

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL, PRINCIPAL BENCH, AT NEW
DELHI.

ORIGINAL APPLICATION NO. 543 OF 2023

IN THE MATTER OF:

ROHIT THAKRAN

.....APPLICANT

VERSUS

STATE OF HARYANA & ORS.

.... RESPONDENTS

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THROUGH

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DATE-23.05.2024

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**REJOINDER ON BEHALF OF THE APPLICANT TO THE REPLY TO THE ORIGINAL
APPLICATION FILED BY RESPONDENT NO.2 I.E. HARYANA SHEHRI VIKAS
PRADHIKARAN.**

MOST RESPECTFULLY SHOWETH:

1. That the present Original Application has been filed by the Applicant herein for directions to the respondents to restore the water bodies which existed in Khasra No. 24 and 28 in village Adampur Gram Panchayat Jharsa, Gurugram Haryana and to stop all construction activities in the land of said water bodies and to plant the trees in lieu of trees which have been illegally cut from the same. That the present matter is pending adjudication before this Hon'ble Tribunal and is now listed for final hearing on 24.05.2024.
2. That before adverting to the contents of the reply filed by the Respondent No.2, there are certain facts which the Applicant would like to place before this Hon'ble Tribunal, as under:

PRELIMINARY SUBMISSIONS:

1. **THE ORIGINAL APPLICATION FILED BY THE APPLICANT IS NOT BARRED BY
LIMITATION:**

- a. That the Respondents have raised issues qua the present Original Application being barred by limitation. It is imperative to mention herein that the Applicant got to know about the entire scenario when in the year 2021, the Respondent issued public notice vide its website <http://hsvphry.org.in> to auction the land bearing Khasra No. 28.
- b. That since October 2021 i.e. when the Applicant came to know about the illegal acts of the Respondent, the Applicant herein has been running from pillar to post to save the water bodies situated in both the Khasra No.s specially in Khasra No. 28. That at the first instance, the Applicant herein submitted a representation dated 04.10.2021 to the Administrator Gurugram (**Annexure-A/3 @ page 87-88 of the Original Application**). The Administrator Gurugram failed to respond to the representation, constrained by which the Applicant herein filed Original Application No. 388 of 2021 before the Hon'ble National Green Tribunal, Principal Bench, New Delhi praying for protection of water body existing at Khasra No. 24 and 28, village Adampur from being destroyed by the Respondent Authorities (**OA @ Annexure-A/4 @ Page 89-116 of the Original Application**). That vide order dated 07.01.2022, while disposing of the matter, the Hon'ble National Green Tribunal directed the District Magistrate, Gurugram, Haryana to look into the matter and take remedial action in accordance with the law. It is submitted that the Applicant vide the said order dated 07.01.2022 was given the liberty to put forward his version before the District Magistrate, Gurugram, Haryana. (**Order dated 07.01.2022 passed by the Hon'ble National Green Tribunal in Original Application No. 388 of 2021 @ Annexure-A/5 @ Page 117-118 of the Original Application**). That in furtherance of the order dated 07.01.2022 passed by the Hon'ble National Green Tribunal in Original Application No. 388 of 2021, the Applicant herein submitted an application/letter dated 09.02.2022 to the Deputy Commissioner, Gurugram stating the facts regarding illegal destruction of water bodies existing in Khasra

No. 24 and 28 and requested for action against the Respondent Authorities. That the Deputy Commissioner, Gurugram vide letter dated 07.03.2022 inter-alia stated that according to Revenue Records gair mumkin jhohad i.e. reservoir exists in Khasra No. 24 and 28 at village Adampur, Jharsa. That vide the said letter the Administrator, Haryana Shehri Vikas Pradhikaran, Gurugram was requested to coordinate with the Chief Administrator, Haryana Shehri Vikas Pradhikaran and comply with the orders of the Hon'ble National Green Tribunal. **(Letter dated 07.03.2022 @ Annexure-A/6 @ Page 119-120 of the Original Application)**. Despite the letter having been issued by the Deputy Commissioner, Gurugram in compliance with the orders of the Hon'ble National Green Tribunal, the officials of the Haryana Shehri Vikas Pradhikaran failed to look into the matter and take any remedial action. That since the Respondent Authorities failed to take any remedial measures in view of the order dated 07.01.2022 passed by this Hon'ble Tribunal, the Applicant herein filed an Execution Application No. 10/2022 in O.A. No. 388/2021. That vide order dated 29.04.2022 the Hon'ble National Green Tribunal, Principal Bench, New Delhi directed the Haryana Shahri Vikas Pradhikaran, Panchkula to take a decision on Khasra No. 24 and 28 and convey the same to the Applicant within one month. **(Execution Application No. 10/2022 in O.A. No. 388/2021 and order dated 29.04.2022 @ Annexure-A/7 @ Page 121-135 of the Original Application)**. That the Original Applicant as incorrectly advised had challenged the order dated 29.04.2022 passed by this Hon'ble Tribunal in Execution Application No.10/2022 in OA No. 388/2021 by way of Civil Appeal bearing Diary No. 13652 of 2023, which the Hon'ble Supreme Court vide order dated 04.05.2023 was pleased to dismiss and thus the order dated 29.04.2022 passed by this Hon'ble Tribunal was upheld. **(Civil Appeal bearing Diary No. 13652 of 2023 and order dated 04.05.2023 passed by the Hon'ble Supreme Court @ Annexure-A/8 @ Page 136-173 of the Original Application)**. That despite the aforesaid directions of the Hon'ble National Green Tribunal no action was taken by the Respondents constrained

by which the Applicant submitted a representation dated 28.06.2022 to the Mayor, Gurugram to take appropriate action against the Haryana Shahri Vikas Pradhikaran for violating orders passed by the Hon'ble National Green Tribunal. **(Representation dated 28.06.2022 @ Annexure-A/9 @ Page 175-177 of the Original Application)**. That since no remedial action was undertaken by the Respondent Authorities, the Applicant herein filed M.A. No. 38 of 2022 in Execution Application No. 10 of 2022 in Original Application No. 388 of 2021 praying for imprisonment and imposition of exemplary fine upon the Respondents for violation of order passed by the Hon'ble National Green Tribunal. That the Hon'ble National Green Tribunal vide order dated 14.07.2022 dismissed M.A. No. 38 of 2022 on ground of maintainability. **(M.A. No. 38 of 2022 in Execution Application No. 10 of 2022 in Original Application No. 388 of 2021 and order dated 14.07.2022 @ Annexure-A/10 @ Page 178-183 of the Original Application)**. That the Applicant herein further sent representation dated 25.07.2022 to the Chief Administrator, Haryana Shahri Vikas Pradhikaran, Panchkula, representation dated 26.07.2022 to the Administrator, Haryana Urban Development Authority, Gurugram and representation dated 26.07.2022 to the Collector Gurugram, requesting them to take remedial actions in compliance of the orders dated 07.01.2022 and 29.04.2022 passed by this Hon'ble Tribunal in O.A. No. 388/2021 and Execution Application No. 10/2022 respectively. **(Representation dated 25.07.2022 to the Chief Administrator, Haryana Shahri Vikas Pradhikaran, Panchkula, representation dated 26.07.2022 to the Administrator, Haryana Urban Development Authority, Gurugram and representation dated 26.07.2022 to the Collector Gurugram @ Annexure-A/11 @ Page 184-193 of the Original Application)**. An application seeking information under the Right to Information Act 2005 was submitted by one of the residents of the village. That response dated 01.08.2022 was received from Haryana Shahri Vikas Pradhikaran, Gurugram stating that 18 number of residential plots are carved out in Khasra No. 28 and 22 number of residential plots, Ashiana Scheme

and R.B. Site are carved out in Khasra No. 24. **(Reply dated 01.08.2022 by Haryana Shahri Vikas Pradhikaran, Gurugram under the Right to Information Act 2005 @ Annexure-A/12 @ Page 194-195 of our OA).**

- c. That the perusal of the above would show that since October 2021, the Applicant herein has been trying his best to save the water bodies under question. That the Respondents themselves in the reply have admitted the fact that allotment of the plots was done in the year 2022-2023. **That hence, the cause of action has been continuing and the Original Application filed by the Applicant is not barred by limitation. That despite rigorous efforts of the Applicant herein, the water bodies existing in Khasra No. 24 and 28 village Adampur continue to be destroyed by the Respondents. The continuing cause of action would refer to the same act or transaction or series of such acts or transactions. The recurring cause of action has an element of fresh cause which by itself provides the applicant the right to sue.**
- d. It is in the humble submission of the Applicant herein that the road that is being claimed to having been laid down in the year 2014 for the purpose of calculating limitation period, was a non-concrete, non-metallic road and it was informed that a footpath was being made for the development of the pond similar to the one already existing in Khasra No.24. Copy of photograph depicting the footpath made in Khasra No. 24 is marked and annexed herewith as **Annexure-A**. That further the RTI response dated 09.05.2023 annexed by the Respondents @ Annexure-P3 of their intervening application, states that the road was only laid down in front of Plot No. 62-65 of Khasra No. 28 upto August 2014, meaning thereby that the non-concrete non-metallic roads were not laid down in the entire Khasra No. 28. However, it is imperative to mention herein that at that point of time, the Municipal Corporation ensured the gram panchayat of the village concerned that the nature of the land i.e. Khasra No. 24 and 28 will not be changed and that the water bodies existing on the land

will be preserved for use of local residents. That as ensured by the Municipal Corporation the water body existing at Khasra No. 24 was developed and when the non-metaled road was being laid down in the year 2014, all throughout the Applicant herein along with other villagers were under the impression that similar development of the pond existing at Khasra No. 28 was being carried out by the Municipal Corporation and hence the footpath was being made by the Municipal Corporation in Khasra No. 28. That it was only in the year 2021 when the public notice for auction was issued by the Respondent No.2, that the Applicant herein got to know that plots are being carved out in Khasra No. 28 for the purpose of developing a Residential Colony. It is imperative to mention herein that proper roads have been laid down in Khasra No. 28 only in the year 2022 and copy of photographs of the same are marked and annexed herewith as **Annexure-B(Colly)**. That contrary to the claims made by the HSVP the sewage lines were also laid down only in July 2023 and the photographs of the same have already been annexed @ Annexure-A/18 @ page 222 of the Original Application filed by the Applicant herein.

- e. It is further contended that the Application involves 'substantial question, relating to environment' and first 'cause of action' challenging illegality of destroying the water bodies in Khasra No. 24 and 28, first arose when legality of such construction work came to the notice of the Applicant. It is in the wake of such 'subsequent event' that the Applicant raked up the dispute in question. Obviously, the cause of action 'first arose' for such a dispute when knowledge of excessive destruction was gained by the Applicant in the year 2021. That this Hon'ble Tribunal cannot overlook the material fact that 'first cause of action' in respect of present dispute arose when the auction notice was noticed by the Applicant and he made complaint to the concerned Authority. Reliance in this regard is placed upon *J. Mehta vs Union of India and Ors"* (M.A.Nos.507,509,644 and 649/2013, in Application No.88/2013) of the National Green Tribunal (Pune

Bench), where the hon'ble Tribunal considered the question of limitation in following way:

*"The cause of action is not restricted to 'in personam' but is an action available to any person in terms of Section 14 of the NGT Act. It empowers any person aggrieved to raise a substantial question relating to environment including enforcement of any legal right relating thereto. Every citizen is entitled to a clean and decent environment in terms of Article 21 of the Constitution and the term 'cause of action first arose' must be understood in that sense and context. **The applicant has been able to establish that he first came to know about the misuser and change of user, particularly with regard to adverse environmental impact, only in the middle of December, 2012 and immediately thereafter, he took steps retuning the authorities concerned to take action as per law but to no avail.** Then he filed the present application within the prescribed period of six months. The respondents have not been able to rebut successfully the factual matrix stated by the applicant. As already stated, they have withheld relevant facts and information from the Tribunal.*

*A cause of action is a bundle of facts which should give, in its composite form, right to a plaintiff against the defendant to approach a court or Tribunal for a legal remedy or redressed of his grievance. Thus, the existence of a legal remedy to the plaintiff is a sine qua non for an actionable cause of action. **In view of the above reasoning, we have no hesitation in concluding that the present application is not barred by time.**"*

- f. That in the matter titled as **Amit Maru vs. Secretary, MoEF and Ors. (MA 65/2014 in OA 13/2014) of the National Green Tribunal (Pune Bench)**, where the Hon'ble Tribunal considered the question of limitation in following way:

"We cannot overlook the material fact that 'first cause of action' in respect of present dispute arose when CRZ Notification's violation was noticed by the Applicant and he made complaint to the concerned Authority. It is important to note that though the MCZMA, is the Authority to take action in the matter on its own, yet failure to take such action by itself, would give rise to 'cause of action', because it is the breach of mandate under the Environment (Protection) Act, 1986, and the order issued thereunder by the MoEF, that will trigger cause of action."

That in the present case, when the Applicant came across the public auction notice in the year 2021, the Applicant herein submitted a representation dated 04.10.2021 to the Administrator Gurugram and since ever then, the Applicant has been running from post to pillars to save the water bodies existing in Khasra No. 24 and 28 but to no use. That non- action on part of the authorities concerned, despite orders of the National Green Tribunal in OA 388/2021, itself gives rise to 'cause of action'.

- g. That further reliance is placed on the judgment dated 05.12.2022 passed by this Hon'ble Tribunal in Appeal titled as **Chandni Chemicals Pvt. Ltd. vs. UPPCB (Appeal No. 14/2020)**, wherein this Hon'ble Tribunal very categorically held that:

"162. Therefore, the issue relating to 'environment' vis-a-vis 'reasonable time' or 'limitation' has to be considered in the backdrop of the fact that no one has any legal, constitutional or otherwise right to damage environment to dump

hazardous waste in an unscientific manner at any place so as to damage to environment as also adverse impact on the health of the people at large..... **The Statuary Regulators to supervise and regulate such activities are there but if they fail to discharge their obligation in an effective manner, the Courts can intervene and if thereafter, appropriate action is taken by such regulators, it cannot be said that such action is vitiated on account of delay or latches for the very reason that such action even if taken belatedly does not affect anybody's rights related to environment.**

.....

174. Continuing cause of action would refer to the same act or transaction or series of such acts or transactions. **The recurring cause of action would have an element of fresh cause which by itself would provide applicant the right to sue. It may have even be de hors the first cause of action or the first wrong by which the right to sue accrues. Commission of breach or infringement may give recurring and fresh cause of action with each of such infringement like infringement of a trademark. Every rejection of a right in law could be termed as a recurring cause of action.**

175. The principle that emerges from the above discussion is that the 'cause of action' satisfying the ingredients for an action which might arise subsequently to an earlier event give result in accrual of fresh right to sue and hence reckoning of fresh period of limitation. A recurring or continuous cause of action may give rise to a fresh cause of action resulting in

fresh accrual of right to sue. In such cases, a subsequent wrong or injury would be independent of the first wrong or injury and a subsequent, composite and complete cause of action would not be hit by the expression 'cause of action first arose' as it is independent accrual of right to sue. In other words, a recurring cause of action is a distinct and completed occurrence made of a fact or blend of composite facts giving rise to a fresh legal injury, fresh right to sue and triggering a fresh lease of limitation. It would not materially alter the character of the preposition that it has a reference to an event which had occurred earlier and was a complete cause of action in itself. In that sense, recurring cause of action which is complete in itself and satisfies the requisite ingredients would trigger a fresh period of limitation. To such composite and complete cause of action that has arisen subsequently, the phraseology of the 'cause of action first arose' would not effect in computing the period of limitation. The concept of cause of action first arose must essentially relate to the same event or series of events which have a direct linkage and arise from the same event. To put it simply, it would be act or series of acts which arise from the same event, may be at different stages. This expression would not de bar a composite and complete cause of action that has arisen subsequently."

2. **THE HON'BLE NATIONAL GREEN TRIBUNAL BEING AN EXPERT BODY CANNOT CLOSE ITS EYES TO THE DESTRUCTION CAUSED BY THE RESPONDENTS OF THE WATER BODIES EXISTING IN KHASRA NO. 24 AND 28.**

- a. That Environmental laws in India have come a long way from the early days of its inception in the landmark cases filed by M C Mehta, the Indian Council for Enviro-Legal Action and socially conscious citizens. **With the economy pacing towards double digit growth, the fragile environment is the direct casualty of this all out economic effort. With environmental degradation happening on a monumental scale and extending to the far corners of the country, the principle of delay defeats equity cannot be allowed as a tool to block civil action opposing the same. Since environmental violations happen in great secrecy often in collusion with authorities, the burden of discovering and proving the same falls on ordinary citizens who lack the machinery of the State to detect and prosecute offenders. Recognising these difficulties, the Indian Judiciary has indeed taken a welcome step in the right direction by taking cognizance of information given by ordinary citizens directly applying the precautionary and polluter pays principles to maximum effect.**
- b. That in the present matter, the Respondents have admitted before this Hon'ble Tribunal that there existed water bodies in Khasra No. 24 and 28. That when the Respondents themselves have admitted to the existence of the water bodies, this Hon'ble Tribunal cannot turn its back towards the cause of environment i.e. **destruction of water bodies, only on the ground of limitation. That this Hon'ble Tribunal has always come down heavily qua destruction of any naturally existing water body and the same is required to be done in the present matter as well.**
- c. That Hon'ble NGT was conceived as a complimentary specialized forum to deal with all environmental multi- disciplinary issues. The Hon'ble NGT has been given wide discretionary powers to *secure the ends of justice*. This power is coupled with the duty to be exercised for achieving the objectives. The intention understandably being to preserve and protect the environment and the matters connected thereto. The provisions of the NGT Act and the NGT Rules demonstrate that myriad roles are to be discharged by the NGT, as was

encapsulated in the Law Commission Report, the Preamble and the Statement of Objects and Reasons. That therefore, only if for the sake of arguments it is taken that this Hon'ble Tribunal is of the view that the present Original Application is barred by limitation, then in that case since it is an admitted fact that the water bodies in Khasra No. 24 and 28 have been destroyed by the Respondents, this Hon'ble National Green Tribunal ought to take suo motto cognizance of the issue in hand.

- d. That the Hon'ble Supreme Court in Civil Appeal titled as ***Municipal Corporation of Greater Mumbai vs. Ankita Sinha & Ors. (CA No. 12122 and 12123 of 2018)*** has in detail laid down the role and the powers of the Hon'ble National Green Tribunal:

"17.1 As can be seen, the Parliament intended to confer wide jurisdiction on the NGT so that it can deal with the multitude of issues relating to the environment which were being dealt with by the High Courts under Article 226 of the Constitution or by the Supreme Court under Article 32 of the Constitution. The Tribunal is also expected to proceed with such matters with the understanding that environment and environmental principles are part of Article 21 of the Constitution.

17.3 For the environmental forum, tasked with implementation of the statutes mentioned in Schedule I of the NGT Act, the concept of lis, would obviously be beyond the usual understanding in civil cases where there is a party (whether private or government) disturbing the environment and the other one (could be an individual, a body or the government itself), who has concern for the protection of environment. Therefore, the NGT is primarily concerned with protection of

the environment and also preservation of the natural resources. As the specialized forum, the NGT would be expected to take preventive action, besides settling and adjudicating disputes and pass orders on all environment related questions.

17.4 The NGT is not just an adjudicatory body but has to perform wider functions in the nature of prevention, remedy and amelioration.....

21.6.....The above would show that from the very inception, the role of the NGT was not simply adjudicatory in the nature of a lis but to perform equally vital roles which are preventative, ameliorative or remedial in nature. The functional capacity of the NGT was intended to leverage wide powers to do full justice in its environmental mandate.

24.5 The NGT is a Tribunal with sui generis characteristic, with the special and all-encompassing jurisdiction to protect the environment. Besides its adjudicatory role as an appellate authority, it is also conferred with the responsibility to discharge role of supervisory body and to decide substantial questions relating to the environment. The necessity of having a specialized body, with the expertise to handle multi-dimensional environmental issues allows for an all-encompassing framework for environmental justice. The technical expertise that may be required to address evolving environmental concerns would definitely require a flexible institutional mechanism for its effective exercise.

25.7 The duty to safeguard Article 21 rights cannot stand on a narrow compass of interpretation. Procedural provisions must be allowed to fall in step with the substantive rights that are invoked in the environmental domain, in larger public interest. The specialized forum is bestowed with the responsibility to ensure protection of the environment. To be effective in its domain, we need to ascribe to the NGT a public responsibility to initiate action when required, to protect the substantive right of a clean environment and the procedural law should not be obstructive in its application."

e. That further, the Hon'ble Supreme Court in the Civil Appeal titled as **Tapas Guha & Ors. vs. Union of India & Ors. (CA-4603/4604/2024)** has recently held that:

*"There was a complete abdication of adjudicatory duties by the NGT to verify the authenticity of the grievance of the appellants. **As an expert body which has been formed under a statute enacted by the Parliament, in the interest of the preservation of the environment, it was first and foremost the duty of the Tribunal to verify the authenticity of the grievance of the appellants.***

The Tribunal, however, simply dismissed the OA having come to the conclusion that no Environmental Clearance had been issued. If the Tribunal were to enquire into the matter even on a prima facie assessment, the facts which have emerged before this Court would have come on the record. The perfunctory dismissal of the case by the NGT not only reflects a lack of due diligence but also demonstrates a disregard for the gravity of the environmental concerns raised by the

appellants. This casual, if not callous, approach to adjudication not only undermines the integrity of the judicial process but also compromises the very purpose for which the NGT was established – to safeguard the environment, ensure sustainable development and facilitate the effective and expeditious disposal of cases related to the protection and conservation of the environment, forests, and other natural resources. Such negligence on the part of the Tribunal sets a concerning precedent, eroding public trust in the efficacy of environmental governance mechanisms."

That in the light of the aforementioned judgments passed by the Hon'ble Supreme Court of India, it is submitted that the Hon'ble National Green Tribunal in the virtue of it being a special body to deal with and protect the environment, ought to take into consideration the grievance of the Applicant and not simply dismiss the same on ground of limitation.

REJOINDER ON MERITS:

That the Applicant reiterates and relies upon the contents and averments made hereinabove and the same are not being repeated hereunder for the sake of brevity. Further, the contents of each of the paragraph of the reply herein below are deemed to be denied by the Applicant, except those specifically admitted.

1. That the contents of the corresponding paragraph needs no reply from the Applicant herein. That the contents of the preliminary submissions are reiterated and not repeated for the sake of brevity.
2. That the contents of the corresponding paragraph needs no reply from the Applicant herein. That the contents of the preliminary submissions are reiterated and not repeated for the sake of brevity.

3. That the contents of the corresponding paragraph are true and hence need no reply from the Applicant herein. That the contents of the preliminary submissions are reiterated and not repeated for the sake of brevity.

REJOINDER TO THE PRELIMINARY OBJECTIONS AND SUBMISSIONS:

- 4-16. That the contents of the corresponding paragraphs are wrong and hence denied. It is denied that the present Original Application filed by the Applicant herein is barred by limitation. It is denied that the applicant has falsely alleged that till year 2019 the water bodies existing in Khasra No. 24 and 28 were being used by the villagers as a source of drinking water for animals and birds and as a source of water supply for plants and trees for the surrounding forest area and said water bodies existing in Khasra No. 24 and 28 have been arbitrarily destroyed by uprooting trees and plants and filling up the land with dust, stones and garbage. It is denied that the present application is nothing but abuse of process of law by the applicant by presenting concocted facts and to safeguard his own personal and commercial interest in the grab of the present application. It is vehemently denied that the present applicant has not come before this Hon'ble Tribunal with clean hands. It is in the humble submission of the Applicant herein that the road that is being claimed to having been laid down in the year 2014 was a non-concrete, non-metallic road and it was told that a footpath was being made for the development of the pond similar to the one already existing in Khasra No.24. That further the RTI response dated 09.05.2023 annexed by the Respondents @ Annexure-P3 of their intervening application, states that the road was only laid down in front of Plot No. 62-65 of Khasra No. 28 upto August 2014, meaning thereby that the non-concrete non-metallic road was also not laid down in the entire Khasra No. 28. However, it is imperative to mention herein that at that point of time, the Municipal Corporation ensured the gram panchayat of the village concerned that the nature of the land i.e. Khasra No. 24 and 28 will not be

changed and that the water bodies existing on the land will be preserved for use of local residents. That as ensured by the Municipal Corporation the water body existing at Khasra No. 24 was developed and when the non-metalled road was being laid down in the year 2014, all throughout the Applicant herein along with other villagers were under the impression that similar development of the pond existing at Khasra No. 28 was being carried out by the Municipal Corporation and hence the footpath was being made by the Municipal Corporation in Khasra No. 28. That it was only in the year 2021 when the public notice for auction was issued by the Respondent No.2, that the Applicant herein got to know that plots are being carved out in Khasra No. 28 for the purpose of developing a Residential Colony. It is imperative to mention herein that proper roads have been laid down in Khasra No. 28 only in the year 2022. That the sewage lines were also laid down only in July 2023 and the photographs of the same have already been annexed @ Annexure-A/18 @ page 222 of the Original Application filed by the Applicant herein. That the cause of action in the present matter is continuing in nature as it was in the year 2021, that the Respondent No.2 issued a public notice for auctioning of the plots carved out in Khasra No. 28 and further it is an admitted fact that the allotment of the plots has been done only in the year 2022-2023. That since 2021 i.e. when the conversion of the ponds came to the knowledge of the Applicant herein, the Applicant herein has been running from pillar to post to save the ponds existing in Khasra No. 24 and 28 but to no use. **It is further contended that the Application involves 'substantial question, relating to environment' and first 'cause of action' challenging illegality of destroying the water bodies in Khasra No. 24 and 28, first arose when legality of such construction work came to the notice of the Applicant. It is in the wake of such 'subsequent event' that the Applicant raked up the dispute in question. Obviously, the cause of action 'first arose' for such a dispute when knowledge of excessive destruction was gained by the Applicant in the year 2021. That this**

Hon'ble Tribunal cannot overlook the material fact that 'first cause of action' in respect of present dispute arose when the auction notice was noticed by the Applicant and he made complaint to the concerned Authority. Reliance in this regard is placed upon **J. Mehta vs Union of India and Ors"** (M.A.Nos.507,509,644 and 649/2013, in Application No.88/2013) of the National Green Tribunal (Pune Bench), where the hon'ble Tribunal considered the question of limitation in following way:

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A cause of action is a bundle of facts which should give, in its composite form, right to a plaintiff against the defendant to approach a court or Tribunal for a legal remedy or redressed of his grievance. Thus, the existence of a legal remedy to the

plaintiff is a sine qua non for an actionable cause of action. In view of the above reasoning, we have no hesitation in concluding that the present application is not barred by time."

That in the matter titled as **Amit Maru vs. Secretary, MoEF and Ors. (MA 65/2014 in OA 13/2014) of the National Green Tribunal (Pune Bench)**, where the Hon'ble Tribunal considered the question of limitation in following way:

"We cannot overlook the material fact that 'first cause of action' in respect of present dispute arose when CRZ Notification's violation was noticed by the Applicant and he made complaint to the concerned Authority. It is important to note that though the MCZMA, is the Authority to take action in the matter on its own, yet failure to take such action by itself, would give rise to 'cause of action', because it is the breach of mandate under the Environment (Protection) Act, 1986, and the order issued thereunder by the MoEF, that will trigger cause of action."

That in the present case, when the Applicant came across the public auction notice in the year 2021, the Applicant herein submitted a representation dated 04.10.2021 to the Administrator Gurugram and since ever then, the Applicant has been running from post to pillars to save the water bodies existing in Khasra No. 24 and 28 but to no use. That non- action on part of the authorities concerned, despite orders of the National Green Tribunal in OA 388/2021, itself gives rise to 'cause of action'. That the judgment relied upon by the Respondent No. 2 in para 13 states that the allotment was made in the year 2006 and hence the matter was barred by limitation. However, in the present case it is an admitted fact that the allotment was done by the Respondent in

the year 2022-2023 with the last allotment being done on 29.08.2023 and the present Original Application was filed by the Applicant on 01.09.2023. Therefore, the present Original Application is within limitation.

That further reliance is placed on the judgment dated 05.12.2022 passed by this Hon'ble Tribunal in Appeal titled as **Chandni Chemicals Pvt. Ltd. vs. UPPCB (Appeal No. 14/2020)**, wherein this Hon'ble Tribunal very categorically held that:

*"162. Therefore, the issue relating to 'environment' vis-a-vis 'reasonable time' or 'limitation' has to be considered in the backdrop of the fact that no one has any legal, constitutional or otherwise right to damage environment to dump hazardous waste in an unscientific manner at any place so as to damage to environment as also adverse impact on the health of the people at large..... **The Statuary Regulators to supervise and regulate such activities are there but if they fail to discharge their obligation in an effective manner, the Courts can intervene and if thereafter, appropriate action is taken by such regulators, it cannot be said that such action is vitiated on account of delay or latches for the very reason that such action even if taken belatedly does not affect anybody's rights related to environment.***

.....

*174. Continuing cause of action would refer to the same act or transaction or series of such acts or transactions. **The recurring cause of action would have an element of fresh cause which by itself would provide applicant the right to sue. It may have even be de hors the first cause of action or the first wrong by which the right to sue accrues. Commission of***

breach or infringement may give recurring and fresh cause of action with each of such infringement like infringement of a trademark. Every rejection of a right in law could be termed as a recurring cause of action.

175. The principle that emerges from the above discussion is that the 'cause of action' satisfying the ingredients for an action which might arise subsequently to an earlier event give result in accrual of fresh right to sue and hence reckoning of fresh period of limitation. A recurring or continuous cause of action may give rise to a fresh cause of action resulting in fresh accrual of right to sue. In such cases, a subsequent wrong or injury would be independent of the first wrong or injury and a subsequent, composite and complete cause of action would not be hit by the expression 'cause of action first arose' as it is independent accrual of right to sue. In other words, a recurring cause of action is a distinct and completed occurrence made of a fact or blend of composite facts giving rise to a fresh legal injury, fresh right to sue and triggering a fresh lease of limitation. It would not materially alter the character of the preposition that it has a reference to an event which had occurred earlier and was a complete cause of action in itself. In that sense, recurring cause of action which is complete in itself and satisfies the requisite ingredients would trigger a fresh period of limitation. To such composite and complete cause of action that has arisen subsequently, the phraseology of the 'cause of action first arose' would not effect in computing the period of limitation. The concept of cause of action first arose must essentially

relate to the same event or series of events which have a direct linkage and arise from the same event. To put it simply, it would be act or series of acts which arise from the same event, may be at different stages. This expression would not de bar a composite and complete cause of action that has arisen subsequently."

That the contents of the preliminary submissions are reiterated and not repeated for the sake of brevity.

17-21. That the contents of the corresponding paragraph are wrong and hence denied except those which are specifically admitted herein. That the Government of Haryana acquired properties through Land Acquisition Collector for development of housing/ institutional/ industrial colony/ area etc. from the year 2004-2005. That Khasra No. 24 and 28 including the water bodies were acquired by the Government of Haryana. That from year 2005 to 2006 the award for property acquired by Land Acquisition Collector was granted to the respective owners. That the Gram Panchayat received amount of compensation for land acquisition in respect of Khasra No. 28 but not in respect of Khasra No. 24 as against the orders of Land Acquisition Collector. It is pertinent to highlight that at the time of land acquisition the villagers were assured by the Gram Panchayat that the nature of the land i.e. Khasra No. 24 and 28 will not be changed after acquisition and that the water bodies existing on the land will be preserved for use of local residents. That however the Gram Panchayat was abolished and was replaced by Municipal Corporation in the year 2008. It is pertinent to mention herein that the Municipal Corporation never showed any concern towards the grievances of the local residents and after the abolishment of the Gram Panchayat, all the land was vested with the Municipal Corporation. It is in the humble submission of the Applicant herein that the layout plans for the development to be undertaken at Khasra No. 24 and 28

have been approved without taking into consideration the existence of the two water bodies situated in Khasra No. 24 and 28. That the Respondents have already destroyed the water body existing in Khasra No. 28 completely and the contents of the para 20 would show that the Respondents have already planned to destroy the water body existing in Khasra No. 24. It is submitted that the Khasra No. 24 admeasures 20 Karnal 10 marla and out of the same 3 karnal 9 marla have been earmarked by the Respondent for religious site and the remaining has been earmarked by the Respondents for the purpose of plotting for development of a Residential Colony. That the contents of the preliminary submissions are reiterated and not repeated for the sake of brevity.

22-23. That the contents of the corresponding paragraph are wrong and hence denied except those which are specifically admitted herein. It is submitted that auctioning and allotment of land where a water body exists, for any purpose be it religious or anything by Respondent No.2, is in itself violation of the environmental law of the land. That the Respondents have already destroyed the water body existing in Khasra No. 28 completely and the contents of the para 20 would show that the Respondents have already planned to destroy the water body existing in Khasra No. 24. It is submitted that the Khasra No. 24 admeasures 20 Karnal 10 marla and out of the same 3 karnal 9 marla have been earmarked by the Respondent for religious site and the remaining has been earmarked by the Respondents for the purpose of plotting for development of a Residential Colony. That the contents of the preliminary submissions are reiterated and not repeated for the sake of brevity.

24-28. That the contents of the corresponding paragraph are wrong and hence denied except those which are specifically admitted herein. It is in the humble submission of the Applicant herein that the road that is being claimed to having been laid down in the year 2014 was a non-concrete, non-metallic road and it was told that a footpath was being made for the development of the pond

similar to the one already existing in Khasra No.24. That further the RTI response dated 09.05.2023 annexed by the Respondents @ Annexure-P3 of their intervening application, states that the road was only laid down in front of Plot No. 62-65 of Khasra No. 28 upto August 2014, meaning thereby that the non-concrete non-metallic road was also not laid down in the entire Khasra No. 28. However, it is imperative to mention herein that at that point of time, the Municipal Corporation ensured the gram panchayat of the village concerned that the nature of the land i.e. Khasra No. 24 and 28 will not be changed and that the water bodies existing on the land will be preserved for use of local residents. That as ensured by the Municipal Corporation the water body existing at Khasra No. 24 was developed and when the non-metalled road was being laid down in the year 2014, all throughout the Applicant herein along with other villagers were under the impression that similar development of the pond existing at Khasra No. 28 was being carried out by the Municipal Corporation and hence the footpath was being made by the Municipal Corporation in Khasra No. 28. That it was only in the year 2021 when the public notice for auction was issued by the Respondent No.2, that the Applicant herein got to know that plots are being carved out in Khasra No. 28 for the purpose of developing a Residential Colony. It is imperative to mention herein that proper roads have been laid down in Khasra No. 28 only in the year 2022. That the sewage lines were also laid down only in July 2023 and the photographs of the same have already been annexed @ Annexure-A/18 @ page 222 of the Original Application filed by the Applicant herein. That further, even if the contention of the Respondent that it is not responsible for work of levelling of the allotted plots, is taken into consideration, but still the entire process of auctioning and thereafter allotting plots on a parcel of land in which a water body existed, is in itself against the Environmental law of the land. That further the contention of the Respondent that no water body existed in Khasra No. 28 from 2010 to 2021 is completely contradictory to map submitted by the State along with the report

in **Original Application No.325 of 2015 titled as Lt. Col. Sarvadaman Singh Oberoi vs. Union of India & Ors.** which showcased all the water bodies located within the State. It is submitted that number of water bodies as submitted by the State as well as the map includes the water bodies which are the subject matter of this Original Application. That in view of the report submitted by the State, this Tribunal, vide order dated 20.07.2018 passed in the above said case gave directions for restoration of 123 water bodies in Gurgaon (now Gurugram) which were admittedly in the possession of the State in the first instance by assigning Unique Identification Number (UID) and making them free from encroachment. However, it appears that the water body subject matter of adjudication in the present case despite being covered under the order dated 20.07.2018 did not benefit by the remedial measures taken for restoration of water bodies. That the map and the report submitted by the State as well as the order dated 20.07.2018 passed by this Hon'ble Tribunal in **Original Application No.325 of 2015 titled as Lt. Col. Sarvadaman Singh Oberoi vs. Union of India & Ors** clearly shows that the water bodies in Khasra No. 24 and 28 were very much in existence at least till the year 2018 and hence the contention of the Respondent regarding non-existence of water body is completely false and is liable to be dismissed. The contents of the preliminary submissions are reiterated and not repeated for the sake of brevity.

29-30. That in response to the contents of the corresponding paragraph it is submitted that fault if any lies on part of Respondent No.2 in allotting plots on a parcel of land by destroying the water body existing in it. That this Hon'ble Court as well as the Hon'ble Supreme Court has in the past come down heavily on anyone who has caused destruction to a naturally existing water body including ponds. That both the Courts in a catena of judgments have ordered for removal of any construction that was undertaken on a parcel of land by destroying a water body. That a judgment compilation has already been submitted by the

Applicant herein to the effect where the Hon'ble Supreme Court as well as this Tribunal has directed for restoration of water bodies by removing any encroachment on it. That same approach is required to be taken by this Hon'ble Tribunal. It is also important to mention herein that as such no construction has been undertaken on Khasra No. 28 by the private Respondents due to the status quo order passed this Hon'ble Tribunal. That before the status quo order was passed by this Hon'ble Tribunal and only after the present Original Application was filed by the Applicant herein, a small kutcha structure of two floors was got built intentionally by the private Respondents in connivance with the Respondent No.2. It is in the humble submission of the Applicant herein that being a Government Authority entrusted with the protection of environment, it was the duty of the Respondent No. 2 and 3 to preserve the water body existing in Khasra No. 28. That the Respondent Authorities have violated the public trust doctrine by destroying the water body existing in Khasra No. 28 by carving out plots and thereafter auctioning the same for allotment. That since no concrete construction has taken place till date, the Respondent Authorities are hence liable to return the auction money received from the private Respondents No. 10-20 and thereby restore the water body in Khasra No. 28. That the contents of the preliminary submissions are reiterated and not repeated for the sake of brevity.

31-35. That the contents of the corresponding paragraph are wrong and hence denied except those which are specifically admitted herein. It is denied that present application has been filed with ulterior motives by the applicant for safeguarding his own commercial interests. It is denied that the present applicant has encroached upon the HSVP Land acquired way back in year 2005 by installing Illegal Mobile Tower in Khasra No. 28 in plot No. 72 P in Sector 50. It is denied that entire attempt of the applicant was to safeguard his illegal Mobile tower on HSVP Land which is on the same parcel claimed to be a water

body. It is denied that the present applicant himself had constructed Residential House in the claimed parcel of Reservoir in Khasra No. 28, which is earmarked for Plot No. 58 and 59 of Sector 50. It is denied that a petition filed by misrepresenting and distorting the factual position is undoubtedly abuse of process of law and is thus liable to be dismissed with exemplary cost. It is in the humble submission of the Applicant herein that the Mobile Tower was in Khasra No. 17 -10/1 and not in Khasra No. 28. That though the said mobile tower was not illegal but the same now stands removed as admitted by the Respondents themselves. Further, the residential house of the Applicant herein is not situated in Khasra No. 28 and is rather situate in Khasra No. 17 plot no. 26. Hence, the allegations of the Respondent with regards to the present application being filed with ulterior motives by the applicant for safeguarding his own commercial interests holds no substance. That the contents of the preliminary submissions are reiterated and not repeated for the sake of brevity.

36. That the contents of the corresponding paragraph are wrong and hence denied. It is denied that answering respondents have not violated any directions of this Hon'ble Tribunal and it is applicant who is pursuing the present litigation for personal gains. this Hon'ble Tribunal in Original Application No. 388 of 2021 titled as **Rohit Thakran vs. State of Haryana & Ors.** vide order dated 07.01.2022 had directed the District Magistrate, Gurugram, Haryana to look into the matter of damage to the water body in Khasra No. 24 and 28 and take remedial action in accordance with the law. That further the District Commissioner vide letter dated 07.03.2022 had requested the Administrator Haryana Shehri Vikas Pradhikaran to comply with the directions of the Hon'ble National Green Tribunal. That the Respondent Authorities failed to pay any heed to the directions issued by this Hon'ble Tribunal as well as the request of the District Commissioner vide letter dated 07.03.2022 and rather continued to undertake construction activities on the water bodies in question. The Applicant herein

thereafter filed Execution Application No. 10/2022 in O.A. No. 388/2021. That vide order dated 29.04.2022 the Hon'ble National Green Tribunal in Execution Application No. 10/2022 directed the Haryana Shahri Vikas Pradhikaran, Panchkula to take a decision on Khasra No. 24 and 28 and convey the same to the Applicant within one month however, no action has been taken by the said Respondent No.2 and 3 till date. The above clearly demonstrates that the Respondents have not complied with the direction of this Hon'ble Tribunal. That the contents of the preliminary submissions are reiterated and not repeated for the sake of brevity.

In light of the facts and circumstances mentioned herein above, it is prayed that this Hon'ble Tribunal may be graciously pleased to:

- i. Take the present Rejoinder on record;
- ii. Pass such other/ further Order(s) as this Hon'ble Tribunal may deem fit and proper in the facts of the present matter in favour of the Applicant.

THROUGH



A.R TAKKAR, SHRIYA TAKKAR, ASMITA DUGGAL, UNNATI ANAND,



BHARGAVA RAVIKUMAR, KAPIL BAKSHI, NIDHI JHA & MANAN TAKKAR

ADVOCATES

M/S ARTLO

P-6/2 E, DLF PHASE-2,

GURGAON 122002

EMAIL ID: ARTAKKAR@ARTLO.IN

MOB: 8826200005/9643014849

PLACE-GURUGRAM

DATE-23.05.2024

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL PRINCIPAL BENCH NEW
DELHI

ORIGINAL APPLICATION NO. 543 OF 2023

IN THE MATTER OF:

ROHIT THAKRAN

...PETITIONER/APPLICANT

VERSUS

STATE OF HARYANA & ORS

...RESPONDENTS

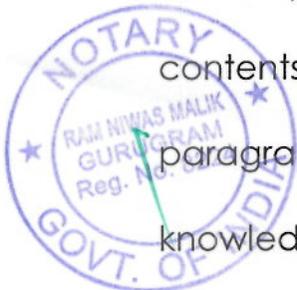
AFFIDAVIT

I, Rohit Thakran S/o Late Sh. Amarpreet Thakran, aged about 35. R/o New Plot No. 136-137, Dear Wood Chase, Nirwana, Sector-50, Village Adampur, Gram Panchayat Jharsa, Gurugram-Haryana.

I the above named deponent do hereby solemnly affirm and declare as under:-

1. That the above titled Rejoinder has been drafted under the authority and instructions of the deponent and after perusing its contents, the deponent has duly signed it, and the contents of paragraph Nos. 1 to 36 thereof are true and correct to the knowledge of the deponent, and the same may be read as contents of this affidavit also, which are not being reproduced for the sake of brevity. No part of it is false and nothing material has been kept concealed therefrom.

2. That the contents of paragraphs no. 1 to 36 of above tilted Rejoinder are true and correct to my knowledge, no part of that is false and nothing has been kept concealed therefrom.



3. That the Annexures attached with the Rejoinder are true copies of their respective originals.

Ralit
DEPONENT

VERIFICATION

Verified that the contents of paragraphs no. 1 to 3 of my above affidavit are true and correct to my knowledge. No part of it is false and nothing has been concealed therein.

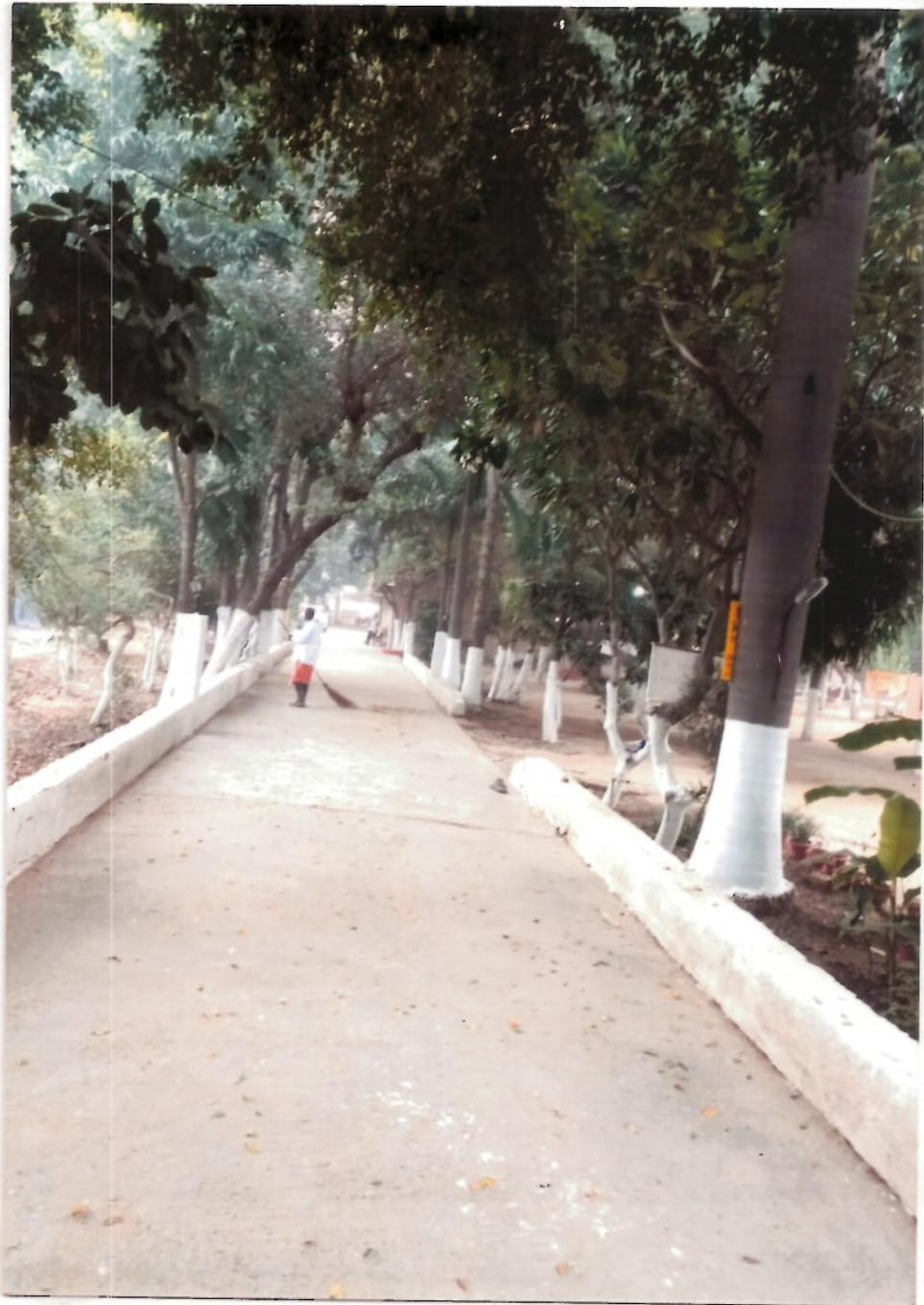
Ralit
DEPONENT



ATTESTED
RAM NIWAS MALIK, ADVOCATE
NOTARY, GURUGRAM (HR.) INDIA

ANNEXURE-A

31









35



