

BEFORE THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

**ORIGINAL APPLICATION NO. 54/2023**

**IN THE MATTER OF:-**

Ratneshwar Jan Kalyan Samiti

...Applicant

Versus

State of Uttarakhand & Ors.

...Respondents

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N.D.H. 10/5/2023

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**FILED BY:**

  
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**(D/3476/2017) (D/4389/2019)**

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New Delhi  
04.05.2023

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REPLY ON BEHALF OF RESPONDENT NO. 5, M. RAJIV SARIN AND  
RESPONDENT NO. 6, MR. AJIT SARIN TO THE REPORT DATED  
15.04.2023 SUBMITTED BY THE EXPERT COMMITTEE

1. The captioned Application is filed to allegedly get protection of a water body i.e., Benital Lake situated in the south-eastern part in Chamoli District of Uttarakhand from artificial cutting of banks resulting drying up of the lake (“**the Lake**”). The Applicants, *inter-alia*, have prayed that a committee be formed and data pertaining to the extent of Benital Lake and surrounding trees in last five years be placed on record.
2. This Hon’ble Tribunal, by way of its order dated 14.02.2023, issued Notice in the captioned Petition, and in addition, constituted a committee comprising six members to analyse and verify the grievances raised in the captioned application (“**Expert Committee**”/ “**Committee**”).
3. The Expert Committee conducted a site visit at the Lake and surrounding land belonging to Respondent Nos. 5 & 6 (“**subject Land**”) on 06.04.2023 and filed its Report (“**Report**”) dated 15.04.2023 before this Hon’ble Tribunal on 17.04.2023.

4. By way of the present Reply, Respondent Nos. 5 & 6 seek leave of this Hon'ble Tribunal to respond to the averments and findings of the said Report. At the outset, it is humbly submitted that the contents of the said Report are denied to the extent that the same are inconsistent with the stand taken by the answering Respondents, and nothing stated in the said Report may be deemed to be admitted for want of a specific traverse. It is humbly submitted that the answering Respondents have also filed a separate Reply to the captioned Application, and the answering Respondents seek this Hon'ble Tribunal's leave to refer to and rely upon the contents of the same during arguments with respect to the Committee Report, and are not repeating the same herein for the sake of brevity and convenience.
  
5. It is humbly submitted that by way of the said Report, the Committee has found no *prima facie* violation of environmental rules, regulations or norms by the answering Respondents, and has not found any evidence to substantiate the allegations that have been falsely set out in the captioned Application. In fact, the Expert Committee given the following categorical and clear findings/opinions that support the submission of the answering Respondents:
  - i. There is no artificial cutting or draining being undertaken by the answering Respondents, so as to dry up the Lake . (***Observation 12***)
  
  - ii. *Prima facie*, there is no evidence of illegal tree cutting in the last five years; (***Observation 7***)
  
  - iii. The Committee further highlighted that there is no evidence of any tea shrubs on the land. In fact, the Expert Committee noted that even the Applicants could not point out the presence of such shrubs same during

the inspection, which have been “illegally felled” as per the Applicants.

***(Observation 10)***

6. In other words, the very substratum of the Applicant’s allegations have been categorically negated by the Expert Committee. Therefore, the entire case of the Applicant *qua* draining/cutting the Lake and using the dried up land for commercial purposes is a mere eye-wash.

***Paragraph-wise Reply to Inspection/Survey:***

7. Enclosure 1 to the said Report is a chart detailing the constructions near the Lake, which clearly show only private construction to the extent of houses/cow sheds/ toilets, including by Respondent No. 5, has been done on the subject Land. Even otherwise, without prejudice to the rights of the answering Respondents, the Committee has not returned any finding of “*commercial construction*” on the subject Land as the Applicant had alleged in the captioned Application.
8. Enclosure 2 to the said Report is a chart setting out the description of all trees found in subject Land surrounding the Lake. A perusal of the said Chart shows that most, if not all, of the trees are in a green and upright condition, whereas due to withering and passage of time, a handful of trees have dried up/become naturally bent or fallen. Pertinently, this chart is to be read with Observation No. 7 of the said Report, which states that *prima facie* there is no evidence of any illegal tree cutting by the answering Respondents, which is also one of the main allegations set out against the answering Respondents in the captioned Application.

9. The contents of Paragraph No. 1 of the said Report are a matter of record, and merit no response.
10. The contents of Paragraph No. 2 of the said Report are a matter of record, and merit no response.
11. The contents of Paragraph No. 3 of the said Report are a matter of record. It is humbly submitted that the findings in Paragraph No. 3 do not relate, in any way, form or manner, to Respondent Nos. 5 & 6 herein, and it is open for Respondent No. 1, i.e., the State of Uttarakhand, to take the appropriate steps in law.
12. The contents of Paragraph No. 4 of the said Report are a matter of record, and merit no response. Pertinently, without prejudice to the rights of the answering Respondents, the Committee has not returned any finding of “*commercial construction*” on the subject Land as the Applicant had alleged in the captioned Application.
13. The contents of Paragraph No. 5 of the said Report, to the extent that they are contrary to the record, are denied. It is humbly submitted that the answering Respondents are only occupying the extent and boundary of the area that belongs to the answering Respondents as per the revenue records, and has been occupying the said land since 1945. It is pertinent to note that (a) the revenue authorities themselves have demarcated the land which is being occupied by the answering Respondents, and the answering Respondents have always complied with the demarcation carried out by the revenue authorities, and (b) no complaint has ever been made against the answering Respondents that they are occupying any land outside the land belonging to them as per the revenue

records. Even otherwise, the answering Respondents undertake to occupy the land as per the boundary demarcated by the revenue authorities.

It is also important to highlight that the Committee has used certain approximations and relied on records which were based on inaccurate methods so as to measure the extent of the Lake and the subject land, and the answering Respondents deny the said measurements.

In any case, the answering Respondent submits the following,

- i. The answering Respondents are the owners of the parcel of land in Chamoli District of Uttarakhand on which the Lake is situated. Initially, the answering Respondents owned the entire stretch of land approx. 1710 acres. However, due to implementation of KUZALR Act initiated by the State Government, the forest land admeasuring approximately 1658 acres consisted of large tracts of forest land (“**forest land**”) came to be vested in the State Government. The remaining parcel of land, which was non-forest land, admeasured approximately 21 hectares (52 Acres approx) (“**subject land**”). The present Application is only concerned with the latter category, i.e. the non-forest land. The Lake, which is a part of the subject Land even as per revenue records, is situated in the heart of the subject land, and is surrounded on all sides by the land of the answering Respondents.
- ii. The discrepancy of the extent of the subject land between 21.186 Ha (land records) and 23.3 Ha (actual land as per survey) is due to inaccuracies in measurement of the land.
- iii. There is no actual physical boundary wall as a result of which markers (stones/boulders) were put along boundary of the subject land to measure the same. When the possession of the forest land was taken by the State

Government, the non-forest land/subject was measured by the State Authorities, based on certain pillars which were put up along the boundary as markers.

- iv. However, the distance between the pillars was extremely large, as a result of which it was not possible to accurately measure the subject land. Further, the said pillars were also stolen subsequently. Hence, on 18.03.2022, the local *patwari* of Benital, installed new pillars in closer proximity, which are the pillars on the basis of which the Expert Committee has arrived at its findings (*Pg. 14 of the Report*).
- v. Hence, it is humbly submitted that the discrepancy is due to the difference in the location of the markers. Since the measurement of the subject land in the land revenue records was done on the basis of broad approximations and a different set of pillars, a difference in measurement has crept in.
- vi. It is submitted that there is no ill-intent or malice on behalf of the answering Respondents and the answering Respondents will comply with the measurement/boundary as demarcated.

Furthermore, it is most respectfully submitted that the said discrepancy would have to be reconciled by the local land authorities and Hon'ble Tribunal does not have the jurisdiction to venture into the said subject. As per section 14 and 15 of the NGT act 2010, this Hon'ble Tribunal has the jurisdiction to adjudicate substantial questions of law pertaining to the environment and arising out of the implementation of the enactments specified in Schedule I. Further, Section 15(1) provides that:-

*“the Tribunal may, by an order, provide,—*

*(a) relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in the Schedule I (including accident occurring while handling any hazardous substance);*

Significantly, no enactments relating to measurement of land are mentioned in Schedule-I. Hence, any direct or indirect challenge to the measurement of the subject land, cannot be raised before this Hon'ble Tribunal.

14. The contents of Paragraph No. 6 of the said Report, to the extent that they are contrary to the record, are denied. It is humbly submitted that the Lake does not contain any "water creatures" and has never contained any water creatures.

Even otherwise, it is the answering Respondents' case that:

- a. The Lake and the land surrounding the lake are all private land, belonging to the answering Respondents, and is not impacting/affecting any person;
- b. The Lake is at an altitude of 6800 ft. The nearest village is at a distance of approximately 2 km (Ghandiyal) which is at an altitude of approximately 5400 ft. In fact, even the Lake and the nearby village is separated by undulating and hilly terrain. In light of the distance between the Lake and the nearest village, coupled with the difference in altitude and terrain, it is impossible for the water availability in the nearby areas to be impacted by the Lake.
- c. The answering Respondents and their ancestors have been occupying the subject Land, which includes the Lake, since 1945. It is humbly submitted that since 1945 the Lake has been in this natural state, covered with weed/grass.. The answering Respondents and their ancestors have never interfered with the natural state of the lake, in

order to preserve the ecology and prevent any unknown/unforeseen environmental impact.

- d. It is pertinent to note that Benital Lake has never had potable water, i.e., water fit for drinking or human consumption, and hence, no need has ever arisen for the answering Respondent to clean the Benital Lake, which is on its private property.

With respect to the trees, a perusal of the Inspection Report shows that out of all the trees seen by the Committee in the subject Land, only two were found to be naturally withered, and even those on account of natural reasons, having dried.

15. The contents of Paragraph No. 7 of the said Report are not denied. It is essential for this Hon'ble Tribunal to note the Committee's finding that *prima facie* there is no evidence of felling of trees in the previous five (5) years. As per this finding it is evident that the Applicant has set out a false, fabricated and concocted case against the answering Respondents.

In fact, the answering Respondents, who have been occupants of the subject Land since 1945, have always sought to make their best efforts to preserve the forest land surrounding the Benital Lake.

In fact, the answering Respondents' ownership over the Forest land was adjudicated by the Hon'ble Apex Court in the year 2011. By its judgment titled *Rajiv Sarin & Anr. v. State of Uttarakhand & Anr.* reported at (2011) 8 SCC 708, a copy whereof has been filed by the answering Respondents along with their Reply to the captioned Application, the Constitution Bench of the Hon'ble Supreme Court also noted that the answering Respondents, who have

maintained the forests instead of exploiting it, cannot be penalised for the same and observed as under :-

*“.[...]In fact, the persons who are maintaining the forest and preserving it for future and posterity cannot be penalised by giving nil compensation only because of the reason that they in fact chose to maintain the forest instead of exploiting it.”*

(Emphasis Supplied)

Therefore, it is evident that there is no substance in the allegations set out in the captioned Application, and the finding of the Hon'ble Apex Court as well as the Expert Committee only support the answering Respondents' arguments.

The contents of Paragraph No. 8 of the said Report, to the extent that they are contrary to the record, are denied. It is submitted that the Lake is largely dependent on monsoon rains for its water. As a result, the area of the Lake expands and recedes based on the season, as it is a rain-fed lake. It is humbly submitted that the area, size and volume of the lake are entirely dependent on the season. Since the inspection by the Committee was undertaken in the winter month of March, there is a minor recession of the Lake area since it is a lean season for monsoons. In comparison, the same area would expand during the monsoon months. It is also important to highlight that the Committee has used certain approximations and relied on records which were based on inaccurate methods so as to measure the extent of the Lake and the subject land, and the answering Respondents deny the said measurements. Even otherwise, the said Report does not present any finding against the answering Respondents with respect to any alleged contribution towards such reduction, such as cutting or draining, as has been alleged in the captioned Petition.

Copies of photographs showing a comparison of the Benital Lake Area in the monsoon and non-monsoon months are annexed herewith as ANNEXURE - R1 (Colly.)

16. The contents of Paragraph No. 9 of the said Report are a matter of record and, hence, merit no response.
17. The contents of Paragraph No. 10 of the said Report are not denied. The Committee has highlighted that there is no evidence of any tea shrubs on the land. In fact, the Committee notes that even the Applicants could not point out the presence of such shrubs same during the inspection. Pertinently, the Applicants allege that these tea shrubs have been "*illegally felled*", however, this finding of the Committee only reiterates the fact that the Application is entirely baseless and misconceived.
18. The contents of Paragraph No. 11 of the said Report, to the extent that they are contrary to the record, are denied. It is humbly submitted that since the subject Land and Benital Lake are the private property of the answering Respondents, they have taken steps deemed appropriate by them for the security of the Lake and surrounding areas. Admittedly, even the Report records that "*since the lake is his private property, so it is not proper to comment more on it...*". However, as has been highlighted in the foregoing paragraphs of this Reply, the answering Respondents have, in fact, been taking all possible steps for the conservation of the Lake as well as the surrounding areas, which was also recognized by the Hon'ble Apex Court. In fact, in 1973, the answering Respondents made a small wall/dam with stones to ensure that the water in the Lake is not dried up.

19. The contents of Paragraph No. 12 of the said report are not denied. It is pertinent to note that the Committee records that “*any types of cutting of the soil by any person or machine is not proved*”. It is humbly submitted that one of the main allegations/grievances raised by the Applicants in the captioned Application is with respect to cuts/drains that have been allegedly put by the answering Respondents, leading to draining of Benital Lake. However, the Committee has returned an unequivocal finding that the reduction in circumference of the Lake is due to soil erosion in the monsoon season, and that there has been no human or mechanical draining or cutting in the Lake. This only goes to prove the answering Respondents’ argument that the captioned Application is merely an eye-wash to harass the answering Respondents and constitutes an abuse of process of this Hon’ble Tribunal.
  
20. The contents of Paragraph No. 13 of the said Report, to the extent that they are contrary to the record, are denied. It is humbly submitted that the subject Land and the Lake itself are both frequented by the nearby villagers. At various points, the local villagers also encroach on the subject Land and conduct “*melas*” or local fairs. On account of the same, there is often footfall of tens or hundreds of persons who illegally enter onto the subject Land and litter the areas surrounding the Lake. It is humbly submitted that the answering Respondents take all reasonable steps towards protecting the subject Land as well as the Lake from trespassers who also litter. However, due to the vast extent of the land, trespassers are able to enter onto the land despite the best efforts of the answering Respondents and their caretaker(s).
  
21. The contents of Paragraph No. 14 of the Report are a matter of record, and merit no response. As submitted hereinabove, the subject Land and Lake itself are

often trespassed by local villagers, despite the best efforts of the answering Respondents.

22. The contents of Paragraph No. 15 of the Report, to the extent that they are contrary to the record, are denied. It is humbly submitted that the Expert Committee has taken water samples from the Lake which are being analysed at the present time. Therefore, it may be premature to comment on the same. However, the answering Respondents reserve their right to respond to the present allegation as and when the subsequent report of the Expert Committee is published.
23. The contents of Paragraph No. 16 of the Report, to the extent that they are contrary to the record, are denied. It is humbly submitted that the Committee itself notes that the water from Benital Lake is not potable, i.e., is not fit to act as drinking water for human consumption.
24. The contents of Paragraph No. 17 of the Report, to the extent that they are contrary to the record, are denied. It is denied that there is any impact on water availability on the nearby villages as a result of the lake. The Lake is at an altitude of 6800 ft. The nearest village is at a distance of approximately 2 km (Ghandiyal) which is at an altitude of approximately 5400 ft. In fact, even the Lake and the nearby village is separated undulating and hilly terrain. In light of the distance between the Lake and the nearest village, coupled with the altitude and terrain, it is impossible for the water availability in the nearby areas to be impacted by the Lake. It is further humbly submitted that the Lake is only a rain-fed Lake, with the Area and Volume of the Lake depending entirely on the season. It is humbly submitted that the Committee itself notes that Benital Lake

is a private lake. It is further humbly submitted that the answering Respondents have been taking all reasonable steps to conserve and protect the Lake and surrounding areas, as has been explained in detail in the foregoing paragraphs of this Reply. However, it is also submitted that the same is admittedly private land, and this Hon'ble Tribunal does not have the jurisdiction to pass any binding strictures or restrictions against the answering Respondents with respect to their private land.

25. The contents of Paragraph No. 18 of the Report, to the extent that they are contrary to the record, are denied. It is humbly submitted that the Expert Committee has sought additional time for calculation of the trees inside the subject Land, and has recommended the establishment of a team and usage of GIS/remote system through the IIRS or FSI. Therefore, it may be premature for the answering Respondents to comment on the same at this time. However, the answering Respondents reserve their right to respond to the present allegation as and when the subsequent report of the Expert Committee is published.

Accordingly, the answering Respondents pray that their above objections to the Report of the Expert Committee dated 15.04.2023 may be taken on record, and the answering Respondents also reserve their right to file additional Replies to any further Report(s) presented by the Expert Committee.

  
**ANIRUDH BHATIA/ ROHAN TALWAR**

**(D/3476/2017) (D/4389/2019)**  
Advocates for Respondent Nos. 5 & 6  
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New Delhi  
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AFFIDAVIT

I, Mr. Rajiv Sarin, son of Late Shri P.N. Sarin, aged about 70 years, residing at A-132, New Friends Colony, New Delhi – 110025 hereby solemnly affirm and declare as under:

1. That I am the Respondent No.5 herein and the authorized signatory on behalf of the Respondent No.6 by way of Authority Letter dated 03.05.2023. I am fully conversant of the facts and circumstances of the matter and am competent to swear this affidavit.
2. The contents of the accompanying Counter Affidavit true and correct to the best of my knowledge and have been drafted by the counsel on my instructions and nothing materials has been concealed therefrom.



*Rajiv Sarin*

DEPONENT

VERIFICATION:

I, the above named deponent do hereby verify that the facts stated herein above are true to my knowledge and belief and no part of it is false and no material fact has been concealed therefrom.

Verified on this \_\_\_ day of May, 2023, at New Delhi.

*Rajiv Sarin*

DEPONENT

RAJENDRA KUMAR, NOTARY, Reg. No: 5780  
F No.-5(486)  
EMPOWERED TO ADMINISTER THE OATH  
SECTION 139 OF CPC 1908  
SECTION 297 OF CRPC 1973  
DELHI HIGH COURT RULES 1967  
PART-6, CHAPTER 1, 10, 27  
EVIDENCE BY APPEALS, SECURE NOTARY  
SUPREME COURT, RULES, 2013  
ORDER IX-7

04 MAY 2023

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04 MAY 2023  
IDENTIFIED  
IDENTIFIED THAT THE CONTENTS EXPLAINED TO THE  
P. WERT EXECUTIVE WHO IS SEEMED PERFECT TO  
UNDERSTAND & AFFIRMED BEFORE ME  
ON..... IDENTIFIED BY  
IDENTIFY THE EXECUTIVE / DEPONENT WHO HAS  
SIGNED IN MY PRESENCE

BEFORE ME  
RAJENDRA KUMAR  
NOTARY, DELHI-R-5780  
GOVERNMENT OF INDIA  
SUPREME COURT OF INDIA  
COMPOUND, NEW DELHI  
Register Pg./Sl. No. 04 MAY 2023.....  
Mobile No.: 9899446209

# ANNEXURE-R-1



Chamoli

27 November 2021 10:57 AM

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# Chamoli

17 June 2022 5:47 PM

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DECEMBER 2021



**MAY 2023**

