

**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. 8 TO O.A
NO. 103 OF 2022**

PAPER BOOK

(KINDLY SEE INSIDE FOR INDEX)

ADVOCATE FOR THE RESPONDENT NO.8

**BEFORE THE NATIONAL GREEN TRIBUNAL
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ORIGINAL APPLICATION NO. 103 of 2022**

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Filed By:



Samridhi S. Jain

Advocate

A10, LGF, Lajpat Nagar III,

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Place: Pune.

Date: 23.04.2023

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**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE BENCH) PUNE, AT PUNE
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**REPLY ON BEHALF OF THE RESPONDENT NO. 8 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.9 AND 10.

MOST RESPECTFULLY SHOWETH:

1. The Applicant vide the OA No. 103/2022 has alleged illegal mining at the behest of Respondent No. 9 to 15 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. Furthermore, vide the said Application, the Respondent is also seeking environmental compensation along with a detailed Committee Report with action to be taken against the Respondent No. 9 to 15. Also, on perusing the

prayers in the Original Application, all reliefs are sought against the Respondent No. 9 to 15 and as such no relief is sought against the answering Respondent No. 8. The obvious reason for not seeking any relief against the Respondent No. 8 is because on perusing the entire Original Application as filed by the Applicant, the mention of Respondent No. 8 is found nowhere but in Paragraph No. 6. Thus, the allegations in the OA are not directed towards the Respondent No. 8 and the Respondent No. 8 has been arrayed as a party unnecessarily.

2. The contentions raised in the Paragraphs, other than Paragraph 6 of the OA NO. 103/2022 have nothing to do with the duties of the Respondent No. 8 and in any case, are denied. Besides, the Respondent No. 9 and 10 have already filed their reply to the OA No. 103/2022 which is on record. The Respondent No. 9 and 10 have filed a detailed reply to the contentions raised by the Applicant in the OA. Barring the contentions raised hereinbelow, the Respondent No. 8 adopts the contentions of the Respondent No. 9 and 10 to the reply to OA No. 103/2022 and reserves his right to rely on the same if need be.
3. In Paragraph No. 6 of the present OA, the Applicant has alleged that the Respondent No. 8 being a public officer was well aware about the illegal excavation undertaken by the Respondent No. 9 to 14 and for his vested interest has not reported the alleged illegality to the Competent authorities. In this context, the allegations made by the Applicant are absolutely frivolous for the reason that on perusing the reply filed by Respondent No. 4 and 5 dated 13.04.2023, the Respondent Authorities have stated that out of the 5 sites that form a part of the subject matter of the OA, 4 sites are government lands where illegal mining had been undertaken for the past 10-12 years and was not being undertaken currently. Thus, this statement of the Respondent

No. 4 and 5 clearly demonstrates that the alleged illegal excavation is an activity of the past 10-12 years and not of the recent past. Also, the Respondent No. 4 and 5 have stated that it was not possible for the Committee to ascertain as to who has undertaken the illegal excavation. Taking a conspectus view of the statement made by the Respondent No. 4 and 5, it can easily be inferred that the alleged illegal excavation is a decade old and has no connection to the recent past. Also, since the Authorities are unable to ascertain the culpability of the alleged illegal excavation, the contention raised by the Applicant in Para 6 that the alleged illegal excavation are undertaken by the Respondent No. 9 to 14 and the Respondent No. 8 being hand in gloves with the Respondent No. 9 to 14 is absolutely contrary to the contention of the Respondent No. 4 and 5.

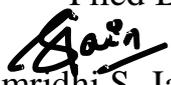
4. The Respondent No. 8 has been a Police Patil of Village Chavsar only from 2018 and has never been the Police Patil for the said Village before that. Furthermore, since the Respondent No. 4 and 5 have stated in their reply dated 13.04.2023 that excavation has been undertaken 10-12 years ago, the Respondent No. 8 has nothing to do with the alleged excavation. Furthermore, on perusing the table of summary forming a part of Para 10 of the Reply of the Respondent No. 4 and 5, only an alleged quantity of 415 brass has been mined at Survey No. 74 of Village Chavsar which is owned by the Irrigation Department, which falls within the jurisdiction of Respondent No.8. With regard to the alleged illegal mining at Survey No. 74 of Village Chavsar, the Respondent No. 3 has already registered an FIR bearing No. 130/2022 u/s 379 of IPC and the same has been registered against unknown persons. Thus, it is evident that action has already been taken by the Respondent authorities for the alleged excavation being done in Village Chavsar of which the Respondent No. 8 is the Police Patil. Thus, it is not true to say that the

Respondent No. 8 has not acted with regards to alleged illegal mining and therefore the contentions in the OA are absolutely erroneous.

5. Interestingly, in the Memo of Parties the Applicant has only arrayed the Respondent No.8, as a Party Respondent in the O.A. No.103 of 2022 and has conveniently abstained from arraying the Police Patil of Village Kolechafesar, Thakursai, Varu, Phagne of Taluka Maval, Distrcit Pune as a party Respondent. This act of the Applicant to only array the Police Patil of Village Chavsar as Respondent No.8 clearly demonstrates the pick and choose approach of the Applicant in arraying the Respondents in the present O.A. As far as the allegations with regards to Respondent No.8 having been purchased by the Respondent No.9 to 14 are being concerned, the Applicant along with the Original Application has produced not a single document to support the contention of the Applicant. Furthermore, the contentions of the Applicant that the Respondent No.8 ought to have complete knowledge of the illegal mining activity are concerned, on perusing the Report dated 23.02.2023, barring Survey No.235 of Village Kusgaon, the alleged illegal excavation has been undertaken in Government Lands be it the Irrigation Department or the Forest Department. Also, the Irrigation Department has registered FIRs against unknown person. In such circumstances where the Irrigation Department and Forest Department were not aware of the illegal excavation previously taken, by no stretch of imagination can the Respondent No.8 be solely responsible for not having reported the alleged illegal mining. Also, it would not be prudent to assert culpability on the Respondent No.8 to say that the Respondent No.8 has vested interest with regards to illegal mining. Therefore, with regards to 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. Also, the alleged illegal excavation is only being conducted at Survey No.74 of Village Chavsar, owned by the Respondent No. 3, within the jurisdiction of the Respondent No. 8. As far as the alleged illegal excavation of 415 brass being mined within the jurisdiction of the Respondent No. 8, the Respondent No. 3 has already registered an FIR No. 130 of 2022 against unknown persons. In such circumstances, nothing remains for the Respondent No. 8 to answer in the present OA.

Filed By:


Samridhi S. Jain
Advocate

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

Place: Pune

Email: samridhi12318@gmail.com

Date: 23.04.2023

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NOTARIAL REG
ENTRY NO. 228 626
DATE 21/04/23

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IN THE MATTER OF:

Mr. Prakash Mishrimal Porwal

...Applicant

Versus

Ministry of Environment Forest and
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... Respondents

AFFIDAVIT

I, Mr. Purushottam Shankar Gonate, Occupation: Police Patil, Age: Adult,
Residing at:- Village Chavsar, Taluka Maval, District Pune, Maharashtra,
412108 do hereby solemnly affirm and state as under:

1. That I am the Respondent No.8 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 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.

DEPONENT

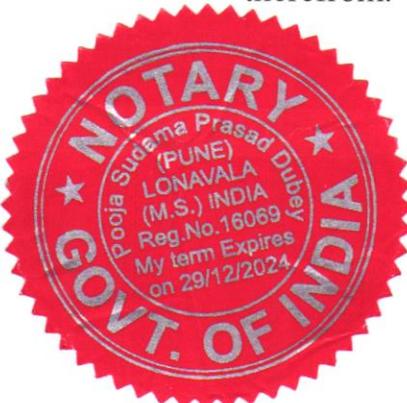
VERIFICATION

Verified at Lonavala 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.

DEPONENT

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

Adv. Pooja Dubey
NOTARY 21/04/23
Govt. of India
Pune (Lonavala) (M.S.) India



**PROOF OF SERVICE**

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Reply on behalf of Respondent No. 8 in OA no. 103 of 2022 between Prakash Porwal v. MOEF & CC& Ors.

1 message

Samridhi Jain <samridhi12318@gmail.com>

Sun, Apr 23, 2023 at 2:20 PM

To: kaawya10jan@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: Sangramsingh Bhonsle <sangramsinghbhonsle@gmail.com>, Pawan Kumar <pawan2110k@gmail.com>

Sir/Ma'am

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

Thanks & Regards,
Samridhi Jain, Advocate
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A-10, LGF, Lajpat Nagar III,
New Delhi - 110024
Mob. 9890210579

**Reply by R-8 Purushottam Gonate-1_LT.pdf**

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