

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE BENCH) PUNE, AT PUNE
ORIGINAL APPLICATION NO. 103 of 2022**

IN THE MATTER OF:

Mr. Prakash Mishrimal Porwal

...Applicant

Versus

Ministry of Environment Forest and

Climate Change & Ors.

... Respondents

**REPLY ON BEHALF OF THE RESPONDENT NO. 11 TO
O.A NO. 103 OF 2022**

**PAPER BOOK
(KINDLY SEE INSIDE FOR INDEX)**

ADVOCATE FOR THE RESPONDENT NO. 11

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**REPLY ON BEHALF OF THE RESPONDENT NO. 11 TO
O.A. NO. 103 OF 2022**

TO

THE HON'BLE CHAIRPERSON

AND HIS HON'BLE COMPANION MEMBERS

OF THE HON'BLE NATIONAL GREEN TRIBUNAL.

THE HUMBLE REPLY OF THE RESPONDENT NO.11.

MOST RESPECTFULLY SHOWETH:

1. The Applicant has invoked the jurisdiction of this Hon'ble Tribunal u/s Section 14 r/w Section 15 of the National Green Tribunal Act, 2010 alleging illegal mining at Village Kole Chafeshwar, Chavsar, Thakursai, Varu and Phagne at the behest of the Respondent No. 9 to 12 in collusion with the State Authorities being Respondent No.3 and 7.

2. This Hon'ble Tribunal, vide its order dated 05.12.2022 was pleased to constitute a Committee to find out who all were involved in the alleged illegal mining operations and directed the said Committee to visit the alleged spot and submit a factual as well as action taken report within a period of one month from 05.12.2022 after issuing notices and giving a hearing to the parties concerned.
3. Thereafter, the O.A. No. 103 of 2022 was considered by this Hon'ble Tribunal on 27.01.2023. On 27.01.2023, the Respondent No.4 and 5 i.e. the District Collector and District Mining Officer submitted that the inspection in terms of the Order dated 05.12.2022 was conducted on 23.12.2022 of 47 Villages with respect to illegal mining being done. However, the same could not be completed and therefore sought a time of 15 days to submit the Report before the Hon'ble Tribunal. The Hon'ble Tribunal vide its Order dated 27.01.2023 was pleased to grant as a last opportunity a period of 15 days to the Joint Committee for submitting its report, with a direction that the Survey shall be made of only those Survey numbers of the Villages which have been mentioned by the Applicant in O.A. No. 103 of 2022 and which find mention in the Paragraph No. 1 of the Order dated 05.12.2022 passed by the Hon'ble Tribunal and not beyond. The Hon'ble Tribunal was also pleased to direct the members of the Joint Committee to give advance notice of the date when the Inspection in question would be made and then only the proceedings should be conducted. Thus, by the Order dated 27.01.2023 this Hon'ble Tribunal was pleased to restrict the scope of the inspection to be undertaken by the Joint Committee.
4. In compliance of the Orders dated 05.12.2022 and 27.01.2023 passed by this Hon'ble Tribunal, the Joint Committee submitted its report before this Hon'ble Tribunal on 23.02.2023. On perusing the contents of said Report, site

inspection in terms of the Orders of this Hon'ble Tribunal in O.A. No. 103 of 2022 was conducted on 09.02.2023 in the presence of all parties and the District Mining Officer, Executive Engineer Irrigation Department, Range Forest Officer Forest Department being the members of the Joint Committee appointed by this Hon'ble Tribunal. The findings of the Committee regarding the Survey/ Gut numbers as mentioned in the Order of Hon'ble Tribunal dated 05.12.2022 were recorded in a tabular format which are reproduced herein below:

Sr. No.	S. No./ Gat No.	Name of Village	Excavation found or not	Remarks	Status
1.	Gat No. 235	Kusgaon	Found	Private Land	Currently Excavation is not going on (action as per MLRC already initiated)
2.	21	Kole Chafesar	Found	Forest Land	Currently Excavation is not going on
3.	S. No. 81 to S. No. 103	Kole Chafesar	Not Found	Forest Land	Currently Excavation is not going on
4.	S. No. 74	Chavsar	Found	Land for Pawana Project	Currently Excavation is not going on (Irrigation department filed FIR against the illegal excavation)
5.	S. No. 96	Varu (no survey no. mentioned in the order)	Found	Land for Pawana Project	Currently Excavation is not going on (Irrigation department filed FIR against the illegal excavation)
6.	S. No.16	Thakursai (Found	Forest	Currently Excavation

		no survey no. mentioned in the order)		Land	is not going on
7.		Phagne (no survey no. mentioned in the order)	No excavation found in village Phagne		

On perusing the table afore mentioned, Gut No. 235 of Village Kusgaon was the only private land. Survey No.21, Survey No.81 to 103 of Village Kole Chafeshwar and Survey No. 16 of Village Thakursarai (not forming a part of O.A. No. 103 of 2022) are Forest Lands, whereas Survey No. 74 of village Chavsar and Survey No. 96 of Village Varu (not forming a part of O.A. No. 103 of 2022) are lands owned by the Irrigation Department. The Irrigation Department, being the Respondent No.3 with regards to Survey No.74 of Village Chavsar has contended that as on the date of inspection i.e. 09.02.2023 excavation was not going on, however, previously excavation at the said Survey No. was found. Also previously, the Irrigation Department on 27.07.2022 has registered an FIR bearing No. 130 of 2022. As far as Survey No.96 of Village Varu (not forming the part of the O.A. No. 103 of 2022) is concerned, it was observed that currently excavation was not going on however, previously excavation was found. In terms thereof, the Respondent No.3 on 09.11.2022 has registered an FIR bearing No. 197 of 2022. Thus, on perusing the findings of the Joint Committee Report as far as the lands in ownership of Respondent No.3 are concerned, there is nothing on record to

correlate with the Respondent No.11 for the excavation that was previously found. As far as the Survey No. 21 in Village Kolechafesar is concerned, the same is forest land and though previously excavation was found at the said site, currently no excavation was going on. As far as Survey No. 81 to 103 of Village Kolechafesar are concerned, the same are forest lands and excavation was not only found previously, but also currently no excavation was going on. As far as Survey No. 16 of Village Thakursai is concerned, previously excavation was found on the forest land, but currently no such excavation was going on. The Forest Department i.e. the Respondent No.7 has addressed a letter to the Respondent No.4 on 10.02.2023, by which the Respondent No.7 has found certain discrepancies with regards to the Forest lands in which mining operations were found and has intimated that the Respondent No.7 shall undertake the demarcation of the said lands. With regards to the same, the Respondent No.7 has requested the Respondent No.4 to provide the Respondent No.7 with the copy of the maps prepared by using the ETS Machines, which would assist the Respondent No.7 to demarcate the lands owned by the Forest Department. Thus, from the letter of the Respondent No.7 dated 10.02.2023 also, it is apparent that there is nothing on record to demonstrate any co-relation of the Respondent No. 11 with the alleged illegal mining activities. The Joint Committee in its Report with regards to Survey No.235 of Village Kusgaon i.e. the private land has found that the Tehsildar had already initiated action under the Maharashtra Land Revenue Code. Be that as it may, the Respondent No.11 is not the owner of Survey No. 235 of Village Kusgaon and as such have nothing to do with any activity at the said Survey Number.

5. Thereafter, the matter was heard by this Hon'ble Tribunal on 24.02.2023 and after considering the Joint Committee Report dated 23.02.2023, this Hon'ble

Tribunal observed that even though FIRs were registered, it was necessary to ascertain the violators so as to impose Environmental Compensation, if the activities resulted in any adverse impact on the Environment and therefore the Hon'ble Tribunal thought it prudent to issue notices of the Respondents, who were not present before the Hon'ble Tribunal on 24.02.2023.

6. In pursuance thereof, the Respondent No. 11 has received the copy of the Notice along with the Original Application and is therefore filing the present Reply before this Hon'ble Tribunal.
7. On perusing the Order dated 05.12.2022, the Applicant merely sought a report from the Respondent authorities and had also agreed that if it was found that the Respondent No.9 and 10 were not found involved in the illegal mining activity, their names would be deleted. In terms of the settled principle of the Law of Evidence, any person who desires any court to give a Judgment as to any legal right or liability dependent on the existence of facts which he asserts must prove that those facts exist. Thus, the burden of proof lies on that person who asserts such facts. In the present case, the Applicant besides making bald assertions against the Respondent No.9 and 10, has brought nothing on record to prove the existence of those assertions. On the contrary, the Application filed by the Applicant seems to be nothing but a fishing and roving enquiry so as to persuade this Hon'ble Tribunal to constitute a Committee to gather Evidence on behalf of the Applicant to prove the case of the Applicant, which otherwise the Applicant had miserably failed to do so. In such circumstances, where the Applicant had agreed to delete the name of the Respondent No. 9 and 10 vide the order dated 05.12.2022 if it was found that the Respondent No. 9 and 10 were not involved in the illegal mining activity, the same relief ought to be extended to the Respondent No. 11, whose name is also not reflected in the Report filed by the Joint Committee on 23.02.2023.

8. In the backdrop of the Applicant failing to prove the facts asserted by the Applicant in O.A. No. 103 of 2022, the Joint Committee Report of 23.02.2023 raises more questions, than it answers on the assertions made by the Applicant in O.A. No. 103 of 2022. In the entire Joint Committee Report of 23.02.2023, there is not a whisper of the Respondent No.11 undertaking any illegal mining operations, which completely destroys the case of the Applicant in O.A. No. 103 of 2022. The Burden of Proof to prove the assertions made by the Applicant in the O.A. No. 103 of 2022 being on the Applicant and in terms of the Order dated 05.12.2022 of this Hon'ble Tribunal and the Joint Committee Report dated 23.02.2023, the Applicant having failed to prove the assertions in O.A. No. 103 of 2022 against the Respondent No. 11, the present O.A. No. 103 of 2022 ought to be dismissed qua the Respondent 11. Without prejudice to the contentions raised hereinabove the Respondent No.11 are filing this present Reply to the O.A. No. 103 of 2020 as filed by the Applicant.

9. Para Wise Reply:

- a. At the outset all the contentions, averments, assertions and allegations made by the Applicant in O.A. No. 103 of 2022 are denied and nothing therein shall be deemed to be admitted by the Respondent No.11 for reasons of non-traverse.
- b. As far as the Synopsis of the O.A. No. 103 of 2022 are concerned the Synopsis are absolutely ambiguous and in no way brings out the case of the Applicant. Besides alleging that the Respondent No.9 to 15 are indulging in illegal mining in Village Kole Chafesar, Chavsar, Thakursai, Varu, Phagne Taluka Maval District Pune, the Applicant has failed to raise any contention as to the specifications of the mineral alleged to have been excavated and the location (Exact Survey No./ Gut

No.) where the alleged illegal mining was undertaken by the Respondent No.9 to 15. The Applicant having failed to assert specific facts with regards to the alleged illegal mining, the O.A. No. 103 of 2022 as filed by the Applicant is a generic attempt to mislead this Hon'ble Tribunal to exercise its power under Section 14 and 15 of the National Green Tribunal, 2010. Furthermore, the provisions of Section 14 of the NGT Act, stipulate that this Hon'ble Tribunal would have jurisdiction over all civil cases, where a substantial question relating to environment is involved. However, on perusing the contents of the Synopsis, the Applicant seems to be in a reverie, and has raised no substantial questions, relating to environment, which needs adjudication by this Hon'ble Tribunal, more particularly, within regards to the Respondent No. 11. Also, the question of claiming damages against the Respondent No. 11 would not arise as the Applicant has failed to prove the assertions made in the present Original Application.

- c. The contentions in Para 1 and 2 are a matter of record and as such need no reply.
- d. As far as the contentions in Para 3 are concerned, the Applicant be put to strict proof of the contention made by the Applicant that the Respondent No. 9 to 12 in collusion with the Officers viz, Respondent No. 3 and 7 have undertaken illegal mining. In legal parlance, it is for the Applicant to prove the assertion made by the Applicant in the Application, exist. On perusing the Order dated 05.12.2022 passed by this Hon'ble Tribunal, on the objections raised by the Respondent No.9 and 10 that a bare reading of the O.A. No. 103 of 2022 fails to establish the connection of the Respondent No.9 and 10 to the alleged illegal mining, the Applicant only sought a Report of the Respondent

Authorities and further agreed to delete the names of the Respondent No.9 and 10 if nothing was found against the Respondent No.9 and 10 in the report of the committee. Accordingly, the Report of the Committee dated 23.02.2023 does not in any way implicate the Respondent No.9 and 10. The Respondent No. 11 is also similarly placed as the Respondent No. 9 and 10 and therefore the contentions of the Applicant in Para 3 being contrary to the Report of the Joint Committee are denied by the Respondent No.11.

- e. The contentions of Para 4 are an attempt to paint the Applicant in noble colors so as to demonstrate that the Applicant is the Social Worker and working for a social cause. The contentions of Para 4 are nothing but masquerading the Applicant. On the contrary, vide the present reply the Respondent No.11 shall demonstrate that Applicant is a busy body indulging in arm twisting respectable citizens and authorities so as to extort favors and money in return. Tersely to demonstrate, an FIR bearing No. 81 of 2021 dated 01.08.2021 for offences punishable under section 34, 406, 420, 504, 506(2) of IPC has been registered against the Applicant. Also, an FIR No.277 of 2021 dated 02.07.2021 has been registered against the Applicant. The afore-stated FIRs are just a glimpse of the culpability of the Applicant and there are several other proceedings against the Applicant which raise a serious suspicion on the credentials of the Applicant. The Respondent No. 11 as a power of attorney holder of Respondent No. 15 had previously filed an RTS Appeal No. 156 of 2020 u/s 247 of the Maharashtra Land revenue Code, 1966 against the Applicant. By an order dated 14.09.2020, the Ld. Sub-Divisional Officer was pleased to allow the Appeal in favor of the Respondent No. 15, acting through the Answering Respondent as a

power of attorney holder, by which the Ld. Sub-Divisional Officer was pleased to cancel the land revenue entry no. 1084 with regards to the property located at Survey No. 244/1, Village: Tung, Taluka: Maval, admeasuring 01 Ha 02 R and had directed that the name of the Respondent No. 15 be added to the Said property. as a consequence of this order, the name of the Applicant has been deleted was the revenue records of the property and therefore to avenge the deletion of the names has simply arrayed the Answering Respondent and the Respondent No. 15 to the present OA. The copy of the order dated 14.09.2020 passed by the Ld. Sub-Divisional Officer is enclosed herewith as **ANNEXURE R-1**. Thus, it is apparent that the contents of Para 4 by no stretch of imagination can be considered as a gospel and therefore this Hon'ble Tribunal ought to gauge the veracity of the contentions raised by the Applicant with a microscopic lens.

- f. The contentions in Para 5 are a matter of record as the same describes the Respondent Authorities and as such need no reply.
- g. As far as the contentions in Para 6 are concerned, the same need no reply as far as the Respondent No. 11 is concerned. However, with regard to the contention in Para 6, the Applicant be put to strict proof before making allegations against responsible Government Authorities. Merely because the Applicant has the forum such as this Hon'ble Tribunal, which adjudicates environmental issues, the Applicant cannot make allegations against authorities without substantiating the same. This being contrary to the rationale of Law of Evidence, this Hon'ble Tribunal should take Judicial Notice for the same and impose exemplary cost on the Applicant.

h. The contentions in Para 7 are the figment of the imagination of the Applicant and is nothing but an endeavor to sensationalize the O.A. No. 103 of 2022. The Applicant has in Para 7 alleged the Respondent No. 11 along with Respondent No. 9 to 12 to be land mafias merely because the Respondent No. 11 had previously in RTS Appeal No. 156/2020 vide an order dated 14.09.2020 had succeeded in deleting the name of the Applicant from the revenue records of the Property bearing Survey No. 234/1, Village Tung, Taluka Maval. Thus, the Applicant is wrongly enforcing the provisions of Section 14 and 15 of the National Green Tribunal Act vide the present O.A. No. 103 of 2022 more particularly when the Applicant has failed to prove the allegations made against the Respondent No.11 exist. On a perusal of the Joint Committee Report dated 23.02.2023, it has become abundantly clear that the Respondent No.11 has no role in the alleged illegal mining as claimed by the Applicant in the present O.A. Also, the contention that a quantity of 14,152 brass of mineral has been excavated illegally as alleged by the Applicant does not corroborate with the Report of the Joint Committee dated 23.02.2023. The fact that the quantity of the 14,152 brass mineral has been illegally mined by the Respondent No.11 has not been substantiated by the Applicant by any evidence whatsoever and also finds no support in the Report dated 23.02.2023, in such circumstances the Applicant be put to strict proof of the same and the contentions in Para 7 are denied. Furthermore, the Respondent No. 4 and 5 on 13.04.2023 have filed their reply affidavit to the OA. On perusing the contents of the said Reply, more particularly at Para 10, the Respondent No. 4 and 5 have quantified the total amount of excavation to be 7151.81 brass, which is half of what has been claimed by the Applicant

in Para 7 of the OA. Furthermore, it is also pertinent to note that out of the 7151.81 brass, which has been excavated, 3468 brass has already been adjudicated by the Sub Divisional Officer of Taluka Maval and therefore if at all any alleged illegal excavation has happened, the same may be to a tune of 3683.81 brass only and nothing more. Thus, the contentions in Para 7 clearly demonstrate that all the allegations in the present OA are far from truth and have been exaggerated so as to mislead this Hon'ble Tribunal to exercise its powers u/s 14 and 15 of the NGT Act.

- i. The contentions in Para 8 need no reply at the behest of the Answering Respondent, barring the fact that the Applicant has alleged that the Respondent No. 9 to 14 are working as a Team. In this context, it is submitted that the Applicant seems to work on a premise that any person who has judicially enforced his statutory rights against the Applicant and has succeeded is a mafia and all such people who have succeeded against the Applicant are a Team. The Applicant has not been able to show in what manner have any of the Respondents coerced together or brought any evidence to show the meeting of the minds of the Respondents to conspire together to undertake illegal excavation as a Team. In such circumstances, the contention of the Applicant in Para 8 are denied.
- j. Furthermore, the Report of 23.02.2023 filed by the Joint Committee also corroborates that no mining of whatsoever nature has been undertaken at the behest of Respondent No. 9 to 14 as a Team. Therefore the contention that the Respondent No. 9 to 14 have conspired to undertake illegal excavation is far from truth and also does not form a part of the Joint Committee Report dated 23.02.2023. The

Respondent No. 11 has not undertaken any illegal excavation and as such is not responsible for destruction of ecology and environment as alleged by the Applicant in Paragraph No. 8. Furthermore, on perusing the Paragraph No. 10 and 11 of the Reply filed by the Respondent No.4 and 5 on 13.04.2023, it is more than evident that no part of the excavation has been undertaken by or at the behest of the Respondent No.11.

- k. As far as the contention of the Applicant in Para 9 with regard to complaints being made to Respondent No. 3 to 7 against the Respondent No. 9 to 12 are concerned, the Joint Committee Report of 23.02.2023 completely negates the contentions of the Applicant in the complaint alleged to have been made. The Respondent Authorities have acted on the directions of this Hon'ble Tribunal dated 05.12.2022, and have accordingly after conducting site inspection and after according an opportunity to the parties have submitted the Joint Committee Report dated 23.02.2023, which in no way corroborates the so called complaints that the Applicant has relied in Para 9.
- l. In Paragraph 10 of the Original Application, the Applicant has tabulated the quantity of alleged illegal excavation that has been undertaken at various villages. The quantities as specified by the Applicant are imaginary and an effort to exaggerate the gravity of the alleged illegal mining. However, the Applicant in Para 10 of the present Original Application has not been able to proof the alleged quantities of illegal excavation. On the contrary, the Joint Committee Report of 23.02.2023 has also tabulated the Survey/Gat Nos and the same in no way corroborates the contention of the Applicant in Paragraph 10. At the cost of repetition, it is submitted that the Applicant should prove the

contentions/assertions made in Paragraph 10, failing which no weightage can be given to the contentions in Para 10. Furthermore, the Respondent No. 4 and 5 on 13.04.2023 have filed their reply affidavit to the OA. On perusing the contents of the said Reply, more particularly at Para 10, the Respondent No. 4 and 5 have quantified the total amount of excavation to be 7151.81 brass, which is half of what has been claimed by the Applicant in Para 7 of the OA. Furthermore, it is also pertinent to note that out of the 7151.81 brass, which has been excavated, 3468 brass has already been adjudicated by the Sub Divisional Officer of Taluka Maval and therefore if at all any alleged illegal excavation has happened, the same may be to a tune of 3683.81 brass only and nothing more.

- m. The contentions of the Applicant in Para 11 that the Mamlatdar has drawn a spot panchnama and has concluded that the Respondent No. 9 to 12 have carried out illegal mining amounting to an approximate amount of Rs. 7, 72, 96, 095/- is absolutely erroneous. On perusing the contents of the alleged panchnama, nowhere have the authorities come to a conclusion of whatsoever nature that the alleged illegal excavation has been undertaken by the Respondent No. 9 to 12. Rather, the Authorities have only recorded the contentions of the Applicant and have not attributed any culpability on the Respondent No. 11. Furthermore, on perusing the table forming a part of the Joint Committee Report dated 23.02.2023, in the status column, properties situated at serial no 1, 2, 4, 5 and 6 have found excavation to have been undertaken at the said sites. However, on perusing the Report dated 23.02.2023, nowhere have the authorities found that the excavation has been undertaken at the behest of the Respondent No. 9 to 12. On the

contrary, there is nothing on record to attribute illegal excavation to the Respondent No. 11. Furthermore, the Joint Inspection Report dated 23.02.2023 in no ways depicts illegal excavation to the tune of Rs. 7,72,96,095/- as alleged by the Applicant. Also, there is nothing on record, to show that the extent of the illegal excavation amounts to Rs. 50 crores. These figures are simply blown out of proportion by the Applicant so as to over-emphasize the case of the Applicant and to misuse the jurisdiction of this Hon'ble Court so as to impose maximum penalty on Respondent No. 9 and 10 against whom the Applicant has a personal vengeance. The Respondent No. 4 and 5 in their reply dated 13.04.2023 also do not support the case of the Applicant as contended in Paragraph 10 of the OA. Apparently, the Respondent No. 4 and 5 have stated that excavation worth Rs. 42,91,086/- for a total of 7151.81 brass has been found to be illegal. Assuming though not admitting, the figures as stated by the Respondent No. 4 and 5 to be true, the same also do not corroborate the case of the Applicant. However, the Respondent No. 4 and 5 while computing the total amount of illegal excavation being done have failed to consider that out of the 7151.81 brass, 3468 brass of excavation done at Survey No. 235, Village Kusgaon was adjudicated and regulated by the orders of the Sub-Divisional Officer of Taluka Maval under the Maharashtra Land Revenue Code and therefore at best 3683.81 brass could be the quantity of alleged illegal excavation, amounting to Rs. 22,10,286/- and nothing more. Thus, the contentions in Para 10 are absolutely contrary to the stand of the Respondent Authorities.

- n. As far as the contentions in Para 11 are concerned, the same have no bearing to the Respondent No. 11 and are dealt with by Respondent No. 12 in its own reply.
- o. The Applicant in Para 11 of the Original Application has also contended that the Mamlatdar on the basis of the Panchnama had directed the Police Authorities to register an offence u/s 379, 334, 120B of IPC and also under the High Explosive Substances Act as the Respondent No.9 to 12 had carried out blasting with the help of gelatine sticks and detonator without any permission. At the outset, this contention of the Applicant should be brushed away without implying much importance as none of the authorities before this Hon'ble Tribunal in the Joint Committee Report of 23.02.2023 have reiterated the contentions of the Applicant that the Respondent No. 11 has undertaken blasting with the help of gelatin sticks and electric detonator. This allegation of the Applicant is of such a magnitude that no Authority who was the member of the Joint Committee could have turned a blind eye. If at all there was any substance to the allegation made by the Applicant in Para 11, the same would have definitely formed a part of the Joint Committee Report dated 23.02.2023. Besides the falsity of the contentions of the Applicant in Para 11 is further substantiated by the Reply dated 29.03.2023, now brought on record by the Respondent No.3 before this Hon'ble Tribunal. The Respondent No.3 along with its Reply has annexed FIR No. 130 of 2022 dated 27.07.2022 and FIR No. 197 of 2022 dated 09.11.2022 with the Lonavala Gramin Police Station for offences punishable u/s 379 of IPC against unknown persons. Thus, by no stretch of imagination can it be said that the Respondent No. 9 to 12 have carried out blasting with the

help of gelatin sticks or electric detonator as alleged by the Applicant. Also, it is pertinent to note that the Respondent No. 4 and 5 in their reply dated 13.04.2023 have contended that the Respondent No. 7 with regard to Survey No. 16 at Village Thakursai has registered an FIR No. E-2/2022-23 filed under the Indian Forest Act, 1927 u/s 26(1)A,D,G and for Survey No. 21 at Village Kole Chafeshwar, the Respondent No. 7 has registered an FIR No. E-6/2022-23 filed under the Indian Forest Act, 1927 u/s 26(1)A,D,G. However, none of the FIRs registered by the Authorities in any way implicate any of the Respondents.

10. Reply to the Grounds of the Application

- a. That the contentions raised by the Applicant in ground No. I are totally misconceived and the Applicant has not even been able to make out any case with regards to the contravention of the Forest Conservation Act as far as the Respondent No. 11 is concerned.
- b. Since the fact finding report dated 23.02.2023 of the Joint Committee constituted by this Hon'ble Tribunal in no way attributes any mining activity to the Respondent No. 11 the contention in ground No. II of the present OA has no relation with Respondent No. 11. Also, on perusing the OA as it is, the Applicant has failed to even make out a case with regards to alleged illegal mining at the behest of any of the Respondents. In circumstances where, the Applicant has failed to prove the assertion in the OA No. 103 of 2022 against any of the Respondents, and in the absence of any evidence corroborating the contentions of the Applicant that the Respondents are undertaking illegal mining, the question of obtaining prior Environment Clearance does not arise. Thus, the contention in ground No. II has no relevance.

- c. The Report of the Joint Committee dated 23.02.2023 does not attribute any illegality or culpability to the Respondent No.11 and therefore the contentions in ground No. III are also misplaced.
- d. The contentions with regards to Ground No. IV have been dealt with while replying to Ground No. II in Paragraph No. 10 (b) herein above and the same be read as a part of reply for Ground No. IV. Also, the Report dated 23.02.2023 in no way confirms the illegal mining being currently undertaken, more particularly by the Respondent No. 11 and therefore, the question of stopping mining as such does not arise as sought by the Applicant in Ground No. IV.
- e. The contentions in Ground No. V are also negated by the Joint Committee Report dated 23.02.2023 and the reply of the Respondent No.3 dated 29.03.2023. The Respondent No.3 in its reply dated 29.03.2023 has annexed copies of FIR bearing No. 130 of 2022 and 197 of 2022 registered with the Lonavala Gramin Police Station. On perusing the contentions of the said FIRs, the Respondent No.3 has alleged that at Survey No.74 of village Chavsar, 415 Brass of illegal excavation was undertaken by an unknown person and that 6024 Brass was also illegally excavated by an unknown person at Survey No. 96 of Village Varu and Survey No. 42 of Village Jovan. Thus, the FIRs registered by Respondent No.3 do not support the contentions of the Applicant in Ground No. V.
- f. The Applicant has not been able to substantiate the contentions in ground No.VI so as to justify the allegation that the Respondents are totally undertaking illegal excavation. Such allegations being contrary to record are of no substance.

- g. The Applicant in ground No. VII has failed to demonstrate any damage to the environment as a consequence of the alleged illegal excavation being undertaken by the Respondent No. 11. The Report of the Joint Committee dated 23.02.2023 having not attributed any illegal action to the Respondent No. 11 where the question of penalizing the Respondent No. 11 does not arise.
- h. The issue raised by the Applicant in Ground No. VIII is not admitted by the Respondent No. 11. The Applicant had produced nothing on record to prove the assertion that the Respondent No. 11 have undertaken money laundering. Be that as it may, the Hon'ble Supreme Court vide its Order dated 27.04.2022 in Civil Appeal No. 2862 – 2863 of 2022 has stayed direction No. (vii) in the Order dated 24.01.2022 issued by the Principal Bench of this Hon'ble Tribunal directing the Enforcement Directorate to examine the matter under the Prevention of Money Laundering Act, 2002. Furthermore, the issue pertaining to money laundering under the Prevention of Money Laundering Act, 2002 does not form a part of the seven enactments specified in the Schedule I of the National Green Tribunal Act, 2010 and therefore, is beyond the jurisdiction of this Hon'ble Tribunal.
- i. The contentions in Ground No. IX by itself demonstrates the vengeance of the Applicant in filing the present Application before this Hon'ble Tribunal. In Ground No. IX, it is the case of the Applicant himself that the Applicant has revengefully filed the present Original Application against the Respondent No. 9 to 12 and Respondent No.14 due to the previous litigations between the Applicant and the said Respondents. In the present Reply, the Answering Respondents in Para 9 (e) has enumerated the details of previous litigation between Applicant and the

Respondent No.11. It is therefore submitted that the present Original Application is an attempt to misuse the Jurisdiction of this Hon'ble Tribunal to settle personal scores of the Applicant against the Respondent No. 11.

11. Reply to the Limitation:

Any application under Section 14(3) of the National Green Tribunal Act, 2010 shall be made with this Hon'ble Tribunal within a period of six months from the date on which the cause of action for such dispute first arose and under Section 15(3) of the National Green Tribunal Act, 2010 within 5 years from the date on which the cause of action for compensation or relief first arose. The Hon'ble Supreme Court in (2011) 9 SCC 126 has interpreted the term "right to sue first accrues" to mean that if a suit is based on multiple causes of action, the period of limitation would begin to run from the date when the right to sue first accrues. Successive violation of the right would not give rise to a fresh cause and the suit would be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrue. The Applicant in the limitation clause has contended that the cause of action for filing of the present Application arose on 26.08.2022, when the Applicant had preferred an application to the Respondent No.6. The Hon'ble Supreme Court in (2013) 12 SCC 179 has held that a representation relating to a stale claim or a dead grievance does not give rise to a fresh cause of action. Mere submission of a representation to a competent authority does not arrest time. Therefore, the contentions of the Applicant in the limitation clause that a representation to the Respondent No.6 on 26.08.2022 would give a cause of action to the Applicant to file

the present Application is contrary to the law laid down by the Hon'ble Supreme Court as well as this Hon'ble Tribunal.

Also, the Respondent No. 4 and 5 in their Reply Affidavit dated 13.04.2023 has categorically stated, more particularly in Para 11 that the alleged illegal mining has been undertaken "*since past 10 to 12 years in parts and has not been undertaken currently*". Thus, it is the stand of the Respondent Authorities in the present OA that the illegal mining has been undertaken since past 10-12 years. In such circumstances, the OA No. 103/2022 in any case, is beyond the period of Limitation prescribed u/s 14(3) as well as 15(3) of the NGT Act, 2010 and ought to be dismissed solely on this ground.

12. Also, the Hon'ble Supreme Court in a recent Judgment dated 21.10.2022 reported in (2022) SCC Online SC 1469 has categorically held that before a litigant is permitted to knock the doors of justice and seek Orders from the Hon'ble Tribunal which have far reaching effects, the credentials and bonafides of such an Applicant must be tested. The Hon'ble Supreme Court was therefore pleased to direct the Hon'ble Tribunal when objections with regards to bonafides and credentials of Applicants are seriously raised when entertaining the grievance of such Applicants, which is likely to adversely affect the rights of many, it should ensure the bonafides and credentials of such Litigants. In view of the Judgment passed by the Hon'ble Supreme Court, it is therefore now necessary to ensure the credentials and bonafides of the Applicant in the present case.

13. In view of the contentions raised herein above, no prayers as sought by the Applicant can be granted qua the Respondent No. 11. As far as the prayer clause A) is concerned, the same has been complied with as this Hon'ble Tribunal has already constituted a Joint Committee vide its Order dated

05.12.2022, which has submitted its Report dated 23.02.2023 and nothing incriminating has been found against the Respondent No.11. As far as prayer clause B) is concerned, since the report does not confirm illegal mining at the behest of the Respondent No.11, the same has no consequence. The relief sought in Prayer clause C) cannot be granted in terms of the contentions raised in Paragraph 10 (h) herein above. Since, no illegal excavation has been attributed to the Respondent No. 11 in the Report dated 23.02.2023, no question of levying Environmental Compensation arises as sought in prayer clause D). Prayer clause E) being interim and ad-interim relief, the same does not survive as on date.

14. It is submitted that the fact finding report dated 23.02.2023 of the Joint Committee constituted by this Hon'ble Tribunal in no way attributes any mining activity against the any of the Respondents. Also, on perusing the present Original Application as it is, the Applicant has failed to even make out a case with regards to alleged illegal mining at the behest of any of the Respondent. In such circumstances, this Hon'ble Tribunal may be pleased to dismiss the present Original Application with exemplary costs.

Filed By:



Samridhi S. Jain
Advocate

A10, LGF, Lajpat Nagar III, New Delhi, 110024

Place: Pune

Email: samridhi12318@gmail.com

Date: 23.04.2023

Contact No: +91 9890210579

NOTARIAL REG.
ENTRY NO. 229
DATE 21/04/23



BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE
ORIGINAL APPLICATION NO. 103 OF 2022

IN THE MATTER OF:
Prakash Mishrilal Porwal
Versus

...Applicant

Ministry of Environment, Forest
and Climate Changes and Ors.

...Respondents

AFFIDAVIT

I, Mr. Pandurang Krushna Jambhulkar, Occupation: Business, Age: Adult,
Residing at:- Kole Chafeshwar, Taluka Maval, District Pune -412108
Maharashtra, do hereby solemnly affirm and state as under:

1. That I am the Respondent No.11 in the above mentioned Original Application as such am conversant with the facts and circumstances of the case and am competent to swear to this affidavit.
2. That I have read the contents of the accompanying reply, the same being drafted by my counsel under my instructions and that the contents of Para 1 to ___ of the reply are facts in brief believed to be true on legal advice and that I have not suppressed any material fact.
3. That the annexures filed along with the reply are the true copies of their respective originals.

[Handwritten signature]

DEPONENT

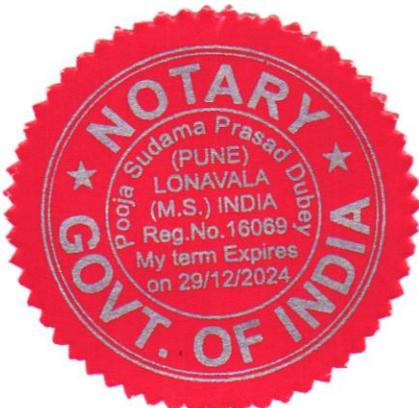
VERIFICATION

Verified at Lonavla on this 21st day of April, 2023 that the contents of the present affidavit are true and correct and nothing material has been concealed therefrom.

[Handwritten signature]

Sworn before me on this
day of 21/04/23 at Pune (Lonavala) by
Shri/Smt./Ku. Pandurang K. Jambhulkar DEPONENT
R/o.....who has been identified
by Shri/Smt. Adv. Pooja Dubey
Advocate, Pune (Lonavala).

[Handwritten signature]
NOTARY
Govt. of India
Pune (Lonavala) (M.S.) India





पिल हरमन डिमेल्ला उर्फ पर्ल राहुल पांचाल
 तर्फे कुलमुखत्यारधारक
 श्री. प्रांडुरंग कृष्णा जांभुळकर
 व्दारा रा. फ्लॉट नं.०२, शांतीमणी इन्क्लेव्ह,
 लक्ष्मीनारायण मंदीराजवळ, भांगरवाडी,
 लोणावळा ता. मावळ जि. पुणे ४१० ४०१

...अपिलार्थी

विरुध्द

१. श्री. प्रकाश मिसरीमल पोरवाल
 रा. मौजे भुशी, सर्व्हे नं. २४, एकविरा बंगलो
 नौसेना बाग जवळ, लोणावळा,
 ता. मावळ, जि. पुणे. ४१०४०१
२. ज्युली हरमन डिमेल्ला
 पत्ता - सुभाषनगर, चेंबुर मुंबई ४०००७१
३. गाव कामगार तलाठी तुंग
 ता. मावळ, जि.पुणे.
४. मंडल अधिकारी काले,
 ता. मावळ, जि.पुणे.

...जाबदेणार

महाराष्ट्र जमिन महसुल अधिनियम १९६६ चे कलम २४७ नुसार चौकशी

दाव्यातील जमिनीचा तपशिल

गावाचे नाव	तालुका	स.नं./ग.नं.	फेरफार क्र.
तुंग	मावळ	२३४/१	१०८४

निकालपत्र

मंडल अधिकारी काले यांनी फेरफार क्र. १०८४ बाबत दिलेल्या निर्णयावर नाराज होवुन अपिलार्थी यांनी प्रस्तुतचे अपिल दाखल केले आहे.

अपिलार्थी यांचे अपलिास विलंब आहे. तरी प्रस्तुत अपिलाकामी उभय पक्षकारांना नोटिसा काढुन सुनावणी घेवुन म्हणणे मांडण्याची संधी देण्यात आली असता अपिलार्थी व जाबदेणार यांचे विधीज्ञ सुनावणीकामी हजर राहिलेले आहे. अपिलार्थी व जाबदेणार यांनी त्यांचे म्हणणे सादर केलेले आहे. प्रस्तुत प्रकरण उभय पक्षकारांना नोटिसा काढुन सुनावणी घेवुन म्हणणे मांडण्याची संधी देण्यात येवुन प्रस्तुतचे प्रकरण गुणदोषावर आधारीत निर्णयासाठी बंद करणेत आले.

अपिल अर्ज व त्यासोबतची कागदपत्रे व पुराव्याकामी दाखल केलेले कागदपत्रे विचारात घेता खालील प्रमाणे परिस्थिती दिसून येते की,

गाव मौजे तुंग ता. मावळ, जि. पुणे येथील गट नं. २३४/१ (गट नं. २३४) एकुण क्षेत्र ०२ हे ०४ आर ही मिळकत या दाव्याचा विषय आहे.

दावा मिळकत मुळ गट नं. २३४ चे एकुण क्षेत्र ०३ हे. ०६ आर असुन दावा मिळकतीचे मुळमालक श्री. गणपती जानकु कुंभार हे आहेत. गणपती जानकु कुंभार यांचे तर्फे कुलमुखत्यार धारक म्हणुन गंगाधर बवरे यांनी दिं ०४/०१/१९८८ रोजी दावा मिळकत उषाक्रांत जमनादास लादीवाला खरेदीखताद्वारे खरेदीने दिलेली आहे. सदर खरेदीखताची फेरफार क्र. ५५ अन्वये नोंद घेण्यात येवुन इतर हक्कात नविन शर्तीचा भंग झालेला आहे व कुळकायदा कलम ८४ क यास पात्र असा शेरा ठेवुन मंजूर केलेली आहे.

तत्कालिन उपविभागीय अधिकारी यांचेकडील हु.न.त. मह/कावि/२६३२/१९९१ दिं. ११/०१/१९९१ तसेच तहसीलदार यांचेकडील क्र. तमहनो /वशि/१२६/१९९१ दिं. १७/०१/१९९१ प्रमाणे गट नं. २३४ या मिळकतीचा नविन शर्त कमी करुन जुन्या शर्तीवर रिग्रॅन्ट करणेत आलेले आहे. सदर आदेशाची नोंद फेरफार क्र. २४० ने नोंद मंजूर करण्यात येवुन इतर हक्कातील नविन शर्तीचा भंग बेकायदेशीर व्यवहार हा शेरा कमी केलेला आहे.

तहसिलदार मावळ यांचेकडील हुकुम नं. ३५३/९० दिं. २१/०६/१९९१ प्रमाणे कु.का.क. ८४ क ची चौकशी होवुन कु.का.क. ८४ क स पात्र हा शेरा कमी करण्याबाबत आदेश झालेला आहे. सदर आदेशाची फेरफार क्रमांक २६३ अन्वये नोंद मंजूर करण्यात येवुन इतर हक्कातील असलेला कु.का.क्र. ८४ क यास पात्र हा शेरा कमी केलेला आहे .

श्री. गणपती जानकु कुंभार श्री. किसन जानकु कुंभार व श्री. विष्णु जानकु कुंभार यांनी दिं. ०६/०५/१९८८ रोजी हर्मन डिमेलो यांस गट नं. २३४ एकुण क्षेत्र ०३ हे ०६ आर या मिळकतीबाबत नोंदणीकृत खरेदीखत दस्त क्र. ३९५/१९८८ अन्वये खरेदीने देलेले आहे.

हरमन अरानुस डिमेलो हे दिं. १५/०७/१९९१ रोजी मयत झाले असुन त्यांचे मृत्यू पश्चात कायदेशीर वारस त्यांची जाबदेणार पत्नी ज्युली हरमन डिमेलो व अपिलार्थी मुलगी पॉल हरमन डिमेलो यांची नोंद इतर मिळकतीचे ७/१२ स फेरफार क्र. ४६२ अन्वये दाखल झालेली आहे.

दिं ३०/१०/२००६ रोजी श्रीमती ज्युली हार्मन डिमेलो वपॉल हर्मन डिमेलो, नं. १. स्वत : करीता व नं. २. ची अ.पा.क. आई म्हणुन यांनी प्रकाश मिश्रीमल पोरवाल यांस नोंदणीकृत कुलमुखत्यारपत्र लिहून दिलेले आहे. सदरचे कुलमुखत्यारपत्र गट नं. २३४ एकुण क्षेत्र ०३ हे ०६ आर व इतर १ जमीनीकरीता करुन दिलेला आहे. सदर कुलमुखत्यारपत्र अनु क्र. बदर - २ ७३५४/२००६ ने दुय्यम निबंधक कुर्ला यांचे कार्यालयामध्ये नोंदविलेले आहे.

तत्कालिन उपविभागीय अधिकारी मावळ उपविभागीय पुणे यांचेकडील आदेश आरटीएस क्र./३७/०६ दिं. ३०/०५/२००८ ने गट नं. २३४ एकुण क्षेत्र ०३ हे ०६ आर मध्ये २/३ हिश्याकरीता पॉल

हर्मन डिमेलो, ज्युली हर्मन डिमेलो यांचे नाव दाखल करून १/३ हिश्याकरीता डॉ. उषाकांत जमनादास लादीवाला यांचे नाव दाखल करण्याबाबत आदेश पारित झालेला असून सदर आदेशाची फेरफार क्रमांक १०५५ ने नोंद मंजूर करण्यात येवून डॉ. उषाकांत जमनादास लादीवाला ०५ आणि ०४ पै. तसेच पॉल हर्मन डिमेलो, ज्युली हर्मन डिमेलो १० आणि ०८ पै. अशी आणेवारी दाखल झालेली आहे.

ज्युली हार्मन डिमेलो ह्या स्वतः : करीता व पर्ल हर्मन डिमेलो तर्फे अ.पा.क. आई म्हणुन तर्फे कुलमुखत्यारधारक म्हणुन प्रकाश मिसरीमल पोरवाल यांनी स्वतःचे नावे दिं. ०४/०६/२००८ रोजी खरेदी क्षेत्रात केलेले असून सदर खरेदी खताची फेरफार क्र. १०८४ अन्वये नोंद घेण्यात आली असता सदर फेरफार नोंदीस गट नं. २३४/२ चे मालक उषाकांत जमनादास लादीवाला यांनी हरकत घेतलेने महसुल नायब तहसिलदार यांनी त्यांचेकडील तक्रार/एसआर/तुंग/४१/२००८ मधील दि. १४/०८/२००९ रोजीचे आदेशान्वये फेरफार क्र. १०८४ ही नोंद मंजूर करण्याबाबत आदेश पारित केलेला असून तदनंतर सदची फेरफार नोंद मंजूर करण्यात आलेली आहे.

उपअधिक्षक भुमीअभिलेख मावळ यांचे कडील आदेश क्र. मौजे तुंग /दु.पो.ही.मो.र.न. /९४६/२०१५ दिं.३०/१२/२०१५ तसेच तहसिलदार यांचेकडील क्र.ह.नो./वशि /६१/२०१६ दिं. ०६/०१/२०१६ चे आदेशाने गट नं.२३४ चे गट नं. २३४/१ प्रकाश मिश्रीमल पोरवाल क्षेत्र ०२ हे ०४ आर व गट नं. २३४/२ डॉ. उषाकांत जमनादास लादीवाला क्षेत्र ०१ हे ०२ आर असा फाळणीबारा झालेला असून सदर फाळणीबाराची फेरफार क्र. १६८७ अन्वये नोंद घेण्यात येवून दोन स्वतंत्र ७/१२ उतारे झालेले आहेत.

दि. ०४/०६/२००८ रोजीचे खरेदीखतावेळी अपिलदार हे सज्ञान असताना सदर खरेदी व्यवहारास त्यांची संमती न घेतलेने तसेच कोणत्याही कोर्टाची परवानगी न घेतलेने अपिलार्थी यांनी सदरची फेरफार क्र. १०८४ ही नोंद त्यांचे ०१ हे. ०२ आर क्षेत्रापुरती रद्द करण्याबाबत विनंती केलेली आहे.

त्या अनुषंगाने अवलोकन केले असता, दावा मिळकत ही अपिलार्थी यांचे वडील व जाबदेणार क्र. २ यांचे पती हर्मन अरानुस डिमेलो यांची स्वकष्टार्जित मिळकत असल्याने अपिलार्थी व जाबदेणार क्र. २ यांचा समसमान हिस्सा आहे. अपिलार्थी यांचा जन्म दिं. २३/०९/१९८७ रोजी झालेबाबत अपिलार्थी यांनी जन्म दाखला प्रकरणी समाविष्ट केलेला असून त्याचे अवलोकन करता दि.०४/०६/२००८ रोजी अपिलार्थी यांचे वय २० वर्षे ८ महीने आहे. म्हणजेच अपिलार्थी हे खरेदी व्यवहाराचेवेळी सज्ञान होते. जाबदेणार क्र. २ यांनी अपिलार्थी तर्फे अपाक म्हणुन कुलमुखत्यारपत्र करून दिलेले असले तरी प्रत्यक्ष खरेदी व्यवहाराचेवेळी अपिलार्थी हे सज्ञान असलेने त्यांचे हिश्यापुरते सदरचे कुलमुखत्यारपत्र संपुष्टात आलेले आहे.

जाबदेणार क्र. १ यांनी अपिल मिळकत खरेदीने घेतेवेळेस अपिलार्थी हे अज्ञान आहेत अथवा नाही याबाबत खात्री करून घेणे आवश्यक होते. अपिलार्थी हे अज्ञान असल्यास योग्य त्या सक्षम न्यायालयाची परवानगी घेणे आवश्यक होते. तथापि, जाबदेणार क्र. १ यांनी तसे केलेले नसल्याने सदरचे खरेदीखत अपिलदार यांचेवर बंधनकारक नाही.

मिळकत वरील सज्ञान

२३/१२/२०१५ तहसिलदार क्षेत्र-२३४

जाबदेणार क्र. १ यांनी अपिलार्थी हे सज्ञान असतानाही त्यांचेकडून स्वतंत्र कुलमुखत्यारपत्र केलेले नाही अथवा सदर खरेदी व्यवहारास त्यांची संमती देखिल घेतलेली दिसून येत नाही. त्यामुळे सदरचा खरेदीव्यवहार तसेच तदनंतरचे हस्तांतरणाचे व्यवहार देखिल अपिलदार यांचे क्षेत्रावर बंधनकारक नाही.

अपिलार्थी यांचे अपिलास विलंब आहे. तथापि, अपिलार्थी हे सदर खरेदी व्यवहारास पक्षकार नाहीत. तसेच सदर खरेदीची फेरफार क्र. १०८४ ही नोंद मंजूर करताना अपिलार्थी यांना नोटिस बजावणी केलेली नाही. अपिलार्थी यांनी विलंब माफीकामी नमुद केलेली कारणे ही समर्पक आहे. तरी नैसर्गिक न्यायतत्वाचे दृष्टिने अपिलार्थी यांचे अपिलास झालेला विलंब क्षमापित करून अपिलार्थी यांचे अपिल मंजूर करून जाबदेणार क्र. १ यांचे खरेदीखताची फेरफार क्र. १०८४ ही नोंद अपिलार्थी यांचे ०१ हे. ०२ आर क्षेत्रापुरती रद्द करून सदर क्षेत्रास अपिलार्थी यांचे नाव दाखल करणे उचित होईल या निष्कर्षाप्रत मी आलो असलेने मी उपविभागीय अधिकारी मावळ - मुळशी उपविभाग, पुणे प्रस्तुत प्रकरणी पुढील प्रमाणे आदेश देत आहे.

आदेश

१. अपिलार्थी यांचे अपिल मान्य करण्यात येत आहे.
२. फेरफार क्र. १०८४ ही नोंद अपिलार्थी यांचे ०१ हे. ०२ आर क्षेत्रापुरती रद्द करणेत येत असून सदर क्षेत्रास अपिलार्थी यांचे नाव दाखल करण्याचा आदेश देत आहे.
३. सदर निकालाची समज उभय पक्षकारांना देण्यात यावी.

ठिकाण - पुणे.

दिनांक १६/९/२०२०


(संदेभ शिर्के)

उपविभागीय अधिकारी

मावळ - मुळशी उपविभाग, पुणे

प्रत - तहसिलदार मावळ यांचेकडे माहितीसाठी व पुढील योग्य त्या कार्यवाहीसाठी रवाना.



नक्कल फी रु. ४०
नक्कल फी रु. ४



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नक्कलेसाठी अर्ज दिनांक - १८/९/२०
नक्कल तयार दिनांक - २१/९/२०
नक्कल करणारे
नक्कल तपासणारे
नक्कल दिल्याचा दिनांक - २१/९/२०


उपविभागीय अधिकारी
मावळ-मुळशी उपविभाग पुणे

In the court of Sandesh Shirke, Sub Divisional Officer

Maval - Mulshi Sub Division

No. RTS/A/S R/156/2020

Paul Herman Dimela alias Pearl Rahul Panchal

Power of Attorney holder by

Shri. Pandurang Krishna Jambhulkar

C/o. Flat No.02, Shantimani Enclave,

Laxminarayan Mandirajval, Bhangarwadi,

Lonavala Ta. Maval Dist. Pune

.... Applicant

Versus

1. Shri Prakash Misrimal Porwal
R/o. Mauje Bhushi, Survey no. 24,
Ekvira Bungalow, Near Naval Bagh,
Lonavala or Maval, Dist. Pune. 410401
2. Julie Herman DiMella
Address - Subhashnagar,
Chembur Mumbai 400071
3. Village Worker Talathi Tung
Tal. Maval, Dist. Pune.

4. Divisional Officer Kale,

Ta. Maval, Dist. Pune

Respondent

Investigation under Section 247 of the Maharashtra Land
Revenue Act, 1966

Name of Village	Tal.	Survey No. / Gut No.	Amendment No.
Tung	Maval	234/1	1084

result sheet

The Appellant was aggrieved by the decision given by Divisional Officer Kale regarding amended no. 1084 and the present appeal has been filed.

Appellant's appeal is delayed. However, when notices were issued to both the appellant parties and an opportunity was given to present their views, the

appellant's and Respondent lawyers were present at the hearing. Appellant and Respondent have submitted their statements. In the present case both the parties were given notices and given an opportunity to present their views after hearing and the present case was closed for decision based on merits.

Considering the appeal application and the accompanying documents and the documents filed by the witnesses, the situation is as follows:

Village Mauje Tung Tal. Maval, Dist. Pune Group No. 234 / 1 (Group No. 234) Total area 02 is 04R is the subject of this property claim.

Claim Property Basic Group No. Total area of 234 is 03 ha. 06 R and claim property of Mr. Ganapati Janku is a Power of Attorney Holder On behalf of Ganapati Janku Kumbhar as the Power of Attorney holder, the claim proceeds have been transferred by purchase to Ushakant

Jamnadas Ladiwal on 04/01/1988. Modification of the said purchase order no. 55 has violated the new condition in the right to be recorded and has been sanctioned by commenting that it is qualified under Section 84C of the Kul Kaida Act.

H.N.T. of the then Sub Divisional Officer. Mah/Kavi/2632/1991 dt. 11/01/1991 and Tehsildar No. Tamhano / Vashi / 126 / 1991 dt. 17/09/1991, Group No. 234, the new condition of this property has been reduced to the old condition. The record of the said order is amended no. 240 has reduced the provision of illegal transaction in breach of new condition of other rights by granting registration.

The order was issued for investigation for Kul Kaida Act 84 and an order has been made regarding the reduction of the comment under Article 84 on dt. 21.06.1999 from Tehsildar Bhaval's vide its no. 353 / 90, After approval

of the entry under amendment No. 263 of the said order, Kul Kaida Act No. 84 C verse is shortened.

Mr. Ganapati Janku Kumbhar and Shri. Kisan Janku Kumbhar had given the property to Shri. Vishnu Janku Kumbhar on dt. 06/05/1988 which is situated at Group No. 234 Total Area 03 is 06 through Registered Purchase Deed No. 395/1988 .

Herman Aranuz Dimela was deceased on 15/07/1991 and posthumously his legal heirs his wife Julie Harman Dimela and appellant daughter Paul Herman Dimela Record of other property 7/12 and Alteration no. 462

On dated 30/10/2006 Mrs. Julie Harmon D'Mello VP Paul Herman D'Mello, no. 1. For himself and no. 2 of MGA mother has written a registered power of attorney to Prakash Mishrimal Porwal. The Attorney General's Letter Group No. 234 total area 03 has been allotted for 06 R

and 1 other land. The said Attorney General Letter No. BDR 27354 / 2006 of Sub Registrar Kurla - registered in office.

RTS NO. 37/06, dated 30.5.2008 the order of the ten sub Divisional officer Maval Sub Divisional Pune by group No. 234 total area 03 H 6 R in which for 2/3 share Paul Herman D'Mello, Julie Herman D'Mello and for 1/3 share Dr. Ushakant Jamnadas Ladiwala name submitted. An order has been passed regarding the registration and the amendment of the order No. 1055 has been approved and Dr. Ushakant Jamnadas Ladiwala 05 ane 04 P. and also Paul Herman D'Mello, Julie Herman D'Mello 10 ane 08 p. such an initiative has been filed.

Julie Harmon D'Mello for herself and Pearl Herman D'Mello by MGA Prakash Misrimal Porwal as power of attorney holder on behalf of his mother gave his own

names. The purchase was made on 04/06/2008 and the said purchase Deed amendment No. 1084 make entry. When notes were taken under 1084, the said alteration notice group no. 234/2 owner Ushakant Jamnadas Ladiwala objected, Revenue Naib Tehsildar filed his complaint/SR/ Tung/ 41/ 2008 dated 14/08/2009 Alteration vide order no. 1084, an order has been passed regarding the approval of this entry and subsequently the amended entry has been approved. The change entry has been approved.

Deputy Superintendent Land Record Maval's order no. Mauje Tung/D.P.H.M.R.N./946/2015 dt. 30/12/2015 from Tehsildar by order No. H.Mo./vashi/61/2016 dt. 06/01/2016 Group no. 234 Group No. 234/1 Prakash Mishrimal Porwal Area 02 H 04 R and Group No. 234/2 Dr. Ushakant Jamnadas Ladiwala area has been divided into 01 and 02 R and the said division has been modified

no. There are two separate 7/12 passages recorded in 1687.

At the time of the purchase transaction dated 04/06/2008, appellant was adult even though without taking the consent of the appellant for the said purchase transaction and without taking the permission of any court, the appellant made the said modification no. 1084 is his entry hence requested to cancel abovesaid entry for the 1 H. 2 R area.

When perused accordingly, the claim property is father of the appellant and Respondent no. 2's husband, Herman Aranus D'Melo, being self-earned property, the appellant and Respondent no. 2 have equal share. Regarding the incident on 23/09/1987, the appellant has included in the birth certificate case and perusal of the same. Appellant's age is 20 years 8 months as on 04/06/2008. That is, the appellant was aware at the time of purchase

transaction. Respondent no. Although 2 has filed a power of attorney on behalf of the appellant, the said power of attorney has been terminated due to the fact that the appellant is aware of the fact that at the time of every purchase transaction.

Respondent no. 1 should have ascertained whether the appellant was ignorant or not at the time of purchase of the appellant's property. If the appellant is ignorant of the appropriate competent court. Permission was required. However, Respondent no. As 1 has not done so, the said purchase deed is not binding on the appellant.

Respondent no. 1, despite the knowledge of the appellant, has not executed an independent power of attorney from him or it does not appear that his consent to the said purchase transaction has been obtained. Therefore, the said purchase transaction as well as

subsequent transfer transactions are not binding on the appellant.

Appellant's appeal is delayed. However, the appellant is not a party to the said purchase transaction. Also, modification of the said purchase no. 1084 No notice has been issued to the appellant while admitting this entry. The reasons cited by the appellant for condoning the delay are relevant. However, from the point of view of natural justice, condoning the delay caused by the appellant and allowing the appeal of the appellant no. 1's purchase order modification no. 1084 this entry is 01 of the appellant. 02 and as I have come to the conclusion that it would be appropriate to register the name of the appellant in the said area by canceling it, I am passing the following order in the matter presented to Sub Divisional Officer Maval - Mulshi Sub Division, Pune.

Order

1. The appeal of the appellant is being accepted.
2. Modification no. 1084 this entry is 01 of the appellant. 02 is being canceled for R area
3. Both the parties should be given an understanding of the said result.

Place: Pune

Date; 14.9.2020

(Sandesh Shirke)

Sub Division officer

Maval-Mulshi Sub Division,

Pune

Copy: Tehsildar Maval for information and further appropriate action.



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**PROOF OF SERVICE**

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Reply of Respondent No. 11 in OA No. 103 of 2022 between Prakash Porwal v. MOEF & CC and Ors.

1 message

Adv Sangramsingh R Bhonsle <srb.chambers@gmail.com>

Sun, Apr 23, 2023 at 7:11 PM

To: kaawa10jan@yahoo.com, advocatedangare@gmail.com, advocatedangare@yahoo.co.in, aniruddha1488@gmail.com, ccftpune@gmail.com, lawofficerpune@gmail.com, eeird.punewrd@maharashtra.gov.in, envis.maharashtra@gmail.com, secy-moef@nic.in, sdkadvocate@gmail.com

Cc: Samridhi Jain <samridhi12318@gmail.com>, Sangramsingh Bhonsle <sangramsinghbhonsle@gmail.com>

Sir/Ma'am

PFA herewith Reply on behalf of Respondent No 11 in the aforesaid matter. Kindly consider this email as service on behalf of the Respondent No. 8.

Regards,

Sangramsingh R. Bhonsle

Advocate

Supreme Court of India

A-10, LGF, Lajpat Nagar III,

New Delhi - 110024.

Mob- 9545809120

**Reply by Pandurang Jambhulkar to OA.pdf**

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