

BEFORE NATIONAL GREEN TRIBUNAL**AT WESTERN ZONAL BENCH PUNE****ORIGINAL APPLICATION NO. 100 OF 2020****IN THE MATTER OF:****UDAYASANKAR SAMUDRALA****....APPLICANT****VERSUS****UNION OF INDIA & ORS.****....RESPONDENTS****INDEX**

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THROUGH



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BEFORE NATIONAL GREEN TRIBUNAL
AT WESTERN ZONAL BENCH PUNE

ORIGINAL APPLICATION NO. 100 OF 2020

IN THE MATTER OF:

UDAYASANKAR SAMUDRALAAPPLICANT

VERSUS

UNION OF INDIA & ORS.RESPONDENTS

REJOINDER ON BEHALF OF APPLICANT TO THE AFFIDAVIT IN
REPLY FILED BY RESPONDENT NO. 4/ SHREE JIVDANI DEVI
MANDIR TRUST, VIRAR

1. The captioned Application has been filed under Section 14 of the National Green Tribunal Act, 2010 seeking intervention of this Hon'ble Tribunal to direct the respondent nos. 1 to 5 to take effective action to stop further construction, development or change of nature and character of the site of the purported funicular ropeway project at Jivdani Temple being done by at the instance of respondent No. 4. The application also raises the issue of non-implementation of various environmental laws , more particularly non implementation of the Forest (Conservation) Act, 1980, the Environment (Protection) Act, 1986, and the Environmental Impact Assessment Notification, 2006 which has led to adverse effects of climate change across the country.

PRELIMINARY SUBMISSIONS/ OBJECTIONS

2. On 07.10.2021 the Applicant was served with a copy of the reply affidavit on behalf of the Respondent no. 4 (hereinafter referred to as the said affidavit).
3. Save what are the matter of record and what is specifically admitted hereafter, each and every allegation contained in the said affidavit is denied and disputed.

PAST HISTORY OF LITIGATION BY ONE M/S DRIL DOES NOT BAR PRESENT APPLICATION

4. At the outset, it is stated and submitted that the allegations made by the respondent no. 4 in its opposition are preposterous and malicious. Strong allegations have been levelled against the applicant without any basis whatsoever to hide the grave illegalities committed by the respondent no. 4 in violating the environmental laws of the country.
5. It is also stated and submitted that the affidavit in reply must not be looked into by this Tribunal as it contains false and concocted facts and matters absolutely contrary to the records. As such, the affidavit in reply must be outrightly rejected by this Hon'ble Tribunal.
6. It is submitted that the Respondent No. 4 conveniently went on alleging that the Applicant is proxy of one M/s DRIL and has filed the present application to harass the Respondent No. 4 and has nothing to do with environment. The said allegation is merely a wild allegation and does

not have any backing and has been taken by the Respondent No. 4 merely to surpass its mala fide violations of the Environment laws.

7. It is submitted that contrary to the allegation of the Respondent No. 4, the documents relied on by the Applicant in the present application are those in the public domain, available on the website of Respondent No. 1 and not the private documents of Respondent No. 4 which the Respondent No. 4 is alleging as being available only with M/s DRIL.
8. The Application filed by M/s DRIL has been dismissed by this Hon'ble Tribunal vide the order dated 09.09.2020 in Original Application No. 55 of 2020 (WZ) on the ground of delay in filing the said application. However, there is no delay on the part of Applicant in filing the present application as submitted in the foregoing paragraphs of this rejoinder. It is pertinent to mention herein that in that matter this Hon'ble Tribunal did not go into the merits of the matter and thus, the question of repeated adjudication does not arise at all, and as such, the present application is not barred.
9. That mere assertion without evidential backing lacks legal sanction and thus, liable to be rejected.

PRESENT APPLICATION IS NOT BARRED BY LIMITATION

10. It is submitted that the present Application has been filed within the time-limit as specified under Section 14 of the National Green Tribunal Act, 2010. It is pertinent to mention herein that the cause of action for

filing the present Application first arose on 18.11.2020 when the Applicant visited the Jivdani Devi Temple and got to know that the Respondent No. 5 has not obtained Environment Clearance before starting the funicular ropeway project. This Hon'ble Tribunal in the case of *Kehar Singh v. State of Haryana* reported as 2013 SCC Online NGT 52 has discussed the meaning of the term cause of action. The relevant extract is reproduced hereinbelow for ready reference of this Hon'ble Tribunal:

"16. 'Cause of action', therefore, must be read in conjunction with and should take colour from the expression 'such dispute'. Such dispute will in turn draw its meaning from Section 14(2) and consequently Section 14(1) of the NGT Act. These are inter-connected and inter-dependent. 'Such dispute' has to be considered as a dispute which is relating to environment. The NGT Act is a specific Act with a specific purpose and object, and therefore, the cause of action which is specific to other laws or other objects and does not directly relate to environmental issues would not be 'such dispute' as contemplated under the provisions of the NGT Act. The dispute must essentially be an environmental dispute and must relate to either of the Acts stated in Schedule I to the NGT Act and the 'cause of action' referred to under Sub-section (3) of Section 14 should be the cause of action for 'such dispute' and not alien or foreign to the substantial question of environment. The cause of action must have a nexus to such dispute which relates to the issue of

environment/substantial question relating to environment, or any such proceeding, to trigger the prescribed period of limitation. A cause of action, which in its true spirit and substance, does not relate to the issue of environment/substantial question relating to environment arising out of the specified legislations, thus, in law cannot trigger the prescribed period of limitation under Section 14(3) of the NGT Act. The term 'cause of action' has to be understood in distinction to the nature or form of the suit. A cause of action means every fact which is necessary to establish to support the right to obtain a judgment. It is a bundle of facts which are to be pleaded and proved for the purpose of obtaining the relief claimed in the suit. It is what a plaintiff must plead and then prove for obtaining the relief. It is the factual situation, the existence of which entitles one person to obtain from the court remedy against another. A cause of action means every fact which, if traversed, would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which, taken with the law applicable to them, gives the plaintiff a right to relief against the defendant. It does not comprise evidence necessary to prove such facts but every fact necessary for the plaintiff to prove to enable him to obtain a decree. The expression 'cause of action' has acquired a judicially settled meaning. In the restricted sense, cause of action means the circumstances forming the infringement of the right or the immediate occasion for the action. In wider sense, it means the necessary

conditions for the maintenance of the suit including not only the infraction coupled with the right itself. To put it more clearly, the material facts which are imperative for the suitor to allege and prove constitute the cause of action."

Accordingly, the cause of action for filing the present application under Section 14 of the National Green Tribunal Act, 2010 can only be said to have been arisen on the day when the applicant found out about the gross environmental violations being done by the Respondent No. 4 / 5. It is also submitted that the said cause of action has been continuing day to day and in as much, the instant application is not barred by the imitation. As such there is no delay in filing the present application.

11. It is stated that the respondent no. 4 on the other hand has filed its opposition in the instant case after much delay without any explanation whatsoever. The instant application was served upon all the respondents in the month of December 2020. However, no steps were taken by the respondent no. 4 to enter appearance or to file its affidavit before this Learned Tribunal.
12. It is submitted that it is only by way of an afterthought subsequent to the stay of operation of the Ropeway by this Hon'ble Tribunal on 02.09.2021 that the Respondent no. 4 has taken these frivolous pleas in its opposition only to evade the law and renege on its obligations under the environmental laws.

OBTAINING ENVIRONMENT CLEARANCE IS MANDATORY FOR THE FUNICULAR ROPEWAY PROJECT OF RESPONDENT NO. 4

13. A funicular ropeway project requires far more construction and destruction of the environment than an ordinary Monocable Pulsated Ropeway as because there are hundreds of pillars laid out on the ground for supporting the rail track like structure. Therefore, the destruction in funicular ropeway system is far more. Also, in its application for Environmental Clearance, the respondent no. 4 has itself explained the different types of ropeway systems and why funicular ropeway system was adopted instead of monocable pulsed ropeway system. Not once in the past have the respondent no. 4 even remotely taken the point that EC is not applicable to a funicular ropeway system. They were all along in the knowhow of the fact that a prior EC is required for the project. This was the sole reason why EC had been obtained in the year 2009 which stood expired in 2014.
14. In the application for grant of Environment Clearance, the respondent no. 4 have explained how funicular ropeway system is a ropeway and why it is better. However, in their affidavit in reply they have attempted to state that funicular ropeway does not fall under the category of ropeways at all. This is a ludicrous proposition made by respondent no. 4 in a desperate attempt to come out of the rigours of the laws of this country and the consequence of their mala fide actions. In fact, the

construction and destruction is so much more in funicular ropeways that the conditions for EC should be more strict.

15. It is submitted that whether it is mandatory for Respondent No. 4 to obtain Environment Clearance for the said project has to be decided by the Respondent No. 1. It is pertinent to mention herein that the Respondent No. 1 in the reply affidavit has specifically brought forward the fact that the said project requires a previous Environment Clearance being covered under Sr. No. 7(g) of the EIA Notification.
16. It is submitted that Respondent No. 4 has sought for the query from Ropeway Advisory Board of Public Works Department (PWD) regarding the coverage of funicular project under aerial ropeway only on 1st November 2019 which is much after commencement of project.
17. Contrary to the submission of Respondent No. 4, various other funicular ropeway projects under PWD Maharashtra including Saptashringi Gad, Village Kalwan, Nashik and Hajimalang Gad Dargah, Village Wadi, Thane have obtained Environmental Clearance. It has been categorically mentioned in their Environment Clearance that the said funicular ropeway projects fall under the Category 'B' 7(g) of EIA Notification, 2006. A true copy of Environment Clearances issued by Respondent No. 1 for funicular ropeway projects at Saptashringi Gad, Village Kalwan, Nashik and Hajimalang Gad Dargah, Village Wadi, Thane are annexed herewith and marked as **Annexure-R/1 (Colly)**.

18. That the Respondent No. 4 has itself applied for Environment Clearance vide TOR letter dated 25.09.2019 and went for public hearing on 30.12.2020. Respondent No. 4 in the said letter have themselves admitted that the project is covered under Item 7(g) of EIA Notification, 2006, and it requires Environment Clearance. It is pertinent to mention herein that in the said TOR letter was based on the premise that no construction work of funicular project has been started till then which is completely false and in their Counter affidavit the Respondent No. 4 has themselves mentioned that construction of the project has been started before 1036 days of filing the present application by Applicant. The Respondent No. 1 has finally applied for Environment Clearance vide application dated 01.03.2021 (Annexure C of Rejoinder).
19. It is noteworthy to point out that the said application for obtaining Environment Clearance by Respondent No. 4 has been delisted by Respondent No. 1. Therefore, it is an afterthought of the Respondent No.4 to contend before this Hon'ble Tribunal that the said project does not require Environment Clearance. The Respondent No. 4 conveniently managed to surpass the said obligation by sending letter dated 04.10.2021 to the Respondent No. 1 thereby requesting the Respondent No. 1 to declare that the pending application of the Petitioner cannot be entertained for want of jurisdiction on the pretext that the said project is not covered under EIA Notification.

20. That the said conduct of Respondent No. 4 shows bad faith on their part as when their application has been delisted by Respondent No. 1, Respondent No. 4 is trying to surpass its obligation by stating that their project does not fall under the purview of EIA Notification.
21. In fact, the respondent no. 4 is well aware of the fact that all the ropeway projects in the country require an EC under Item 7(g) of EIA Notification, 2006 and as such in 2009 had obtained an EC for construction of ropeway that stood expired in 2014. A perusal of the EC obtained in 2009 would also go on to show that for any change in technology, a fresh EC was to be applied for before any construction could be started.
22. The respondent no. 4 in blatant disregard of the environment, to hide its illegal actions is trying to take the plea that it is not covered under the law when in fact it is. The respondent no. 4 has time and again admitted that the project falls under 7(g) of the EIA Notification, 2006 and it has taken all steps for obtaining the EC from the year 2019 much after the construction began. All Funicular Ropeway projects in the country till date have obtained Environmental Clearances and as such the respondent no. 4 cannot be viewed differently under the law.
23. Moreover, the respondent no. 1 being the sole authority on the subject has time and again clarified that prior EC is required for the project. In the event it was not so, then the respondent no. 1 would have never entertained any application for EC. But on the contrary, the respondent

no. 1 has time and again in its affidavit and in its report clarified that the project of the respondent no. 4 required prior EC. This plea raised by the respondent no. 4 has been only done as an attempt to dilute the issue to digress the attention of this Hon'ble Tribunal.

24. It is also stated and submitted without admitting that even if there was any iota of doubt in the minds of the Respondent no. 4 about the applicability of EC in funicular ropeway projects, instead of taking the liberty to start construction of the project and then apply for prior EC, they should have sought for clarifications before the start of the project. They have continuously attempted to approbate and reprobate on their stands taken by them which is absolutely impermissible under law. By way of these frivolous arguments, the respondent no. 4 is attempting to grossly mislead this Hon'ble Tribunal.

THE PRESENT APPLICATION ARISES SUBSTANTIAL QUESTION RELATED TO ENVIRONMENT

25. Pursuant to Section 14 of the National Green Tribunal Act, 2010, this Hon'ble Tribunal has the jurisdiction over all civil cases where a substantial question relating to environment is involved. Such substantial question of law concerns the implementation of the enactments specified in Schedule I.
26. The Schedule I of the National Green Tribunal Act, 2010 enlists the following enactments:

1. *The Water (Prevention and Control of Pollution) Act, 1974;*
 2. *The Water (Prevention and Control of Pollution) Cess Act, 1977;*
 3. *The Forest (Conservation) Act, 1980;*
 4. *The Air (Prevention and Control of Pollution) Act, 1981;*
 5. *The Environment (Protection) Act, 1986;*
 6. *The Public Liability Insurance Act, 1991;*
 7. *The Biological Diversity Act, 2002.*
27. The present application has been filed by the Applicant against the non-implementation of the Forest (Conservation) Act, 1980, the Environment (Protection) Act, 1986 and Environment Impact Assessment Notification, 2006 by Respondent No. 4 as Respondent No. 4 has failed to obtain Environment Clearance.
28. It is submitted that the applicant has specifically pointed out the violation of Environmental norms by the Respondent No. 4 in not obtaining the Environmental Clearance before starting the funicular ropeway project. The EIA Notification has been enacted by Ministry of Environment and Forest under Section 3(2) of the Environment (Protection) Act, 1986. Thus, non-compliance with the same is in violation of Environment (Protection) Act, 1986 and the same is in direct violation of specific statutory environmental obligation.
29. Therefore, the Applicant has raised substantial questions of law in the present application.

NO PLURALITY IN CAUSE OF ACTIONS IN PRESENT APPLICATION

30. The cause of action alleged by the Applicant in the present Application is that the Respondent No. 4 has started the construction of the funicular ropeway project without obtaining environment clearance. As such, the allegations put forward in the present Application are connected with this single cause of action i.e., construction of the funicular ropeway project without obtaining environment clearance. Thus, it is submitted that the submission of the Respondent No. 4 that the Applicant has plural cause of actions in the present Application is misleading and without any merits.

CONSENT TO ESTABLISH FROM MPCB

31. The Respondent No. 4 has obtained the Consent to established from MPCB only on 08.07.2020 i.e., much after the commencement of project. Furthermore, it is submitted that the Consent to establish is granted by MPCB was subject to certain conditions which includes "*PP shall not take any effective steps prior to obtaining EC...*".
32. The said clause in the consent to establish granted to the Respondent No. 4 further buttress the submission of the Applicant that the Respondent No. 4 was obligated to obtain Environment Clearance.

NO PERSONAL RELIEF SOUGHT BY APPLICANT

33. The Applicant has filed the present Application only for seeking directions of this Hon'ble Tribunal against the gross violation of environmental norms by the Respondent No. 4. The Applicant has no personal agenda behind filing the said Application. The Applicant is not deriving any personal benefit from the present application and has not sought any personal relief.
34. As alleged by the Respondent No. 4 in the reply, the Applicant has not sought any relief for any kind of compensation or restitution in the present application.

PARAWISE REJOINDER

35. The contents of paras 1 to 3 are formal in nature and hence do not merit any reply.
36. The contents of para 4 are denied. The Original Application has been served upon all the Respondents in the month of December 2020. However, no steps were taken by the Respondent no. 4 to enter appearance or to file its affidavit before this Learned Tribunal.
37. The contents of paras 5 to 7 are matter of record and hence do not merit any reply.
38. The contents of para 8 are disputed and denied as being false and misleading. It is submitted the Respondent No. 4 is conveniently making frivolous assertions without any evidential backing. The

Applicant is deeply concerned about the environment and has filed the present Application being aggrieved by the blatant violations and willful disregard of the environmental laws by the Respondent No. 4. The Applicant has nothing to do with the litigations of Respondent No. 4 with M/s DRIL. These misleading submissions are being made by Respondent No. 4 merely to surpass its liability under the Environment law by raising frivolous allegations to misdirect this Hon'ble Tribunal.

39. The contents of para 9 are matter of record and hence do not merit any reply.
40. The contents of para 10 are disputed and denied as being false. It is submitted that contrary to the allegation of the Respondent No. 4, the documents relied on by the Applicant in the present application are those in public domain, available on the website of Respondent No. 1 and not the private documents of Respondent No. 4 which the Respondent No. 4 is alleging as being available only with M/s DRIL.
41. The contents of para 11 are denied to the extent the same are inconsistent with the considered stand of the Applicant herein. The instant Applicant appeared in person in the public hearing dated 30.12.2020 and placed certain facts before the committee presiding hearing, including the filing of the instant application and the order passed herein. To the utter surprise of the applicant herein, when the applicant perused through a copy of the minutes of the public hearing dated 30.12.2020 it came to light that the objection made by the

applicant had not been recorded in the minutes. Immediately after the meeting, the applicant sent a letter dated 31.12.2020 to the respondent as a written objection to the grant of environment clearance along with all the material evidentiary documents to highlight why the grant of EC would be an exercise in futility in the instant project in as much as the entire project had been constructed without the grant of EC. A copy of the OA application along with the order passed by this Tribunal on 24.12.2020 had been also enclosed therewith. In spite thereof, there was no mention whatsoever of any objection received from the applicant in the minutes of the meeting dated 30.12.2020. A copy of the letter dated 31.12.2020 sent by the applicant is annexed hereto and marked as **Annexure-R/2**.

Thereafter, the applicant wrote another letter to the respondent on 03.02.2021 making a note of the fact that its objection was not recorded in the minutes and that the project had been completed without environmental clearance and that appropriate actions in this regard may be taken. A copy of the letter dated 03.02.2021 sent by applicant is annexed hereto and marked as **Annexure-R/3**.

42. The contents of para 12 to 14 are matter of record and hence do not merit any reply.
43. The contents of para 15 are matters of record. However, it is submitted that the Applicant is not contending that Respondent No. 4 did not have the right to change the Ropeway system. It is the submission of

Applicant that the Respondent No. 4 ought to have obtained the Environment Clearance before the commencement of construction of the funicular ropeway project.

44. The contents of para 16 are matter of record. However, it is submitted that if the project falls under the Environmental Impact Assessment Notification, 2006, Environmental Clearance has to be obtained from Respondent No. 1.
45. The contents of para 17 are matter of record and hence do not merit any reply.
46. The contents of para 18 are matter of record. However, it is pertinent to mention herein that the Respondent No. 4 has sought for the query from Ropeway Advisory Board of Public Works Department (PWD) Maharashtra only on 27.10.2019 which is much after commencement of project. In this regard, a reference may be made to Annexure R1 of Reply affidavit filed by Respondent No. 4. This clearly shows the intention of Respondent No. 4 to surpass the obligations under environmental law.
47. The contents of paras 19 and 21 are denied as being false and misleading. It is submitted that Saptashringi Gad, Village Kalwan, Nashik has obtained Environmental Clearance for its funicular ropeway project which is clear from Annexure-R/1 of this rejoinder. It has been categorically mentioned in their Environment Clearance that the said funicular ropeway projects fall under the Category 'B' 7(g) of EIA Notification, 2006. It is submitted that if a project is covered by the EIA

Notification, it is mandatory to obtain environment clearance. The best authority to judge if the project is covered under EIA Notification is Respondent No. 1. It is pertinent to mention herein that the Respondent No. 1 in the reply affidavit has specifically brought forward the fact that the said project requires a previous Environment Clearance being covered under Item 7(g) of the EIA Notification, 2006.

48. The contents of paras 22 to 24 are matters of record and hence do not merit any reply.
49. The contents of para 25 are denied to the extent the same are inconsistent with the considered stand of the Applicant herein. It is submitted that Respondent No. 1 is the best authority to decide whether the project is aerial ropeway and covered under EIA Notification.
50. The contents of para 26 are matter of record and hence do not merit any rejoinder. Firstly, the funicular ropeway squarely falls in Item 7(g) of EIA Notification. It is a practice since 2006 that all the funicular ropeway projects have been developed only after obtaining prior Environmental Clearance from Respondent No. 1. Secondly, it is submitted that the Railway/ Metro projects have been specifically excluded from the EIA Notification for a separate reason altogether. As such, the funicular ropeway project is completely different from Railway/ Metro projects. The railway/ metro projects are alternate mode of transportation while the funicular projects are made for convenience and add up to carbon

emission. It is for this reason that the Ropeway projects have been expressly included under EIA Notification and not have been excluded. As such, if Respondent No. 4 has any objections to the EIA Notifications regarding inclusion or exclusion of ropeway projects within its ambit, the Respondent No. 1 ought to have challenged the vires of the EIA Notification before appropriate forum.

51. The contents of paras 27 to 29 are denied to the extent the same are inconsistent with the considered stand of the Applicant herein. It is submitted that plantation of trees cannot be the defence to surpassing the obligations under the environmental laws. It would set a wrong precedent if the gross violations of the environmental laws cannot be rectified, and Respondent No. 4 is left on the basis of their submission that they have planted trees after violating the environmental norms.
52. The contents of para 30 are denied to the extent the same are inconsistent with the considered stand of the Applicant herein. The submissions of Applicant in foregoing paragraphs of this rejoinder may be read as reply to this paragraph.
53. The contents of paras 31 to 34 are denied to the extent the same are inconsistent with the considered stand of the Applicant herein. It is submitted that the present Application has been filed within the time-limit as specified under Section 14 of the National Green Tribunal Act, 2010. It is pertinent to mention herein that the cause of action for filing the present Application first arose on 18.11.2020 when the Applicant

visited the Jivdani Devi Temple and got to know that the Respondent No. 5 has not obtained Environment Clearance before starting the funicular ropeway project. This Hon'ble Tribunal in the case of *Kehar Singh v. State of Haryana* reported as 2013 SCC Online NGT 52 has discussed the meaning of the term cause of action. The relevant extract is reproduced hereinbelow for ready reference of this Hon'ble Tribunal:

“16. ‘Cause of action’, therefore, must be read in conjunction with and should take colour from the expression ‘such dispute’. Such dispute will in turn draw its meaning from Section 14(2) and consequently Section 14(1) of the NGT Act. These are inter-connected and inter-dependent. ‘Such dispute’ has to be considered as a dispute which is relating to environment. The NGT Act is a specific Act with a specific purpose and object, and therefore, the cause of action which is specific to other laws or other objects and does not directly relate to environmental issues would not be ‘such dispute’ as contemplated under the provisions of the NGT Act. The dispute must essentially be an environmental dispute and must relate to either of the Acts stated in Schedule I to the NGT Act and the ‘cause of action’ referred to under Sub-section (3) of Section 14 should be the cause of action for ‘such dispute’ and not alien or foreign to the substantial question of environment. The cause of action must have a nexus to such dispute which relates to the issue of environment/substantial question relating to environment, or any such proceeding, to trigger the prescribed period of limitation. A cause of

action, which in its true spirit and substance, does not relate to the issue of environment/substantial question relating to environment arising out of the specified legislations, thus, in law cannot trigger the prescribed period of limitation under Section 14(3) of the NGT Act. The term 'cause of action' has to be understood in distinction to the nature or form of the suit. A cause of action means every fact which is necessary to establish to support the right to obtain a judgment. It is a bundle of facts which are to be pleaded and proved for the purpose of obtaining the relief claimed in the suit. It is what a plaintiff must plead and then prove for obtaining the relief. It is the factual situation, the existence of which entitles one person to obtain from the court remedy against another. A cause of action means every fact which, if traversed, would be necessary for the plaintiff to prove in order to support his right to a judgment of the court. In other words, it is a bundle of facts which, taken with the law applicable to them, gives the plaintiff a right to relief against the defendant. It does not comprise evidence necessary to prove such facts but every fact necessary for the plaintiff to prove to enable him to obtain a decree. The expression 'cause of action' has acquired a judicially settled meaning. In the restricted sense, cause of action means the circumstances forming the infraction of the right or the immediate occasion for the action. In wider sense, it means the necessary conditions for the maintenance of the suit including not only the infraction coupled with the right itself. To put it more clearly, the

material facts which are imperative for the suitor to allege and prove constitute the cause of action."

Accordingly, the cause of action for filing the present application under Section 14 of the National Green Tribunal Act, 2010 can only be said to have been arisen on the day when the applicant found out about the gross environmental violations being done by the Respondent No. 4 / 5. It is also submitted that the said cause of action has been continuing day to day and in as much, the instant application is not barred by the imitation. As such there is no delay in filing the present application.

54. The contents of para 35 are denied to the extent the same are inconsistent with the considered stand of the Applicant herein. It is submitted that the said application filed by the DRIL has been dismissed vide the order dated 09.09.2020 in Original Application No. 55 of 2020 (WZ) on the ground of delay in filing the said application. However, there is no delay on the part of Applicant in filing the present application as submitted in the foregoing paragraphs of this rejoinder. It is pertinent to mention herein that in that matter this Hon'ble Tribunal did not go into the merits of the matter and thus, the question of repeated adjudication does not arise at all, and present application is not barred.

55. The contents of paras 36 and 37 are denied to the extent the same are inconsistent with the considered stand of the Applicant herein. It is submitted that the applicant has specifically pointed out the violation

of Environmental norms by the Respondent No. 4 in not obtaining the Environmental Clearance before starting the funicular ropeway project. The EIA Notification has been enacted by Ministry of Environment and Forest under Section 3(2) of the Environment (Protection) Act, 1986. Thus, non-compliance with the same is in grave violation of Environment (Protection) Act, 1986 and the same is in direct violation of specific statutory environmental obligation.

56. The contents of paras 38 are denied to the extent the same are inconsistent with the considered stand of the Applicant herein. Pursuant to Section 14 of the National Green Tribunal Act, 2010, this Hon'ble Tribunal has the jurisdiction over all civil cases where a substantial question relating to environment is involved. Such substantial question of law concerns the implementation of the enactments specified in Schedule I.

The Schedule I of the National Green Tribunal Act, 2010 enlists the following enactments:

1. *The Water (Prevention and Control of Pollution) Act, 1974;*
2. *The Water (Prevention and Control of Pollution) Cess Act, 1977;*
3. *The Forest (Conservation) Act, 1980;*
4. *The Air (Prevention and Control of Pollution) Act, 1981;*
5. *The Environment (Protection) Act, 1986;*
6. *The Public Liability Insurance Act, 1991;*

7. The Biological Diversity Act, 2002.

The present application has been filed by the Applicant against the non-implementation of the Environment (Protection) Act, 1986 and Environment Impact Assessment Notification, 2006 by Respondent No. 4 as Respondent No. 4 has failed to obtain Environment Clearance.

57. The contents of paras 39 to 41 are denied to the extent the same are inconsistent with the considered stand of the Applicant herein. It is submitted that the cause of action as alleged by the Applicant in the present Application is that the Respondent No. 4 has started the construction of the funicular ropeway project without obtaining environment clearance. As such, the allegations put forward in the present Application are connected with this single cause of action i.e., construction of the funicular ropeway project without obtaining environment clearance. Thus, it is submitted that the submission of the Respondent No. 4 that the Applicant has plural cause of actions in the present Application is misleading and without any merits.
58. The contents of paras 42 and 43 are disputed and denied. It is submitted that the funicular ropeway project has been built on the forest land by causing severe loss to the flora and fauna of the forest. The relief sought by the Applicant in the present application is for demolition of the structure and impose penalty on Respondent No. 4 for violation of environment laws which would, in turn, help in restoring the flora and

fauna on that forest land and rejuvenate the environment on that forest land.

59. The contents of paras 45 to 48 are denied to the extent the same are inconsistent with the considered stand of the Applicant herein. It is submitted that the Applicant has filed the present Application only for seeking directions of this Hon'ble Tribunal against the gross violation of environmental norms by the Respondent No. 4. The Applicant has no personal agenda behind filing the said Application. The Applicant is not deriving any personal benefit from the present application and has not sought any personal relief. As alleged by the Respondent No. 4, the Applicant has not sought any relief for any kind of compensation or restitution in the present application.
60. The contents of paras 49 to 51 are denied to the extent the same are inconsistent with the considered stand of the Applicant herein. The submissions of Applicant in foregoing paragraphs of this rejoinder may be read as rejoinder to these paragraphs.
61. The contents of para 52 are denied to the extent the same are inconsistent with the considered stand of the Applicant herein. The Applicant has presented a good case of violation of EIA notification, 2006 by relying upon various evidences like current photos of project, newspaper articles showing the completion of construction, ticket of ropeway showing the commissioning, Article in Mumbai mirror stating trial run of project has started, Balance sheets of 2017-20 showing the

amount invested in funicular project and Minutes of meetings of 30.12.2020 stating 90% work had been completed since then. All these evidences indicate that the construction of funicular ropeway project has been started much before obtaining Environment Clearance and in fact completed.

62. The contents of para 53 are denied to the extent the same are inconsistent with the considered stand of the Applicant herein. It has been submitted by the Applicant in foregoing paragraphs of this rejoinder that the present application is maintainable before this Hon'ble Tribunal.
63. The contents of paras 54 and 55 are denied to the extent the same are inconsistent with the considered stand of the Applicant herein. It is submitted that the funicular ropeway project also requires the EC as has been confirmed by Respondent No. 1 in their reply affidavit.
64. The contents of paras 56 to 65 are denied to the extent the same are inconsistent with the considered stand of the Applicant herein. It is submitted that whether it is mandatory for Respondent No. 4 to obtain Environment Clearance for the said project has to be decided by the Respondent No. 1. It is pertinent to mention herein that the Respondent No. 1 in the reply affidavit has specifically brought forward the fact that the said project requires a previous Environment Clearance being covered under Item 7(g) of the EIA Notification. It is submitted that Respondent No. 4 has sought for the query from Ropeway Advisory

Board of Public Works Department (PWD) regarding the coverage of funicular project under aerial ropeway only on 27.10.2019 which is much after commencement of project.

Contrary to the submission of Respondent No. 4, all other funicular ropeway projects under PWD Maharashtra including Saptashringi Gad, Village Kalwan, Nashik and Hajimalang Gad Dargah, Village Wadi, Thane have obtained Environmental Clearance. It has been categorically mentioned in their Environment Clearance that the said funicular ropeway projects fall under the Category 'B' 7(g) of EIA Notification, 2006. It is further submitted that the Respondent No. 4 has itself applied for Environment Clearance vide application dated 25.09.2019 and went for public hearing on 30.12.2020. Respondent No. 4 in the said Application have themselves admitted that the project is covered under Item 7(g) of EIA Notification, 2006, and as such requires Environment Clearance. In fact, on 21st March, 2021 the respondent no. 4 has made its final application for grant of EC in terms of the EIA Notification, 2006 as annexed to the rejoinder of the applicant to the opposition of the respondent no. 1.

It is noteworthy to point out that the said application for obtaining Environment Clearance by Respondent No. 4 has been delisted by Respondent No.1. Therefore, it is an afterthought of the Respondent No.4 to contend before this Hon'ble Tribunal that the said project does not require Environment Clearance. The Respondent No. 4

conveniently managed to surpass the said obligation by sending letter dated 04.10.2021 to the Respondent No. 1 thereby requesting the Respondent No. 1 to declare that the pending application of the Petitioner cannot be entertained for want of jurisdiction on the pretext that the said project is not covered under EIA Notification.

Such conduct of Respondent No. 4 shows bad faith on their part as when their application has been delisted by Respondent No. 1, Respondent No. 4 is trying to surpass its obligation by stating that their project does not fall under the purview of EIA Notification.

65. The contents of para 66 are denied to the extent the same are inconsistent with the considered stand of the Applicant herein. The Respondent No. 4 has obtained the Consent to establish from MPCB only on 08.07.2020 i.e., much after the commencement of project. Furthermore, it is submitted that the Consent to establish is granted by MPCB was subject to certain conditions which includes "*PP shall not take any effective steps prior to obtaining EC...*". The said clause 10 in the consent to establish granted to the Respondent No. 4 further buttress the submission of the Applicant that the Respondent No. 4 was obligated to obtain Environment Clearance.

66. The contents of paras 67 are matter of record and hence do not merit any reply.

67. The contents of paras 68 to 69 are denied to the extent the same are inconsistent with the considered stand of the Applicant herein. It is

submitted that the submissions in foregoing paragraphs of the present rejoinder may be read as reply to this paragraph.

68. The contents of paras 70 to 72 are matter of record and hence do not merit any reply.
69. That the contents of para 73 to 77 do not merit any reply as this Hon'ble Court has vacated the status quo vide order dated 08.10.2021. However, it is denied that there exists prima facie case in favour of Respondent No. 4 as prima facie from the reply affidavit of Respondent No. 1 it is clear that the said project falls under S. No. 7(g) of EIA Notification and that the project has been completed by the respondent no. 4 without obtaining any EC. As such, it is not at all the case of Respondent No 4 that EC has been obtained before commencement of the funicular ropeway project.

It is submitted that the balance of convenience may also be decided on the basis of harm being caused to the environment.

70. The contents of paras 78 are denied. Respondent No. 4 itself is committing wrong and acting in gross violation of Environmental norms but is praying before this Hon'ble Tribunal to dismiss the Application by imposing exemplary costs on Applicant. It is submitted that the Applicant has brought forward the mischief of Respondent No. 4 so that the same may be looked into by this Hon'ble Tribunal and severe penal consequences may be thrust upon the respondent no. 4 for the wilful violations of the environmental laws.

71. In light of the submissions made above, the opposition filed by the respondent no. 4 may not be gone into as being baseless, harassive, vexatious and demeaning to the law of the land and it would set a dangerous precedent if such illegal actions of the Respondent no. 4 are not checked by this Hon'ble Tribunal and the Application preferred by the Applicant herein may be allowed.

THROUGH



(NITESH RANJAN/ UTKARSHA SHARMA)

Advocates for the Applicant
Flat No. 1302, Supreme Tower,
Sector-99, Noida-201301
Enrollment No.: D/1336/2014
Mob. : 9999072726

Email: advniteshranjan@gmail.com

Filed On: 08.11.2021

New Delhi



2. That the said Rejoinder has been drafted under my instructions and I have gone through the contents of the same.

3. That the contents of the accompanying Rejoinder are true and correct to the best of my knowledge and belief and nothing material has been concealed there from and the prayers thereof are my humble submissions before this Hon'ble Tribunal.

4. That the statements contained in the aforesaid paragraphs are true to my knowledge and belief.

Shivaji N. Dhanage
DEPONENT

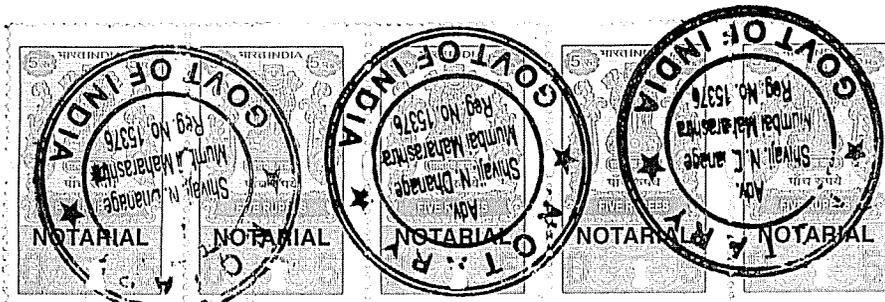
Advocate for the Applicant

VERIFICATION

Verified on this the 8th day of November, 2021 at Mumbai that the contents of the above affidavit are true and correct to the best of my knowledge and belief and no part of it is false and nothing material has been concealed therefrom.

Shivaji N. Dhanage
DEPONENT

Advocate for the Applicant



BEFORE ME

Shivaji N. Dhanage
Adv. Shivaji N. Dhanage
Notary, Govt of India
Regd. No. 15376 MUMBAI (MS)
404-405, 4th Floor, Davar House,
197/199, Near Central Camera Bldg.,
D.N. Road, Fort, Mumbai - 400001.

NOTED & REGISTERED

Page No. 98 Sr. No. 793
Dated. 8 OCT 2021

Paryavaran Bhawan,
CGO Complex, Lodhi Road,
New Delhi – 110003.

Dated, the 21st May, 2008

Sub: Environmental clearance for funicular ropeway at Saptashringi Gad., Village Kalwan, District Nashik, Maharashtra by M/s Public Works Department - regarding.

Reference is invited to the letters No.PB/100/2008, dated 6.2.2008 and No.PB/2008, dated 31.3.2008 from Executive Engineer, Tribal Public Works Divisions, Kalwan regarding the subject mentioned above.

2. The proposal is for installation of funicular trolley system on elevated track with approach road at Saptashringi gad, Village Satashringi, Tah. – Kalwan, District Nashik, Maharashtra. Nanduri village is situated at the foot of the Saptashringi Gad. The present route to the temple has 470 steps, which are very steep, damaged and poorly maintained. Hence, a ropeway is proposed.

3. Double reversible funicular ropeway will have with two cars circulating on a single rail track with a passing loop (80m) at the centre of the track. Along the track, the haul rope is supported by isolated line sheaves. There will be a STP at the lower station of adequate capacity and conventional septic tank and soak pit facility at the upper station. Green belt development at both the stations for proper environment ambience is proposed. Total land required for the project is 1.1280 ha.

4. The project falls under Category 'B' 7(g) of Environmental Impact Assessment Notification, 2006 and was considered in the Expert Committee meeting held on 27th and 28th February, 2008 and has recommended. Accordingly, the proposal has been examined in the Ministry of Environment & Forests and clearance under Environmental Impact Assessment Notification, 2006 is hereby accorded subject to effective implementation of the following conditions:-

(A) Specific Conditions:

- (i) The project proponent shall implement all the measures that have been suggested by them in their clarification letter dated 31.3.2008 provided to the Ministry.
- (ii) As forest area of 4 ha is proposed to be acquired for the project, separate clearance under Forest (Conservation) Act, 1980 shall be obtained.
- (iii) No solid wastes/effluents shall be discharged into the forest area.
- (iv) Due to the project there shall be no commercial activities such as shops and other facilities in the area which will spoil the pristine nature of the hill.
- (v) All requisite safety measures stipulated for ropeway shall be strictly adhered to.
- (vi) The ropeway project shall not abstract/pass through the public access area.
- (vii) It shall be ensured that adequate parking facilities for the tourist is provided. There shall be no spillage of vehicles of the tourists coming for the ropeway on the road.

(viii) It shall be ensured that toilets which are proposed to be constructed shall have proper treatment facilities such as STPs.

(B) General Conditions:

(i) Appropriate measures must be taken while undertaking digging activities to avoid any likely degradation of water quality.

(ii) Borrow sites for earth, quarry sites for construction must be identified keeping in view the following:

(a) No excavation or dumping on private property is carried out without written consent of the owner. The solid waste generated shall be safely disposed of or used in the project itself.

) No excavation or dumping shall be allowed on wetlands, forest areas or other ecologically valuable or sensitive locations.

) Excavation work shall be done in consultation with the Soil Conservation and Watershed Development Agencies working in the area; and

(d) Construction spoils including bituminous material and other hazardous materials must not be allowed to contaminate water courses and the dump sites for such materials must be secured so that they shall not leach into the ground water.

(iii) The construction material shall be obtained only from approved quarries. In case new quarries are to be opened, specific approvals from the competent authority shall be obtained in this regard.

(iv) Adequate precautions shall be taken during transportation of the construction material so that it does not affect the environment adversely.

(v) Borrow pits and other scars created during the construction shall be properly levelled.

(vi) The project-affected people, if any, shall be adequately rehabilitated and the details in this regard shall be furnished to the Ministry.

(vii) Adequate financial provision must be made in the project to implement the aforesaid safeguards.

(viii) Adequate environmental safeguards shall be undertaken to minimize the input due to transportation of construction material from the quarries. The quarries shall be rehabilitated.

(ix) Full support shall be extended to the officers of this Ministry/Regional Office at Bhopal by the project proponents during their inspection of the project for monitoring purposes by furnishing full details and action plan including action taken reports in respect of mitigative measures and other environmental protection activities.

(x) A six-Monthly monitoring report shall be submitted to the Regional Office of this Ministry at Bhopal regarding the implementation of the stipulated conditions.

(xi) The Ministry or any other competent authority may stipulate any other conditions or environmental safeguards, subsequently, if deemed necessary, which shall be complied with.

(xii) The Ministry reserves the right to revoke this clearance if any of the conditions stipulated are not complied with to the satisfaction of the Ministry.

(xiii) In the event of a change in project profile or change in the implementation agency, a fresh reference shall be made to the Ministry of Environment & Forests.

(xiv) The project proponents shall inform the Regional office as well as the Ministry, the date of financial closure and final approval of the project by the concerned authorities and the date of start of land development work.

(xv) A copy of the clearance letter will be marked to concerned Panchayat/local NGO, if any, from whom any suggestion/representation has been received while processing the proposal.

(xvi) State Pollution Control Board shall display a copy of the clearance letter at the Regional Office, District Industries Centre and Collector's Office/Tehsildar's office for 30 days.

(xvii) Any appeal against this environmental clearance shall lie with the National Environment Appellate Authority, if preferred, within a period of 30 days as prescribed under Section 11 of the National Environment Appellate Act, 1997.

(xviii) The project proponent shall advertise at least in two local newspapers widely circulated in the region around the project., one of which shall be in the vernacular language of the locality concerned, informing that the project has been accorded environmental clearance and copies of clearance letters are available with the State Pollution Control Board and may also be seen at Website of the Ministry of Environment & Forests at <http://www.envfor.nic.in>. The advertisement shall be made within 7 days from the date of issue of the clearance letter and a copy of the same shall be forwarded to the Regional Office of this Ministry at Bhopal.

5. These stipulations would be enforced among others under the provisions of Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, the Environment (Protection) Act, 1986, the Public Liability (Insurance) Act, 1991 and EIA Notification 1994 including the amendments and rules made thereafter.

Sd/-
(Dr. A. Senthil Vel)

Additional Director

To

Executive Engineer,
Public Works Department,
Thane Circle, Government of Maharashtra,
District Thane, Maharashtra-400601.

Copy for necessary action to:-

1. Chief Conservator of Forests, Ministry of Environment and Forests, Regional Office, Western Region, "Kendriya Paryavaran Bhavan", Link Road No.3, Ravishankar Road, Bhopal -462016 (M.P.).
2. Member Secretary, Maharashtra State Pollution Control Board, Kalpataru Point, 3rd and 4th Floor, Sion Matunga Scheme Road No.8, Opposite Cine Planet Cinema, Near Sion Circle, Sion (East), Mumbai - 400022.
3. Chairman, Maharashtra State Coastal Zone Management Authority, & Principal Secretary, Environment Department, Mantralaya, Mumbai-400032.
4. Member Secretary, Maharashtra State Coastal Zone Management Authority & Deputy Secretary, Mantralaya, New Administrative Building, 15th Floor, Madam Cama Marg, Mumbai - 400032.
5. The Chairman, Central Pollution Control Board, Parivesh Bhavan, CBD-cum- Office Complex, East Arjun Nagar, Delhi -110032.
6. Director (EI), Ministry of Environment & Forests.
7. The Regional Office Cell, MoEF.

- 8. Guard File
- 9. Monitoring File

Sd/-
(Dr. A. Senthil Vel)
Additional Director



//TRUE COPY//

No.10-141/2007-IA-III
Government of India
Ministry of Environment and Forests
(IA-III Division)

Paryavaran Bhawan,
CGO Complex, Lodhi Road,
New Delhi - 110003.

Dated, the 10th March, 2008

Sub: Environmental clearance for funicular trolley system on elevated track with approach road at Hajimalang Gad Dargah, Village Wadi, Tah.-Ambemath, District Thane by M/s Public Works Department - regarding.

Reference is invited to the letters No.2747, dated 18.4.2007 and No.1047, dated 5.2.2008 from Executive Engineer, Thane Construction Division, Public Works Department regarding the subject mentioned above.

2. The proposal is for installation of funicular trolley system on elevated track with approach road at Hajimalang Gad Dargah, Village Wadi, Tah.-Ambemath, District Thane by M/s Public Works Department. Haji Malang Dargah is on top of a hill situated near village Wadi, Tal. - Ambemath, District Thane of Maharashtra State. The Dargah is located at about 17 kms by road from Kalyan (a suburb of Mumbai). The proposed funicular trolley system will be located in Survey No./134 and 211 in parts of village Wadi. The area required for the trolley along with the track will be 1.174ha, the length of the track will be 1174m and the width of the track will be 10m including the area left on both the sides as a walkway and safety measures to avoid accidental situations. The area proposed for the lower terminal is approximately 500m away from the steps. The area proposed for the lower terminal will be 1.391 ha. The lower terminal will be provided with a booking office, waiting room, lobby, a shed for the security of trolley, toilets, small shops of the worship material, a small restaurant, parking facility for 300 vehicles and small garden. The lower terminal will be a simple roof construction with walls to protect trolley cars and passengers from weather and support structure to the trolley car's boarding and de-boarding arrangement. For the treatment and disposal of the domestic effluent generated at the toilets of lower terminal septic tanks and STP will be provided. The garbage bins will be provided collection and scientific disposal of the domestic waste of the lower terminal.

3. The project falls under Category 'B' 7(g) of Environmental Impact Assessment Notification, 2006 and was considered in the Expert Committee meeting held on 23rd, 24th and 25th January, 2008 and has recommended. Public hearing has been carried out for the project on 21.12.2007. Accordingly, the proposal has been examined in the Ministry of Environment & Forests and clearance under Environmental Impact Assessment Notification, 2006 is hereby accorded subject to effective implementation of the following conditions:-

(A) Specific Conditions:

- (i) The project proponent shall implement all the measures that have been suggested by them in their clarification letter dated 5.2.2008 provided to the Ministry.
- (ii) No solid wastes/effluents shall be discharged into the forest area.
- (iii) Due to the project there shall be no commercial activities such as shops and other facilities in the area which will spoil the pristine nature of the hill.
- (iv) All requisite safety measures stipulated for ropeway shall be strictly adhered to.
- (v) The ropeway project shall not abstract/pass through the public access area.
- (vi) It shall be ensured that adequate parking facilities for the tourist is provided. There shall be no spillage of vehicles of the tourists coming for the ropeway on the road.

(vii) It shall be ensured that toilets which are proposed to be constructed shall have proper treatment facilities such as STPs.

(B) General Conditions:

- (i) Appropriate measures must be taken while undertaking digging activities to avoid any likely degradation of water quality.
- (ii) Borrow sites for earth, quarry sites for construction must be identified keeping in view the following:
 - (a) No excavation or dumping on private property is carried out without written consent of the owner. The solid waste generated shall be safely disposed of or used in the project itself.
 - (b) No excavation or dumping shall be allowed on wetlands, forest areas or other ecologically valuable or sensitive locations.
 - (c) Excavation work shall be done in consultation with the Soil Conservation and Watershed Development Agencies working in the area; and
 - (d) Construction spoils including bituminous material and other hazardous materials must not be allowed to contaminate water courses and the dump sites for such materials must be secured so that they shall not leach into the ground water.
- (iii) The construction material shall be obtained only from approved quarries. In case new quarries are to be opened, specific approvals from the competent authority shall be obtained in this regard.
- (iv) Adequate precautions shall be taken during transportation of the construction material so that it does not affect the environment adversely.
- (v) Borrow pits and other scars created during the construction shall be properly levelled.
- (vi) The project-affected people, if any, shall be adequately rehabilitated and the details in this regard shall be furnished to the Ministry.
- (vii) Adequate financial provision must be made in the project to implement the aforesaid safeguards.
- (viii) Adequate environmental safeguards shall be undertaken to minimize the input due to transportation of construction material from the quarries. The quarries shall be rehabilitated.
- (ix) Full support shall be extended to the officers of this Ministry/Regional Office at Bhopal by the project proponents during their inspection of the project for monitoring purposes by furnishing full details and action plan including action taken reports in respect of mitigative measures and other environmental protection activities.
- (x) A six-Monthly monitoring report shall be submitted to the Regional Office of this Ministry at Bhopal regarding the implementation of the stipulated conditions.
- (xi) The Ministry or any other competent authority may stipulate any other conditions or environmental safeguards, subsequently, if deemed necessary, which shall be complied with.
- (xii) The Ministry reserves the right to revoke this clearance if any of the conditions stipulated are not complied with to the satisfaction of the Ministry.
- (xiii) In the event of a change in project profile or change in the implementation agency, a fresh reference shall be made to the Ministry of Environment & Forests.

(xiv) The project proponents shall inform the Regional office as well as the Ministry, the date of financial closure and final approval of the project by the concerned authorities and the date of start of land development work.

(xv) A copy of the clearance letter will be marked to concerned Panchayat/local NGO, if any, from whom any suggestion/representation has been received while processing the proposal.

(xvi) State Pollution Control Board shall display a copy of the clearance letter at the Regional Office, District Industries Centre and Collector's Office/Tehsildar's office for 30 days.

(xvii) The project proponent shall advertise at least in two local newspapers widely circulated in the region around the project, one of which shall be in the vernacular language of the locality concerned, informing that the project has been accorded environmental clearance and copies of clearance letters are available with the State Pollution Control Board and may also be seen at Website of the Ministry of Environment & Forests at <http://www.envfor.nic.in>. The advertisement shall be made within 7 days from the date of issue of the clearance letter and a copy of the same shall be forwarded to the Regional Office of this Ministry at Bhopal.

5. These stipulations would be enforced among others under the provisions of Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981, the Environment (Protection) Act, 1986, the Public Liability (Insurance) Act, 1991 and EIA Notification 1994 including the amendments and rules made thereafter.

(Dr. A. Senthil Vel)
Additional Director

To

Executive Engineer,
Public Works Department,
Thane Circle, Government of Maharashtra,
District Thane, Maharashtra-400601.

Copy for necessary action to:-

1. Chief Conservator of Forests, Ministry of Environment and Forests, Regional Office, Western Region, "Kendriya Paryavaran Bhavan", Link Road No.3, Ravishankar Road, Bhopal-462016 (M.P.).
2. Member Secretary, Maharashtra State Pollution Control Board, Kalpataru Point, 3rd and 4th Floor, Sion Matunga Scheme Road No.8, Opposite Cine Planet Cinema, Near Sion Circle, Sion (East), Mumbai - 400022.
3. Chairman, Maharashtra State Coastal Zone Management Authority, & Principal Secretary, Environment Department, Mantralaya, Mumbai-400032.
4. Member Secretary, Maharashtra State Coastal Zone Management Authority & Deputy Secretary, Mantralaya, New Administrative Building, 15th Floor, Madam Cama Marg, Mumbai - 400032.
5. The Chairman, Central Pollution Control Board, Parivesh Bhavan, CBD-cum- Office Complex, East Arjun Nagar, Delhi-110032.
6. Director (EI), Ministry of Environment & Forests.
7. The Regional Office Cell, MoEF.
8. Guard File
9. Monitoring File

(Dr. A. Senthil Vel)
Additional Director

//TRUE COPY//

31st December, 2020

To,

1. The Chairman,
Maharashtra Pollution Control Board,
Kalpataru Point, 3rd & 4th Floor,
Sion-Matunga Scheme Road No.8,
Opp. Cine Planet Cinema,
Near Sion Circle,
Sion (East), Mumbai 400 022.
2. Mr. Ashok Shingare,
Member Secretary,
Maharashtra Pollution Control Board,
Kalpataru Point, 3rd & 4th Floor,
Sion-Matunga Scheme Road No.8,
Opp. Cine Planet Cinema,
Near Sion Circle,
Sion (East), Mumbai 400 022.

Sirs,

Sub: Construction of Jivdani Passenger Funicular System (Ropeway) at Shree Jivdani Devi Sansthan, Virar (East), District: Palghar.

It has come to my notice that Jivdani Passenger Funicular System (Ropeway) at Shree Jivdani Devi Sansthan, Virar (East), District: Palghar was constructed on forest land which falls in Item 7(g) of the Schedule of the EIA Notification dated 14th September, 2006 by M/s. Yashita Automotive Engineering Pvt. Ltd. without getting any necessary environmental clearance. The construction was carried out in willful disregard of the Environmental Laws. The land used and environmental damage caused are exponentially high.

It appears that EC was applied for on 30th September, 2019 after making substantial progress of construction work and no EC has been granted till date. However, the construction is complete as on date.

In these circumstances, I filed an Application before Hon'ble National Green Tribunal, Principal Bench at New Delhi being O.A. No.100/2020 (WZ). The Hon'ble Tribunal has been pleased to pass an Order on 24th December, 2020 and posted the matter for further consideration on 12th March, 2021 after directing the MoEF&CC to furnish a report in this regard. The Hon'ble NGT will adjudicate the matter upon receiving the report.

LAW CHAMBERS OF SAMUDRALA

2, Rewa Chambers, 31 New Marine Lines, Mumbai 400 020
Tel: 91-22-22090909, Telefax: 91-22-22080404, Cell: 91-9820340180
E-mail: ussamudrala@gmail.com / samudrala_udaya@rediffmail.com

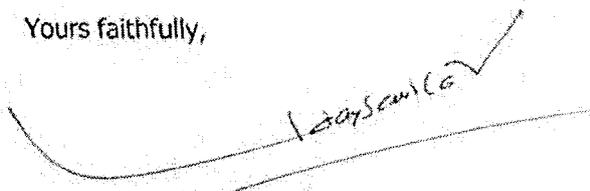
Hence, it is requested that the process of EC be stayed and remained in abeyance till the time the said Application is decided finally by the Hon'ble NGT after receiving the report of MoEF&CC.

A copy of the said Order is annexed hereto for your ready reference. This is for your kind information.

The said proceeding was reported in an article in the Business World, a copy of which has also been enclosed herein.

Thanking you,

Yours faithfully,


Uday Sankar Samudrala
Advocate, High Court Bombay

Encls: As stated above.

REPRESENTATION BEFORE MAHARASHTRA POLLUTION
CONTROL BOARD IN RESPECT OF PROPOSED JIVDANI
PASSENGER FUNICULAR SYSTEM (ROPEWAY)

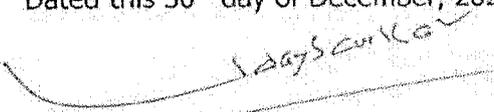
1. The project involves huge scale destruction of nature and forest land.
2. Blatant violations have been carried out in willful disregard of the Environmental Laws.
3. The project falls within Item 7(g) of the Schedule of EIA Notification, 2006.
4. The project does not have any environmental clearance.
5. The land used and environmental damage caused are exponential higher.
6. It appears that Sri Jivdani Devi Sansthan applied for environmental clearance on 30th September, 2019, after substantial progress was made to the Funicular System (Ropeway).
7. Sri Jivdani Devi Sansthan applied for environmental clearance on 30th September, 2019 in terms of reference annexed with the Application and it was mentioned that the said clearance is for future projects. (The intention is *mala fide*).
8. It is pertinent to mention that Sri Jivdani Devi Sansthan applied for environmental clearance after initiation of the project and the present public hearing is being held after the project is almost complete.
9. Construction of Funicular System (Ropeway) is initiated without obtaining a prior environmental clearance.



10. There is a non-disclosure of construction already made in the Application for environmental clearance and it amounts to material suppression.

11. If the environmental clearance is now given and if the project is allowed to be completed, much damage shall be caused to the forest land and the environment.

Dated this 30th day of December, 2020.


Uday Sankar Samudrala
Advocate, High Court Bombay


//TRUE COPY//

3rd February, 2021

To,

1. The Secretary,
Ministry of Environment, Forest & Climate Change,
Government of India,
Indira Paryavaran Bhawan,
Jor Bagh Road,
New Delhi 110 003.
2. The Member Secretary,
Infrastructure and Miscellaneous Projects & CRZ Committee,
Ministry of Environment, Forest & Climate Change,
Government of India,
Indira Paryavaran Bhawan,
Jor Bagh Road,
New Delhi 110 003.
3. Deputy Conservator of Forest (Central),
Ministry of Environment, Forest & Climate Change,
Government of India,
Regional Office, Western Region,
Kendriya Paryavaran Bhawan,
Link Road No.3,
E-5, Ravishankar Prasad Road,
Bhopal 462 016.
4. The Chairman,
Maharashtra Pollution Control Board,
Regional Office,
5th Floor, Office Complex Building,
Near Mulund Check Naka,
Wagale Estate,
Thane 400 604.

Sirs,

Sub: Construction of Jivdani Passenger Funicular System (Ropeway) at Shree Jivdani Devi Sansthan, Virar (East), District: Palghar.

Ref: Minutes of Public Hearing held on 30th December, 2020 in respect of proposed Jivdani Passenger Funicular System (Ropeway) at Shree Jivdani Devi Sansthan, Virar (East), District: Palghar duly circulated by the Regional Officer, Maharashtra Pollution Control Board.

I am the Applicant in Original Application No.100/2020 (WZ) filed before the National Green Tribunal, Principal Bench, New Delhi and I have to submit as under:

LAW CHAMBERS OF SAMUDRALA

2, Rewa Chambers, 31 New Marine Lines, Mumbai 400 020
Tel: 91-22-22090909, Telefax: 91-22-22080404, Cell: 91-9820340180
E-mail: ussamudrala@gmail.com / samudrala_udaya@rediffmail.com

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It has come to my notice that Jivdani Passenger Funicular System (Ropeway) at Shree Jivdani Devi Sansthan, Virar (East), District: Palghar was constructed on forest land which falls in Item 7(g) of the Schedule of the EIA Notification dated 14th September, 2006 by M/s. Yashita Automotive Engineering Pvt. Ltd. without getting any necessary environmental clearance. The construction was carried out in willful disregard of the Environmental Laws. The land used and environmental damage caused are exponentially high.

It appears that EC was applied for on 30th September, 2019 after making substantial progress of construction work and no EC has been granted till date. However, the construction is complete as on date. It is pertinent to mention here that the entire construction was done without obtaining any EC.

In these circumstances, I filed an Application before Hon'ble National Green Tribunal, Principal Bench at New Delhi being O.A. No.100/2020 (WZ). The Hon'ble Tribunal has been pleased to pass an Order on 24th December, 2020 and posted the matter for further consideration on 12th March, 2021 after directing the MoEF&CC to furnish a report in this regard. The Hon'ble NGT will adjudicate the matter upon receiving the report.

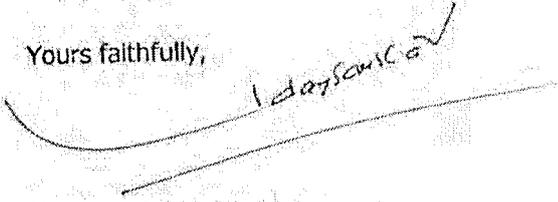
In the meanwhile the Maharashtra Pollution Control Board, Regional Office, Thane convened a Public Meeting on 30th December, 2020. Though I attended the meeting and took objection and I could not stay longer due to my pre-occupations and, therefore, I had submitted a Written Note which was sent vide my letter dated 31st December, 2020. Copy of my said letter along with the said Note is annexed hereto for your kind reference.

It is once again submitted that construction of the project cannot be commenced and completed without the grant of EC and in the present case the construction work was commenced and completed without any EC.

Therefore, appropriate and necessary may please be taken in this regards.

Thanking you,

Yours faithfully,


Udaya Sankar Samudrala
Advocate, High Court Bombay

Encls: As stated above.


//TRUE COPY//

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Utkarsha Sharma <utkarshas046@gmail.com>

Service Rejoinder in O.A.No.100/2020 Pending before NGT(WZ)

Utkarsha Sharma <utkarshas046@gmail.com>

Mon, Nov 8, 2021 at 3:21 PM

To: advgupte@gmail.com, jituenviro@gmail.com, jivdanidtt@gmail.com, joshi.vasant@gmail.com, lmc.moefcc@gov.in, nitinpatil02@gmail.com, pradeep_tendolkar@yahoo.co.in, pratikthakur@ptespl.com, "Principal Secretary Environment Dept. Govt. of Maharashtra" <psec.env@maharashtra.gov.in>, rahulkrishna.adv@gmail.com, rowz.bpl-mef@nic.in, salesakiran7717@gmail.com, secy-moef@nic.in, shard-sapra@nic.in, ssvallunekar@gmail.com, swaroop.karade@gmail.com, adv.rbmahabal@gmail.com, ms@mpcb.gov.in, pccfhoffngp@mahaforest.gov.in, ankushkotmire@gmail.com

Dear All,

Please find attached the Rejoinder to Affidavit in reply filed by Respondent No. 4 in O.A.No.100/2020 pending before NGT(WZ). Please acknowledge the receipt of the same.

Regards,
Utkarsha Sharma
Advocate
+91 9977238101

**FL_Rejoinder to reply filed by R-4.pdf**

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