

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL**PRINCIPAL BENCH, NEW DELHI****Original Application No. 532 of 2023****IN THE MATTER OF:**

BALBIR SANDHU

...APPLICANT

VERSUS


UNION OF INDIA AND OTHERS

...RESPONDENTS

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DRAWN AND FILED BY



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28/09/2024

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PRINCIPAL BENCH, NEW DELHI

Original Application No. 532 of 2023

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...RESPONDENTS

REJOINDER AFFIDAVIT ON BEHALF OF THE APPLICANT

IN RESPONSE TO THE REPLY FILED BY RESPONDENT

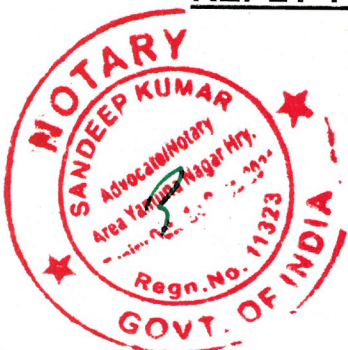
NO. 8

MOST RESPECTFULLY SHOWETH:

I, Balbir Sandhu, applicant in the present Original Application do hereby solemnly swear, affirm and state as hereunder:

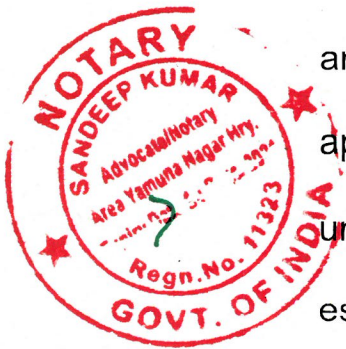
1. That the deponent is the applicant in the above-mentioned Original Application and as such fully conversant with the facts and circumstances of the case, hence competent to swear the present rejoinder affidavit.

REPLY TO PRELIMINARY REPLY

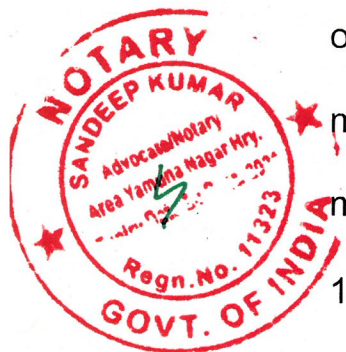


Ref. No. 474
Date 30.09.2024
Year 2024

1. That the present rejoinder is being filed on behalf of Balbir Sandhu "Applicant", in response to the Reply filed by "Respondent 8" to the present Original Application.
2. That at the very outset, the Applicant denies each averment stated in the Respondent's Reply except for those that are a matter of record and/or explicitly admitted herein. It is clarified that there shall be no admission on the part of the Applicant for want of specific denial.
3. It is submitted that the detailed submissions made by the Applicant in the Original Application may be read as part and parcel of the present Rejoinder and the same is not being reiterated herein for the sake of brevity.
4. That the Applicant submits this rejoinder in response to the Reply filed by the Respondents 8, refuting the Respondents' contentions and reiterating the significant environmental violations resulting from approval of excessive mineral extraction, approval of mining in unlisted areas, and non-compliance with statutory requirements as established under the District Survey Report (herein after referred as DSR).

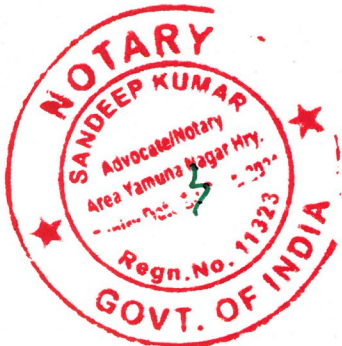


5. That the Respondent's assertion that there is no violation of DSR is *factually incorrect*. The DSR for Ambala clearly identifies 10.11 hectares as suitable for mining, yet the respondent has been approved for operations over an area around 99.9 hectares. The magnitude of this overextension, beyond the permitted limits, undeniably violates the DSR.
6. As per the DSR of Ambala District, the total mineable mineral reserves, have been assessed at 38.29 lakh MT. However, the claim put forth by the Project Proponent alone, i.e., Respondent No. 8, asserts an annual extraction capacity of 44.60 lakh MT, which is in clear excess of the mineable limit prescribed in the DSR.
7. The respondent's repeated reference to "typographical errors" and inadvertent mistakes in the original DSR demonstrates the flawed foundation upon which this mining plan was approved. However, these are not inadvertent clerical errors but are rather significant oversight which suggests their negligence and have direct and material impact on the legal foundation of the approvals granted for mining and thus is in violation of violation of MoEF Notification dated 15.01.2016, MoEF Notification dated 25.07.2018, Sustainable Sand Mining Management Guidelines, 2016 and the Enforcement & Monitoring Guidelines for Sand Mining, 2020.



REPLY TO PARAWISE REPLY:

1. That the contents of the Para 1 are Matter of Record.
2. That the contents of the Para 2 are incorrect and the same are hereby denied. There is a substantial question relating to the Environment in the present case.
3. That the contents of the Para 3 are Matter of Record.
4. That the contents of the Para 4 are incorrect and the same are hereby denied. That the e-auction notice dated 31.05.2022 for the purpose of granting of mining contracts for extraction of minor minerals namely "Boulder, Gravel and sand" from the mineral mines located at District Ambala, Haryana issued by respondent No. 5 is bad in law as the same is in violation of DSR.
5. That the contents of the Para 5 are incorrect and the same are hereby denied. The e-auction notice dated 31.05.2022 was issued not in consonance but in violation of the DSR.
6. That the contents of the Para 6 are incorrect and the same are hereby denied. That the Department has not followed the due



diligence and the same is clear from the fact that the DSR for Ambala limits mining area to 10.11 hectares and total mineable mineral reserve at 38.29 lakh MT, yet Respondent has been approved for an area around 99.9 hectares and asserts an annual extraction of 44.60 lakh MT, both in clear violation of the DSR.

7. That the contents of the Para 7 are Matter of Record.
8. That the contents of the Para 8 are Matter of Record.
9. That the contents of the Para 9 are Matter of Record. That the case of the Petitioner is that the Mining Plan and the Progressive Mining closure Plan are in violation of the DSR.
10. That the contents of the Para 10 are Matter of Record.
11. That the contents of the Para 11 are Matter of Record.
12. That the contents of Para 12 are incorrect and the same are hereby denied. That the Hon'ble Supreme Court in *Anjani Kumar vs State of Uttar Pradesh & Ors.*, 2017 SCC OnLine NGT 979, has expressly held that "the data collected and declared for the preparation of the District Survey Report (DSR) shall take precedence over any other data and form the



foundation for granting mining leases." Therefore, if the *mineable mineral exceeds the quantity specified in the DSR*, the Mining Plan is rendered bad in law.

13. That the contents of Para 13 are incorrect and the same are hereby denied. There has been no careful analysis of the Mining Plan and the same is clear from the fact that the DSR for Ambala limits mining area to 10.11 hectares and total mineable mineral reserve at 38.29 lakh MT, yet Respondent has been approved for an area around 99.9 hectares and asserts an annual extraction of 44.60 lakh MT, both in clear violation of the DSR.

14. That the contents of the Para 14 are Matter of Record.

15. That the contents of Para 15 are incorrect and the same are hereby denied. The Mining Plan is not prepared as per the prescribed procedure but was prepared in violation of the DSR. That the defence of misnomer regarding the Sukroon River are post-facto justifications that far exceeds what was initially stated by them suggesting negligence in the legal foundation of the approvals.



16. That the contents of Para 15 are incorrect and the same *are hereby denied. There is violation of the DSR in the present case and there is substantial question relating to the environment.*

PARAWISE REPLY OF REPLY ON MERITS:

1. That the Para 1 doesn't require any reply. That the applicant reiterates the facts and circumstances stated in the para 1 of the Original Application.
2. That the Para 2 doesn't require any reply. That the applicant reiterates the facts and circumstances stated in the para 2 of the Original Application.
3. That the contents of Para 3 are incorrect and the same are hereby denied. That the applicant reiterates the facts and circumstances stated in the para 3 of the Original Application.
4. That the contents of Para 4 are incorrect and the same are hereby denied. That the contents of the Para 4 in the Original application are not false and there is substantial question relating to environment in the present case.



5. That the contents of Para 5 are incorrect and the same are hereby denied. That there is substantial question relating to environment in the present case.
6. That the contents of Para 6 are incorrect and the same are hereby denied. That the applicant reiterates the facts and circumstances stated in the para 6 of the Original Application.
7. That the contents of Para 7 are incorrect and the same are hereby denied. That The Mining Plan is not prepared as per the prescribed procedure but was prepared in violation of the DSR. That the due diligence was not exercised and the same is clear from the fact that the DSR for Ambala limits mining area to 10.11 hectares and total mineable mineral reserve at 38.29 lakh MT, yet Respondent has been approved for an area around 99.99 hectares and asserts an annual extraction of 44.60 lakh MT, both in clear violation of the DSR.
8. Reply to sub-paragraphs of para 8
 - I. That the contents of sub-para I are incorrect and the same are hereby denied. The Applicant reiterates the judgment of the Hon'ble Supreme Court referenced in



sub-para I of the Original Application, and asserts that the same is fully applicable to the present case.

- II. That the sub-para II doesn't require any reply.
- III. That the contents of sub-para III are incorrect and the same are hereby denied. The Applicant reiterates the judgment of the Hon'ble Supreme Court referenced in sub-para I of the Original Application, and asserts that the same is fully applicable to the present case.
- IV. That the sub-para IV and V doesn't require any reply.
- V. That the contents of the sub-para VI are Matter of Record.
- VI. That the contents of sub-para VII are incorrect and the same are hereby denied. That the DSR was not duly taken into consideration while issuing the e-auction notice dated 31.05.2022 and the Mining Plan is in clear violation of the DSR.
- VII. That the contents of sub-para VIII are Matter of Record.



VIII. That the contents of sub-para IX are incorrect and the same are hereby denied. That the recalculated mineable area of 373.35 hectares and mineral potential of 224 lacs MT per annum and the defence of the misnomer regarding the Sukroon River are post-facto justifications that far exceeds what was initially stated. These are not inadvertent clerical errors but substantial oversight suggesting their negligence, with a direct and material impact on the legal foundation of the approvals granted for mining, in clear violation of MoEF Notification dated 15.01.2016, MoEF Notification dated 25.07.2018, Sustainable Sand Mining Management Guidelines, 2016 and the Enforcement & Monitoring Guidelines for Sand Mining, 2020.

IX. That the contents of sub-para X are Matter of Record.

X. That the contents of sub-para XI are incorrect and the same are hereby denied. That the contents of the sub-para XI in the Original application are not false. That the applicant reiterates the facts and circumstances stated in the sub-para XI of the Original Application.



- XI. That the sub-para XII, XIII, XIV, XV, XVI, XVII doesn't *require any reply.*
- XII. That the contents of the sub-para XVIII, XIX, XX, XXII, XXIII are Matter of Record.
- XIII. That the sub-para XXIV doesn't require any reply.
- XIV. That the contents of sub-para XXV are incorrect and the same are hereby denied. That the Mining Plan is in clear violation of the DSR.
- XV. That the Applicant reiterates contents of the sub-para XXVI of the Original Application.
- XVI. That the contents of the sub-para XXVII and XXVIII are Matter of Record.
- XVII. That the contents of the sub-para XXIX, XXX, XXXI, XXXII, XXXIII doesn't require any reply.
- XVIII. That the contents of the sub-para XXXIV are false. It is further respectfully submitted that the Mining Plan of the Respondent is bad in law and hence it is liable to be set aside.



XIX. That it is denied that the contents of the sub para XXXV *of the Original Application are false. That the contents of sub-para XXXV of the reply are incorrect and the same are hereby denied. It is further respectfully submitted that the Mining Plan of the Respondent is in violation of the DSR. That the DSR for Ambala limits mining area to 10.11 hectares and total mineable mineral reserve at 38.29 lakh MT, yet Respondent has been approved for an area around 99.9 hectares and asserts an annual extraction of 44.60 lakh MT, both in clear violation of the DSR. That after the Applicant brought the issue to light, the Respondent engaged a NABL-recognised laboratory. However, at the time of approval of the Mining Plan, no such consultant had been engaged, which is a mandatory requirement under the Notification dated 15.01.2016, MoEF Notification dated 25.07.2018, Sustainable Sand Mining Management Guidelines, 2016 and the Enforcement & Monitoring Guidelines for Sand Mining, 2020. Hence, the Mining Plan is vitiated and liable to be set aside.*

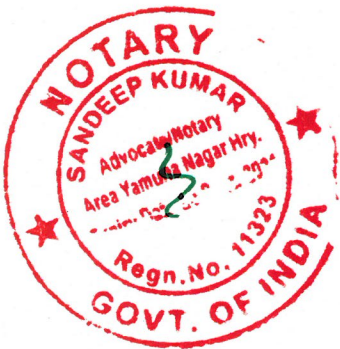


XX. That it is denied that the contents of the sub para XXXVI of the Original Application are false. That the contents of sub-para XXXVI of the reply are incorrect and the same are hereby denied. That the Mining Plan is not based upon the scientific analysis but is in violation of the DSR.

XXI. That it is denied that the contents of the sub para XXXVII of the Original Application are false. That the contents of sub-para XXXVII of the reply are incorrect and the same are hereby denied. That the due diligence was not followed as the Mining Plan is in violation of the DSR.

9. That the Applicant reiterates contents of the Para 9 of the Original Application.

10. That the contents of Para 10 of the reply are incorrect and the same are hereby denied. That the contents of the Para 10 of the Original Application are reiterated.



REPLY TO THE GROUNDS:

A. That the Applicant reiterates the judgment of this Hon'ble Tribunal referenced in Para A of the Original Application,

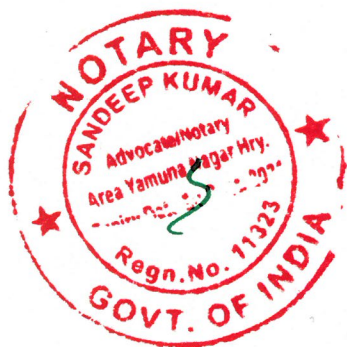
and asserts that the same is fully applicable to the present case.

B. That the Applicant reiterates the judgment of this Hon'ble Tribunal referenced in Para B of the Original Application, and asserts that the same is fully applicable to the present case.

C. That the Applicant reiterates the judgment of this Hon'ble Tribunal referenced in Para C of the Original Application, and asserts that the same is fully applicable to the present case.

D. That the Applicant reiterates the judgment of this Hon'ble High Court referenced in Para D of the Original Application, and asserts that the same is fully applicable to the present case.

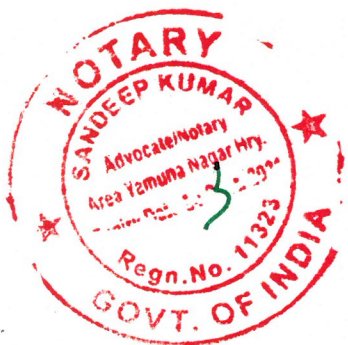
E. That the Applicant reiterates the judgment of this Hon'ble High Court referenced in Para E of the Original Application, and asserts that the same is fully applicable to the present case.



- F. That the Applicant reiterates the judgment of this Hon'ble Tribunal referenced in Para F of the Original Application, and asserts that the same is fully applicable to the present case.
- G. That the Applicant reiterates the judgment of the Hon'ble Supreme Court referenced in Para G of the Original Application, and asserts that the same is fully applicable to the present case. That the Mining Plan is in violation of the DSR.
- H. That the Applicant reiterates the content of the Para H of the Original Application.
- I. That the Applicant reiterates the content of the Para I of the Original Application.

LIMITATION

That in reply to the limitation clause it is respectfully submitted that the Applicant has filed the present application well within the prescribed limitation period. To elucidate, the cause of action in this case cannot be confined to a singular date but must be understood through the lens of continuous and



recurring infringements. The doctrine of recurring cause of action has been expansively dealt with by the Principal Bench of this Hon'ble Tribunal in the *Doaba Paryavaran Samiti* case (OA No. 327 of 2015). There, the Hon'ble Tribunal held that when a series of acts or omissions continue over time, each instance constitutes an independent cause of action. In the same vein, the present application pertains to ongoing and successive violations of environmental norms and statutory guidelines, which are not bound by a solitary moment in time but perpetuate a continuous breach of the Applicant's rights.

Moreover, the Hon'ble Supreme Court in *Hanumanthappa's case* examined the phrase "first arose" under Article 58 of the Limitation Act, 1963, concluding that where a claim is based on recurring wrongs, the limitation period does not solely begin from the first instance of harm. The present matter aligns with this reasoning, where each new breach, each violation of the District Survey Report (DSR), and each failure to comply with statutory obligations rekindles the Applicant's right to seek legal remedy.

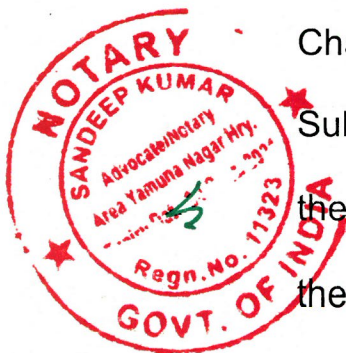
The term "cause of action" in legal parlance refers to a collection of essential facts necessary for a claimant to



establish their case before the court to obtain relief. All facts asserted in the application need to be considered as a whole rather than piecemeal in determining what prompted the applicant to seek the relief requested.

In *Forward Foundation v. State of Karnataka* (O.A. No. 222/2014), the Hon'ble Tribunal elaborated on the concept of a recurring cause of action, noting that recurring events that breach rights can constitute fresh causes of action, even if they are linked to earlier wrongs. In *M.R. Gupta v. Union of India* (1995) 5 SCC 628, the Hon'ble Supreme Court held that recurring wrongs, such as salary miscalculations in that case, give rise to new causes of action each time they occur, and the period of limitation would renew with each such breach.

In the present case, the DSR was prepared in considering the Ministry of Environment, Forest and Climate Change (MoEF) Notification dated 15.01.2016. But, Subsequently, the Joint Committee report acknowledged that the original DSR was flawed. The cause of action arose when the Mines and Geology Department, through its letter dated 25.10.2023, formally admitted the deficiencies in the original DSR and indicated the necessity for its revision.



Given the factual circumstances of the case, and the *material fact that the Director of Mines and Geology, Government of Haryana, has approved the mining plans of Respondent No. 8 and others in clear violation of the MoEF Notification dated 15.01.2016, MoEF Notification dated 25.07.2018, Sustainable Sand Mining Management Guidelines, 2016 and the Enforcement & Monitoring Guidelines for Sand Mining, 2020 and the DSR, it is evident that the illegality has been ongoing. Therefore, the present petition falls within the prescribed limitation period. It is also pertinent to note that the Hon'ble Supreme Court has time and again expressly held that the substantial rights of a litigant should not be defeated by procedural defects*

The Honb'le Supreme Court in *Bhagwan Swaroop And Ors. vs Mool Chand And Ors. ((1983)2SCC132)* Observed that “in the larger interests of administration of justice the Court may and the Court in fact does, excuse or overlook a mere irregularity or a trivial breach in the observance of any procedural law for doing real and substantial justice to the parties and the Court passes proper orders which will serve the interests of justice best.”

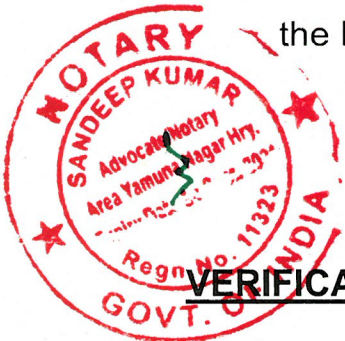


The Honb'le Supreme Court also observed in State Of Punjab *And Another vs Shamlal Murari & Anr (1976 (1) SCC 719)* "We must always remember that processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. It has been wisely observed that procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice. After, all Courts are to do justice, not to wreck this end product on technicalities."

PRAYER

In light of the aforementioned submissions, the Applicant respectfully prays that this Hon'ble Tribunal may be pleased to allow the Prayer clause of the Original Application.

Balbir
DEPONENT



VERIFICATION

Verified on 28/09/2024 that the contents of the present rejoinder affidavit are true and correct and nothing material has been concealed herein.

Balbir
DEPONENT

ATTESTED
Sandeep
SANDEEP KUMAR
Advocate & Notary
Distt Courts Jagadhri (YNR)
30/09/2024