

**IN THE NATIONAL GREEN TRIBUNAL,
WESTERN ZONE BENCH**

AT PUNE

I.A. No. 247/2024

IN

Original Application No. 141/2024

IN THE MATTER OF:

Prakash Agrawal

...Applicant

versus

Mathias Construction Pvt. Ltd. & Ors

...Respondents

REPLY ON BEHALF OF THE RESPONDENTS 1, 2, 3 & 4 TO

I. A. 247 OF 2024 SEEKING AMENDMENT OF O. A. 141 /

2024 FILED BY THE APPLICANT.

MOST RESPECTFULLY SHEWETH:

1. That the present reply to the Applicants application for Amendment of O. A. 141 / 2024 is being filed on behalf of Respondent No. 1, 2, 3 & 4 – Mathias Construction Private Limited, Julian Richard Mathias, Joe Marcelino Mathias and Mrs. Mariola Mathias, respectively.

PRELIMINARY OBJECTIONS AT THE OUTSET

- A. The Original Application raises unsubstantiated allegations on non-compliance of Environment Clearance norms in **Sector – 1** of the concerned larger **ongoing project comprising of 4 sectors (Survey No. 249/1-A)** for which the EC is granted.
- B. The proposed Amendment seeks to maliciously rope in “**Phase – I plots**” which are otherwise subdivided plots of a larger and independent property at **Survey No. 247** sold undeveloped to individual owners over the years in 1990’s. The said Survey No. 247 is independent and unconnected of the EC which is granted only to **Survey No. 249/1-A**.
- C. The said “**Phase – I plots**” are individually sold plots whereon private owners have developed their residential houses which are below the categorized **schedule 8 (a)** of MoEF Notification of 2006 which stipulates requirement of above 20,000 Sq. Mts. and below 1,50,000 Sq. Mts. Built Up Area for applicability of EC norms and regulations.



- D. The Respondents have neither intended, proposed or carried out “*any construction project falling under entry 31 of Schedule – I*” as per relied Notification of 07th July, 2004, to attract applicability of EC.
- E. The Respondents have merely sub divided a larger property bearing Survey No. 247 into smaller parcels ranging from **300 Sq. Mts to 900 Sq. Mts** and further sold it to individual landowners who have constructed their residential houses as per their independent permissions and licenses.
- F. The Respondent has sub divided and sold the plots in the **year 1991**, this date is pertinent as it not only makes it evident that the said subdivision, plotting and sale was executed prior to the MoEF Notifications, but also establishes that the Applicant/ Complainant is hopelessly **barred by limitation** in terms of Section 15 (3) of the National Green Tribunal Act, 2010.
- G. **WITHOUT PREJUDICE** the amendment sought is not imperative for proper and effective adjudication of the alleged allegations in the OA 141 of 2024; the application for amendment is *malafide*; the



Amendment if allowed will cause undue prejudice to the present Respondents as well as the independent plot owners who are unconnected with the EC or project in question **nor are parties herein**; the proposed amendment constitutionally and fundamentally changes the nature and character of the case; And as a general rule, this hon'ble Tribunal should decline amendments if a fresh suit on the amended claims would be barred by limitation on the date of application. These basic principles are formulated by the Hon'ble Supreme Court in **Revajeetu Builders and Developers v. Narayanaswamy & Sons 2009 (10) SCC 84** which shall be taken into consideration while allowing or rejecting the application for amendment.

2. The Respondents state that the amendment pertains to a **different cause of action from OA 141 / 2024** and in fact concerns a new and different cause of action (**in Survey No. 247**) which is directly and substantially barred by **limitation** and as such the applicant is maliciously using a backdoor entry to adjudicate alleged causes which concern 1991 subject matters now in 2024 by way of the present



Amendment. The OA 141 of 2024 concerns allegations of non-compliance in EC granted to Survey No. 249/1-A, as filed by the Applicant himself, and the proposed amendments concern Phase – I plots in Survey No. 247 which were subdivided into smaller parcels ranging from **300 Sq. Mts to 900 Sq. Mts** & sold to private individuals in 1991 and are entirely unconnected to the concerned EC project. **The amendment on this pretext is attempting to salvage an alleged cause of action hopelessly barred by Section 15(3) of the NGT Act. It is categorically stated that the amendment is a subterfuge.**



3. It is categorically stated that undue, unreasonable and grave harm, injury and injustice will be caused to the Respondents if this amendment application is granted. It is not only the Respondents, but also unconnected, **3rd party private plot owners since 1991, who are not parties to the said proceedings will be affected if the said amendment is allowed.**
4. The said Phase – 1 plots are neither connected nor applicable for an EC as the said Phase – I plots were subdivided and sold

prior to the Notifications concerning Environmental Clearances in the year **1991**. Phase – 1 is not applicable under the terms of EC as the same was merely sub divided into smaller parcels ranging from **300 Sq. Mts to 900 Sq. Mts** and sold to individual private owners in the year 1991 and that the private owners have purchased the same and subsequently constructed their dwelling houses based on their individual permissions and licenses. The applicability of the 2004 Notification as stated by the Applicant is entirely on non-applicability of mind and malafide. **The Respondents have not constructed anything on the said subdivided plots and have merely sold the same to private owners.** The Phase – 1 plots are in survey no. 247 which is not connected to the Survey No. 249/1-A.



5. The Applicant was arrested on charges of extortion and as on date a chargesheet to this effect has also been filed against the Applicant. This Applicant does not deserve any levy or indulgence by this Hon'ble Tribunal in light of the unsubstantiated and malafide intents of the Applicant. This position is also made clear by the Hon'ble Supreme Court that the bona fides of the Applicant need be assured before the Tribunal proceeds to adjudicate matters concerning

rights of multiple parties. The Applicant is only seeking to arm-twist the Respondents with such applications as an earlier attempt to extort the Respondents was foiled by the Crime Branch – Goa, which lead to the arrest of the Applicant herein who is out on conditional bail.

6. The construction if any in 2004 in phase – I was of private landowners, the said subdivided larger property is not a township, it is merely a larger property subdivided and sold further to private individuals. Thus, construction if any was in their private capacity which does not come under applicability of EC norms as the plot sizes into smaller parcels ranging from **300 Sq. Mts to 900 Sq. Mts** and are below 1000 sq mts and the same cannot be considered as a single project undertaken by the Respondents as each private owner applied for its own licenses and constructed thereon.

7. The Applicant is also aiming to entangle unconnected subdivided plots only to arm twist the Respondent. The Applicant is using the OA as well as the present application for amendment as a tool for “legal terrorism” against the Respondents, instead of seeking justice. The criminal case / chargesheet for extortion and such prayers in amendment



makes the entire modus operandi and malafides of the Applicant crystal clear before this Tribunal.

8. The Respondent humbly prays that the application for Amendment as filed by the Applicant be rejected/ dismissed with exemplary costs.



DEPONENT NO. 1

on behalf of RESPONDENT NO. 2, 3 and 4

Through

Adv. Siddharth S. Sardesai
Advocate for the Respondents 1, 2, 3 & 4
4th Floor, SmithVandan by Adwalpalkar,
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Panaji-Goa, 403002.

Place: Panaji-Goa

Mobile No. 9881884646

Date: .09.2024 Email: advsiddharthsardesai@gmail.com

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AT PUNE

Original Application No. 141/2024

IN THE MATTER OF:

Prakash Agrawal

...Applicant

versus

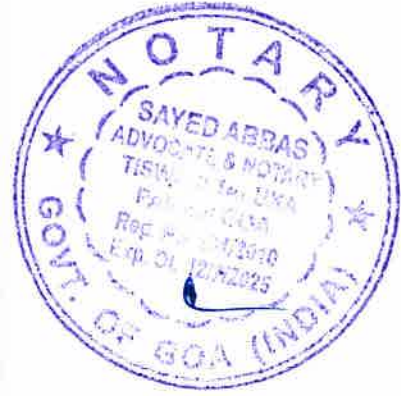
Mathias Construction Pvt. Ltd.

...Respondents

AFFIDAVIT

I, Shri. Joe Mathias S/o. Late Marcelinho Mathias R/o. Casa Mathias, Near Nirmala Institute of Education, Altinho, Panaji – Goa, 403001, Indian National, Major in age, Authorized representative of the Respondent No. 1 Mathias Constructions Private Limited as per letter of authority/resolution dated 06/09/2024 herein under referred to as Deponent, and on behalf of Julian Richard Mathias, Joe Marcelino Mathias and Mrs. Mariola Joe Mathias all R/o. Casa Mathias, Althino – Panaji, Goa, Indian National, Major in age, Respondent No. 2, 3 and 4 respectively.

I the abovenamed Deponent do hereby solemnly affirm and declare as under: -



1. I/ We am/are well conversant with the facts and circumstances of the present case and competent to swear this affidavit.
2. I/ We have read the contents of the accompanying reply, which has been drafted by my counsel under my instructions and I state that the contents thereof are true to my knowledge and are also based upon information/legal advice received by me/us and believed to be correct.
3. I adopt the contents of the accompanying application as a part and parcel of the present affidavit and the same is not being reproduced herein for the sake of brevity.
4. I/ We say that the paragraphs of the accompanying application from paragraphs 1 to 7 and prayer clauses A, B and C thereof are true to my knowledge and are also based upon information/legal advice received by me/us and believed to be correct.



[Handwritten Signature]
DEPONENT NO. 1

on behalf of RESPONDENT

NO. 2, 3 and 4

Solemnly affirmed before me by
 Shri / Smt. *Joe Mathias*
 who has been identified by
 when I personally known
 Reg. No. *6786* Dated: *24/03/24*

[Handwritten Signature]
SAYED ABBAS
 Advocate & Notary
 Tiswadi Taluka
 Paraji, Goa 403001
 Reg. No. 231/2010



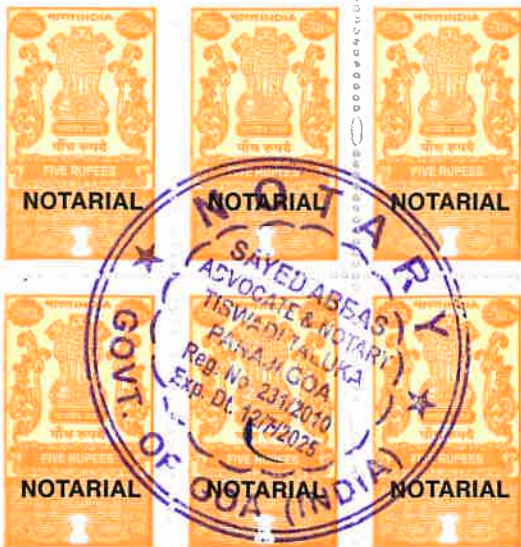
VERIFICATION

I/ We say that the paragraphs of the above affidavit and paragraphs 1 to 4 thereof are true to my knowledge and are also based upon information/legal advice received by me/us and believed to be correct and nothing material has been concealed therefrom.



DEPONENT NO. 1

on behalf of RESPONDENT NO. 2, 3 and 4



SOLEMNLY AFFIRMED AND VERIFIED
BEFORE ME BY Joe Mathias
WHO IS IDENTIFIED BEFORE ME BY Joe Mathias
SR. NO: 6487/2024
DATED: 24/09/2024

SAYED ABBAS
Advocate & Notary
Tiswadi Taluka
Panaji-Goa 403001
Reg. No. 231/2010

