

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL, WESTERN  
ZONE BENCH, PUNE**

I. A. NO.111 /2020

IN

O.A. NO. 66/2019

KUMAR CITY RESIDENTS CO-OPERATIVE  
HOUSING SOCIETY LTD.

----- APPLICANT

V/S.

KUMAR URBAN DEVELOPMENT PVT. LTD.  
AND OTHERS.

----- RESPONDENTS

**REPLY SUBMITTED ON BEHALF OF THE APPLICANT TO THE  
APPLICATION FOR PRELIMINARY OBJECTION FILED BY THE  
RESPONDENT NO. 1 IS AS UNDER:-**

1. The Application under Reply is false, frivolous and not tenable at law. The alleged objections namely Issue Of Limitation and Multiplicity Of Proceedings are misleading and therefore the Application under Reply deserves to be rejected.
2. The allegation of the Applicant that the Hon'ble Tribunal does not have jurisdiction to entertain, try and disposed off the present Application as the same is not within the Limitation within the meaning of provisions of NGT Act is totally false and misleading.
3. With reference to Para Nos. 2 to 4 of the Application under reply, the Applicant submits that the Respondent is interpreting the provisions of Law as per their own suitability / convenience and thereby smartly raising alleged objection regarding limitation. The Applicant hereby specifically clarify that the

cause agitated by way of Original Application is well within limitation and therefore the present matter is perfectly maintainable. As far as law settled by the Hon'ble Bombay High Court and Hon'ble Supreme Court is concern, the Applicant submits that there is no any dispute about the same.

4. With reference to Para Nos. 5 and 6 of the Application under reply, the Applicant submits that the Respondent is unnecessarily insisting the Hon'ble Tribunal to take into consideration date of sanctioning Development Plan i.e. 02.03.2012 as a base for giving effect to the provisions of Sec.14(3) of the NGT Act. It is a settled Law that the *Cause of Action* has to be gathered from the pleadings of the parties not from the proposed defense of the other side. It is pertinent to note that in the Original Application, the Applicant has nowhere referred the date of sanction of the Development Plan i.e. 2<sup>nd</sup> March 2012 as a date of its knowledge. So also, the Date of sanctioning Development Plan or existence of Amenity Plot has no concern to the cause involved in the present Petition. The Respondent by it's own whims and desire insisting the Hon'ble Court to compute limitation period from 2<sup>nd</sup> March 2012.

The allegation that the Original Application is filed with an malafide intentions and further to harass the Respondent Nos. 1 to 3 is totally misleading. The allegation that the Original Application is filed after almost 7 years after accrual of cause of action and also after 2 years of the other Application being filed is also false and misleading. It is further denied that the Applicant is a proxy litigant and they have vested interest behind filing of Original Application. It is further denied that the issue raised by way of Original Application are similar to the issue raised by the Applicant in the pending Civil Suit bearing Special Civil Suit No. 556/2019. The Applicant hereby specifically clarify that the issue involved in the present matter as well as in Special Civil Suit No. 556/2019 are totally different. The interpretation of Sec.14 and 15 of the NGT Acts 2010, as tried to be made out by the Respondent No.1 is also false and misleading.

5. With reference to Para Nos. 7 to 9 of the Application under reply, the Applicant submits that the contents of Para No.7 are the matter of record. It is specifically denied that the date of knowledge has absolutely no application to the provisions of Sec.14 and 15 of the NGT Act. It is further denied that the Application of *Principal of Recurring and / or Continuing Cause of Action* would lead to serious anomalous and undesirable consequences. As far as case Law reported in 2016 (1) SCC 332 is concerned, the Applicant submits that considering the factual aspects involved in the present matter, the said case law has no application to the present case. The Respondent is unnecessary giving weightage to the Principle of Successive Violation. It is pertinent to note that by the Original Application, the Applicant has sought relief of Restoration of Nala (Water Stream) to its original situation and also for Compensation. As far as, the relief regarding cancellation of Construction permission dt. 08.01.2018 is concern, the Applicant submits that it is their specific case that they got the knowledge about the proposed construction in March, 2019. Under such circumstances, the alleged issue of Limitation as raised by the Respondent does not hold any water.

6. With reference to Case Law referred in Para No.10 of Application under reply, the Applicant submits that considering the facts of the present matter the said Case Law is not applicable.

7. With reference to Para Nos. 11 to 13 is concerned, the Applicant submits that it is true that as per the provisions of law, the Application for grant of Compensation or for the relief of restitution of property / environment has to be made within 5 years from the date of cause of action, but rest of the contents of the Para are false and misleading. It is specifically denied that present Original Application is barred by Section 14 and 15 of the NGT Act 2010. It is a matter of record that the alleged Environment Clearance is granted on dt. 13.12.2019 and the same is also under challenged. All these clarifications makes crystal clear that the Original Application is well within the limitation. It is further pertinent to note that issue agitated under the Original Application is of continuous nature.

The unlawful acts challenged by the Applicant are still going on and therefore, considering the substantial question of environment, it cannot be termed that the cause is time barred.

It is specifically denied that as the Nala passing through the Larger Land is not of permanent nature, the Respondent No. 4 has granted permission to construct over the Nala / Water Stream. It is further denied that though the construction permission dt. 23.11.2019 is granted, the same is not yet challenged by the Applicant. The Applicant submits that they have specifically challenged the alleged Construction Permission as well as E.C.

8. With reference to Para Nos. 14 and 15 of the Application under reply, the Applicant submits that all the contents of the said Para are false and misleading. It is specifically denied that the Applicant is engaged in forum shopping and filing litigation against the Respondents before other fora. It is denied that as the Applicant has filed Civil Suit and thereby raised issue of conversion of Amenity Plot, diversion of Nala, the same issue cannot be permitted to raise in the present Original Application. It is further denied that if the Applicant is permitted to raise the same issue again, the same will amount to abuse of Public Policy and will further cause harassment and hardship to opposite party. The Applicant submits that the Civil Suit bearing Special Civil Suit No. 556 / 2019 is filed on totally different grounds and the same is filed by the Applicant for protecting its Civil Rights. The issue of Conversion of Amenity Plot and diversion of Nala are not at all the issues involved in the said Civil Suit. The Applicant has already provided clarification in Para No. 5 of the Original Application about the Spl.C.S.No.556 / 2019 and further filed the copy of Plaint of the said Civil Suit at Annexure- A6. The present Original Application pertains to the substantial question of Environment and the same cannot be confused with the independent Civil Rights of the Applicant. Therefore, the allegations made by the Respondent are totally misleading and the same does not require any sort of consideration.

9. With reference to Para Nos. 16 to 18 of the Application under reply, the Applicant submits that all the contents of the said Para are false and frivolous. The doctrine of Res-Judicata has no application in the present matter. The allegation that the Hon'ble Tribunal does not have the Jurisdiction to grant any relief is also false and misleading.

10. With reference to Para No. 19 of the Application under reply the Applicant submits that all the contents of the said Para are false and misleading. It is specifically denied that as the Applicant has invoked the provisions of certain statutes which are not a part of *Schedule - I* of the NGT Act, this Hon'ble Tribunal has no jurisdiction to entertain Original Application. It is pertinent for the Hon'ble Tribunal to note that in addition to the issues relating to the Cutting of Trees is concern, the Applicant has raised various other substantial questions relating to the Environment. As such, addition of cause of illegal trees in Original Application can not be a ground for dismissal of present matter.

11. It is therefore prayed that Application for Preliminary Objection filed by the Respondent No.1 may kindly be rejected.

PUNE

DATE 15.01.2021

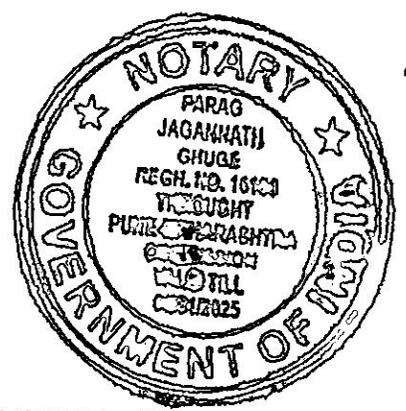


(Adv. Nitin R. Munot)  
ADVOCATE FOR APPLICANT




APPLICANT

Affidavit



**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL, WESTERN ZONE BENCH, PUNE**

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IN  
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KUMAR URBAN DEVELOPMENT PVT. LTD. ----- APPLICANT

**IN THE MATTER OF**

KUMAR CITY RESIDENTS CO-OPERATIVE HOUSING SOCIETY LTD. ----- APPLICANT

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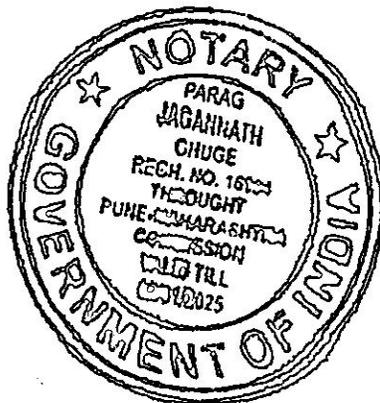
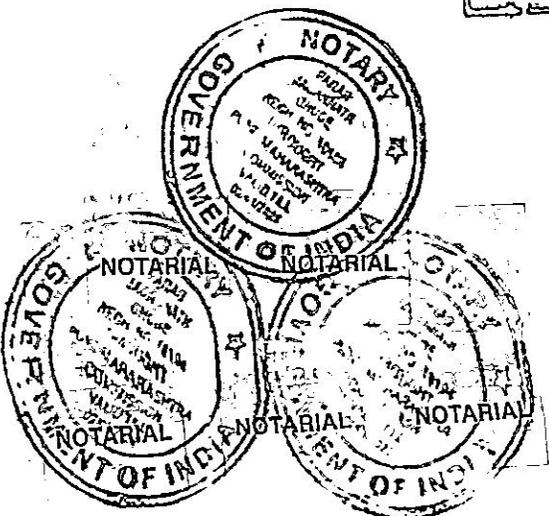
**AFFIDAVIT**

I, MR. DIVENDER KUMAR DHAMIJA, Age - 63 Years, Occupation - Business, A Chairmen of Applicant Society, R/at Cluster No. 11/15, Kumar City Residents Co. Op. Hsg. Ltd., S.No.13B/1+2+3 (Part), S.No.14 (Part), Kalyani Nagar, Wadgaon Sheri Pune - 411014, do hereby solemn affirmation that what is stated in above Para Nos. 1 to 11 of this Reply is true to my own knowledge and is based on information and belief which I believe to be true, in witness whereof I have signed hereto below at Pune on 15<sup>th</sup> day of January 2021.



*[Signature]*  
DEPONENT

Noted & Registered  
Sr. No. A - 289/2021



BEFORE ME

*[Signature]*  
PARAG J. CHUGE  
NOTARY  
GOVT. OF INDIA  
15 JAN 2021