

**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. 12 (Incline Reality Pvt. Ltd.)**

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

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. 12 (Incline Reality 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 an admission which shall be adverse to the underlying cause of this Original Application.

3. At the outset, the Applicant submits that it is indeed unfortunate that this Respondent has sought to convert an academic reference on violation of laws related to Recreation Ground, as an intimidating reply by making incorrect statements bordering on derogation of those who are committed to upholding the cause of environment and to saving human lives from the pain of distress and even death. In fact, what the Applicant had done was to have innocuously made a general list of examples, and in the Original Application he had not sought any specific relief against any particular Respondent. It was for this reason, that the Applicant had not named this Respondent and other similarly placed Respondents as parties to the case. It was only later, when this Hon'ble Tribunal considered it necessary, accordingly, they were added as party Respondents.

4. Needless to add that if this Respondent were to have little concern about the precious lives of the general public, then instead of condemning the Applicant, he would have appreciated his efforts in improving the environment. Going by the tall rhetoric of elitist environment often penned in the sales websites, logically, this Respondent ought to have aligned himself to the cause of this Original Application, that trees of requisite biological sizes save precious human lives from ailments and even death and therefore, they be planted on mother earth. Naturally, the very tenor of this Respondent's submissions, to any prudent person, would appear to be specious, nay pretentious in nature.

5. Be that as it may, this Respondent has opposed the Original Application on the following core grounds:

Ground No. 1: THAT no order can be passed against this respondent because of cryptic allegations.

Ground No. 2: THAT this matter is already under consideration in the case of Sagar Devare by the Hon'ble Supreme Court.

Ground No. 3: THAT the project proponent has placed the recreation ground on the podium pursuant to the provisions of regulation 27 of Development Control and Promotion Regulations for Greater Mumbai, 2034.

Ground No. 4: THAT the original application is barred by limitation.

6. Before the Applicant specifically traverses through the above-mentioned 4 grounds, it would be in the fitness of things to understand the background of this Respondent.

7.0 BACKGROUND OF THIS RESPONDENT:

7.1 As Mumbai reels under unprecedented pollution and with every year thousands of people dying of pollution and many-many more thousands becoming sick with serious ailments and suffer intense pain of ailments and medications, and notwithstanding the fact that Hon'ble Supreme Court and this Hon'ble Tribunal have ruled in a catena of cases, that garden-related lands or open lands reservations cannot be diminished whatever be the reason, and have imposed the principles of 'Non-Regression', yet the companies linked to this Respondent in its various projects, have ***overstepped into many***

scores of acres of Gardens, No Development Zone, Mangrove Buffer Zone and layout Gardens in heritage areas abutting the sea. All this has been done for the sake of creating extremely expensive, super-luxury housing, described by engineered nobility and rhetoric of elitism. And that is how, the who's who of the town, unaware of the underlying ugliness of human despair, including Bollywood Celebs, have become the prime customers of the projects of Companies linked to this Respondent.

7.2 *The modus operandi to overstep the open space reservations or stipulations are broadly, as under:*

- Large tracts of lands of scores of acres owned by reputed corporate entities and multinational companies, who do not have a capacity to manipulate the Municipal Officers with respect to open space and garden reservations, are purchased at very low prices.
- Once the Companies linked to this Respondent get hold of such constrained land, manipulative games start. As a consequence whereof, the substantial obligations for creating open spaces are either dampened or removed.
- While erasing or easing such statutory reservations or obligations, the noble principles of 'Non-Regression' are ignored and so are ignored the catena of rulings of the Constitutional Courts that come what may, green spaces cannot be reduced.
- Once the land is relieved of its statutory impediments, then through an intricate exercise of manipulation of Floor Space Index rules, construction of unimaginable proportions are made,

whereby almost the entire land is concretised and multilevel basements cover almost 80% or even more of the land area. In this Island of Mumbai, lakhs of tonnes of stones and gravel are recklessly excavated and further, delicate the ground water aquifers are mercilessly destroyed.

- In short, it is no less than an environmental devastation and makes a mockery of the noble principles of sustainable development as mandated in section 20 of The National Green Tribunal Act, 2010.
- All this is made possible by a simple rule practised in the Municipal Corporation:

“This simple rule is that if there is a technically weak and an overstretched interpretation of law, which devastates and kills humans, and if in the same matter, there is a stronger and direct interpretation of law, which saves humans from death and ailments, and enhances their lives, then the Municipal Corporation, will adopt that interpretation which devastates and kills humans.”

That is how, the noble principle of Interpretation of Statutes, specific to purpose interpretation and the strict interpretation get relegated and the negativity of the mischief rule, with all its fury, anchors itself firmly.

7.3 In the backdrop of the antecedents of the corporate group of this Respondent, the Applicant now addresses the specific grounds raised in the Affidavit-in-Reply of this Respondent.

8.0 REJOINDER TO THE SPECIFIC GROUNDS RAISED BY THIS RESPONDENT:

8.1 GROUND NO. 1: That no order can be passed against this Respondent because of cryptic allegations:

The Applicant submits that in the Original Application, he has not sought any specific action against any Developer. By citing the examples of specific cases of violations done by various Developers, all that the Applicant is seeking is that there is enough material to constitute an expert committee. The said committee can then examine all the projects and take action in accordance with the law related to plantation.

Needless to add that in case, the Applicant were to have sought any particular action against this Respondent, then he would have filed a specific Petition, with elaborate details and specific evidences. However, should this Hon'ble Tribunal consider it so necessary, then the Applicant is ready to provide full details of evidences and the legal provision, linked thereto.

8.2 GROUND NO. 2: That this matter is already under consideration in the case of Sagar Devare by the Hon'ble Supreme Court:

The Applicant submits that in the aforesaid case, rather than agitating the issue before this Hon'ble Tribunal on grounds which are unknown, this Respondent can file an intervention application before the Hon'ble Supreme Court and obtain necessary orders in relation thereof. To not to approach the Hon'ble Supreme Court seeking to

become a party to the case, the approach of this Respondent is not correct.

8.3 GROUND NO. 3: That the project proponent has placed the recreation ground on the podium pursuant to the provisions of regulation 27 of Development Control and Promotion Regulations for Greater Mumbai, 2034:

The Applicant submits that reliance on Regulation 27 cannot be made, because the project was approved under the provisions of Development Control Regulations for Greater Mumbai, 1991 and based on that the Project Proponent had done substantial construction. In fact, the Project Proponent received the Environment Clearance on 18th July, 2016, and it was only after the construction had been completed substantially, especially the basements and podium, that the Development Control and Promotion Regulations for Greater Mumbai, 2034 came into force from 8th June, 2018.

It is pertinent to note that as per the law prevailing at that time, the entire Recreation Ground had to be placed on the ground and not on the podium. As to how the Project Proponent was able to waive this law at that time could be anybody's guess.

It is also further pertinent to note that if this Respondent is claiming that he is bound by Regulation 27 of the Development Control and Promotion Regulations for Greater Mumbai, 2034, then he cannot seek reliance of these Regulations in a discriminatory manner. In other words, ***this Respondent cannot indulge in a pick and choose exercise***, where he picks up things which are good to him in the Development Control and Promotion Regulations for Greater Mumbai,

2034 and to discard the mandatory legal provisions, which are bad to him in the same Regulations.

In this sequence, *inter alia*, Regulation 14A of these Regulations mandate that the Project Proponent would have to surrender 500 square metres for the first 10000 of square metres of the plot area and thereafter @10% of the plot area for public amenities including area of garden. However, if any land in the layout has already been surrendered for Development Plan reservations, (excluding land meant for road setbacks), then the surrender area would stand reduced.

In this case, there was a Recreation Ground reservation of 2894 square metres, , which had been surrendered by the erstwhile owner who had taken benefits in relation thereof and that this Respondent was not the owner of this land, Therefore, the Project Proponent was required to surrender the entire land as per the stipulations mentioned above.

Thus the calculations would be made as under:

Plot Area: 101153 square metres

Total Area Required to be Surrendered: 500 plus 10% of 91153 i.e. $500 + 9115 = 9615$ **square metres.**

For the reason as above, the submissions of the Project Proponent ought to be rejected as his approval was under Regulation 23 of the Development Control Regulations for Greater Mumbai, 1991, where 100% Recreation Ground was required to be placed on the mother earth. Further, if this this Respondent is seeking to convert this project under the Development Control and Promotion Regulations for

Greater Mumbai, 2034, then he will have to hand over an area of 9615 square metres to the Municipal Corporation for public amenities, including area of a public garden. Unfortunately, the Project Proponent did not hand over the said area to the Municipal Corporation.

It is also pertinent to note that this obligation to surrender similar 10% of the area to the Municipal Corporation has been upheld by the Hon'ble Supreme Court in the landmark order issued in the case of *Association of Vasanth Apartments Owner v. V. Gopinath & Others unbecoming Civil Appeal No. 1890-91 of 2010*.

In other words, the Affidavit-in-Reply of this Respondent is hit by the legal maxim – *falsus in uno, falsus in omnibus* meaning thereby that false in one thing, false in everything.

8.4 GROUND NO. 4: THAT the original application is barred by limitation:

The Applicant submits that this plea cannot be taken under any circumstances. As per the standard Environment Clearance conditions, which this Respondent is strictly obliged to comply with, 1 tree has to be planted for every 80 square metres of land. Since the area of the land of the Project Proponent is 101153 square metres, therefore, **he was obliged to plant $101153/80= 1264$ number of trees on mother earth.**

Unfortunately, the Project Proponent has concretised the entire land and the little Recreation Ground area he has shown that was encumbered by slums. **As per the policy adopted by State Level**

Environment Impact Assessment Authority in Mumbai, plantation in the podium or above a concrete slab shall be considered to be shrubs and would not be counted in the obligation of tree plantation, which has to be done strictly as per the “Green Belt” Guidelines issued by the Central Pollution Control Board.

The reason which the State Level Environment Impact Assessment Authority regards plantation on the podium as shrubs and not trees is that they do not create enough numbers of stomata in the leaves of the trees, which cleanse toxic gases at the source of pollution, i.e. which addresses the pollution then and there.

In other words, since the boundary of the project of the Project Proponent touches the extremely busy, and traffic-jam prone Western Express Highway, the hundreds of millions of stomata of the leaves of 1264 evergreen tropical trees of an imposing volume and height, would absorb the enormous quantum of toxic fumes emanating from lakhs of vehicle and neutralise the poison on the very spot where it is generated.

Thus, if such large voluminous trees of hundreds of millions of stomata of leaves, which are legally required under the provisions of Environment Impact Assessment Notification of 2006, do not exist because of the violations of law done by the Project Proponent, then each day, there would be ailments, suffocation and even death.

Thus, every time an innocent resident of the local area, suffers from these deadly pollutants, then each moment of such time, a fresh period of limitation would arise in view of the provisions of section 22

of the Limitation Act, 1963. This is not only perfectly rational but as much as it is a settled position in law.

The very fact that the Project Proponent has openly violated the law, and has made huge investments, and that is leading to death and ailment of the innocent public with each passing day, this cannot be reckoned as a tenable ground to impose the finality through the contrived laws of limitation.

In short, the lack of hundreds of millions of stomata in the leaves of such 1264 trees, would cause ailment, suffering and death of large number of people. Each time the "Right to Life" of such innocent persons gets undermined even to an iota, there would arise a fresh cause of action for initiating the linked proceedings.

Thus, the contention that the provisions of limitation shall relieve the Project Proponent from the requisite plantation of finality to the waiver to plant 1264 number of trees as per the "Green Belt" Guidelines, issued by the Central Pollution Control Board, such a pretext can never be countenanced.

9. This situation where the Project Proponents exploit the law by creating pretexts, can best be described by quoting the eminent American President Lyndon Johnson, in the historic speech he gave in the Joint Session of the Congress, whereupon equal rights to Afro-Americans were conferred.

“There is no issue of States’ rights or National rights. There is only the struggle for human rights”.

Thus, it is high time, the undesirable acts of the Project Proponent, by engineering pretexts and then getting them legitimatised through partisan and unilateral actions of compromised public servants, come to an end. There is no issue of manipulated interpretation of laws – there is only a struggle for human rights, which is being mercilessly undermined by gravely infringing the eminent principles of sustainable development.

10. 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 doing plantation on mother earth of 1264 number of trees. Accordingly, it is eminently desirable, that necessary demolition 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 perplex these proceeding, due to misjoinder of issues.

11. Accordingly, the Applicant submits that he is moving the State Level Environment Impact Assessment Authority to take statutory action against the Project Proponent for not providing required space on the mother earth for effective plantation of 1264 trees and the violations allied thereto. 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 open spaces be provided, by conducting demolitions, and the tree plantation of such 1264 trees be done therein, as per the Central Pollution Control Board specifications.

12. Accordingly, it is humbly prayed that the prayers made in the Original Application be made absolute.


APPLICANT

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

15 JUL 2024
DATE: July, 2024

PLACE: Mumbai

BEFORE ME


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

15 JUL 2024

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