

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

ORIGINAL APPLICATION NO. 49 of 2024

BETWEEN:

Pratap Lal Teli ... **APPLICANT**

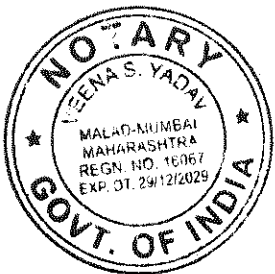
VERSUS

Secretary, Environment Department of the Government of
Maharashtra, & others ... **RESPONDENTS**

**REJOINDER TO AFFIDAVIT-IN-REPLY OF RESPONDENT
NO. 5 (India Film Combine)**

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

1. The Appellant has gone through the copy of the Affidavit-in-Reply of the abovementioned Respondent.
2. In this Affidavit-in-Reply, this Respondent has stated a tediously evolved long history of the project, and how various constructions took place. Such tediously narrated facts are not relevant to the issues at stake, accordingly, the for the sake of brevity and keeping focus of the issues at stake, the Applicant is filing this Rejoinder, keeping such focus in mind.
3. The Applicant further submits that the entire core of this Original Application is two-fold:
 - (a) Huge Category A project constructed without any Environment Clearance based on the permission given by the Urban Development



Department in the year 2007 i.e. after the year 2006 when Environment Impact Assessment Notification of 2006 was brought into force— Can such construction be allowed to exist without Environment Clearance?

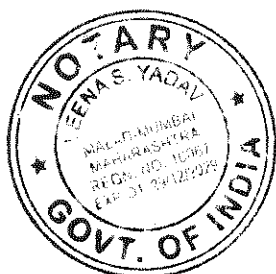
(b) A substantial part of this project is in the Mangrove Buffer Zone – Can such construction be permitted to exist within the Mangrove Buffer Zone?

4. The Petitioner submits that instead of this Respondent confining his pleadings addressing such 2 violations, which are not person specific, but are environment specific, almost the entire Affidavit-in-Reply has been attributed to the procedural aspects, mainly concentrating on the questions limitation.

5. In this reference, it is submitted that the law is very clear on such cases where the Project Proponent has set up the project and operates it without the mandatory Environment Clearance. It is a case of a recurring and continuous cause of action.

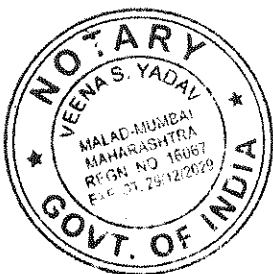
6. On this particular aspect, the Applicant would rely on the provisions of section 22 of the Limitation Act, 1963, where the limitation is continuous. Further, in a similar situation, the Principal Bench of the Hon'ble National Green Tribunal in the case has Shiv Prasad in Original Application No. 24 of 2014 has explained it explicitly as under:

19. Learned Counsel appearing on behalf of the applicant invited our attention to para nos. 23, 24, 30 and 31 in the Judgment delivered by the Principal Bench in the Forward Foundation's case (O.A. No. 222/2014: The Forward Foundation A Charitable Trust & Ors. vs. State of Karnataka and Ors.) dated 7th May, 2015 for our better understanding of concept of recurring cause of



action which according to him comes into play in the present case. He urged us to consider the real gravamen of the case of the applicant and not to be carried away by the Statement in the application that the cause of action is “ongoing”. Material paragraphs 30 & 31 in the Judgment delivered in Forward Foundation’s case (Supra) are reproduced hereunder:

30. Now, we would deal with the concept of recurring cause of action. The word ‘recurring’ means, something happening again and again and not that which occurs only once. Such reoccurrence could be frequent or periodical. The recurring wrong could have new elements in addition to or in substitution of the first wrong or when ‘cause of action first arose’. It could even have the same features but its reoccurrence is complete and composite. The recurring cause of action would not stand excluded by the expression ‘cause of action first arose’. In some situation, it could even be a complete, distinct cause of action hardly having nexus to the first breach or wrong, thus, not inviting the implicit consequences of the expression ‘cause of action first arose’. The Supreme Court clarified the distinction between continuing and recurring cause of action with some finesse in the case of *M. R. Gupta v. Union of India and others*, (1995) 5 SCC 628, the Court held that: “The appellant’s grievance that his pay fixation was not in accordance with the rules, was the assertion of a continuing wrong against him which gave rise to a recurring cause of action each time he was paid a salary which was not computed in accordance with the rules. So long as the appellant is in service, a fresh cause of action arises every month when he is paid his monthly salary on the basis of a wrong computation made contrary to rules. It is no doubt true that if the appellant’s claim is found correct on merits. He would be entitled to be paid according to the properly fixed pay scale in the future and the question of limitation would arise for recovery of the arrears for the past period. In other words, the appellant’s claim, if any, for recovery of arrears calculated on the basis of difference in the pay which has become time barred would not be recoverable, but he would be entitled to proper fixation of his pay in accordance with rules and to cessation of a continuing wrong if on merits his claim is justified. Similarly, any other consequential relief claimed by him, such as, promotion etc. would also be subject to the defence of laches etc. to disentitle him to those reliefs. The pay fixation can be made only on the basis of the situation existing on 1.8.1978 without taking into account any other consequential relief which may be barred by his laches and the bar of limitation. It is to this limited extent of proper pay fixation the application cannot be treated as time barred since it is based on a recurring cause of action. The Tribunal misdirected itself when it treated the appellant’s claim as ‘one time action’ meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules. This right of a Government servant to be paid the correct salary throughout his tenure according to

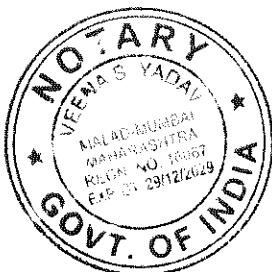


computation made in accordance with rules, is akin to the right of redemption which is an incident of a subsisting mortgage and subsists so long as the mortgage itself subsists, unless the equity of redemption is extinguished. It is settled that the right of redemption is of this kind. (See Thota China Subba Rao and Ors. v. Mattapalli, Raju and Ors. AIR (1950) F C1.”

31. The Continuing cause of action would refer to the same act or transaction or series of such acts or transactions. The recurring cause of action would have an element of fresh cause which by itself would provide the applicant the right to sue. It may have even be de hors the first cause of action or the first wrong by which the right to sue accrues. Commission of breach or infringement may give recurring and fresh cause of action with each of such infringement like infringement of a trademark. Every rejection of a right in law could be termed as a recurring cause of action. [Ref: Ex. Sep. Roop Singh v. Union of India and Ors., 2006 (91) DRJ 324, 44 M/s. Bengal Waterproof Limited v. M/s. Bombay Waterproof Manufacturing Company and Another, (1997) 1 SCC 99].

20. In light of the legal principles which have evolved through the judgments quoted by the rival parties, the facts in the present case clearly reveal the case of recurring cause of action craving for reliefs under Section 15 of the NGT Act, 2010. Running of industries without EC or without enough environmental safeguards have generated serious adverse effect on flora and fauna and eco-system in and around such industries and cumulatively have given rise to an independent cause of action which will be recurring cause of action. As noted above, the CSE report brought to surface serious adverse impacts of running of the said industries on eco-system in and around such industries and made recommendations for remedying the situation and yet authorities remained cold. Obviously, this fact is an incident of recurring cause of action- a fresh composite and distinct which would prompt the application as one before us for remedial action not hit by the concept of cause of action first arose.

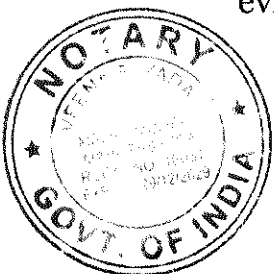
21. In our considered opinion, therefore, the present application filed on 10th February, 2014 is well within the period of limitation and calls for further enquiry in the matter. plea of the respondents not to entertain the present application is therefore, rejected. Case to proceed further.” (Emphasis supplied).



7. From the above-mentioned clear-cut ruling it is apparent that operation of any activity, which required Environment Clearance, creates a cause of action in a continuous manner. Operation for a activity without Environment Clearance means operation of that activity without any safeguards, and which in turn would mean damaging environment with each passing day, particularly in view of the 'Precautionary Principle' ingrained in section 20 of the The National Green Tribunal Act, 2010.

8. It is further seen that this Respondent has been blocking flow of Information from every statutory authority, and only after several years of endeavours some Information was forthcoming. **Needless to add that the statutory investigation agencies, with all their statutory powers for obtaining and finding out information and evidence, take several years to arrive at an inference and thereafter send the case to the Court.** Thus, for a private Applicant, who has got no statutory powers, and with the Project Proponent blocking the flow of Information by filing repeated applications, it would be impossible to say that he would conduct his enquiry, gather evidence within a short period and thereafter file a case with the NGT which requires specific and actionable evidence.

9. Naturally, what the Project Proponent is trying to say, is that an Applicant ought to perform and impossible task of filing an Original Application, without seeking any time to obtaining supporting evidence.



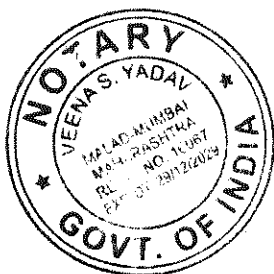
10. In fact, the Applicant got categorical evidence strong enough to file an Original Application with this Hon'ble Tribunal, when the Maharashtra Coastal Zone Management Authority (MCZMA) minutes became public and then it could be said with due certainty that the Project Proponent had done construction within the Mangrove Buffer Zone, which thereafter, led the Applicant do his own enquiry and thereafter he filed a case with the Hon'ble National Green Tribunal.

11. Even otherwise, it is a very well-settled position in law and it is that procedural law cannot be invoked to undermine substantive law. For, procedure is a handmaiden of justice and not the master of justice.

12. The Applicant further submits that from the Affidavit-in-Reply of this Respondent it is clear that he started the work on the construction of the Shopping Mall and the 7/5-Star hotel, after obtaining approval from the Chief Minister 15 January, 2007, i.e. after Environment Impact Assessment Notification of 2006, was brought into force. As per this Notification, he ought to have taken Environment Clearance, which he did not take.

13. Thus, till this day, this mammoth project, situated substantially on the Mangrove Buffer Zone has got no Environment Clearance. In other words, it is operating without the environmental safeguards.

14. It is further seen that this project kept expanding from time to time. In this reference, the Petitioner would rely on the ruling of the Hon'ble Supreme Court in the case of **Keystone Realtors Pvt. Ltd. in Civil Appeal No. 2435 of 2019**, where it was held as under:

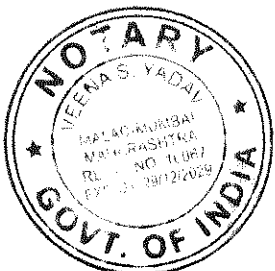


17. At the time of the second increase, the total construction area of the appellant's project was enlarged from 32,395.17 square metres to 40,480.88 square metres. As a result of the expansion, the appellant

constructed sixteen additional flats which were sold at the prevailing market rate. The appellant did not comply with the procedure set out under paragraph 7(ii) of the EIA Notification but rather sought an „amendment“ to the EC. The third respondent did not require the appellant to submit an updated Form 1 nor was the proposal processed and evaluated by the fourth respondent. The „amendment“ to the EC dated 13 March 2014 does not discuss the potential environmental impact of the increase in construction area, but merely records that the construction area now stands at 40,480.88 square metres. The procedure set out under paragraph 7(ii) of the EIA Notification exists to ensure that where a project is expanded in size, the environmental impact on the surrounding area is evaluated holistically considering all the relevant factors including air and water availability and pollution, management of solid and wet waste and the urban carrying capacity of the area. This was not done in the case of the appellant’s project. It was not open to the third respondent to grant an „amendment“ to the EC without following the procedure set out in paragraph 7(ii) of the EIA Notification.

15. Accordingly, the claim of the Project Proponent that he does not require Environment Clearance fails completely. The project went in for a huge expansion from the date of 15th January, 2007, when the Chief Minister permitted the expansion. Since then, several amendments were made to the plan. Unfortunately, while for every amendment an Environment Clearance was required, but no Environment Clearance was taken at all. Thus, the ruling of the Hon'ble Supreme Court mentioned above is apt, clear and fully applicable in this case.

16. The Petitioner further submits that a substantial part of this project is within the Mangrove Buffer Zone and this has been accepted by the Project Proponent himself. All he is saying that he has represented to the MCZMA in this reference. However, since the scientific evidence is clear on this and that there can be no denying the fact that a substantial part of this project is within the Mangrove Buffer Zone, therefore, the Project Proponent has not got any relief from the MCZMA.



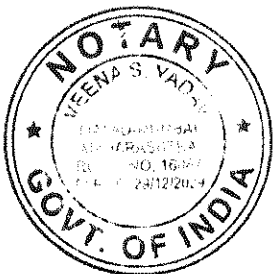
17. Accordingly, the entire Affidavit-in-Reply of the Project Proponent fails, and which is summarised as under:

(A) The Project Proponent is operating a mammoth project which is several times greater than the threshold of 20,000 square metres and for that he does not have any Environment Clearance whatsoever, as mandated in the Environment Impact Assessment of 2006. Therefore, this project operates without environmental safeguards, and as per the ruling of the Hon'ble Principal Bench of the National Green Tribunal, this is a case of continuous cause of action, where limitation keeps getting triggered till the time the environmental safeguards are set in place by obtaining the statutory Environment Clearance.

(B) THAT the major expansion of this project commenced after the Urban Development Department of the Government of Maharashtra issued orders dated 15th January, 2007. Thereafter, several expansion and amendments to the plans were made. However, the Project Proponent took no Environment Clearance. Such a situation cannot be countenanced and the ruling of the Hon'ble Supreme Court in the case of Keystone Realtors mentioned above, and which aptly covers such a situation.

(C) THAT a substantial part of this project is within the Mangrove Buffer Zone and no construction of any nature could have been done there.

18. In view of what has been stated above, the specious, verbose and tedious narration of facts done by this Respondent, which have got no bearing on the environmental damage which is continuously happening with each passing day, and which is undermining the "Right



to Life" of the innocent persons, such specious pretexts be rejected. Likewise, concentrating on the core and substantive elements of these proceedings, the Prayers made in the Original Application be made absolute.

Pratap

APPLICANT

VERIFICATION

I, Pratap Lal Teli, the Applicant above-named having his address as Chawl No. 10, Room No. 203, Punjabi Colony, GTB Nagar, Sion Koliwada, Mumbai – 400037, do hereby verifies that the contents of aforesaid paras in this Rejoinder to the Affidavit-in-Reply of Respondent No. 5 are true to my personal knowledge and belief and that I have not suppressed any material fact.

Pratap

APPLICANT

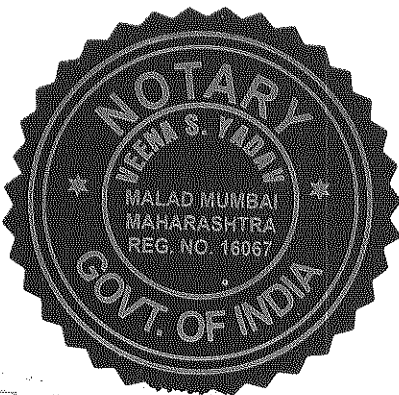
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PLACE: Mumbai

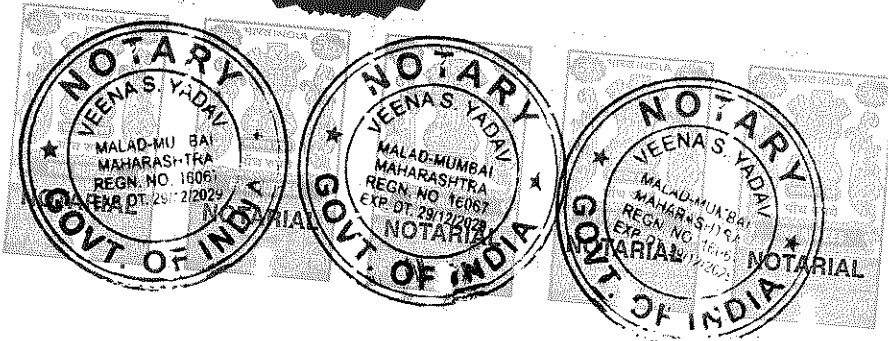
BEFORE ME

Veena S. Yadav 04/02/2025

VEENA S. YADAV
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Maharashtra - 400097



Notary	465
Register	
Sr No. R	
Date	04/02/2025



ORIGINAL SEEN & VERIFIED					
AADHAR	PAN	ELECTION ID	DRNG. LICENSE	PASSPORT	POA RESOLUTION
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