

**BEFORE THE NATIONAL GREEN TRIBUNAL SITTING  
AT PUNE**

**MEMORANDUM OF APPLICATION**

(Under Sections 15 of read with section 18 National Green Tribunal  
Act, 2010)

**APPLICATION NO. <sup>34</sup> OF 2023**

Sandeep Prakash Parkar & Another ... **APPLICANTS**

**VERSUS**

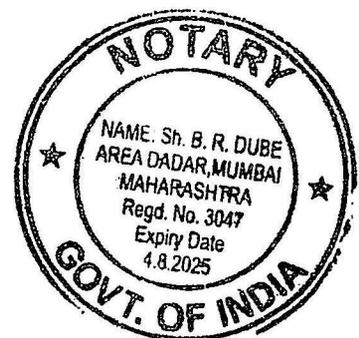
Member-Secretary, State Level Environment Impact Assessment  
Authority and others ... **RESPONDENTS**

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**REJOINDER TO THE REPLY OF**

**RESPONDENT NO. 5 (Developer – Skylark Buildcon)**

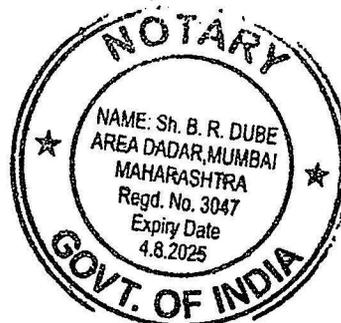
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**BEFORE THE NATIONAL GREEN TRIBUNAL SITTING****AT PUNE****ORIGINAL APPLICATION NO. 34 OF 2023 (WZ)****BETWEEN:**Sandeep Prakash Parkar and Another ... **APPLICANTS****VERSUS**Member-Secretary, State Level Environment Impact Assessment  
Authority, and Others ... **RESPONDENTS****REJOINDER TO AFFIDAVIT-IN-REPLY OF****RESPONDENT NO. 5 (Developer – Skylark Buildcon)**

I, Sandeep Prakash Parkar, the Applicant above-named, residing at Mumbai, on behalf of the Applicants do hereby solemnly affirm and state as under:

1. The Applicants have gone through the copy of the Affidavit-in-Reply of the abovementioned Respondent and accordingly, the Applicants tender this Rejoinder as under.
2. At the very outset the Applicants submit that this Respondent has traversed through several elements, which are extraneous to deciding the core question.

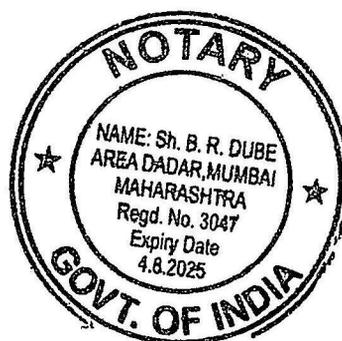


3. This core question, which this Respondent has avoided to answer is as under:

Was not the Developer obliged to plant such number of trees bearing the requisite attributes of trees as stipulated in the "Green Belt" guidelines issued by the Central Pollution Control Board and further was not the Developer obliged to follow the provisions of Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975 in letter and spirit, so that large trees of the local variety, with adequate distances could be planted. The requisite number of trees and attributes of such trees have been specifically detailed in the Original Application.

3. The Applicants further submit that all these questions have been addressed by the Applicants with adequate details in the Original Application as well as in the Rejoinder submitted with reference to Affidavit-in-Reply of the Tree Authority, being Respondent No. 3 and 4. Accordingly, such issues are not being duplicated in this Rejoinder. As such, whatever which has not been denied specifically be construed as any admission to anything which has not been specifically averred.

4. In essence the additional points which are required to be rebutted in this Rejoinder are as under and the same are being rebutted specifically as under:

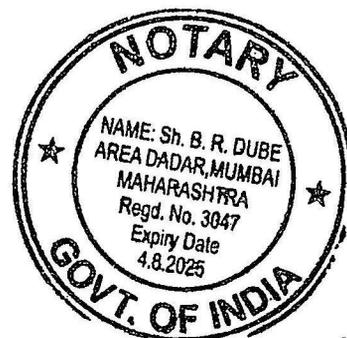


## 5. Rebuttal Points:

### 5.1 FIRST Contention of this Respondent – Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975 is not within the jurisdiction of this Hon'ble Tribunal:

The Applicants submit that this content of this Respondent is incorrect for the following reasons:

(A) The National Green Tribunal has, from time to time, given orders to comply with certain requisites pertaining to tree plantation, which includes keeping 1 metre distance of soil exposed to the elements all around the outer face of the trunk of the trees. These Orders of the Hon'ble Tribunal have never been overruled by any Court. In fact, even Hon'ble High Court have issued similar orders. Accordingly, this becomes an admitted and established position through precedents, that the Hon'ble National Green Tribunal has a full and complete jurisdiction with reference to matters related to trees. If it is determined that that the National Green Tribunal does not have any jurisdiction over the issue, then at the same time, several other orders of this Hon'ble Tribunal in relation thereof would be undermined. Naturally, this would be legally untenable position.



(B) The Environment Clearance condition stipulates that all the local laws and regulations shall be complied with. Accordingly, if there is a breach of the provisions of the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975, in that case, it would simultaneously amount to non-compliance of Environment Clearance conditions. Accordingly, this Hon'ble Tribunal has got complete jurisdiction in the matter.

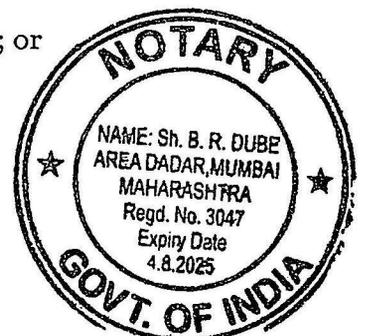
(C) Section 3 (1) of the Environment Protection Act, 1986, gives enough powers to the Central Government to invoke any law which is relatable to the objects of the Environment Protection Act, 1986. More particularly, section 3(1) and (2) of the Act provides as under:

“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 subsection (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;**

(ii) **planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;**

(iii) laying down standards for the quality of environment in its various aspects;

(iv) laying down standards for emission or discharge of environmental pollutants from various sources whatsoever:

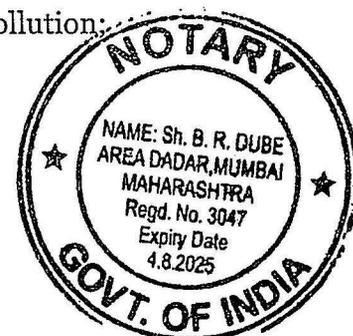
Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources;

(v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;

(vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;

(vii) laying down procedures and safeguards for the handling of hazardous substances;

(viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution:



(ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;

(x) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorises, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;

(xi) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;

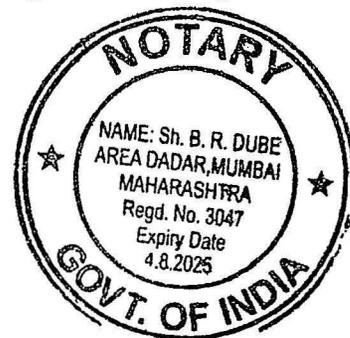
(xii) collection and dissemination of information in respect of matters relating to environmental pollution;

(xiii) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;

(xiv) such **other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act.**"

Accordingly, the Applicant submits that in case the contention of this Respondent is upheld, then the essence of the provisions of the above-mentioned section 3 of the Environment Protection Act, 1986 would get unsettled, which obviously, cannot be the case.

Accordingly, this contention of this Respondent ought to be rejected.



**5.2 SECOND Contention of this Respondent** – The Applicant claims to be aggrieved by the issuance of occupation certificate by the Slum Rehabilitation Authority which is beyond the scope of this Hon'ble Tribunal

This contention put forward by this Respondent is incorrect. This is because the essential challenge in the Original Application is 2-fold. *First*, there has been a serious violation of the Environment Clearance conditions, which has been explicitly set out in the Original Application. *Second*, there has been a serious violation of tree stipulations set out in the various rulings of this Hon'ble Tribunal.

The question of grant of Occupation Certificate is only incidental to such primary contentions and violations. In other words, the Occupancy Certificate is not challenged as such. What has been challenged is the violation of the Environment Clearance conditions and the rulings of the Hon'ble Tribunal in relation to trees.

The revocation of the Occupation Certificate becomes relevant only because the Environment Clearance conditions and the stipulations of tree plantations as prescribed by the Hon'ble National Green Tribunal have been violated.



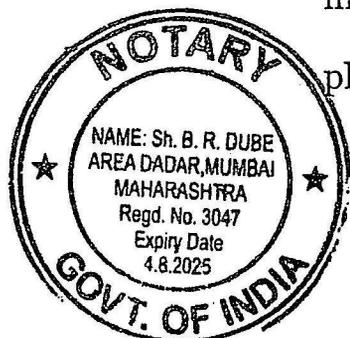
Accordingly, once it is determined that there have been such violations of Environment Clearance conditions and further in relation with the mandate of this Hon'ble Tribunal, in relation to trees, then it would be natural consequence that the Occupancy Certificate ought to be revoked.

### **5.3 THIRD Contention of this Respondent – Original Application is barred by Limitation.**

The Applicants submit that this Original Application traverses through violations of Environment Clearance conditions. It is a settled position in law and it is that the question of violation of Environment Clearance conditions is a recurring wrong and therefore, gives rise to a recurring cause of action. Accordingly, the contention put forward by this Respondent that this Original Application is barred by limitation is not correct.

The Applicants further submit that the contention of this Respondent that there is a delay of 13 years in filing this Original Application is preposterous.

The question of plantation has arisen at the fag-end of project implementation. This process is still going on. The so-called tree plantation is also currently in progress. The 'Cause of Action' of this



Original Application arose only when the Applicants found that this Respondent has not planted the requisite trees as per the conditions of Environment Clearance. It is thus a contemporary phenomenon, which has led to the Applicants file this Original Application.

In fact, the validity of the Environment Clearance of this Respondent has expired and even this Respondent is continuing with the work, which by itself gives rise to a fresh 'Cause of Action'.

6. The Applicants further submit and reiterate that all other contentions, which are critical to deciding this case have been traversed through very specifically in the Original Application and the Rejoinder given with reference to the reply of the Tree Authority i.e. Respondent No. 3 and 4. Accordingly, in order to avoid repetition and to keep focus at the issues at stake, such specific elements are not being duplicated, herein.

7. Considering the aforesaid, it is apparent that the contentions put forward by 'These Respondents' are simply preposterous and legally untenable. Accordingly, the Applicants humbly reiterate that the contentions raised by this Respondent be rejected, and the Prayers made in the Original Application be made absolute.



*Applicants*  
Applicants

VERIFICATION

I, Sandeep Prakash Parkar, on behalf of the Applicants, and resident of Flat no. 801, Rehab Bldg no. 3, Sai Sundar Nagar CHS, Sadanand Hasu Tandel Marg, Prabhadevi, Mumbai - 400 025, do hereby verify that the contents of aforesaid paras in this Rejoinder to the Affidavit-in-Reply of Respondent No. 3 and Respondent No.4, are true to my personal knowledge and belief and that I have not suppressed any material fact.

*Sandeep Prakash*  
Applicant

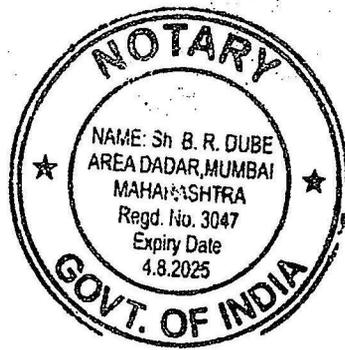
DATE: 30 January, 2024.

PLACE: Mumbai

BEFORE ME

*Ambe*  
30/01/2024

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