

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,  
WESTERN ZONE BENCH PUNE  
ORIGINAL APPLICATION NO. 02/2020

IN THE MATTER OF:

VAIBHAV TAPKIR & ANR.

....APPLICANT

VERSUS

M/S. TANISH ASSOCIATES & ORS.

....RESPONDENTS

REJOINDER ON BEHLF OF THE APPLICANT TO THE AFFIDAVIT IN REPLY FILED BY R-2-MPCB DATED 12.10.2023 AND REJOINDER TO THE REPLY FILED BY R-8-SOCIETY DATED 08.04.2024 AND REJOINDER TO THE REPLY FILED BY R-6-MOEF&CC DATED 15.10.2024.

I, Mr. Vaibha Tapkir S/o Shri. Vitthal Tapkir Age: 36 Years, R/at: Alangapuram, Vadmukhvadi, Charoli Budruk, Taluka-Haveli, District-Pune-412105, do hereby solemnly affirm and state on oath as follows:

Para	Description
1.	Brief background of Case
2.	Rejoinder to the Reply of R-2-MPCB
3.	Rejoinder to the Reply of R-8-Society
4.	Rejoinder to the Reply of R-6- MoEF&CC

**1. BRIEF BACKGROUND OF CASE:**

- A) That the present OA is filed on 08.01.2020 U/s. 14, 15, 18 & 20 of the NGT Act, 2010 for the violations Water (P&CP) Act, 1974 & Air (P&CP) Act, 1981 committed by Respondent No. 1: Tanish Associates-PP {in short R-1-PP} in his building construction project situated at land bearing gat 498/1, 498/2, 498/3 and 504 of Village-Charholi, Taluka-Khed, District-Pune within the local limits of PCMC.

- B) That this Hon'ble NGT vide its Order dated 17.08.2020 appointed first Joint Committee consisting member of District Collector Pune, PMRDA & MPCB for fact finding & action taken report and also issued notice to the Respondents and the first joint committee report submitted on dated 23.08.2021.
- C) That the Service was completed on all Respondents and affidavit of service was filed on dated 25.09.2021.
- D) That in the said OA the Hon'ble NGT issued an order dated 09.03.2022 in view of the said report project does not have mandatory EC & CTE, CTO. Therefore, this Hon'ble NGT appointed second Joint Committee consisting member of CPCB and MPCB for submission of detailed report and thereafter the report was filed on dated 21.04.2023.
- E) That this Hon'ble NGT vide order dated 09.03.2022 have **suo motu** have taken up the issue of not obtaining prior EC, CTE, CTO issue
- F) As per Joint Committee Report vide dated 21.04.2023, Building Sanctions, Plinth Check Certificate, Occupancy, Buildings & Flats, are as follow:

Sr.	Gat No.	498/1	498/2 498/3	504	Total
1.	First Sanction & Commencement	12.04.2012 05.05.2012	26.09.2013 07.11.2013	07.11.2012 30.11.2012	
2.	Plinth Check		16.10.2014	08.03.2013	
3.	Last Sanction & Commencement	13.03.2014 02.01.2015	28.10.2016	24.10.2016	
4.	OCC	31.03.2017	31.03.2017	31.03.2017	
5.	No. of Buildings	4	3	5	
6.	No. of Flats	126	305	336	767
7.	No. of Shops		10		10

- G) As per Joint Committee Report vide dated 21.04.2023, Total Plot Area, FSI, Non-FSI, TBUA are as follow:

Sr.	Gat No.	Land Area (M <sup>2</sup> )	Flats+ Shops	FSI (M <sup>2</sup> )	Non-FSI (M <sup>2</sup> )	TBUA (M <sup>2</sup> )
1.	498/1	8434	126	6588.59	3937.67	10526.26
2.	498/2 498/3	13004	305+10	12709.49	7221.00	19930.49
3.	504	13600	336	12561.50	6249.33	18750.83
4.	Amenity			1551.84	543.76	2095.6
5.	Club House				186.76	186.76
6.	Total	35038		33411.42	18138.52	51489.94

- H) That the Respondent No 1-PP has filed IA No. 142 of 2022 on dated 17.09.2022 for Recalling the order dated 09.03.2022 passed by this Hon'ble Tribunal to proceed Ex-Parte against the Respondent No 1-PP and the said IA is allowed on dated 21.09.2022 and reply has been filed by the Respondent No 1-PP on dated 21.07.2023.
- I) That on 19.10.2023 this Hon'ble Tribunal directs applicant that MoEF&CC, SEIAA, and Tanish Shrushti CHS be added as Respondent No. 6, 7 and 8, respectively. Further this Hon'ble Tribunal directs R7-SEIAA to file define reply as to whether the construction of the buildings "A" to "J" will be considered as a single project. Further directed reply from R6-MoEF&CC and R7-SEIAA whether any policy is laid down by them to check the device adopted by the Project Proponent to split one bigger survey number/project into parts for raising construction below 20,000 sq.mtrs in order to obviate the need of prior EC.
- J) That, this Original Applicant is filing this rejoinder affidavit to the affidavit in reply filed by R-2-MPCB dated 12.10.2023 and rejoinder to the reply filed by R-8-Society

dated 08.04.2024 and rejoinder to the reply filed by R-6-MoEF&CC dated 15.10.2024 as below;

**9 REJOINDER TO THE REPLY OF R-2-MPCB:**

A) That the contents of the reply affidavit dated 18.10.2023 of R-2-MPCB are misleading, false, baseless, and denied by this Original Applicant. It is submitted that the answering Respondent No.2-MPCB has false and fabricated information before this Hon'ble Tribunal.

B) **PRELIMINARY OBJECTION –**

(i) That the as per order dated 26.09.2023 this Hon'ble Tribunal directed the R-2-MPCB to take necessary steps in this regard forthwith and file an affidavit before us, as to what steps have been taken at their end to resolve this problem, but the till date the R-2-MPCB failed to take any steps towards stoppage of untreated sewage to be discharged in the nearby drain, which meets the River Indrayani due to poor STP of R-1-PP. Further in their reply of R-2-MPCB not submitted any facts showing that what action has been taken against the said non-compliances.

**PARAWISE REJOINDER TO THE REPLY OF R-2-MPCB:**

C) That the contents of the **Para-1 & 3** of reply affidavit dated 18.10.2023 of R-2-MPCB are not true and denied by this Original Applicants as it is admittedly fact that the STP installed are not scientific and not in proper & scientific operation as the STP installed does not meet the technical specification approved by the norms.

D) That the through this Reply the R-2-MPCB informed that the installed STP of capacity 480 CMD based on MBBR technology, but to prove that no documents has attached.

Further no technical specifications are provided by the R-2-MPCB. Further, PP and MPCB have failed to provide any documents to prove the capacity of the STP & its continuous operations.

- E) Further MPCB failed to provide the test report for treated water and hence reply is vague. STP installed are not scientific and not in proper & scientific operation as the STP installed does not meet the technical specification approved by the norms, and same has been already informed and admitted by the R-8-Tanish Shrushti CHS through their reply dated 08.04.2024 at Para No. 4.
- F) The Respondent No 1-PP has installed only one STP for entire project and failed to operate the STP, since long time due to non-payment of electricity bill STP is not in operation and untreated sewage water directly discharged into the nearby natural nallah, which is finally margining with Holy Indrayani River.
- G) That as per the said reply the officers of R-2-MPCB has visited the site of PP on dated 12.10.2023 but it is completely failed to submit details related to whether the electricity connection of the said STP is active or permanently disconnected. The R-2-MPCB has intentionally suppressed the said important information that consumer of STP electricity is 176014327976 and said connection is in the name of "The Chairman Tanish Shrushti" and same has been already permanently disconnected. Hence the entire STP is till date not functional and operating.
- H) That as per the said visit report dated 12.10.2023 it is clearly evident that the PP has not applied for Consent to Establish and Operate for the said STP plant, but same

not submitted through reply intentionally. Hence all the photographs attached along with the said reply is just for show compliance on paper only, factually till date STP is non-functional and operating.

- I) That entire STP is illegal because it is constructed without taking consent to establish and PP tried to operate with Consent to Operate from R-2-MPCB.
- J) Therefore, R-2-MPCB is not acting in letter and spirit of the law and the objective behind their establishment. And officials of the R-2-MPCB intentionally submitted the false and fabricated information to mislead this Hon'ble Tribunal, hence this Hon'ble NGT may kindly take serious note of conduct of R-2-MPCB official.

**10 REJOINDER TO THE REPLY FILED BY R-8-SOCIETY DATED 08.04.2024:**

- A) That the contents of the reply affidavit dated 08.04.2024 of R-8-Society are misleading, false, baseless, and denied by this Original Applicant. It is submitted that the answering Respondent No. 8 has mechanically filed said Reply without application of mind. Hence, it is submitted that the averments and allegations mentioned in reply of the Respondent No. 8 are denied in toto unless it is specifically admitted or reiterated hereunder and no part of the same may be deemed to have been admitted otherwise.
- B) **PRELIMINARY OBJECTION -**
  - (i) That the R-8-Society has not submitted their para wise reply, which shows that R-8-Society intentionally doesn't want to disclose factual aspects before this Hon'ble Tribunal.

(ii) From the outset, the R-8-Society was fully aware that the aforementioned OA was pending before this Hon'ble Tribunal. Additionally, multiple visits were carried out by the PMRDA, MPCB, and various committee members to assess the factual situation. During these visits, the R-8-Society deliberately withheld important information and did not present the true facts to the committee members. Consequently, as an aggrieved party, the R-8-Society failed to provide the necessary factual details, hence no relief should be granted to the R-8-Society.

(iii) The R-8 Society, despite being given the opportunity to present their views before this Hon'ble Tribunal, has deliberately chosen not to provide any comments regarding the nalla flowing from their society. Further, the R-8-Society is well aware and knowing that RCC pipes have reduced the water flowing /carrying capacity of nallah and given rise to the over flow of water and also blockage of nallah. The actual size of said nallah is approximately 6 meter, but the Respondent No 1-PP has reduced the actual size of nallah by way of channelizing it, also inlet and outlet of the said nallah filled with all construction debris, hence it is clear that the Respondent No. PP has obstructed the nallah in every possible way and illegally used the space of nallah for the parking lot purpose. Further inlet and outlet of the said nallah is relatively very small which is not more than 1 ft. size pipe. Therefore, the Respondent No 1-PP has reduced the size of nallah.

**PARAWISE REJOINDER TO THE REPLY OF R-8-SOCIETY:**

- C) That the contents of the **Para-1 to 3** of reply affidavit are not true and denied by this Original Applicant. That the R-8-Society failed to inform that when the Co-Operative Housing Society was formed and what plans and layouts has been submitted by the PP to the R-8-Society.
- D) That the contents of the **Para-4** are entirely true, the R-8-Society intentionally not submitted entire factual before this Hon'ble Tribunal. The R-8 Society, despite being given the opportunity to present their views before this Hon'ble Tribunal, has deliberately chosen not to provide any comments regarding the nalla flowing from their society.
- E) That the contents of the **Para-5 to 8** of reply affidavit are not true and denied by this Original Applicant. The the R-8-Society tried to cover-up the all the serious issue with respect to environment by calling him-self as a victim. Further till date no one has stopped the R-8-Society to initiate action against the PP but knowingly the R-8-Society not filed any case before any appropriate tribunal/ court for the protection of their rights.
- F) That the contents of the **Para-9 to 12** of reply affidavit are not true and denied by this Original Applicant. The R-8-Society has well aware that the total BUA of the project construction on site was more than 20000 M<sup>2</sup>, which mandates prior EC & CTE as per EIA Notification, 2006. However, PP mislead on account of the three different projects to overcome the illegality and also to avoid the environmental compliance. Therefore, PP have violated Environmental norms and committed violations causing serious irreparable damage to the environment & ecology. Knowing all the facts the R-8-Society till date has not initiate any action against the PP, which shows that R-8-

Society has given his implied consent about these violation of environmental laws.

- G) That the R-1-PP has taken the different permissions for the Gat No. 498/1, 498/2, 498/3, 504 on paper only. The entire project is registered under the name of “Tanish Srushti” only. While doing the advertisement for the “Tanish Srushti” the R-1-PP showed that this is entire one project, having all the common facilities, amenities, internal roads, entry & exit points to the every resident of “Tanish Srushti”. Therefore, just to escape from regime of EC compliance the R-1-PP has wilfully, intentionally and deliberately taken the separate permission which is against the law and EC notifications.
- H) That the contents of the **Para-13 to 16** of reply affidavit are totally false, misleading and baseless. That the preliminary objections raised by R-8-Society on account of Limitation, jurisdiction.
- I) **Limitation to file OA:** The Hon’ble NGT has taken the *suo motu* cognizance of applicability of EC for the said project by issuing observations and directions through order dated 09.03.2022 and PP have expanded the original scope of the project from 2012 to 2017. Therefore, this OA is filed within 5 years U/s. 15 of NGT Act, 2010 and stand taken by the PP is baseless, illegal and not tenable in the eyes of law. It is well settled in law on limitation as per the Order of this Hon’ble NGT; “**Para-20 to 33 of Forward Foundation Case-2015 SCC OnLine NGT 5**” and as uphold by Hon’ble SC in **Para-39 to 50 of Matri Techzone Vs. Forward Foundation-(2019) 18 SCC 494**.
- J) **JURISDICTION OF NGT:**

That the issues arising out of DCR & MRTP does not fall within jurisdiction of NGT. That the PP himself is relying to show his development activity as three separate project on the basis of permissions procured under DCR & MRTP on one hand and other hand, PP is refusing to accept the pleadings related to DCR & MRTP establishing the environmental violations. That the prayers sought by the Original Applicant are in relation to the environmental protection and in view to avoid the further degradation of the environment and ecology. That, any reference made to the Acts/law/notifications/ documents beyond Schedule-I acts will not vitiate the jurisdiction of this Hon'ble NGT. Moreover, this NGT have powers U/s. 33 of NGT act, 2010 to give overriding effect. Therefore, this Hon'ble NGT have jurisdiction to entertain, decide and grant relief in accordance with law and also to modify the prayers of this Original Applicant.

- K) Therefore stand taken by the R-8-Society is completely wrong and despite being given the opportunity to present their views before this Hon'ble Tribunal, has deliberately chosen not to provide any comments regarding illegal construction by PP, encroachment over the nalla, and application of EC for the said project.

**11 REJOINDER TO THE REPLY FILED BY R-6-MOEF&CC DATED 15.10.2024:**

- A) That, the reply of the MOEF&CC is misleading, and failed to provide exact information as per the direction of this Hon'ble.
- B) That the R-1-PP has taken the different permissions for the Gat No. 498/1, 498/2, 498/3, 504 on paper only. The

entire project is registered under the name of “Tanish Srushti” only. While doing the advertisement for the “Tanish Srushti” the R-1-PP showed that this is entire one project, having all the common facilities, amenities, internal roads, entry & exit points to the every resident of “Tanish Srushti”. Therefore, just to escape from regime of EC compliance the R-1-PP has wilfully, intentionally and deliberately taken the separate permission which is against the law and EC notifications.

- C) That the documents relied by R-1-PP i.e. Development Agreement, Layout Sanctions, Building Sanctions, Non-Agricultural Permissions, with plea to considered as separate permissions for the separate project is not legal and site condition clearly shows that the project under challenge is the patently integral & single project constructed in single premises having single PP as beneficiary. Therefore, mere obtaining separate permissions for phases does not constitute the separate project to get escape from the clutches of obtaining mandatory prior EC & CTE. That the concept & definitions from any other law than the environmental law have no bearing on the Environmental Law. As per the Notification dated 07.07.2004 r/w. 2006, it is clearly single project/activity attracting prior EC & CTE and stand taken by the R-1-PP as well as Respondent Authorities is not tenable in the eyes of law as the R-1-PP is having common sharing transformer, amenity space, open space, amenity buildings, STP, OWC on it. Therefore, the concepts from laws & Acts other than Environmental Law are alien to the Environmental Jurisprudence and such concept can be borrowed from common civil engineering having

synchronisation of statute with objects hind the enforcement of such statute as held by Hon'ble Supreme Court in Keystone Realtors case at Para No. 20. Therefore, the construction activity/ project under taken by the R-1-PP is single project attracting prior EC & CTE since the Year 2012.

D) **SETTLED POSITION OF LAW ON MANDATORY PRIOR EC:**

That, the EIA Notification, 2006 mandates prior Environment Clearances as per the interpretation of statue, Judgments & Orders passed by this Hon'ble NGT and Uphold by Hon'ble Supreme Court as explained below;

Sr.	Date	Event	Para No. & Page No.
1.	14.09.2006	EIA Notification, 2006	¶2, 8 Word "Prior" appears more than 40 times
2.	19.08.2010	OM issued by MoEF on activities permissible prior to obtaining EC	Only fencing & Security Cabin

E) The Hon'ble Supreme Court in the case of "**Mantri Techzone Vs. Forward Foundation & Ors. and SP Muthuraman Case**", it is have uphold the orders of this Hon'ble NGT and clarified that the prior EC is mandatory for the project falling under regime of EIA Notification, 2006. Therefore, by applying the doctrine of merger, Order of Hon'ble High Courts are merged into the orders passed by Hon'ble Supreme Court in the matters of "**Mantri Techzone Vs. Forward Foundation & Ors. and SP Muthuraman Case**" and said order of Hon'ble High Courts become meaningless as the present project is having total BUA more than 20000 M<sup>2</sup>, which is mandating prior EC & CTE. That the R-1-PP has taken the

different permissions for the Gat No. 498/1, 498/2, 498/3, 504 on paper only. The entire project is registered under the name of "Tanish Srushti" only. While doing the advertisement for the "Tanish Srushti" the R-1-PP showed that this is entire one project, all the facilities, amenities, internal roads, entry & exit points are common to the every resident of "Tanish Srushti", hence just to escape from EC compliance the R-1-PP has wilfully, intentionally and deliberately taken the separate permission which is against the law and EC notifications. Therefore, this Hon'ble NGT may kindly pass appropriate Orders/directions/reliefs for restitution & restoration of area.

**12** Hence this Rejoinder.

Whatever stated above is true and correct to the best of my knowledge, belief and information, hence, to verify the same I have signed hereunder at Pune/Sangli.

Date: 11.01.2025



**ADVOCATE FOR THE APPLICANT**

Noted Register  
Serial Number...86/2025  
11 JAN 2025

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WESTERN ZONE BENCH PUNE  
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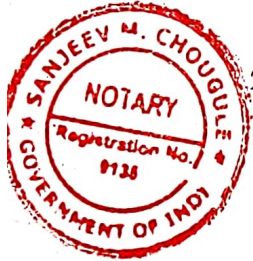
VERSUS

M/S. TANISH ASSOCIATES & ORS. ....RESPONDENTS

AFFIDAVIT

I, VaibhavVithhalTapkir, aged adult, R/at Alangapuram Society, Vadmukhwadi, Charoli BK, Tal- Haveli, Dist. Pune, do hereby make an oath to swear as under -

1. That I am the Applicant in the present Original Application and I am well conversant with the facts and circumstance of the case and competent to file this affidavit.
2. The accompanying objection/ submission/ rejoinderhas been drafted under my instruction and the facts mentioned therein are true to my knowledge and the records obtained.



VERIFICATION

I, the above named deponent do hereby verify that the contents of Para 1 and 2 of the above affidavit are true to my knowledge.

Hence signed and verified at Sangli on this 11<sup>th</sup>day of January 2025.

*[Signature]*

ADVOCATE FOR THE APPLICANT

*[Signature]*

DEPONENT

Noted Register  
Serial Number...86/2025

Solemnly affirmed  
BEFORE ME

*[Signature]*

Adv. S. M. Chougule  
Notary Government of India  
Miraj, Dist. Sangli Reg. No. 9135

11 JAN 2025

