



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

MEMORANDUM OF APPLICATION

(Under Sections 14&15 read with Section 18 of The National
Green Tribunal Act, 2010)

APPLICATION NO. 39 OF 2023

Yogesh Pratap Singh

... APPLICANT

AND

Secretary, Environment
Maharashtra and others

Department, Government of
... RESPONDENTS

**REJOINDER TO THE REPLY OF RESPONDENT NO. 1,
I.E. MINISTRY OF ENVIRONMENT, FORESTS AND
CLIMATE CHANGE**

INDEX

SR. NO.	DESCRIPTION	ANNE- XURE	PAGE NO.
1.	Rejoinder to the Reply of Respondent No. 1, i.e. Ministry of Environment, Forests and Climate Change.		437 - 448

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**REJOINDER TO AFFIDAVIT-IN-REPLY OF
RESPONDENT NO.1, MINISTRY OF ENVIRONMENT,
FORESTS AND CLIMATE CHANGE**

I, Yogesh Pratap Singh, the Applicant above-named, residing at Mumbai, do hereby solemnly affirm and state as under:

1. The Applicant, has gone through the copy of the Affidavit-in-Reply of the Ministry of Environment, Forests and Climate Change (hereinafter addressed to as 'The Answering Respondent') and tenders his Rejoinder as under:

2. At the very outset the Applicant submits that this entire Rejoinder is evasive and ***does not specifically address the 16 Specific legal points raised in the Original Application.***

Instead, 'This Respondent' has narrated his own presumptive position, which accordingly, defeats the essence of the rules of





natural justice, where the issues raised have to be specifically addressed vis-à-vis the specific legal averments.

3. Equally pertinent is the fact that this, Affidavit-in-Reply of 'This Respondent' is assailed from the provisions contained in Order VIII of the Civil Procedure Code, 1908, the relevant part of which is quoted hereunder:

"3. Denial to be specific -- It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, **but the defendant must deal specifically with each allegation of fact of which he does not admit the truth**, except damages.

... .."

"5. Specific denial – (1) Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, **shall be taken to be admitted except as against a person under disability:**"

(Emphasis supplied).

4. The Applicant submits that the Affidavit-in-Reply of 'This Respondent' has completely omitted to even touch upon the aforesaid referred to 16-specific law points, enumerated in a specific and self-contained manner. This conspicuous omission to even respond to these specific violations of law implicitly renders this Affidavit-in-Reply as being the one which implicitly admits the averments presented in the Writ Petition.

5. The 16 legal points raised in the Original Application vis-à-vis the Affidavit-in-Reply of 'This Respondent' is briefly summarised



hereunder, with the assertion that details in relation thereof have already been elaborately traversed through in the main Original Application.

1. GROUND NO. 1:

Regulations on basements changed drastically whereby unlimited basements were permitted – No Environment Impact Assessment done to study the impact of unlimited basements on environment and geology.

OBSERVATION OF THE APPLICANT: No Reply given by 'This Respondent'.

2. GROUND NO. 2:

An Environment Clearance for amending the Regulation mentioned above was required, as it had the effect of a total mining area exceeding 50 hectares on a contiguous land but broken in parts of plots less than threshold size of 5 hectares.

OBSERVATION OF THE APPLICANT: No Reply given by 'This Respondent'.

3. GROUND NO. 3:

Environment Impact Assessment Notification of 2006 deals with 'projects' as well as 'activities' – Extracting minor minerals for the purpose of basement construction is an 'activity' – A prior Environment Clearance was required.



OBSERVATION OF THE APPLICANT: A very limited Reply of an untenable nature has been given by 'This Respondent'.

3. GROUND NO. 4:

The National Green Tribunal has set the law whereby the Development Plans can be quashed if it is detrimental to environment as was done in the case of Shimla Draft Development Plan:

OBSERVATION OF THE APPLICANT: No Reply given by 'This Respondent'.

5. GROUND NO. 5:

Mumbai an island vulnerable to rise in sea-level – Environment Impact Assessment necessary before permitting enormous excavations for making extremely deep basement.

OBSERVATION OF THE APPLICANT: No Reply given by 'This Respondent'.

6. GROUND NO. 6:

Study on the Environment Impact on the geology imperative.

OBSERVATION OF THE APPLICANT: No Reply given by 'This Respondent'.

7. GROUND NO. 7:

No Environment Impact Assessment done on dumping destination of mammoth quantities of excavated materials.

OBSERVATION OF THE APPLICANT: No Reply given by 'This Respondent'.

8. GROUND NO. 8:

Placing unlimited number of deep basements of sizes which almost fully cover the plot – Environment impact on the surrounding trees in the surrounding road areas and neighbouring plots required.

OBSERVATION OF THE APPLICANT: No Reply given by 'This Respondent'.

9. GROUND NO. 9:

Mumbai has a water table which is generally between 2 metre to 5 m deep – basements involve heavy extraction of ground water which may have environmentally detrimental effects.

OBSERVATION OF THE APPLICANT: No Reply given by 'This Respondent'.

10. GROUND NO. 10:

Deep basements would disturb underworld aquifers – extraction of ground water not permitted in coastal areas and restricted in other areas – Violation of the CRZ





Notifications and the Orders of the Central Ground Water Authority.

OBSERVATION OF THE APPLICANT: No Reply given by 'This Respondent'.

11. GROUND NO. 11:

Enormous amount of air pollution arising out of cement dust and dust of the excavated earth being spread to the areas around.

OBSERVATION OF THE APPLICANT: No Reply given by 'This Respondent'.

12. GROUND NO. 12:

In Mumbai respiratory diseases is on the rise as is evident from the News Report titled "Air pollution indirect cause of death in respiratory ailments".

OBSERVATION OF THE APPLICANT: No Reply given by 'This Respondent'.

13. GROUND NO. 13:

Frequent traffic jams caused by the movement of tens of thousands of concrete mixer trucks and dumpers throughout the day in the city.

OBSERVATION OF THE APPLICANT: No Reply given by 'This Respondent'.

**14. GROUND NO. 14:**

Heavy noise generation due to the hammering of rock breakers which is used because blasting is not permitted in the densely populated areas – Law made in violation of Rule 3 (4) of the Noise Pollution (Regulation and Control) Rules, 2000.

OBSERVATION OF THE APPLICANT: No Reply given by 'This Respondent'.

15. GROUND NO. 15:

Mumbai is in the Zone 3 of the earthquake zone – It is also vulnerable to cyclones – unlimited basements could make Mumbai extremely vulnerable.

16. GROUND NO. 16:

Large number of basements made in violation of the mandatory guidelines issued by the Central Ground Water Authority.

OBSERVATION OF THE APPLICANT: No Reply given by 'This Respondent'.

6. The Applicant submits that the narration of the aforesaid 16-specific legal points and the evasiveness of 'This Respondent' to respond to the same renders this Affidavit-in-Reply as completely untenable and gets categorically hit by the abovementioned

provisions of the Civil Procedure Code, 1908 mentioned in the foregoing paragraphs.

7. The Applicant further submits that the Ministry of Environment, Forests and Climate Change in its Affidavit-in-Reply has essentially stated that no Environment Clearance is required for construction of basements and, in this reference, has stated as under:

“That the answering respondent vide appendix IX of EIA Notification S.O 1224 (E) vide dated 28.03.2020 exempted the following from the purview of Environmental Clearance (hereinafter referred as EC).

1. ”

2. *Manual extraction of lime shells (dead shell), shrines, etc., within inter tidal zone by the traditional community.*

3. *Digging of well-settled for irrigation or drinking water purpose.*

4. *Digging of foundation for buildings, not requiring prior environmental clearance, as the case may be.*

5. *Excavation of ordinary earth or clay for plugging of any breach*

caused in canal, nallah, drain, water body, etc., to deal with any disaster or flood like situation upon orders of the District Collector or District Magistrate or any other Competent Authority.

6. *Activities declared by the State Government under legislations or rules as non-mining activity. ”*



8. Based on the aforesaid Office Memorandum 'The Answering Respondent' has stated as under:

"That, the answering respondent humbly submits that the construction of underground parking would not be covered under mining activities, and Environmental Clearance shall not be required as per the EIA Notification 2006 and subsequent amendments"

9. The Applicant submits that the reasoning of the 'The Answering Respondent' is **completely untenable for the following reasons:**

(A) The Office Memorandum referred to by this Respondent exempts Environment Clearance only from digging of foundation for buildings. On one hand, digging of foundation, which are generally for placing the columns and pillars, and, on the other hand, excavation of basement pit, these are two entirely different things.

Foundation for pillars does not create a pit and does not hollow out the earth. However, a basement creates and enormous pit and permanently hollows out the earth.

Therefore, the interpretation of 'The Answering Respondent' that foundation of building and construction of basements are synchronous, this is an untenable position.

(B) If excavation of enormous quantities of minor minerals for basements which go deep upto 20 metres, and can



lead of permanent extraction of earth upto a million ton, then this can never said to be a foundation of a building. Needless to reiterate that a foundation of a building is laid for the columns and pillars and once these are constructed the earth is filled back and no hollowness remains. However, when basements are excavated, massive quantities of minor minerals upto a million ton hollows the earth and that the pits are not filled up. To any person with a common prudence, this would mean that there would be serious implications on environment of the area.

- (C) The ruling of the Hon'ble Supreme Court in the case of Deepak Kumar, is related to extraction of minor minerals. 'The Answering Respondent' cannot add words to this mandate of the Hon'ble Supreme Court. This violates the legal principle – 'A verbis legis non recedendum est', i.e. "From the words of law, there must be no departure".

In other words, when the ruling of the Supreme Court stipulates removal of minor minerals, then 'The Answering Respondent' cannot add words to this mandate of the Supreme Court, by stating as follows:

"Removal of mineral minerals require Environment Clearance, however, removal of minor minerals for making basement does not required Environment Clearance."
(words in italics added by 'The Answering

Respondent' on his own, to the ruling of the Hon'ble Supreme Court).

It is thus reiterated that by adding words to the ruling of the Hon'ble Supreme Court, 'The Answering Respondent' has violated the abovementioned legal maxim - - '***A verbis legis non recedendum est***', i.e. "**From the words of law, there must be no departure**"

- (D) The position taken by 'The Answering Respondent' would lead to the situation as under:

While excavation of minor minerals in faraway mofussil areas would cause damage to environment and hence would require Environment Clearance, however, excavation of similar minor minerals in the city of Mumbai, which is an Island and surrounded by sea on all sides, would not damage the environment and hence Environment Clearance would be required.

Needless to add that extraction of minor minerals is use neutral. Whatever, be the use, the consequence is on the environment.

Accordingly, 'Precautionary Principle' would apply in letter and spirit and that it would be in the fitness of things for this Hon'ble Tribunal to invoke the provisions of section 20 of The National Green Tribunal Act, 2010, which for the sake of convenience is quoted hereunder.

"The Tribunal shall, while passing any order or decision or award, apply the



principles of sustainable development, the precautionary principle and the polluter pays principle.”

20. Considering the aforesaid, it is apparent that the contentions put forward by ‘The Answering Respondent’ are simply preposterous and ought to be rejected outright on the very face of it. Accordingly, the Applicant humbly reiterates that the contentions raised by this Respondent, in his Affidavit-in-Reply be rejected and the prayers made in the Appeal be made absolute.

Yogesh Pratap Singh
APPLICANT

VERIFICATION

I, Yogesh Pratap Singh, the Applicant above-named, Yogesh Pratap Singh, having his address as 501, Harisiddhi Heights, Khan Abdul Gaffar Khan Road, Mumbai – 400030, hereby verify that the contents of aforesaid paras are true to my personal knowledge and belief and that I have not suppressed any material fact.

Yogesh Pratap Singh
APPLICANT
BEFORE ME

Ranjeet Singh
NOTARY

RANJEET SINGH
M.Sc LL.B

DATE: 3rd October, 2023

PLACE: Mumbai

