

## BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

## WESTERN ZONE AT PUNE

## ORIGINAL APPLICATION NO. 45 OF 2021

**IN THE MATTER OF:**

Syamantak Trust

...Applicant

Versus

State of Maharashtra &amp; Ors.

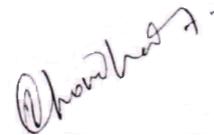
...Respondents

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Through



RITWICK DUTTA



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Place:- Pune/Delhi

Dated;- 21.03.2023

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL  
WESTERN ZONE AT PUNE**

**ORIGINAL APPLICATION NO. 45 OF 2021**

**IN THE MATTER OF:**

Syamantak Trust

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**REJOINDER ON BEHALF OF THE APPLICANT TO REPLY OF  
REPODENT NO. 8 DATED 01.02.2023**

**MOST RESPECTFULLY SHOWETH:**

1. That this Rejoinder is being filed in response to the Reply dated 01.02.2023 of the Respondent No. 8, i.e., Yogesh Rawool. At the outset, the Applicant denies the contents of the Reply filed by Respondent No. 8 unless expressly admitted or are of matter of record.
2. That the Applicant has filed the above titled Original Application dated 23.06.2021 before the Hon'ble NGT against the gross violations of the Wetland (Conservation and Management) Rules, 2010 (hereinafter referred to as "**Wetland Rules, 2010**"), the Hon'ble Supreme Court order dated 08.02.2017 in ***M. K. Balakrishnan & Ors. v. Union of India & Ors. (WP (Civil) 230 of 2001)***, the Wetland (Conservation and Management) Rules, 2017 (hereinafter referred to as "**Wetland Rules, 2017**") and the subsequent order of the Hon'ble Supreme Court dated 04.10.2017 in ***M. K. Balakrishnan & Ors. v. Union of India & Ors. (WP (Civil) 230 of 2001)***, in the Dhamapur Lake area, Sindhudurg, through illegal reclamation and construction of residential property and concrete wall in the wetland area, illegal dumping of construction and demolition waste, installation of borewell, all located in or within 50 metres of the High Flood Level (HFL) of the Dhamapur wetland area.

3. The Response of the Applicant dated 29.01.2022 to the Site Visit Report, Additional Affidavit dated 05.11.2022 of the Applicant and the Written Submissions of the Applicant dated 21.03.2023 to provide clarifications as per the directions of the Hon'ble Tribunal in its order dated 01.02.2023 should be read as part and parcel of this Rejoinder to the Reply of Respondent as they are not being repeated here for the sake of brevity.

**PARA-WISE REPLY:**

4. That it is submitted that paragraph 1 needs no response to the extent that it is a matter of record. However, it is denied that the Respondent No. 8 is not liable for violations of Wetland Rules, 2010 and Wetland Rules, 2017. It is submitted that the Respondent No. 8 is to be held liable for the conversion of wetland for non-wetland use which was done by them by excavating and spreading of soil on the land which is a part of the Dhamapur lake wetland and construction of a concrete wall on the land which is within 50 metres from the High Flood Level of Dhamapur lake wetland, in violation of Rule 4(2)(i) and 4(2)(vi) of the Wetland Rules, 2017.
5. That the contention in paragraph 2 that the said land was never a part of Dhamapur lake is denied for being misleading. The said land falls within 50 metres from the High Flood Level of the Dhamapur lake as seen in the map dated 11.02.2019 prepared by the Maharashtra Remote Sensing Application Centre (MRSAC) for the Deputy Collector, Sindhudurg (**Annexure- A-5 at page no. 320**) as even submitted in the Additional Affidavit dated 05.11.2022 of the Applicant (**Page no. 283, Paragraph no. 18**) and therefore, has to be protected from the prohibited activities which are mentioned in Rule No. 4 of the Wetland Rules, 2017.
6. That in response to paragraph 3, it is submitted that Respondent No. 8 cannot excavate the soil or spread new soil on the land of Dhamapur lake after digging the land, in the process of cultivation

because such activities constitute as prohibited activity of reclamation of wetland under Rule 4(1)(i) of Wetland Rules, 2010 as well as conversion for non-wetland uses which is a prohibited activity under Rule 4(2) (i) of the Wetland Rules, 2017. The Rule 4(1) (i) of Wetland Rules, 2010 states as follows:

*"4. Restrictions on activities within wetlands.-*

*(1) the following activities within the wetlands shall be prohibited, namely:-*

*(i) reclamation of wetlands;"*

The Rule 4(2)(i) of Wetland Rules, 2017 states as follows:

*"4. Restriction of activities in wetlands.- (2) The following activities shall be prohibited within the wetlands, namely.-*

*(i) conversion for non-wetland uses including encroachment of any kind;"*

Moreover, it is submitted that the construction of wall within 50 metres of the High Flood Level of Dhamapur lake is a prohibited activity under Rule 4(2)(vi) of Wetland Rules, 2017, which has been submitted prior to this in the original pleadings (**Page No. 19-21 , Para No. 27-32**) as well as the Additional Affidavit of the Applicant dated 05.11.2022 (**Page No. 282-283, Para no. 15 & 18**). Therefore, it cannot be claimed by the Respondent No. 8 that there was no such activity being carried out by them that were in violation of Wetland Rules, 2017.

7. That in response to paragraph 4 it is submitted that the Respondent No. 8 reclaimed the wetland and used the land of Dhamapur lake wetland for non-wetland use by spreading the soil after excavation of the well and from the land by digging it for laying foundation of fencing. The Respondent No. 8 had submitted a clarification before the Tahsildar and Executive Magistrate Malvan Office, Taluka Malvan, Sindhudurg that they excavated the soil from both the well and the

land during digging of foundation for fencing on the Survey No. 96 and thereafter, spread the soil on the land. This statement of clarification was recorded in the Order dated 27.09.2018 of the Tahsildar and Executive Magistrate Malvan Office, Taluka Malvan, Sindhudurg to Respondent No. 8 to deposit the amount for illegal excavation of soil.

A copy of the Order dated 27.09.2018 of the Tahsildar and Executive Magistrate Malvan Office, Taluka Malvan, Sindhudurg to Respondent No. 8 along with a English translated copy is annexed herewith as **Annexure-1.**

It is submitted that such activities are prohibited under Rule 4(1)(i) of the Wetland Rules, 2010 and Rule 4(2)(i) of the Wetland Rules, 2017.

8. That the contention in paragraph 5 that the map relied by the Applicant cannot be accepted in evidence as per Section 83 of the Indian Evidence Act, is denied for being false and without application of mind. It is submitted that the rules of evidence as in the Indian Evidence Act do not apply to the proceedings before the National Green Tribunal. This is stated in Section 19(3) of the National Green Tribunal Act, 2010. The said provision is reproduced below:

***"19. Procedure and powers of Tribunal.***

...

***(3) The Tribunal shall also not be bound by the rules of evidence contained in the Indian Evidence Act, 1872."***

(Emphasis Supplied)

It is further submitted that the said map dated 11.02.2019 which has been prepared by the Maharashtra Remote Sensing Application Centre for the office of Deputy Collector, Sindhudurg was submitted by the Applicant in the Response of the Applicant dated 29.01.2022 to the Site Visit Report dated 15.07.2021 of the Joint Committee constituted by the Hon'ble Tribunal (**Annexure- A-1 at page no.**

**202)** and the Additional Affidavit of the Applicant dated 05.11.2022 (**Annexure- A-5 at page no. 320**). The map has not been denied by the other Respondent authorities on any prior occasion before the Hon'ble Tribunal, especially Respondent No. 3, i.e., the District Collector, Sindhudurg and the Respondent No. 4, i.e., the Maharashtra State Wetland Committee. Therefore, Respondent No. 8 cannot say that the map submitted by Applicant cannot be accepted.

9. That in response to paragraph 6 it is submitted that Respondent No. 8 wrongly claimed that the demarcation of High Flood Level for Dhamapur lake was not done by the authority. It is submitted that the buffer zone of 50 metres has been demarcated by the Maharashtra Remote Sensing Application Centre in its map dated 11.02.2019 prepared for the Office of Deputy Collector, Sindhudurg and the map marks the excavation of soil done by Respondent No. 8 as "illegal reclamation".
10. That in response to paragraph 7, it is submitted that:
  - a. The Respondent No. 8 had submitted a clarification before the Tahsildar and Executive Magistrate Malvan Office, Taluka Malvan, Sindhudurg that they excavated the soil from both the well and thereafter spread the soil on the land. This has been submitted in paragraph 7 of the present Rejoinder and is not repeated here for the sake of brevity.
  - b. Moreover, the order of the Sub-divisional Officer, Kudal dated 04.09.2019 which set aside the above-mentioned Order dated 27.09.2018 by the Tahsildar and Executive Magistrate Malvan Office, Taluka Malvan, Sindhudurg cannot be accepted to decide a question of violation of environmental law. As submitted in paragraph 7 of the present Reply, the acts of excavation and spreading of soil on the land which is a part of the Dhamapur lake wetland as well as agricultural activities are in violation of Wetland Rules, 2010 and Wetland Rules, 2017.

It is submitted that as per Section 14 of the National Green Tribunal Act, 2010, (hereinafter called as “**NGT Act**”) the Tribunal has the jurisdiction over all civil cases where a substantial question relating to environment is involved and when such questions arise out of the implementation of the enactments specified in Schedule I. Schedule I includes Environment (Protection) Act, 1986 in its list. The Wetland Rules, 2017 has been formulated in exercise of the powers conferred by section 25, read with sub-section (1) and clause (v) of sub-section (2) and sub-section (3) of section 3 and section 23 of the Environment (Protection) Act, 1986. Therefore, the Hon’ble Tribunal has jurisdiction over any issue of violation of Wetland Rules, 2017, as in the above-mentioned Original Application. Section 14 of the NGT Act is reproduced below:

***“14. (1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.***

***(2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.”***

(Emphasis Supplied)

- c. It is further submitted that Section 29 of the NGT Act bars the jurisdiction of a civil court to settle a dispute that may be adjudicated upon by the Tribunal. As submitted in paragraph 10(b) therefore, the Respondent cannot rely on the order of the Sub-divisional Officer, Kudal dated 04.09.2019 which set aside the Order dated 27.09.2018 by the Tahsildar and Executive Magistrate Malvan Office, Taluka Malvan, Sindhudurg wherein it was directed by the authority to pay

compensation for illegal excavation of soil. The extract of Section 29 of NGT Act, 2010 reads as follows:

*"29. Bar of jurisdiction*

*(1) With effect from the date of establishment of the Tribunal under this Act, no civil court shall have jurisdiction to entertain any appeal in respect of any matter, which the Tribunal is empowered to determine under its appellate jurisdiction.*

*(2) **No civil court shall have jurisdiction to settle dispute or entertain any question relating to any claim for granting any relief or compensation or restitution of property damaged or environment damaged which may be adjudicated upon by the Tribunal, and no injunction in respect of any action taken or to be taken by or before the Tribunal in respect of the settlement of such dispute or any such claim for granting any relief or compensation or restitution of property damaged or environment shall be granted by the civil court.***"

(Emphasis Supplied)

11. That the contents of paragraph 6 is denied for being irrelevant. It is submitted that as per the submissions made in paragraph 1 to 10 of the present Rejoinder of the Applicant, the application against Respondent No. 8 has not become infructuous.
12. Thus, in light of the above, the prayers in the Original Application should be allowed.

13) Pass any such order as this Hon'ble Tribunal may deem fit in the facts and circumstances of the present case.



**APPLICANT**

**THROUGH**



**RITWICK DUTTA**



**RAHUL CHOUDHARY**

**ADVOCATES**

COUNSELS FOR THE APPLICANTS

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New Delhi -110048

Mobile: +91 9312407881

Email: [litigation.life@gmail.com](mailto:litigation.life@gmail.com)

**VERIFICATION**

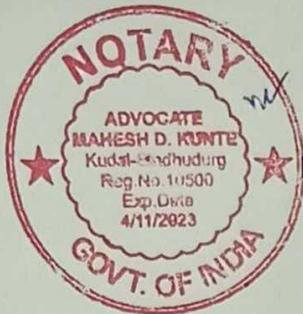
Verified by Sachin Anand Desai, authorized representative of Applicant Organisation, S/o Anand Desai, aged about 48 years, R/o Syamantak, 163, at post Dhamapur, Taluka Malvan, District Sindhudurg-416605, do hereby verify that the contents of Paragraphs 1 to 13 are true to my personal knowledge and nothing has been concealed therefrom.

**APPLICANT**

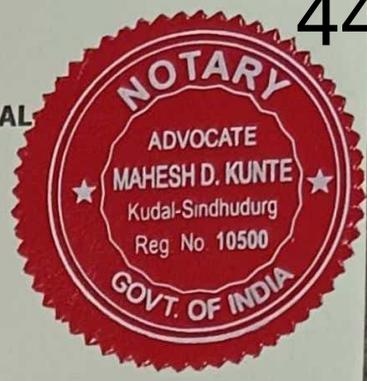


**PLACE**

**DATE: 20.03.2023**



BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL  
WESTERN ZONAL BENCH AT PUNE  
O.A. NO. 45 OF 2021



**IN THE MATTER OF:**

**Syamantak Trust**

**...Applicant**

**Versus**

**State of Maharashtra & Ors.**

**...Respondents**

**AFFIDAVIT**

I, Sachin Anand Desai, authorized representative of Syamantak Trust, S/o Anand Desai, aged about 48 years, R/o Syamantak, 163, at post Dhamapur, Taluka Malvan, District Sindhudurg-416605, do hereby solemnly affirm and declare as under:

1. That I am the authorized representative of Applicant in the above-titled Application and conversant with the facts and circumstances of the case and competent to swear this affidavit.
2. That the contents of the accompanying Rejoinder are true and correct and nothing material has been concealed therefrom.

**DEPONENT**

**VERIFICATION**

Verified on this 20<sup>th</sup> day of March 2023 that the contents of the present Affidavit are true and correct to my knowledge and belief and nothing material is concealed therefrom.



I, Sachin Anand Desai Solemnly Affirmed that this is my name and signature & that the contents of this affidavit are true.

Signature of Dependent

Signature of Notary  
Signed before me

**DEPONENT**  
Address No. 5623  
3199 5523

**MAHESH D. KUNTE**  
NOTARY  
Govt. of India  
AARADHANA Shriramwadi  
Mumbai Goa Highway, Tal-Kuda  
Dist-Sindhudurg, Maharashtra

This document is noted at  
Sr. No. 221  
in the Notarial Register

तहसीलदार तथा कार्यकारी दंडाधिकारी मालवण यांचे कार्यालय,  
तालुका - मालवण जि.- सिंधुदुर्ग

दुरध्वनी क्रमांक ०२३६५-२५२०४५ E-mail tmaltah.si-mh@nic.in, tmalclk03.si-mh@nic.in

क्र.महसूल/गौख/अ.उत्ख./एसआर- १२०१८

दिनांक:२७/०९/२०१८

- वाचले - १) महाराष्ट्र जमीन महसूल अधिनियम १९६६ चे कलम ४८ (७)  
२) मंडळ अधिकारी आंबेरी यांचा दिनांक २९/०६/२०१८ चा अहवाल.  
३) शासन, महसूल व वनविभाग यांचेकडील शासन निर्णय क्र. गौखनि-१०/१०१४/प्र.क्र. ५००/ख दि. २१/०५/२०१५  
४) मा. जिल्हाधिकारी सिंधुदुर्ग यांचेकडील पत्र क्र. खनि/२१/१३/२०१५ दि.२०/०२/२०१६.  
५) शासन, महसूल व वनविभाग यांचेकडील शासन परिपत्रक क्र. गौखनि- १०/०३१६/ प्र.क्र.२६९/ख दि.१४/०६/२०१७.  
६) महसूल व वन विभाग यांचेकडील अधिसूचना क्र.१८ दिनांक १२/०९/२०१८.  
७) मा.जिल्हाधिकारी सिंधुदुर्ग यांचेकडील परिपत्रक क्रमांक/खनि/१३/१/२०१८ दि.०४/०४/२०१८.  
८) या कार्यालयाकडील दि.२९/०८/२०१८ ची मंजुर टिपणी.

आदेश

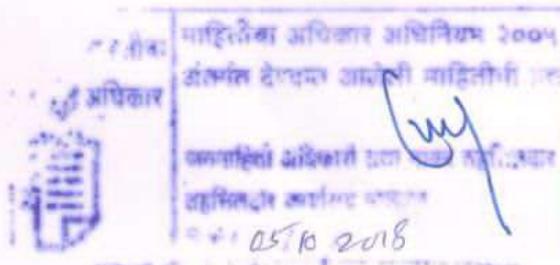
ज्याअर्थी, धामापूर सा.नं.९६ हि.नं.३/१४ पैकी ०-१२-४ ख ०-००-५ आकार १-०० पैकी ०-०६-०० एवढी मिळकत श्री.योगेश मनोहर राऊळ यांच्या नावे, यांनी उलखनन केल्याचे आढळून आले आहे. सदर उलखननाकरीता श्री.राऊळ यांनी या कार्यालयाची कोणतीही परवानगी घेतलेली नाही. याबबत श्री.योगेश मनोहर राऊळ, रा.काळसे(माळकेवाडी) ता.मालवण यांना या कार्यालयाकडून दि.२०/०६/२०१८ रोजी नोटीस देणेत आलेली होती. सदर नोटीसबाबत श्री.योगेश मनोहर राऊळ यांनी सदर जमीनीत वाडीतील लोकांची पिण्याच्या पाण्याची सार्वजनिक विहीर असून ते १७ फुट व्यासाची व ३० फुट खोलीची बांधलेली आहे.सदर विहीरीत ८० ते ८५ ब्रास माती प्लॉटमध्ये बरेच दिवस साचलेली होती ती माती सदर प्लॉटवर पसरून घेतली व कुंपणासाठी खोदलेल्या पायाची १८ ते २० ब्रास मातीही प्लॉटमध्ये पसरविली व दगडी कुंपणाचे काम सुरु केले.असा खुलासा सादर केलेला आहे. सदरचा खुलासा अमान्य करणेत येत आहे.

त्याअर्थी श्री.योगेश मनोहर राऊळ, रा.काळसे(माळकेवाडी) ता.मालवण यांनी मौजे धामापूर सा.नं.९६ हि.नं.३/१४ पैकी ०-१२-४ ख ०-००-५ आकार १-०० पैकी ०-०६-०० एवढी मिळकत श्री.योगेश मनोहर राऊळ यांच्या नावे, यांनी. मातीचे अनधिकृत उलखनन केल्याचे सिद्ध झालेले आहे.

सबब वाचले क्र.५६ व ७ अन्वये मी, तहसीलदार मालवण मला प्रदान करणेत आलेल्या अधिकाराचा वापर करून, महाराष्ट्र जमीन महसूल अधिनियम १९६६ चे कलम ४८ (७) अन्वये श्री.योगेश मनोहर राऊळ, रा.काळसे(माळकेवाडी) ता.मालवण यांचेकडून खालीलप्रमाणे रक्कम वसूल करण्याचा आदेश देत आहे.

खनिजाचा प्रकार	प्रति ब्रास रु.४००/- प्रमाणे रॉयल्टीची किंमत	मा.अपर जिल्हाधिकारी सिंधुदुर्ग यांचेकडील दिनांक ०४/०४/२०१८ चे परिपत्रकाप्रमाणे दंडाची पाचपट रक्कम	एकूण वसूल करावयाची रक्कम
माती ६० ब्रास	२४०००/-	३०००००/-	३२४०००/-

वरीलप्रमाणे रक्कम श्री.योगेश मनोहर राऊळ, रा.काळसे(माळकेवाडी) यांनी सरकारी खजिन्यात या आदेशाच्या दिनांकापासून ७ दिवसांच्या आत शासन जमा करावयाची आहे. सदरची रक्कम मुदतीत भरणा न केल्यास महाराष्ट्र जमीन महसूल अधिनियमातील तरतुदीनुसार थकबाकीच्या वसुलीच्या पध्दतीनुसार वसूल करणेत येईल.



*C. R. Khan*

(समीर घारे)  
तहसीलदार मालवण

Kr. Mahsul/Gukh/A. UTKH./SR- /2018

Date: 27/09/2018

- Read - 1) Maharashtra Land Revenue Act, 1966 section 48 (7)  
2) Circle officer, Amberi report dated 29/06/2018  
3) GR of Revenue and Forest department Kr.gaukhani-10/1014/pr.kr.500/kh Date 21/05/2015  
4) Letter of Hon'ble District Collector no khni/21/13/2015 dated 20/02/2016  
5) Circular of Revenue and Forest department Kr. gaukhani-10/0316/prkr 269/kh Date 14/6/2017  
6) Notification of Revenue & Forest department Kr 18 Dated 12/01/2018  
7) Circular of District Collector Sindhudurg Kramank/khani/13/01/2018 Dated 04/04/2018  
8) Approved comment at this office Date 29/08/2018

**ORDER**

Since it has been found that Shri. Yogesh Manohar Raul has done excavation on his property in Dhamapur survey num 96, part num 3/14 out of 0-14-14 kh 0-00-5, Aakar 1-00 out of 0-06-00. Shri Raul has not taken any permission from this office. In this regard notice dated 26/06/2018 was issued to Shri. Yogesh Manohar Raul, R/o Kalse (Maalkewadi), Tal.Malvan. Shri Yogesh Manohar Raul has submitted a clarification on this that on the said plot there is a community drinking water well construction of 17 feet diameter and 30 feet in depth. There was 80-85 brass soil accumulated in the well for many days. This soil was spread over the said plot and 18-20 brass soil excavated during digging foundation for fencing was also spread on the plot and started stone-work fencing. Such a clarification is submitted. The said submission has been rejected. In that sense it has been proved that Shri. Yogesh Manohar Raul R/o Kalse (Maalkewadi), Tal, Malvan has done illegal soil excavation in village Dhamapur survey num 96, part num 3/14 out of 0-14-14 kh 0-00-5, Aakar 1-00 out of 0-06-00 owned by Shri. Yogesh Manohar Raul.

Reason read num 5,6 and 7 accordingly I, Tahsildar Malvan using the authority granted to me as per Maharashtra Land Revenue Act 1966 sect 48 (7) ordering recovery of the amount as under from Shri. Yogesh Manohar Raul R/o Kalse (Maalkewadi), Tal, Malvan

Type of mineral	Royalty value as per Rs. 400 per brass	Circular of Hon'ble Upper District Collector Dated. 04/04/2018 five times of the fine	Total recovery amount
Soil - 60 brass	24,000/-	3,00,000/-	3,24,000/-

The aforementioned amount should be deposited in the Government treasury within 7 days from the order. If the said amount is not paid the arrears will be recovered according to the recovery method as per the provisions of Maharashtra Land Revenue Act.

Sameer Ghate  
Tahsildar, Malvan