

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 26.09.2023 FILED BY THE RESPONDENT  
NO.1**

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL  
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Drawn on: 27.09.2023  
Filed on: 29.09.2023  
Place: Pune

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**REJOINDER ON BEHALF OF THE APPLICANTS TO THE REPLY  
DATED 26.09.2023 FILED BY THE RESPONDENT NO.1**

IT IS MOST RESPECTFULLY SHOWETH:

1. At the outset, all the contentions, allegations and statements made by the Respondent No.1 in the reply dated 26.09.2023 filed by the Respondent No.1 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 26.09.2023 filed by the Respondent No.1 is devoid of any merit and therefore, liable to be dismissed.
2. The Execution Application No. 13/2023 was filed by the Applicants under Section 25(1) of the National Green Tribunal Act, 2010 seeking compliance of the order dated 16.12.2020 in Original Application No. 194/2018 and order dated 19.01.2023 in Execution Application No. 11/2022 passed by this Hon'ble Tribunal. The said EA No. 13/2023 was listed before the Hon'ble Tribunal on 29.08.2023 wherein this Hon'ble

Tribunal deemed it appropriate to convert the Execution Application into a Miscellaneous Application and was further pleased to admit the said Application. The Hon'ble Tribunal vide its order dated 29.08.2023 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.

3. In view thereof, the Respondent no.1 on 26.09.2023 has filed its reply before the Hon'ble Tribunal, to which the Applicants herein are filing the present Rejoinder. It is submitted that the reply dated 26.09.2023 has primarily been filed by the Respondent No.1 seeking a period up to January 2024 to comply with the orders dated 16.12.2020 in Original Application No. 194/2018 and order dated 19.01.2023 in Execution Application No. 11/2022 passed by this Hon'ble Tribunal.
4. It is submitted that the OA No. 194/2018 was filed by the present Applicants under Section 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. The Joint Committee comprising of the Maharashtra Pollution Control Board, Irrigation Department, Lonavala Municipal Council and the Tehsildar, Maval filed its Joint Inspection Report dated 01.01.2020 wherein it was found that :

**“CONCLUSION:**

*The Committee has conclusion on the basis of the Demarcation Dt. 24.12.2019 and the objections filed by the Applicants that Mr. Prakash Porwal has made and illegal dumping and encroachment in the Indrayani River of 257 sq. mtrs partially towards north west boundary, north boundary and south east boundary of Survey No. 24 in Indrayani River. The Committee had decided that the local authority shall take appropriate action of removing dumping and encroachment as per the procedure as early as possible. This decision shall be submitted with the*

*Hon'ble National Green Tribunal, Nodal Agency, Chief Officer, Lonavala Municipal Council."*

Thus, as on 01.01.2020 the Lonavala Municipal Council i.e. the Local Authority was directed to take appropriate action of removal of dumping and encroachment as undertaken by Mr. Prakash Porwal of 257 Sq. Mtrs in River Indrayani at Sr No. 24.

5. 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.
6. Since the Local Authority i.e. Respondent No.1 failed to comply with the order dated 16.12.2020 in OA No.194/2018, the Applicants approached this Hon'ble Tribunal vide Execution Application No. 11/2022 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.
7. While adjudicating the EA No. 11/2022, this Hon'ble Tribunal vide its order dated 16.12.2022 noted that:

*"4. From the side of Respondent No.1/Lonavala Municipal Council, learned Counsel Mr. Ajay Gadegaonkar has appeared and apprised that he has been appointed as a Counsel in this Case yesterday only, therefore, he has filed Vakalatnama today itself. We take it on record. **He prays that he may be allowed 15 days' time to carry out the directions given in the Judgment and Order dated 16.12.2020 and a detailed affidavit shall also be filed by him giving compliance report. We allow the said time period. He undertakes that the entire illegal dumping and encroachment in the Indrayani River in the area of 257 sq. meters would be cleared within that time period, though the said undertaking has been given by the learned Counsel orally. We direct the Registry to place this matter for further hearing on 19.01.2023.***

*5. We give liberty to the learned Counsel for the Respondent No. 1 to move us for police aid, if so required, but that would not mean that the period of 15 days would be treated to have been extended for completing the exercise.”*

Thus, a bare perusal of the Order dated 16.12.2022 in E.A. No. 11/2022 makes it abundantly clear that the Respondent No. 1, voluntarily had given an undertaking before this Hon’ble Tribunal to complete the task of removal of earth-filling and encroachment in River Indrayani within 15 days from 16.12.2022 i.e, till 31.12.2022 and had further undertaken to file a detailed compliance affidavit before this Hon’ble Tribunal.

8. Thereafter, the EA No. 11/2022 was listed before the Hon’ble Tribunal on 19.01.2023 wherein the Respondent No. 1 stated and the Hon’ble Tribunal noted that :

*“10. From the side of learned Counsel for the Respondent No. 5/LMC, compliance affidavit has been filed, where-in it is submitted that the work of demolition was commenced on 29.12.2022 between 10:30 AM to 11:00 AM and at that time, the Respondent No. 5 had resisted the said proceeding, so much so that he personally slept on the path where the JCB machine was being used. It is further submitted that the Police personnel who were present on the spot, did not intervene. The demolition work was being carried out with the help of 30 workers alongwith the JCB machine but could be completed only to the extent of 100 sq. mtrs. because of the presence of water. It is also mentioned that they were required to collect the encroached soil and transport it back. The JCB machine also could not run faster because of their being water in that area **and therefore, approximately one month’s time is prayed to be allowed to conclude the exercise. It is further mentioned that there were 8 trees of mango and chikku, which need to be uprooted to complete the exercise and that, Police aid would be taken to complete the task/exercise. In case any further resistance is offered by the Respondent No. 5, a complaint may be filed against him.”***

9. Further, vide order dated 19.01.2023, the Hon’ble Tribunal while disposing of the EA No. 11/2022, 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 and 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 to complete the entire task of removal of illegal encroachment by 05.03.2023.

10. That on 21.03.2023, the Advocate representing the Applicants received an Interim Affidavit dated 20.03.2023 in EA No. 11/2022 via email from the Advocate representing the Respondent No. 1 before this Hon'ble Tribunal wherein the Respondent No. 1 stated:

*“3. As per the inspection made by the Officers of the Lonavala Municipal Council at the site of the encroachment, it was found that the trees have not been either removed or replanted by Mr. Prakash Porwal up till 23<sup>rd</sup> February, 2023, though a period of one month and four days have left.....*

*4.....*

*5.....*

*6.....*

*7. I say that, as the Respondent No. 5 Mr. Prakash Porwal has failed and avoided to remove the trees and transplant the same, the Lonavala Municipal Council has passed an order on 24<sup>th</sup> February, 2023 under the Trees Act, whereunder the Lonavala Municipal Council will initiate the work of uprooting the trees and replanting the same at Survey No. 24 owned by Lonavala Municipal Council. **The same shall be completed by the Lonavala Municipal Council within a period of two weeks and thereafter the Lonavala Municipal Council shall commence the work of removing the encroachment of soil and other material dumped in the Indrayani River, in accordance with the report of the Committee ”***

In view thereof, the Respondent No. 1 vide its Interim Affidavit dated 20.03.2023 had undertaken to complete the work of removal of trees within 2 weeks i.e, by 03.04.2023 and was thereafter to commence and complete the work of removal of encroachment.

11. Thus, from the aforesaid factual matrix, the knowledge of the Respondent No. 1 to complete the work of removal of earth-filling of 257 sq. mtrs from Survey No. 24, Village: Bhushi, Tal: Maval, Dist. Pune, is more than clear:

Sr. No.	Document	Timeline for Respondent No.1
1.	Joint Committee Report dated 01.01.2020	The Joint Committee found that R-5 had undertaken illegal dumping and encroachment in the Indrayani River of 257 sq. mtrs for which the R-1 had to take appropriate action <b>as early as possible.</b>
2.	Order dated 16.12.2020 in O.A. No. 194/2018	The Hon'ble Tribunal directed the Joint Committee to take <b>remedial actions in terms of the Report dated 01.01.2020.</b>
3.	Order dated 16.12.2022 in E.A. No. 11/2022	The R-1 was to complete the task of removal of earth-filling and encroachment in River Indrayani within 15 days from 16.12.2022 i.e, <b>till 31.12.2022</b>
4.	Order dated 19.01.2023 in E.A. No. 11/2022	The R-1 was to complete the entire task of removal of illegal encroachment in River Indrayani <b>by 05.03.2023.</b>
5.	Interim Affidavit of Respondent No. 1 dated 20.03.2023	R-1 undertook to complete the work of removal of trees <b>by 03.04.2023</b> and was thereafter

		to commence and complete the work of removal of encroachment.
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12. It is therefore submitted that the contention of the Respondent No. 1 vide its Reply dated 26.09.2023 seeking a period up to January, 2024 to complete the task of removal of trees and encroachment is completely in complete violation of the orders passed by this Hon'ble Tribunal as well as in contravention to the undertakings of the Respondent No. 1.

13. In addition to this, it is submitted that the Respondent No. 1 vide its Reply dated 26.09.2023 **has played a fraud upon the Hon'ble Tribunal in the present proceedings**. It is submitted that the Respondent No. 1 vide the Reply affidavit dated 26.09.2023 in Para 3 has stated that the Lonavala Municipal Council, through the Chief Officer had issued an order dated 24.03.2023 to its Garden Department to remove the 8 trees and replant them. The relevant averments from the Reply dated 26.09.2023 are extracted hereinbelow:

*“3. The Lonavala Municipal Council, through the Chief Officer, had also issued an order to its Garden Department to remove the 8 trees and replant them, by using scientific method, so that they shall survive replanting. A copy of the said order dated 24<sup>th</sup> March, 2023 is also annexed and marked as “EXHIBIT-C”*

*4. I say that, however, the said work could not be done by the Garden Department, as they did not have sufficient expertise for replanting. However, subsequently, the said work could not be completed for various Departmental reasons. The region of Lonavala gets maximum rains during the rainy season. Therefore the said work also could not be done from the month of June and the entire river was got flooded with water and is absolutely impossible to access the said area, remove the trees and encroachment. Therefore, the said work can be done during the month of November and December, 2023 only, when the water little bit recedes. The Lonavala Municipal Council intends to obtain expert advice regarding replant from other Agencies and get the said work done. The Lonavala*

*Municipal Council would require a period up to January, 2024 to complete the removal of trees and encroachment, considering the same is done in a river having water.”*

The said averment in the Reply dated 26.09.2023 seeking a time period up to January 2023 to undertake the work of removal of earth filling from River Indrayani is completely contrary and in contradistinction to the stand taken by the Respondent No.1 in its Interim Affidavit dated 20.03.2023. In the Interim Affidavit dated 20.03.2023 submitted by the Respondent No. 1 in Paragraph 7, the Respondent No. 1 had sought 2 weeks time, i.e, by 03.04.2023 to complete the work of removal of trees and had further undertaken to commence and complete the work of removal of encroachment.

14. Another contradiction in the Reply dated 26.09.2023 and the Interim Affidavit dated 20.03.2023 of the Respondent No. 1 is that :

<b>Interim Affidavit dated 20.03.2023</b>	<b>Reply dated 26.09.2023</b>
<p>Para 7-</p> <p><i>I say that, as the Respondent No. 5 Mr. Prakash Porwal has failed and avoided to remove the trees and transplant the same, the Lonavala Municipal Council has passed an order on 24<sup>th</sup> February, 2023 under the Trees Act, whereunder the Lonavala Municipal Council will initiate the work of uprooting the trees and replanting the same at Survey No. 24 owned by Lonavala Municipal Council. The same shall be completed by the Lonavala Municipal Council within a period of two weeks and thereafter the Lonavala Municipal Council shall commence the work of removing the encroachment of soil and other</i></p>	<p>Para 3-</p> <p><i>The Lonavala Municipal Council, through the Chief Officer, had also issued an order to its Garden Department to remove the 8 trees and replant them, by using scientific method, so that they shall survive replanting. A copy of the said order dated 24<sup>th</sup> March, 2023 is also annexed and marked as “EXHIBIT-C</i></p>

<p><i>material dumped in the Indrayani River, in accordance with the report of the Committee. The copy of the order passed by the Lonavala Municipal Council for transplantation of the trees is attached and marked as EXH.B.</i></p>	
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Thus, the Respondent No. 1 vide its Interim Affidavit dated 20.03.2023 had stated that an Order dated **24.02.2023** under the Trees Act was passed by the Respondent No. 1 for the transplantation of the trees at Survey No. 24, whereas the Respondent No. 1 in its Reply dated 26.09.2023 has stated that an order dated **24.03.2023** was issued by the Respondent No. 1 to its Garden Department for the removal of trees.

15. It may be pertinent to note that along with the Interim Affidavit dated 20.03.2023, even though the Respondent No. 1 in Para 7 stated to have annexed the Copy of the order dated 24.02.2023, but the same was not annexed. Moreover, along with the Reply dated 26.09.2023, the Respondent No. 1 has annexed the copy of the Order dated 24.03.2023 as Exhibit C.
16. A bare perusal of the Order dated 24.03.2023 annexed as Exhibit C, it becomes abundantly clear that there has been an over-writing on the date in order to change the date from 24.02.2023 to 24.03.2023. A screenshot of the Exhibit C is being extracted hereinbelow for the sake of convenience of this Hon'ble Tribunal.

Exhibit C

180

जा.क्र.लोनप /का.आ /2022-23/ 4224

दिनांक- 24/03/2023

प्रति,

- 1) गार्डन विभाग प्रमुख, गार्डन विभाग  
लोणावळा नगरपरिषद
- 2) अतिक्रमण विभाग  
लोणावळा नगरपरिषद
- 3) वाहन विभाग  
लोणावळा नगरपरिषद

17. It is therefore submitted that the Respondent No. 1 has indulged into interpolation of document (i.e., Exhibit C annexed along with Reply dated 26.09.2023), solely for the purpose to protect the Respondent No. 5 and refrain from complying with the orders passed by this Hon'ble Tribunal. The Respondent No. 1, by portraying that an Order was issued to the Tree/Garden Department for the removal of trees only on 24.03.2023 and not on 24.02.2023 is trying to explain the delay for non-compliance of the order dated 16.12.2020 in Original Application No. 194/2018 and order dated 19.01.2023 in Execution Application No. 11/2022 passed by this Hon'ble Tribunal. The Respondent No. 1 in Para 4 of the Reply dated 26.09.2023 is specifically trying to take benefit of the monsoons in the city of Lonavala to seek an extension up to January 2024 from this Hon'ble Tribunal to comply with the order dated 16.12.2020 in Original Application No. 194/2018 and order dated 19.01.2023 in Execution Application No. 11/2022 passed by this Hon'ble Tribunal and undertake the work to removal of earth-filling from River Indrayani. In this manner, the Respondent No. 1 is trying to protect the illegal earth-filling undertaken by the Respondent No. 5, thereby playing in the hands of the Respondent No. 5.
18. The interpolation undertaken by the Respondent No. 1 in the present proceedings, depicts the high handedness of the Respondent No. 1 and further the level to which the Respondent No. 1 can stoop to protect a Violator like the Respondent No. 5. It is most respectfully and humbly submitted that such illegal actions of the Respondent No. 1 cannot be permitted to go un-noticed and this Hon'ble Tribunal ought to take strict cognizance of the same.
19. Lastly, it is submitted that even after all possible opportunities, there is either an inability at the behest of the Respondent No. 1 to understand simple legal directions or there is an intentional unwillingness to comply

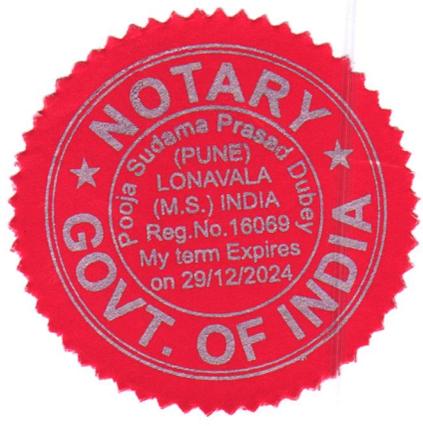
with the directions of this Hon'ble Tribunal as well as the Hon'ble Supreme Court.

20. The negligent attitude of the Respondent No. 1 depicts the defiance towards this Hon'ble Tribunal and such defiance is nothing but an attempt to play fraud upon this Hon'ble Tribunal which ought to be meted out by this Hon'ble Tribunal by exercising its powers u/s 25 of the National Green Tribunal Act, 2010 r/w Section 51 of the Code of Civil Procedure, by directing the Chief Officer Lonavala Municipal Council to be detained in civil imprisonment for deliberate and intentional violation of the orders passed by this Hon'ble Tribunal.
21. Further, strict and stringent orders ought to be passed by this Hon'ble Tribunal, including but not limited to imposition of costs upon the Respondent No. 1 for the act of interpolation and for making false statements on oath, thereby committing perjury before this Hon'ble Tribunal.



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Drawn on: 27.09.2023  
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NOTARIAL REG 192  
ENTRY NO. 517/23  
DATE 27/09/23

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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 1 to of 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.

*[Signature]*  
DEPONENT

**VERIFICATION**

Verified at on this .....day of September 2023 that the contents of the present affidavit are true and correct and nothing material has been concealed therefrom.

*[Signature]*  
DEPONENT

Sworn before me on this day of 27/09/2023 at Pune (Lonavala) by Shri/Smt./Ku. Suresh M. Pujari R/o.....who has been identified by Shri/Smt. Adv. Pooja Dubey Advocata, Pune (Lonavala).

Adv. *[Signature]*  
NOTARY 27/09/23  
Govt. of India  
Pune (Lonavala) (M.S.) India



**PROOF OF SERVICE**

chaitanya dixit &lt;dixitchaitanya2000@gmail.com&gt;

**Service of Rejoinder in Miscellaneous Application No. 11 of 2023 between Ashish Rohidas Shinde & Anr. V. Lonavala Municipal Council & Ors.**

1 message

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

29 September 2023 at 11:41

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: Pawan Kumar <pawan2110k@gmail.com>, chaitanya dixit <dixitchaitanya2000@gmail.com>

Sir/Ma'am,

PFA herewith Rejoinder on behalf of the Applicants to the reply dated 26.09.2023 filed by Respondent No.1 in the aforesaid matter.

Kindly consider this email as service on behalf of the Applicants.

Thanks & Regards,  
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Advocate-on-Record  
Supreme Court of India  
A-10, LGF, Lajpat Nagar III,  
New Delhi - 110024  
Mob. 9890210579

 **Final Rejoinder to Affidavit of Lonavala Municipal Council.pdf**  
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