

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH AT NEW DELHI

ORIGINAL APPLICATION NO. 620 OF 2024

IN THE MATTER OF

Bashir Ahmed Bhat & Ors.

...Applicants

Versus

National Highways Authority of India & Ors.

....Respondents

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PLACE: NEW DELHI

DATED: 29.3.2025

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL**PRINCIPAL BENCH AT NEW DELHI****ORIGINAL APPLICATION NO. 620 OF 2024****IN THE MATTER OF**

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**REJOINDER ON BEHALF OF THE APPLICANTS TO THE
REPLIES FILED BY THE RESPONDENTS****MOST RESPECTFULLY SHOWETH:-**

1. That present Application is filed before the Hon'ble Tribunal under Section 15 read with Section 20 of the National Green Tribunal Act, 2010 raising the issue of environmental damage in form of dust pollution and water logging which has led to flooding of the Orchards of the Applicants at village Wathoora, Tehsil, Chadoora in District Budgam in the Union Territory of Jammu and Kashmir. The Environmental damage has occurred due to the construction of Srinagar Ring Road passing through Village Wathoora, Tehsil, Chadoora in District Budgam in the Union Territory of Jammu where the Apple Orchards of the Applicants are situated. Infact, not only the Orchards/Agricultural fields of the Applicants but as per the information available with the Applicants a total of approximately 50-60 acres of Orchards/agricultural fields have been adversely impacted in the villages of Khanda Suthsoo, Ganji Bagh, Gowherpora, Wathora Bugam, Lalgam, Lal Gund, Gudsathoo, Wulnu, Ichgam and Dharmuna due to dust pollution and water logging in their respective

Orchards/Agricultural Fields. All this has led to a severe damage of the apple orchards and crops like oats and mustard. The Applicants also submit that the NHAI was duty bound to get done a thorough Environment Impact Assessment (EIA) done as required under Section 3 (2) (v) of the Environment Protection Act, 1986 read with Rule 5 sub-rule (3) clause (d) of the Environment Protection Rules, 1986. The EIA & EMP got done by the NHAI through its consultant Louis Berger Consulting Pvt. Ltd. in 2015 is superficial and deficient in taking care of the actual impact on the Environment as is evident from the facts of the present case. Hence there is violation of the provisions of Environment Protection Act, 1986 read with Rules the Environment Protection Rules, 1986 which is a Schedule I enactment and within the jurisdiction of this Hon'ble Tribunal.

2. That the contents of the Original Application may be read as part and parcel of this Rejoinder and the contents of the said Original Application are not been repeated herein for the sake of brevity. All the contents of the Replies filed by the Respondent NHAI and NKC Projects Pvt Ltd. are denied in toto unless they are specifically admitted herein.
3. The Applicants are filing this Rejoinder to the Reply filed by the Respondents. The following issues have been taken up by the Respondent in the Replies filed by them :-
 - i. There is no Environmental damage at all.
 - ii. There was no dust pollution or water logging

- iii. There was heavy rainfall in the valley in the month of April due to which the water level had raised upto the danger mark.
 - iv. Because of the heavy rainfall, there was flood like situations due to which the water from the flood channels had seeped to the residential areas leading to landslides and damage to the private properties. Moreover due to landslides, there was damage to several structures in District Budgam with a portion of an interior road, along with two boundary walls being washed away.
 - v. Respondent has adopted sufficient provisions for the cross-water drainage throughout the alignment of Ring Road.
 - vi. It is denied that the Environment Impact Assessment (EIA) and Environmental Mitigation Plan (EMP) study which was done by the Answering Respondent through its consultant Louis Berger Consulting Pvt Ltd, is superficial and deficient.
 - vii. The Applicants are not entitled to compensation as per Section 17 of the NGT Act, 2010.
 - viii. The Applicants are not entitled to compensation as per the Polluter Pays Principle which forms part of the NGT Act, 2010 as stipulated under Section 20 of the Act as in this case as there was no violation under the Environment Protection Act, 1986 read with Environment Protection Rules, 1986.
4. **In rejoinder to contention Nos. i to viii it is submitted that the same are wrong and denied.** It is reiterated that there has been environmental damage in form of dust pollution and water logging which has led to flooding of the Orchards of the

Applicants at village Wathoora, Tehsil, Chadoora in District Budgam in the Union Territory of Jammu and Kashmir. The Environmental damage has occurred due to the construction of Srinagar Ring Road passing through Village Wathoora, Tehsil, Chadoora in District Budgam in the Union Territory of Jammu where the Apple Orchards of the Applicants are situated. As a matter of fact there is no question of damage to the fields of the Applicant due to heavy rains as claimed by the Respondents. This fact also stand proved by the report of the J&K Pollution Control Committee which says at page 256 that course of the Water Channel may have caused flooding that was earlier diverted for construction of Bridge at Wathoora – Bugam Road near applicants orchard. The report reads :

“ The course of the water channel / nallah which was earlier diverted for construction of the bridge may have caused flooding in the surroundings. This water channel has now been restored to its original course and no flooding and water logging was observed at any place in the surrounding areas during the inspection “

5. That it is submitted that the report of J&K Pollution Control Committee is self-explanatory as the J&K PCC team has agreed that flooding has taken place. With regard to inspection the same was carried on 20.08.2024 and this was after almost 4 months of the flooding that had taken place. Due to the constant water retention in the apple orchards the fruit production was less than 50 % and it also caused lots of diseases in the trees like fungal infection / scab etc. The apples produced didn't even fetch Rs 50 kg in the market and this season also the Applicants don't expect to get good yield.
6. That it is submitted that the after the water came out / dried up due to sunlight, the area witnessed massive Dust Pollution from June, 2024 onwards. Pertinently the massive trucks carrying

the clay / soil from nearby Karewas has been unloaded around the Apple Orchard of the Applicants- Bashir Ahmad Bhat and others and this caused huge Dust Pollution in the area and even the apple /plum flowering has been impacted and production of fruit and other crops has come down drastically.

7. That the Clay was being excavated from Karewas without any proper permission as no permission has been mentioned or placed on record. The application submitted by NKC Projects Pvt Ltd dated 9.9.2024 wherein they have attached a letter of Sarpanch of village Gowharpora Chadoora which when translated states that the letter has been addressed to Deputy Commissioner Budgam Dated : 28.12.2021 and on this basis the NKC Projects Pvt Ltd was given permission to excavate the clay from the Karewas of Gowharpora, Kuzwera and adjoining areas which caused environmental disaster and dust pollution. The state land / kahcharai land is meant for grazing of animals / cattle and their rights were also snatched by the Sarpanch and some officers of Revenue Department. No democratic Process was done to allow the NKC Projects Pvt Ltd to lift the clay and muck in the Karewa land of Gowharpora village in block Chadoora District Budgam and other villages as no Gram Sabha meeting was conducted. The local adult population was kept in the dark. The Gram Sabha Resolution with Signature of the Panchayat Secretary isn't attached. The letter of Sarpanch addressed to DC Budgam reads :

“ That the state land / kahcharai land situated at village Gowharpora is in the form Slant (Labroo) and we are not able to make the use of said land for public benefits so the panchayat and respectable of panchayat halqa Gowharpora has amicably decided and agreed that the said state land be leveled so that the same could be utilized for the public use. As the construction of Srinagar Ring Road is under process

so it is requested that discussion with the contractors of National Highway be made , the earth filling required for the construction of Ring Road be excavated and transported from the Gowharpora and in this regard permission be granted, the amount against the same be utilized for the development of village Gowherpora, after levelling the said land the fencing around the same be constructed . The land be handed over to the govt Department so that it would be used for the general public. Copy to Tehsildar Chadoora for information and necessary action”

8. That on the basis of this letter the DC forwarded the case to SDM Chadoora who further asked Tehsildar , Naib Tehsildar and Patwari to allow the work. It is submitted that not even 5% of the total value of Clay has been deposited into Govt treasury or Panchayat Account

Very poor Air Quality

9. The response of J&K Pollution Control Committee -Page 256 at Point No 5 mentions about Air Quality. The same was sought and the quality of the air in the construction site near Apple Orchard of Bashir Ahmad Bhat and others is very bad. The report reads :

“ The air quality report reveals that PM10 PM2.5 is above the prescribed standards “

10. The said report is mentioned on page 257 which has been prepared by the Air Lab Team of J&K Pollution Control Committee. The air quality near orchard of Bashir Ahmad Bhat is very bad. PM 10 was recorded as 148.18 which is very dangerous as normal value is 0 to 50 or max 100. This report means the air quality is unhealthy for individuals and plants as well.
11. That the Report dated 10.09.2024 has been filed by the J&K PCC disclosing that a Joint Committee was constituted which had conducted the site inspection and had found as under:-

“That the Joint committee after conducting the site inspection furnished a inspection report along with its observations and recommendations vide his No. PCC/RDK/PS/2024/564-565 dated 30-08-2024 (copy enclosed as Annexure-2). The joint committee reported as under:-

1) Flooding may have been caused due to diversion of the course of water channel/ nallah, which has been restored now. No flooding/water logging observed during the inspection.

2) No developmental activity other than the ring road project observed in the proximity of the apple orchard. The orchard is approximately 25 meters away from the embankment of road.

3) Dust observed in the area is due to the unmetalled road, which could have adversely affected the orchards.

4) The air quality monitoring carried out by the Air Lab. J&K PCC, Kashmir reveals that PM10 and PM2.5 is above the prescribed standards.”

12. Therefore, the Applicants rely upon the report of the J&K PCC and re-iterate that there has been environmental damage in form of dust pollution and water logging which has led to flooding of the Orchards of the Applicants at village Wathoora, Tehsil, Chadoora in District Budgam in the Union Territory of Jammu and Kashmir. The Environmental damage has occurred due to the construction of Srinagar Ring Road passing through Village Wathoora, Tehsil, Chadoora in District Budgam in the Union Territory of Jammu where the Apple Orchards of the Applicants are situated.

13. That the Applicants re-iterate that the NHAI was duty bound to get done a thorough Environment Impact Assessment (EIA) done as required under Section 3 (2) (v) of the Environment Protection Act, 1986 read with Rule 5 sub-rule (3) clause (d) of the Environment Protection Rules, 1986. The EIA & EMP got done by the NHAI through its consultant Louis Berger

Consulting Pvt. Ltd. in 2015 is superficial and deficient in taking care of the actual impact on the Environment as is evident from the facts of the present case. Hence there is violation of the provisions of Environment Protection Act, 1986 read with Rules the Environment Protection Rules, 1986. There is poor impact assessment of natural drainage system that has led to massive impact on orchards leading to submergence of Orchard lands and damaging of crops.

14. It is submitted that this is a clear cut case of liability of NHAI and it's contractor NKC Projects Pvt. Ltd to pay compensation to the Applicants and other villagers living in neighboring villages for damage to their Orchards/agricultural fields on the basis of principles of No Fault Liability as per Section 17 of the NGT Act, 2010.
15. The NHAI and it's contractor NKC Projects Pvt. Ltd are also duty bound under Section 15 of the NGT Act, 2010 for restoration, restitution and remediation of the Orchards/agricultural fields of the Applicants and other villages/ area in their vicinity to it's original state and pay forthwith compensation to the Applicants.
16. As per Section 20 of the NGT Act, 2010 the principle of polluter pays is part of the NGT Act, 2010 and the Applicants rely on the said provision for imposition of a suitable compensation by this Hon'ble Tribunal. Therefore, the prayer in the Original Application may very kindly be allowed in view of the above mentioned facts and circumstances.

17. Any other or further relief may also be granted in favour of the Applicants.


BASHIR AHMED BHAT
Applicant No.1

THROUGH



SAURABH SHARMA

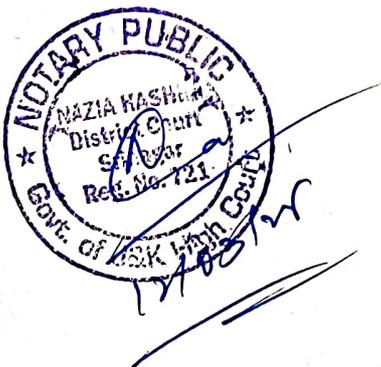


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(M): 9810983559



VERIFICATION: Verified today on this 12th March 25 at Srinagar, Union Territory of J&K do hereby verify and declare that the facts mentioned above are true and correct nothing material has been concealed therefrom and no part of it is false.




BASHIR AHMED BHAT
Applicant No.1



सत्यमेव जयते

INDIA NON JUDICIAL

Government of Jammu and Kashmir

₹10

e-Stamp

₹1010710210

Certificate No.	: IN-JK47788270722529X
Certificate Issued Date	: 12-Mar-2025 01:36 PM
Account Reference	: NEWIMPACC (SV)/ jk12541104/ SRINAGAR/ JK-SN
Unique Doc. Reference	: SUBIN-JKJK1254110482738789918696X
Purchased by	: Bashir Ahmad
Description of Document	: Article 4 Affidavit
Property Description	: Not Applicable
Consideration Price (Rs.)	: 0 (Zero)
First Party	: Bashir Ahmad
Second Party	: Not Applicable
Stamp Duty Paid By	: Bashir Ahmad
Stamp Duty Amount(Rs.)	: 10 (Ten only)



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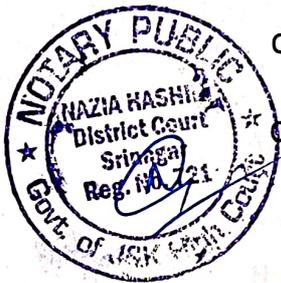
National Highways Authority of India & Ors.

....Respondents

AFFIDAVIT

I, Bashir Ahmed Bhat, son of Shri Ghulam Mohammad Bhat, aged about 72 years, resident of Alamdar Colony, Gopalpora Chadoora, District Budgam, Union Territory of Jammu & Kashmir, do hereby solemnly affirm and declare as under:-

1. That I am the Applicant No.1 in the abovementioned Original Application and therefore competent to swear the present Affidavit.
2. That the accompanying Rejoinder has been drafted by my counsel on my instructions and the contents of the same are true and correct to my knowledge.



[Signature]
DEPONENT

VERIFICATION: Verified today on this 12th March 25 at Srinagar, Union Territory of J&K do hereby verify and declare that the facts mentioned above are true and correct nothing material has been concealed therefrom and no part of it is false.

Certified that the above is true and correct as per the records on oath before me at Srinagar on this day of 12/03/25 by Muhammad Bhat who is identified by [Signature]
NAZIA HASHIM
NOTARY PUBLIC

[Signature]
DEPONENT



Saurabh Sharma <saurabh.envirolawyer@gmail.com>

Advance service of Rejoinder in OA No. 620/2024

1 message

Saurabh Sharma <saurabh.envirolawyer@gmail.com>

Sat, Mar 29, 2025 at 2:40 PM

To: "membersecy.pcb@jk.gov.in" <membersecy.pcb@jk.gov.in>, "info@nkcproject.com" <info@nkcproject.com>, "cs-jandk@nic.in" <cs-jandk@nic.in>, Madhu Sweta <madhu@singhania.in>, Astha Dhawan <astha@singhania.in>, Vijay Kumar <vijay3312@gmail.com>

Sir,

Please find attached advance service of Rejoinder filed by the Applicants in OA No. 620/2024.

Regards

--

Saurabh Sharma, Advocate
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**Rejoinder by Applicants.pdf**

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