

**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. OF 2023

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**REJOINDER TO AFFIDAVIT-IN-REPLY OF
RESPONDENT NO. 8**

(Suraj Esate Developer Pvt. Ltd.)

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**BEFORE THE NATIONAL GREEN TRIBUNAL SITTING AT
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MEMORANDUM OF APPLICATION

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

APPLICATION NO. 28 OF 2023

BETWEEN:

Santosh Daundkar ... **APPLICANT**

AND

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

**REJOINDER TO AFFIDAVIT-IN-REPLY OF RESPONDENT
NO. 8 (Suraj Esate Developer Pvt. Ltd.)**

I, Santosh Daundkar, the Applicant above-named, residing at
Mumbai, do hereby solemnly affirm and state as under:

- 1.** The Applicant has gone through the Affidavit-in-Reply of the abovementioned Respondent, and accordingly, tenders this Rejoinder.
- 2.** The Applicant submits that, in this Rejoinder, he shall traverse through the core points which are pertinent to the issues at stake. Accordingly, whatever has not been denied specifically, be construed as being any admission which shall be adverse to the underlying cause of this Original Application.

3. In this Affidavit-in-Reply, this Respondent has stated that he be deleted as a Respondent to this case, as he has not indulged in any violation of the law. This assertion is incorrect and is overwhelmingly proved by the following elements, which are being narrated hereinafter.

4. In this reference it would be incidental to note that the Applicant had impleaded this Respondent to this Original Application only for an academic purpose and after the Hon'ble directed the Applicant to do so. Moreover, the Applicant has not been seeking any specific relief against this Respondent. All that the Applicant is seeking is that there ought to be a generalised mechanism to identify all the violations which have happened, where Recreation Ground has not been placed on the Ground and action be taken in accordance with the law.

5. The Applicant submits that the assertion of this Respondent that in this project he has been infallible, noble and pure, turns incorrect when confronted with glaring facts and crushing violation of laws. This would show that this Respondent does not bear clean hands. Accordingly, on this reason by itself, the averments of this Respondent turn worthy of rejection.

6. *Why this Respondent does not bear clean hands:*

The reasons why this Respondent has not filed this Affidavit-in-Reply with clean hands is apparent from the following facts and laws:

(A) This entire plot was on 100% Hospital Reservation in the Development Plan:

This Respondent could wrongly impress upon State Level Expert Appraisal Committee (SEAC) and the State Level Environment Impact Assessment Authority (SEIAA) to not to consider the extremely critical fact that this large piece of land admeasuring 3,266 square metres, was a 100% Development Plan Reservation for a Hospital. This large Hospital was to cater to the needs of Dadar area, which is extremely densely population and that there no large hospital nearby. Considering the rising pollution levels and an enormous rise in Floor Space Index and vehicle load, this Development Plan Reservation bore a critical relevance to the health of the people. Hereto annexed and marked as **ANNEXURE-‘A-1’** is the copy of the relevant part of the Development Plan, which demarcates this land as being for an Hospital. Had the Project Proponent were to have stated full facts before the SEIAA and the SEAC, he would never have been granted an Environment Clearance the way it is now.

(B) Only 1.24% Built-up Area is provided for a Hospital in this 100% Hospital Reservation Plot:

This Respondent suppressed the fact before the SEAC and SEIAA that of the total construction of 41,036 square metres he is providing a tiny namesake hospital of just 508 square metres. In other words, the Project Proponent is providing a hospital in the 100% hospital reservation plot, to the extent of just $41036/508 \times 100 = \mathbf{1.24\%}$.

In fact, even a novice can discern this grotesque anomaly – **if the plot is 100% reserved for Hospital, then how could only 1.24% of the Built-up Area is created for hospital** and the rest for residential apartments. Naturally, the venture has been only fuelled by profit motives – if the humanity suffers as a collateral, then the Project Proponent would not be concerned.

In other words, it is shocking to note that on a 100% hospital reservation plot, the **Project Proponent is providing just 1.24% of the Built-up Area for hospital** and the rest would be for residential apartments.

(C) The minuscule 1.24% area goes below the threshold area for a Hospital – No Hospital can exist under the extant norms:

The above-mentioned area 1.24 % is so small that no Hospital can be made in actuality since that would fall short of the minimum statutory specification for a hospital. This is apparent from the following:

As per Regulation 37 (3) (ii) the Development Control and Promotion Regulations for Greater Mumbai, 2034, the following has been stipulated:

“(II) Building for Medical use-

For Hospital, Maternity Homes and Health Centre, Sanatorium, Multi-Specialty Hospitals:

a) minimum area of general wards shall be **40 sq.m with no side less than 5.5 m;**”

(Emphasis supplied).

In this case, as apparent from the ‘Approved Plan’, the area of General Ward is as under:

MALE WARD: $6.12 \times 4.60 = 28.15$ square metres
i.e. less than the minimum threshold of 40 square metres.

FEMALE WARD: $5.16 \times 6.25 = 32.25$ square metres, *i.e. less than the minimum threshold of 40 square metres.*

In short, this 1.24% area is only form namesake, as in such a small area, the minimum specifications for Hospital can never be accomplished.

In short, in this plot reserved 100% for Hospital, there would be no Hospital.

(D) The 1.24% Built-up Area on a 100% Hospital Reservation Plot cannot comply with the mandatory IS 12433:2001 for Hospitals:

In said Regulation 37 (3) (ii) the Development Control and Promotion Regulations for Greater Mumbai, 2034, the following has been stipulated:

b) the basic requirements for building put to medical use shall conform to IS 12433:2001

It is seen that this Respondent has done serious violation of the said code as under:

Several of hospital rooms do not open towards, areas open to sky. Windows of many rooms open inside the stilt where the nearest light and ventilation source is about 6 metres away.

There cannot be any tree plantation on the said land since the open spaces around the building are below the threshold levels. In fact, in certain places open space has been reduced to 3 feet. In a gallery of 3 feet it is impossible to plant giant-sized indigenous variety of tropical trees, which is a specification in the Maharashtra (Urban Areas) Protection and Preservation of Trees Rules, 2009.

6.1 While planning the hospital building, the importance of landscape elements, such as, open areas, horticulture to increase the comfort conditions within the recommendations contained in IS 7662 (Part 1), may be kept in view.”

“20.1.7 Ventilation: Ventilation of hospital buildings maybe achieved by either natural supply and natural exhaust of air, or natural supply and mechanical supply and mechanical exhaust of air. The following standards of general ventilation are recommended for various areas of

the hospital building based on maintenance of required oxygen, carbon-dioxide and other air quality levels and for the control of body odours when no products of combustion or other contaminants are present in the air or anesthesia gases, which are highly explosive, are present:”

Since there cannot be any plantation in the prescribed manner within the layout, therefore, the above-mentioned stipulation is infringed, because neither is there the minimum required open spaces as prescribed under Regulation 41, which in this case is 20 metres, and nor is there any plantation done, and thus there would be no horticulture.

(E) The massive plot with 100% Hospital Reservation where Built-up Area is 41036 square metres, not more than 5-bedded Hospital can be made:

As per the area specifications prescribed in Para 5.2 of the said IS Code, the prescribed covered area for each hospital bed is 92.5 square metres.

In this case, the Project Proponent has left an area of 508 square metres for an hospital. Thus, this can at best be a hospital of $508/96 = 5.29$ i.e. of **5 beds**.

If the Project Proponent had followed the mandate of Development Plan reservation as provided under section 22 of the Maharashtra Regional and Town Planning Act, 1966, there would have been a hospital of at least $41036 \text{ (Built-up Area)}/96 = 427.74$ i.e. of **428 beds**.

Thus, for the Project Proponent to have defied the mandate of the Maharashtra Regional and Town Planning Act, 1966, and then constructing a 5 bed hospital, against the 428 bed hospital he ought to have made,

Had the Project Proponent told the SEAC and the SEIAA at the time of taking Environment Clearance, that the 100% hospital reservation plot would have just 5 beds, certainly the SEAC and SEIAA would have read between the lines and would never have accorded the Environment Clearance.

Needless to add that no Hospital is possible on the said land because of the strict compromise on side and front open spaces, and also on the minimum threshold requirements of the a general ward.

(F) Policy of the Municipal Corporation cannot undermine the Development Plan Reservations Prescribed after due application of mind through the process of section 22 of the Maharashtra Regional and Town Planning Act, 1966:

The Applicant submits that the Project Proponent is relying on a policy of the Municipal Corporation, whereby, if a particular area is surrendered, then the plot would be released from the reservation. Pursuant to this policy, the Project Proponent has provided 1.24 % of Built-up Area for Hospital and provided a 5-Bed Hospital, instead of a 428 Bed Hospital he would have made in the Built-up Area he is consuming.

The Applicant submit that SEAC and the SEIAA can never assign countenance to this policy as it fundamentally violates the provisions of section 22 of the Maharashtra Regional and Town Planning Act, 1966. This Development Plan reservation of Hospital was made presuming that 100 land with its linked FSI would be used for Hospital, which in this case. The SEAC and the SEIAA are independent environment authorities and they are governed by the exigencies of the health of the people. Where medical facilities are woefully inadequate, no environment authority would ever given permission to construct only 1.24% of the Built-up Area for hospital, when it ought to have provided for 100% of such area.

(G) Net Rear Open Space in a 50 Floor Building is shockingly 3 Feet:

It is shocking to note that the Project Proponent has left a rear setback of just about 3 feet in a building of 50 floors. To even a novice it would be apparent that this would seriously compromise with the air and ventilation not just for the hospital inmates, but far more than that to the general public as they would have to bear the brunt of the massive heat island effect emanating from the mammoth 50 floor high structure.

(H) Impossible to plant the mandatory No. of trees in the prescribed manner:

The Applicant submits that as per the Standard Environment Clearance Conditions, the Project Proponent has to abide by the “Green Belt” Guidelines issued by the Central

Pollution Control Board. In other words, the Applicant is required to plant local variety of trees, which are giant tropical trees bearing a huge trunk diameter and an imposing canopy.

What is further shocking to note is that as per the NOC of the Tree Authority, the Project Proponent was required to plant 80 trees within 30 days of the 40 trees which were permitted to be cut. It was further stipulated that each tree ought to have a circumference of 6 inches and above and bearing a height of 15 feet i.e. 4.5 metres.

Unfortunately, the Project Proponent did not comply with the requisite plantation stipulations imposed by the Tree Authority.

Unfortunately, there is no space to plant even a single tree, as all the open spaces are driveways or too little to accommodate any giant tropical tree.

In short, the Project Proponent would not be able to plant even 1 tree in the prescribed manner, though the Project Proponent had cut 40 trees and purportedly transplanted 17 trees.

In other words, the Project Proponent removed 57 trees several decades old and in its place there is not a single tree.

Had the Project Proponent been compliant, then by this time, with about 8 years having elapsed, these 80 trees would have grown very substantially. Unfortunately, no such trees exist and neither is there any possibility for such trees to exist, as with the given negligible open spaces below threshold levels, it is

impossible to effect any legally required plantation in the prescribed manner.

(I) The minimum required open space of 6 metres on all sides for a Hospital not maintained:

As per the provisions of Regulation 41 of the Development Control and Promotion Regulations for Greater Mumbai, 2034, (analogous provisions exist in Development Control Regulations for Greater Mumbai, 1991), the Project Proponent was required to leave an open space of at least 6 metres from all 4 sides. Unfortunately, the Project Proponent has left an open space of just about 1.32 m in the front and net open space of 1.05 metres at the rear.

The law in this respect is quoted hereunder:

Regulation 41 (6) of Development Control and Promotion Regulations for Greater Mumbai, 2034:

“(6) Open spaces for various types of buildings-

(a) Educational buildings, **hospitals**, mental hospitals, maternity homes, house of correction, assembly buildings, mangal karyalaya, markets, stadia, petrol filling and service stations:

A minimum space 6 m wide shall be left open on all sides from the boundaries of the plot.”

To reiterate, if the minimum prescribed open spaces for a hospital is 6 metres, then it is impossible to conceive as to how the building is coming up with an open space of just about 1.05 to 1.5 metres.

7. Accordingly, the foregoing would eloquently narrate that the Project Proponent does not bear clean hands, and is thus ineligible to seek even an iota of equity in the matter.

8. In short, since the hands of this Respondent are not clean, therefore, his statement in his Affidavit-in-Reply ought not be taken at its face-value, nay, this would be a fit case for the State Level Environment Impact Assessment Authority to act in the strictest possible manner, and to order the pruning of the building so that the dimensions come within the threshold of what is prescribed.

9. The Applicant further submits that the prime contention of this Respondent to not to have provided Recreation Ground at the ground level is that the plan had been approved by the Municipal Corporation in this regard. This contention is untenable, for the reason that the SEAC and the SEIAA are not rubber stamps, which simply ratify what is approved by the Municipal Corporation in contravention of the laws of the land.

10. In other words, if the Municipal Corporation agrees on providing Recreation Ground on concrete slab, then the SEAC and the SEIAA can never accept such a position. This is because the said bodies have to conduct and environment impact.

11. Thus, if in this case, the Project Proponent has cut several decades old trees numbering 40 in number and where such trees have grown on Mother Earth, in that case the SEAC and the SEIAA can never accept the position that the Project Proponent could do the plantation atop a concrete slab.

12. Needless to add that the Project Proponent has not left any Recreation Ground at the ground level where the requisite tree plantation can be done. The Recreation Ground he has shown are passage for Fire Tender. Therefore, obstructions in the form of tree plantation can be done there. Further, at the rear and in the front, the space is less than 5 feet, where it is impossible to plant large tropical trees.

13. The other ground taken by this Respondent is that no cause of action exists against the Project Proponent.

14. This is an incorrect position, for the reason of a plethora of violations listed in the foregoing paragraphs

15. The other ground taken by this Respondent is that the Hon'ble Supreme Court is seized of the matter related to Regulation 27. The Applicant submits that since similar grounds have been raised by other Respondents and a Rejoinder has been filed to that effect, accordingly, the same argument is adopted in this Rejoinder. Needless to add that this Respondent if he were to have been diligent in the matter, ought to have intervened in the matter and sought appropriate directions from the Hon'ble Supreme Court. However, without approaching the Hon'ble Supreme Court, if this Respondent takes such a ground then it would be untenable.

16. Another ground taken by this Respondent is that this Original Application is barred by limitation. This contention of this Respondent is incorrect because here the case is of violation of Environment Clearance conditions.

17. In other words, till the time the Project Proponent plants the requisite at least 80 trees in the prescribed manner on Mother Earth, the public will suffer because the trees with substantial volumes would not be available to cleanse pollution at the local level i.e. where pollution is generated. In other words, the omissions and commissions of the Project Proponent have given rise to a recurring cause of action and that limitation would come into play, only when the infringement is duly corrected.

18. It is further needless to reiterated that no environmental authority, would ever give an Environment Clearance, for a plot of land, which was entirely reserved for the hospital. Had the Project Proponent been honest and expressed this critical fact before the State Level Expert Appraisal Committee and the State Level Environment Impact Assessment Authority, the Project Proponent would not have got permission to construct just 1.24% of the Built-up Area for hospital where as per the provisions of section 22 of the Maharashtra Regional and Town Planning Act, 1966 he ought to have provided 100% of the Built-up Area for hospital.

19. In view of what has been stated in the foregoing, it is clear and apparent that this Respondent has not made this Affidavit-in-Reply with clean hands. He has constructed luxury residential building on the hospital reservation land by manipulating the law by just providing 1.24% of the Built-up Area as hospital. He has manipulated the law in the most outrageous manner, whereby, the ultimate sufferers would be the innocent people, who may not even be aware of such infractions

crafted in a web of technicality and fervent rhetoric of being law compliant, when the reality in this double-faced scenario is otherwise.

20. Be that as it may, the purpose of this Rejoinder is only to assert that the Project Proponent has very gravely violated the law, in not setting aside the required spaces for plantation in the prescribed manner. Accordingly, it is eminently desirable, that necessary modifications in plans be carried out, to facilitate such plantation in the manner as spelt out in the mandatory guidelines issued by the Central Pollution Control Board and the directives of tree plantation given in various Orders of the Hon'ble National Green Tribunal. However, at the same time, the Applicant does not want to disorient these proceeding, due to misjoinder of issues.

21. Accordingly, the Applicant submits that he is moving the State Level Environment Impact Assessment Authority to take statutory action for the Environment Clearance conditions by the Project Proponent. The Authority has been accorded statutory powers under section 5 of the Environment Protection Act, 1986, for violation of Environment Clearance conditions vide Notification dated 28th February, 2014. The Applicant is sanguine that the Authority would not dither from invoking its statutory obligations for protecting the "Right to Life" of the people as guaranteed under Article 21 of the Constitution of India, so that the requisite areas be provided for Garden.

22. In sum, it is humbly prayed that the prayers made in the Original Application be made absolute.

VERIFICATION

I, Santosh Daundkar, resident of 10/37 BIT Chawl, KK Marg, Mumbai Central, Mumbai 400 008, do hereby verify that the contents of aforesaid paras 1 to 3 are true to my personal knowledge and the rest of the paragraphs are believed to be true on legal advice and that I have not suppressed any material fact.

Signature of the Applicant

DATE: 7th November, 2024

PLACE: Mumbai

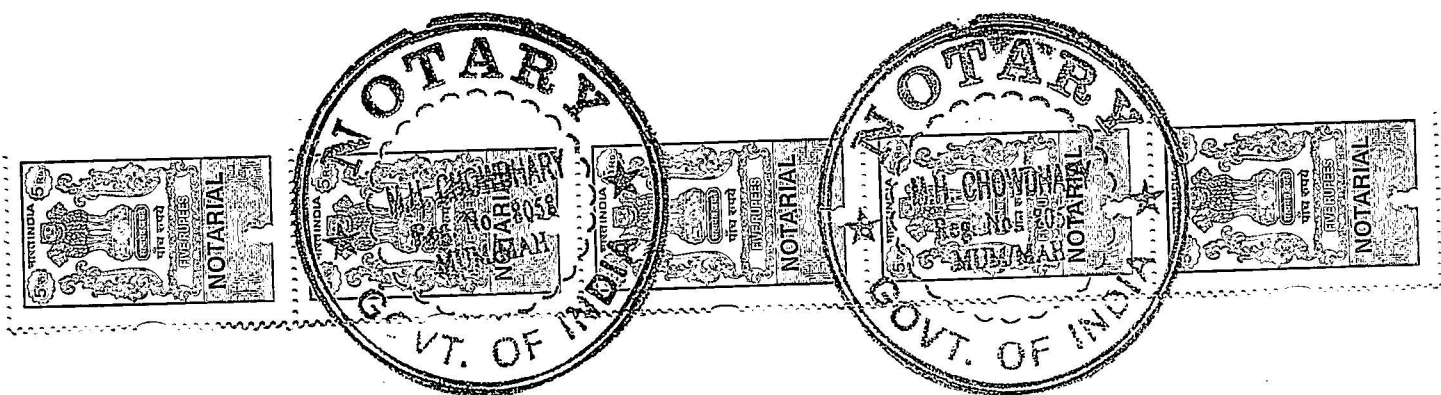
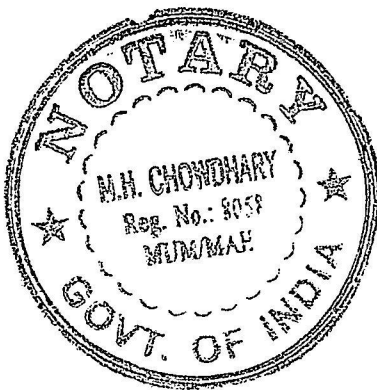
BEFORE ME

M. H. CHOWDHARY
PUBLIC NOTARY
(GOVT. OF INDIA)

7 NOV 2024



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ANNEXURE-'A-1'

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RESERVATION

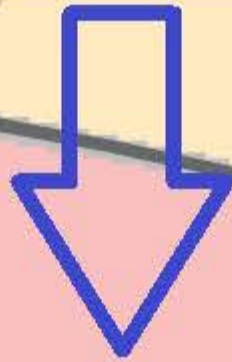
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