made in Para 46 to 93 are denied unless expressly accepted or are part of matter of record. It is submitted that the Applicant has already responded appropriately to the said contentions in the Paragraphs above, and the same is not being repeated for the sake of brevity.

17. That therefore, in light of the above-mentioned submissions, the Applicant submits that there is no merit in the prayers of the Respondent No. 12 and is liable to be dismissed.

18) Pass any other orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the instant case.

Rajesh
APPLICANT

THROUGH

Ritwick Dutta

RITWICK DUTTA

Rahul Choudhary

RAHUL CHOUDHARY

ADVOCATES

COUNSELS FOR THE APPLICANT

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Email: litigation@dclawchambers.com



Place: New Delhi

Date: 08.07.2025

VERIFICATION:

Verified by Sushil Raghav, s/o Shri Ratan Singh, aged about 39 years, R/o 226, Karkar Model Post, Sahibabad, Site-4, Ghaziabad that the contents of Paragraphs 1 to 18 are true to my personal knowledge and nothing material has been concealed therefrom.

4 ATTESTED
No. 4 Dated 08.07.25
Certified that Documents Affidavit Signed by Sushil Raghav APPLICANT
Identified By Shri. [Signature]
[Signature]
P.K. SHARMA
Advocate
Notary Ghaziabad
(GOVT. OF INDIA)
08.07.25

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AFFIDAVIT

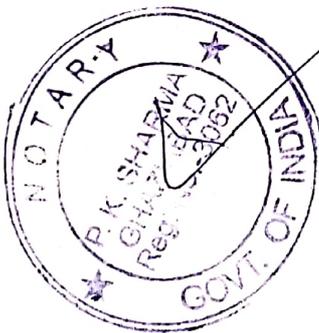
I, Sushil Raghav, s/o Shri Ratan Singh, aged about 39 years, R/o 226, Karkar Model Post, Sahibabad, Site-4, Ghaziabad, do hereby solemnly affirm and declare as under:

1. That I am the Applicant in the above titled Original Application and conversant with the facts and circumstances of the case and competent to swear this affidavit.
2. That the contents of the accompanying Rejoinder are true and correct and nothing material has been concealed there from.


DEPONENT

VERIFICATION

Verified on this 7th day of July, 2025 that the contents of the present affidavit are true and correct to my knowledge and belief and nothing material has been concealed therefrom.




DEPONENT



913

Litigation . <litigation@dclawchambers.com>

**Copy of Rejoinder and Reply on behalf of the Applicant in OA No. 710 of 2023
Sushil Raghav Versus. State of Uttar Pradesh and ors.**

1 message

Litigation . <litigation@dclawchambers.com>

Tue, Jul 8, 2025 at 2:43 PM

To: bhanwar jadon <bhanwar09jadon@gmail.com>, malak@malakbhatt.com, yagyawalkya@dylawchambers.com,
Advocate Raj Kumar <advrajkumar@gmail.com>, abhishek.lawyer@gmail.com, sthaviasthana@gmail.com,
contact@advocatemayank.in

Cc: Shreepurna Dasgupta <shreepurnadasgupta@proton.me>

Dear Sir/madam,

Please find attached- Copy of Rejoinder and Reply on behalf of the Applicant in OA No. 710 of 2023 Sushil Raghav Versus. State of Uttar Pradesh and ors.

Thanks & Regards
Counsel for the Applicant

2 attachments

 **Reply on behalf of applicant R-13 & 34.pdf**

742K

 **Rejoinder Sushil Raghav.pdf**

746K