

**BEFORE THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
IN  
ORIGINAL APPLICATION NO. 710 OF 2023**

**IN THE MATTER OF:****SUSHIL RAGHAV****...APPLICANT****VERSUS****STATE OF UTTAR PRADESH & ORS.****...RESPONDENTS****INDEX**

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Office at: D-146, LGF, Defence Colony, New Delhi – 110024

Also at: 922, JMD Megapolis, Sohna Rd, Sector 48,  
Gurugram, Haryana – 122018Email: [contact@advocatemayank.in](mailto:contact@advocatemayank.in)

Contact No.: 9971220936

**Place:** New Delhi**Date:** 04.07.2025

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SUSHIL RAGHAV

...APPLICANT

VERSUS

STATE OF UTTAR PRADESH & ORS.

...RESPONDENTS

**REPLY ON BEHALF OF RESPONDENT NO. 12 TO THE ORIGINAL  
APPLICATION BEARING O.A. NO. 710 OF 2023**

**MOST RESPECTFULLY SHOWETH:**

1. That the present reply is being filed on behalf of Respondent No. 12 in compliance with the order dated 21.05.2025, whereby this Hon'ble Tribunal was pleased to grant an opportunity to Respondent No. 12 to file a reply to the Original Application in the captioned matter.

*Copy of the order dated 21.05.2025 passed by this Hon'ble Tribunal in O.A. No. 710 of 2023 is annexed herewith and marked hereto as ANNEXURE – R12/1.*

2. That the contents of I.A. No. 478/2024, I.A. No. 479/2024, I.A. No. 480/2024 and I.A. No. 36/2025 filed by Respondent No. 12 be read as part and parcel of the present reply, and the same is not being repeated herein for the sake of brevity.

**BRIEF BACKGROUND:**

3. One **Pritam Chand Chawla @ Pratap Chand** was the exclusive owner (*Bhumidar*) having absolute possession of the multiple plots of agricultural land, situated in the village of Sahibabad, Tehsil Ghaziabad, Distt. Meerut (U.P.). The said land consisted of Khasra Nos. 197A(0-10-4), 201 (0-6-0), 208/1 (0-0-11½), 156 (1-8-0), 173/2 (0-7-0), 192/2 (0-15-0), 240A (2-19-0), 241 (2-16-0), 202A (0-2-0), 179 (0-14-0), 180/2 (0-4-0), 210 (3-7-0), 197B (0-3-16), 202B (0-3-0), **218 (2-15-0)**, 240C (jim)(0-1-14), 247 (0-3-0), 240 B (0-1-6), 202 (Dal) (0-3-0), 206A towards East (0-2-0), 238A (0-2-6), 206B towards East (1-0-5-16), 238 B (0-1-14), 203B (0-3-0), 204 (0-7-0), 237 (1-4-0), 250 (1-13-0), 238C (Jim) (0-4-0), 216/1 (0.6.0), 216/3 (1-0-0), 202C (Jim) (0-3-0), 217 (1-4-0), 200 (0-4-0), 198 (0-14-0), 199 (0-3-0), 235 (4-11-0), 236 (2-5-0), 205 (1-11-0), 239 (1-9-0), 203A (1-12-0), total measuring 36-18-17-6 Pukhta Bighas. Moreover, Pritam Chand Chawla @ Pratap Chand was also the exclusive owner and in possession of Khasra Nos 208/2 (0-1-10), 211/2 (0-1-10), 213/2 (0-1-15), 214/2 (0-11-15), 215 (0-1-17), 209 (2-14-0), containing Kothi, 219/2 (0-3-8), 216/2 (0-4-0), 75A (0-0-6-10), 74 (0-0-5-6) measuring 3-10-6-16 Pukhta Bighas total land measuring 40-9-4-2 Pukhta Bighas or 121-7-12-6 Kham Bighas. It is pertinent to note that the Park in question is situated in the aforesaid Khasra Nos., which were initially owned by Pritam Chand Chawla @ Pratap Chand.
4. Some layout plan was approved by the Ghaziabad Development Authority (**the correct version of which is not before this Tribunal till date**) (*Erstwhile known as “Ghaziabad Improvement Trust”*) for the development of an area, namely ‘Rajendra Nagar Industrial Colony’ on G.T. Road Mile 8/7, V. Sahibabad, Ghaziabad. For the development of the above-mentioned colony, an area measuring more or less 121 Bighas 7

Biswas, 12 Biswansis, 6 Kachwansis Kham was purchased by Delhi Housing and Finance Corporation (*hereinafter referred to as “DHFC”*) from the Shri Pritam Chand Chawla @ Pratap Chand S/o Lala Thakur Dass *vide* a registered sale deed dated 18.04.1962 (*hereinafter referred to as “1962 Sale Deed”*).

5. That pursuant to the 1962 Sale Deed, ‘Rajendra Nagar Industrial Colony’ was developed by DHFC allegedly in accordance with a certain Layout Plan dated 04.04.1962 (*hereinafter referred to as “Alleged Layout Plan”*).
6. That, notably, since the very inception of Rajendra Nagar Industrial Colony a 30 Feet Wide Path existed and was being used for access to the Factory and Bungalow from the southern side of the area earmarked as factory and bungalow in the Alleged Layout Plan (*hereinafter referred to as “30 Feet Wide Road”*).
7. That thereafter, DHFC sold the plots of land in the Rajendra Nagar Industrial Colony in favour of multiple buyers. In 2000, DHFC sold the area marked as ‘Factory and Bungalow’ to several owners by splitting up the plot into small land parcels.
8. That later, *vide* Sale Deed dated 22.06.2004 (*hereinafter referred to as “2004 Sale Deed”*), a part of freehold industrial area bearing Plot No. 80-K admeasuring 102 sq. yard or 85.28 sq. meter was purchased by Respondent No. 12 from DHFC which was situated on the southern side of the area marked as ‘Factory and Bungalow’. Further, it is pertinent to note that even as per the **2004 Sale Deed**, there is a specific mention of a road on the south side of Plot No. 80-K.

9. That since 22.06.2004, Respondent No. 12 herein has been in possession of Plot No. 80-K and has been using the 30 Feet Wide Path on the southern side of Plot No. 80-K as a right of way to access and effectively enjoy Plot No. 80-K. Moreover, the said 30 Feet Wide Path is also being used by approximately nine (9) other factory/property owners as well in the same manner as Respondent No. 12 and in many cases much prior to Respondent No. 12, whose industrial units are situated in the same row as that of Respondent No. 12 herein.
10. That on 25.01.2023, Ghaziabad Municipal Corporation started obstructing the right of way of Respondent No. 12 and started erecting poles and digging up holes right in front of his factory without serving any notice whatsoever to the factory owners. Furthermore, the plantation drive carried out by Respondent No. 12 herein was arbitrarily nullified by the Ghaziabad Municipal Corporation by uprooting the same.

### **PRELIMINARY OBJECTIONS**

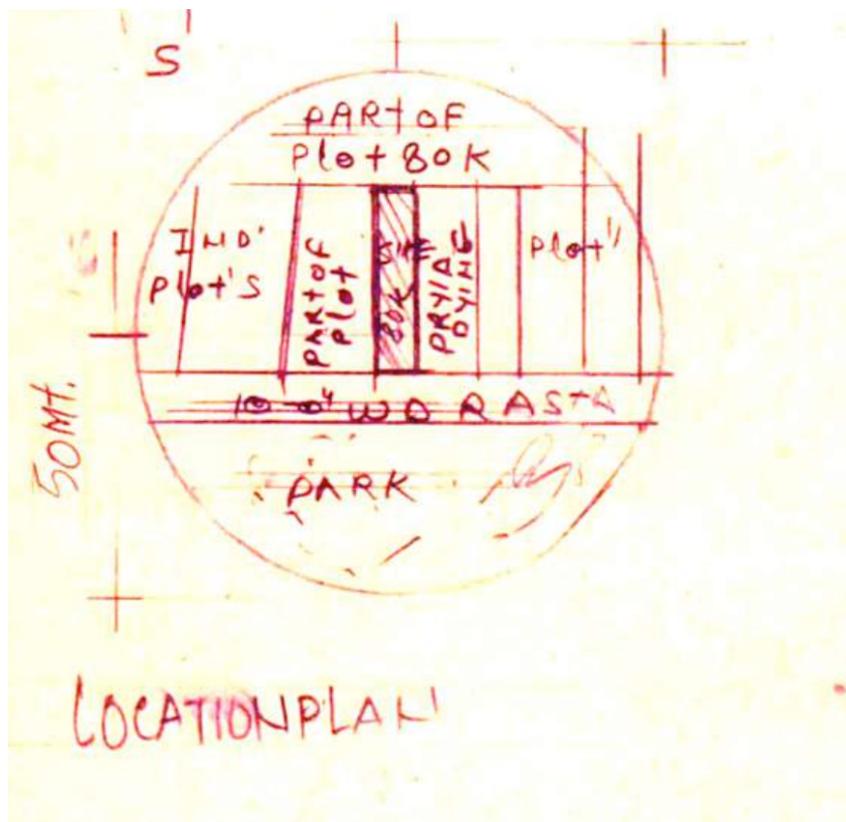
11. **Seriatim list of the objections taken by Respondent No. 12 is as under:**
- a. The captioned Original Application is time-barred.
  - b. The Alleged Layout Plan relied on by the Original Applicant and endorsed by the Chief Secretary, State of Uttar Pradesh (Respondent No. 1) is incorrect and not a valid map.
  - c. This Hon'ble Tribunal cannot base its decision on committee reports and a trial is necessary since there are disputed questions of facts.

### **THE CAPTIONED ORIGINAL APPLICATION IS TIME-BARRED**

12. It is submitted that the captioned Original Application filed by the Original Applicant before this Hon'ble Tribunal is time-barred and hopelessly out

of limitation, and hence, the captioned Original Application should be dismissed on this ground alone.

13. It is submitted that as per the location map mentioned in the 2004 Sale Deed, by virtue of which Respondent No. 12 acquired his property, there exists a road between Respondent No. 12's property and the 'Park' area. The location map in the 2004 Sale Deed is reproduced hereinbelow for ready reference of this Hon'ble Tribunal:



14. Notably, Section 14 of the National Green Tribunal Act, 2010 (*hereinafter referred to as "NGT Act"*) provides that any application for adjudication of dispute under Section 14 before this Hon'ble Tribunal shall not be entertained by this Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose, provided that this Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said

period, allow it to be filed within a further period not exceeding sixty days. The relevant provision of the NGT Act is reproduced hereinbelow for ready reference of this Hon'ble Tribunal:

**“14. Tribunal to settle disputes.—**(1) *The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I.*

(2) *The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.*

**(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose: Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.”**

*(Emphasis Supplied)*

15. Further, no application for grant of any compensation or relief or restitution of property or environment under Section 15 of the NGT Act shall be entertained by this Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose, provided that this Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days. The relevant provision of the NGT Act is reproduced hereinbelow for ready reference of this Hon'ble Tribunal:

**“15. Relief, compensation and restitution.—**(1) *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);*

*(b) for restitution of property damaged;*

*(c) for restitution of the environment for such area or areas, as the Tribunal may think fit.*

(2) *The relief and compensation and restitution of property and environment referred to in clauses (a), (b) and (c) of sub-section (1) shall be in addition to the relief paid or payable under the Public Liability Insurance Act, 1991 (6 of 1991).*

**(3) No application for grant of any compensation or relief or restitution of property or environment under this section shall be entertained by the Tribunal unless it is made within a period of five years from the date on which the cause for such compensation or relief first arose:**

**Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.**

*(4) The Tribunal may, having regard to the damage to public health, property and environment, divide the compensation or relief payable under separate heads specified in Schedule II so as to provide compensation or relief to the claimants and for restitution of the damaged property or environment, as it may think fit.*

*(5) Every claimant of the compensation or relief under this Act shall intimate to the Tribunal about the application filed to, or, as the case may be, compensation or relief received from, any other court or authority.”*

*(Emphasis Supplied)*

16. From a bare perusal of the aforementioned provision of the NGT Act, it is evident that the limitation period provided under the NGT Act is 6 months and 60 days for an application under Section 14 and 5 years and 60 days for an application under Section 15.

17. However, in the present case, the Respondent has been enjoying the 30 Feet Wide Road on the southern side of his Plot since 2004 along with other factory owners.

18. That, if the period of 06 months is calculated from the year 2004, it would expire in the year 2005, and as regards Section 15, the limitation period would expire in the year 2009, while the captioned Original Application has been filed by the Original Applicant in the year 2023 on 21.11.2023.

19. That in the captioned Original Application, the Original Applicant is trying to establish September, 2023 as the date when the first cause of action arose on the basis of his having noticing some construction activities in the park next to the plot shown as ‘Factory and Bungalow’, subsequently when the Original Applicant filed a complaint, online on junsunwai portal on

15.10.2023 and thereafter, on 30.10.2023 when Ghaziabad Municipal Corporation replied to the above complaint. Pertinently, no construction whatsoever was ever undertaken by Respondent No. 12; further, the Original Applicant **has not annexed any photographs, videos, etc. wherein any such construction could be seen.** Furthermore, even as per the report dated 02.02.2024 by the Joint Committee formed apropos the direction of this Hon'ble Tribunal, no construction whatsoever was taking place as averred by the Original Applicant. The relevant portion of the report dated 02.02.2024 by the Joint Committee is reproduced hereinbelow for ready reference of this Hon'ble Tribunal:

2- During visit joint team found that the boundary wall of the said park in three sides is constructed of brick masonry while one side of boundary wall is made temporally made of tin sheet. There was no permanent boundary wall made of bricks on one side, it could not be clear whether the construction work of the said temporary tin-sheet boundary wall was done by reducing the land of the park or not. During visit joint team observed that no work related to construction of drain or shifting of boundary wall was being carried out. Plantation was done in the Babu Jag Jeevan Ram park by Nagar Nigam, Ghaziabad.

20. Further, if such applications come to be allowed, any *non-bona fide* person may move an online complaint so as to bring the cause of action within the period of limitation in order to initiate legal proceedings, which cannot be allowed to happen because that is not the intent of the law. A similar view has been taken by the Hon'ble National Green Tribunal, Western Zone Bench in *Ajay Jayvantrao Bhosale v. Union of India, 2022 SCC OnLine NGT 5096*.

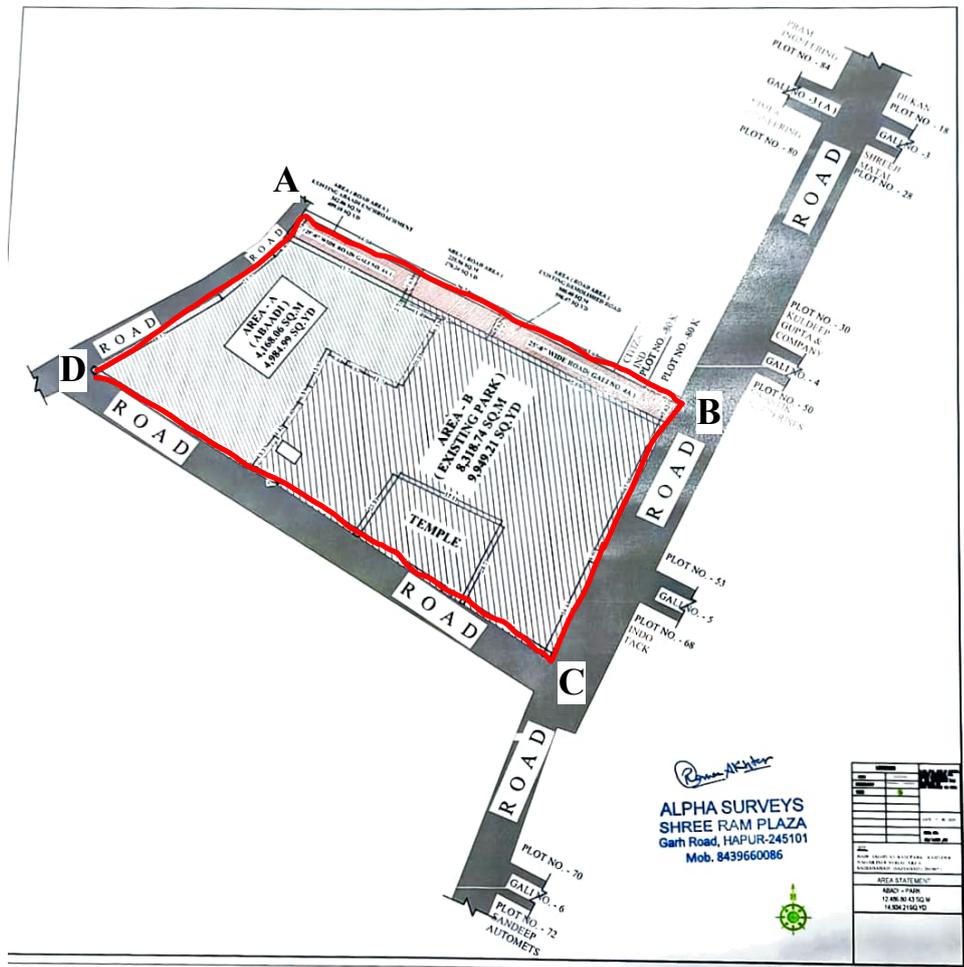
**THE ALLEGED LAYOUT PLAN RELIED ON BY THE ORIGINAL APPLICANT AND ENDORSED BY THE CHIEF SECRETARY, STATE OF UTTAR PRADESH (RESPONDENT NO. 1) IS INCORRECT AND NOT A VALID MAP**

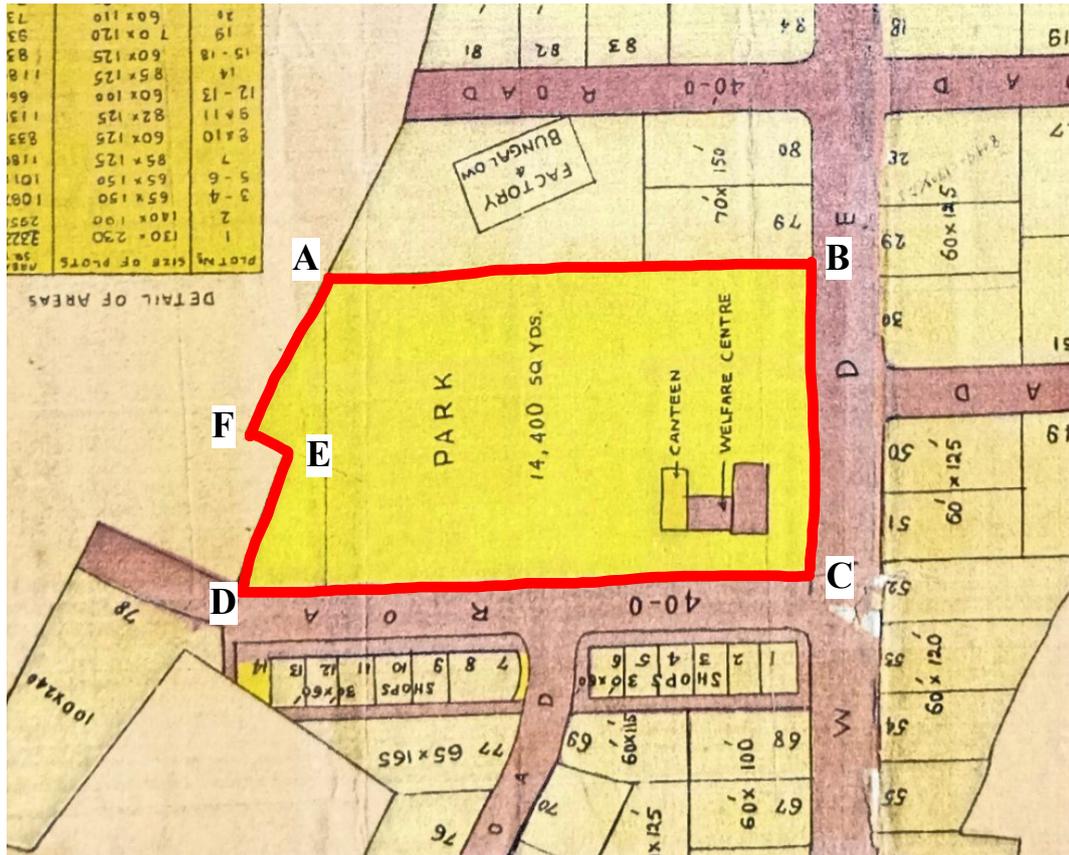
21. Even otherwise, without prejudice to the above-stated contentions, the Alleged Layout Plan relied upon by the Original Applicant, based on which the captioned Original Application has been filed before this Hon'ble Tribunal is incorrect as the same does not reflect the correct position of Rajendra Nagar Industrial Colony and therefore, cannot be relied upon. It is further submitted that originally the District Magistrate, Ghaziabad, in his report dated 15.04.2024, stated that the Alleged Layout Plan is not available in the record room, and further, no evidence of any approval of the Alleged Layout Plan. Thereafter, *vide* order dated 18.04.2024, this Hon'ble Tribunal directed the Chief Secretary, State of Uttar Pradesh ("**Respondent No. 1**") to look into the matter.
22. Consequently, apropos the direction of this Hon'ble Tribunal, a team was constituted by Respondent No.1 to look into the matter. It is submitted that the office of Respondent No. 1 has erroneously endorsed the wrong map i.e., the Alleged Layout Plan, which does not reflect the true and correct position of Rajendra Nagar Industrial Colony, as even the original development do not coincide with the Alleged Layout Plan. Further, the office of Respondent No. 1 may be put to strict proof of the documentation and effort undertaken by them before endorsing the Alleged Layout Plan. It is submitted that Respondent No. 12 is already under the process of preferring an application seeking the right to cross-examine the government officials in the captioned Original Application.

23. That for the proper and just adjudication of the captioned Original Application, Respondent No. 12 along with other factory owners, appointed an architect to create an as-on-date site map of Rajendra Nagar Industrial Colony.

*A copy of the as-on-date map of Rajendra Nagar Industrial Colony is annexed herewith and marked hereto as ANNEXURE – R12/2.*

24. Upon superimposing the Alleged Layout Plan and the aforementioned as-on-date map of Rajendra Nagar Industrial Colony, it is evident that the area of Rajendra Nagar Industrial Colony was never made as per the Alleged Layout Plan and clearly the original development has not been captured in the map produced by the Original Applicant and the Govt. of Uttar Pradesh. A side-by-side comparison of both maps is made hereinbelow for the ready reference of this Hon'ble Tribunal:





25. Further, as per the measurements undertaken by various authorities, it is evident that it is, in fact, Babu Jagjeevan Ram Colony which has purportedly encroached upon the so claimed 14,400 Sq. Yards of the 'Park' area as shown in the Alleged Layout Plan. It is submitted that the 30 Feet Wide Road being used by Respondent No. 12 (which is the only ingress and egress from his property) between the 'Park' area and the 'Factory & Bungalow' area is not a part of the encroachment area of the 'Park' i.e., the area of 14,400 Sq. Yard. This is evident from the fact that even as per the investigation report dated 09.06.2023 submitted by Tehsildar (Sadar) based on his on-site inquiry, the 'Park' area was purportedly encroached by Babu Jag Jeevan Ram Colony and not Respondent No. 12. A table encapsulating the different measurements undertaken by the authorities is made hereunder for ready reference of this Hon'ble Tribunal:

<b>Report</b>	<b>Encroachment free 'Park' area</b>	<b>Area allegedly encroached by Babu Jagjeevan Ram Colony</b>	<b>Area of the 30 Feet Wide Road used by Respondent No. 12</b>	<b>Total Park Area excluding the 30 Feet Wide Road used by Respondent No. 12</b>
	<b>(A)</b>	<b>(B)</b>	<b>(C)</b>	<b>(A+B)</b>
Initial measurement given in Report by DM, Ghaziabad (09.08.2023), Joint Committee Report (02.02.2024) and Report by Ghaziabad Municipal Corporation (12.04.2024)	10880 Sq.m. / 13012.37 Sq. Yards	7120 Sq.m. / 8515.44 Sq. Yards	N.A.	18000 Sq.m. / 21527.82 Sq. Yards
Measurements given after passing of the order dated 18.04.2024 by Hon'ble NGT in the report dated	8311.8 Sq.m. / 9940.83 Sq. Yards	2864 Sq.m. / 3425.31 Sq. Yards	864.2 Sq.m. / 1033.57 Sq. Yards	11175.8 Sq.m. / 13366.14 Sq. Yards

18.07.2024 by DM, Ghaziabad to the Joint Secretary				
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26. Upon a bare perusal of the aforesaid table, it is evident that there are multiple discrepancies in the measurements taken by various authorities and committees. Therefore, Respondent No. 12 was constrained to approach an architect for calculating the as-on-date measurements of the encroached and encroachment-free 'Park' area. A Table depicting the as-on-date encroached area, encroachment-free area and calculation of the 'Park' area is made hereunder for ready reference:

<b>Encroachment Free Area (in Sq. Yards) (A)</b>	<b>Area Encroached by Babu Jag Jeevan Ram Colony (in Sq. Yards) (B)</b>	<b>'Total Park' area along with Baby Jag Jeevan Ram Colony (excluding the 30 Feet Wide Road)</b>
<b>9949.21</b>	<b>4984.99</b>	<b>14934.2</b>

27. Notably, the initial reports submitted by various committees and authorities who undertook the task of measuring the 'Park' area apropos the directions passed by this Hon'ble Tribunal, have recorded findings that the 30 Feet Wide Road being used by Respondent No. 12 is not a part of the encroachment upon the 14400 Sq. Yards of 'Park' area. However, to the utter dismay of Respondent No. 12, the reports submitted by certain other authorities at a later stage seem to have deliberately submitted contrary findings. The contrary findings submitted by various committees and authorities are reproduced hereunder for ready reference:

**INITIAL REPORTS****a. Joint Committee Report dated 02.02.2024 (@Page no. 97 – 108):**

In compliance with the order dated 30.11.2023, a joint committee was formed, which visited the site on 20.01.2024, to ascertain the factual position on the spot and based on the observation submitted that Babu Jag Jeevan Ram Colony has encroached on the area of 'Park'. The relevant portion of the joint committee report is reproduced hereinbelow for ready reference of this Hon'ble Tribunal:

4- In reply to above a report from Additional Municipal Commissioner, Ghaziabad Nagar Nigam was received on 30.01.2024. According to the said letter it reveals that the encroachment free area of the park is 10880 sqm and area of park on which Babu Jag Jeevan Ram Colony built illegally is 7120 sqm. Hanuman temple and Municipal Corporation's Sulabh toilet are also built in the park. Copy of the said letter is annexed as **Annexure-II**.

**b. Report dated 09.08.2023 by the Office of District Magistrate, Ghaziabad (@Page no. 106 – 108)**

Upon receiving a complaint dated 27.05.2023 from Sh. Subash Singh, Senior Vice President – Hind Mazdoor Kisan Panchayat, UP Office – Babu Jagjeevan Ram Colony, Rajendra Nagar, Sahibabad, Ghaziabad, Tehsildar (Sadar), conducted an inquiry and submitted an investigation report dated 09.06.2023.

In the aforementioned report, it was submitted that in the land revenue records, a total area of 51,190 Sq.m. (6122.73 Sq. Yards) is in the name of Sh. Pritam Chand Chawla S/o Thakur Dass. Out of which, upon an area of 33190 Sq.m. (39694.91 Sq. Yards), Rajendra Nagar Industrial Area and roads have been developed. The encroachment-free area of the 'Park' is 10880 Sq.m. (13012.37 Sq.



c. **Report dated 12.04.2024 submitted by Ghaziabad Municipal Corporation (@Page no. 119 – 121)**

In compliance with the order dated 05.02.2024 passed by this Hon'ble Tribunal, Ghaziabad Municipal Corporation (“GMC”) submitted a report wherein GMC relying on the Joint Committee report submitted that Babu Jag Jeevan Ram Colony has been illegally established and encroached upon the ‘Park’ area and that such encroachment has been going on for more than 30 years. Further, it had also been stated that **there is no evidence of the approval of the Alleged Layout Plan as annexed by the Original Applicant, with the Original Application is available with the government authorities.** Therefore, it is not possible to give a report regarding the area of 14400 Sq. Yards of the ‘Park’ in the Alleged Layout Plan filed by the Original Applicant. The relevant portion of the report is reproduced hereinbelow for ready reference of this Hon'ble Tribunal:

1. यह कि प्रश्नगत ओ0ए0/वाद में मा0 अधिकरण द्वारा पारित आदेश दिनांक-30.11.2023 के द्वारा एक संयुक्त कमैटी का गठन करते हुये अनुपालन आख्या दाखिल किये जाने हेतु आदेश पारित किये गये। जिसके क्रम में संयुक्त कमैटी द्वारा दिनांक-20.01.2024 को स्थलीय निरीक्षण कर आपनी आख्या मा0 एन0जी0टी0 के समक्ष प्रेषित की गयी जिसमें नगर निगम व तहसील स्टाफ द्वारा स्थल की पैमाईश कर यह आख्या प्रेषित की गयी कि विवादित स्थल राजेन्द्र नगर औद्योगिक क्षेत्र में स्थित पार्क में 10880 वर्ग मीटर क्षेत्रफल अतिक्रमण मुक्त है तथा 7120 वर्ग मीटर क्षेत्रफल पर लगभग 25-30 वर्षों से वावूजगजीवन राम कालौनी अवैध रूप से बसी हुयी हैं, जिसका उल्लेख मा0 अधिकरण के पारित आदेश दिनांक-05.02.2024 में भी किया गया है। वावू जगजीवन राम कालौनी 7120 वर्ग मीटर क्षेत्रफल पर लगभग 30 वर्षों से अधिक समय से अवैध रूप से स्थापित है।

3. प्रश्नगत ओ0ए0 में दिनांक-05.02.2024 को पारित आदेशों में मा0 अधिकरण ने वादी द्वारा अपनी ओ0ए0 में दाखिल राजेन्द्र नगर औद्योगिक क्षेत्र के (मास्टर प्लान) जिसमें उक्त पार्क का क्षेत्रफल 14400 वर्गगज उल्लेखित है पर जिलाधिकारी महोदय से सुस्पष्ट आख्या हेतु निर्देशित किया गया है। उक्त के क्रम में वादी द्वारा उपरोक्त मास्टर प्लान की प्रमाणिकता हेतु जिलाधिकारी महोदय द्वारा जी0डी0ए0 से मास्टर प्लान स्वीकृति की आख्या उपलब्ध कराने हेतु पत्र प्रेषित किया गया जिसके सापेक्ष जी0डी0ए0 द्वारा उक्त मास्टर प्लान की स्वीकृति कराये जाने का कोई साक्ष्य उपलब्ध न होने का उल्लेख कर पत्र जिलाधिकारी महोदय को प्रेषित किया गया है। साथ ही गाजियाबाद नगर निगम स्तर से भी जी0डी0ए0 को उक्त ले-आउट प्लान उपलब्ध कराये जाने हेतु पत्र प्रेषित किया गया है। जो अभी जी0डी0ए0 स्तर पर विचाराधीन है। ले-आउट प्लान की प्रमाणिकता व सक्षम स्तर (जी0डी0ए0) से अनुपलब्धता होने के फलस्वरूप वादी द्वारा दाखिल मास्टर प्लान में पार्क के क्षेत्रफल 14400 (वर्गगज) के सम्बन्ध में आख्या दिया जाना सम्भव नहीं है। जी0डी0ए0 द्वारा जिलाधिकारी महोदय को प्रेषित पत्र दिनांक-12.04.2024 व नगर निगम द्वारा जी0डी0ए0 को प्रेषित पत्र दिनांक-10.04.2024 की छायाप्रति संलग्नक-01 के रूप में संलग्न है।

### REPORT SUBMITTED AT A LATER STAGE

- d. **Report dated 18.07.2024 by DM, Ghaziabad to Joint Secretary, Urban Development Section – 5 (@Page no. 158 – 168)**

In view of the copy of the Alleged Layout Plan of Rajendra Nagar Industrial Colony attached with a letter dated 05.07.2024 by the Secretary, Ghaziabad Development Authority, necessary on-spot measurements were done and two separate site maps were prepared. The scale of the map is 1 inch = 82.5 feet, which was confirmed by measuring the 60 feet-wide road, with the width of the road on the map, which came out to be 3/4 inch.

The area of the 'Park' marked on the Alleged Layout Plan is 14400 square yards (12040.2 square meters). Taking this measurement as the basis, the map has been displayed in Annexure-1 (annexed with the report). Thereafter, the measurement work was done on the spot, the measurement of which is recorded in the attached Nazri-Naksha (Annexure-2).

As per the map marked as Annexure-2 and the measurement done, the encroachment-free area came to be 9940.8 Sq. Yard (8311.8 Sq.m.), the area allegedly encroached by Respondent No. 12, along

with other factory owners, came to be 1033.6 Sq. Yards (864.2 Sq.m.), and the area encroached by Babu Jag Jeevan Ram Colony is 3452.3 Sq. Yard (2864 Sq.m.). The relevant portion of the report is reproduced hereinbelow for ready reference of this Hon'ble Tribunal:

संलग्नक-2 में प्रदर्शित अतिक्रमण मुक्त क्षेत्रफल वाली भूमि 9940.8 वर्ग गज (8311.8 वर्गमीटर) तथा 1033.6 वर्ग गज (864.2 वर्ग मीटर) फैक्ट्री संचालकों द्वारा रास्ते में अवैध रूप से उपयोग किया जा रहा है। शेष क्षेत्रफल 3425.3 वर्ग गज (2864 वर्ग मीटर) में सघन आबादी बनी हुयी है जिसमें निर्बल आय वर्ग के व्यक्ति छोटे-छोटे मकानों में लगभग 40 वर्ष से अधिक समय से निवास कर रहे हैं। स्थल पर पार्क के उत्तर दिशा की ओर फैक्ट्री संचालकों द्वारा पार्क की भूमि में से वर्तमान में 1033.6 वर्गगज (864.2 वर्ग मीटर) भूमि पर अवैध रूप से रास्ते के रूप में प्रयोग किया जा रहा है जो स्वीकृत तलपट मानचित्र में नहीं है। साक्ष्य स्वरूप गाजियाबाद विकास प्राधिकरण द्वारा स्वीकृत तलपट मानचित्र/ले-आउट प्लान की प्रति संलग्न है।

इस प्रकार उक्त पार्क की भूमि पर अवैध कॉलोनी का क्षेत्रफल 3425.3 वर्गगज (2864 वर्ग मीटर) तथा पार्क की भूमि में से बने हुये अवैध रास्ता क्षेत्रफल 1033.6 वर्गगज (864.2 वर्ग मीटर) है। शेष भूमि अतिक्रमण मुक्त है। स्थल का नजरी नक्शा संलग्न है।

e. **22.07.2024 – site visit report by Chief Secretary, State of Uttar Pradesh (@Page no. 298 – 303)**

In compliance with the order dated 18.04.2024, the Chief Secretary, State of Uttar Pradesh, visited Rajendra Nagar Industrial Colony on 22.07.2024 and 23.07.2024 and submitted a report that the factory owner had encroached upon the 'Park' area and constructed a road measuring 864 Sq.m. (1033.33 Sq. Yards). Further, the factory owners have subdivided plot no. 79 and 80 into smaller fractions from which they are operating their factories. Furthermore, the 30 Feet Wide Road is the only ingress and egress for these factory owners, save and except the corner plot.

28. From a bare perusal of the various reports by various committees/ authorities of the government of Uttar Pradesh, it is manifest that initially and even to date, it is Babu Jag Jeevan Ram Colony who have encroached upon the 'Park' area since the last 40 years or more. However, for reasons unknown, the reports submitted at a later stage malafidely included the 30 Feet Wide Road being used by Respondent No. 12 under the area encroaching the 'Park'. It appears that certain officers of the Government have failed to appreciate and account for the reports that were already in existence while the present survey was conducted, hence there is a need to re-examine the findings of the department.

**THIS HON'BLE TRIBUNAL CANNOT BASE ITS DECISION ON COMMITTEE REPORTS AND A TRIAL IS NECESSARY SINCE THERE ARE DISPUTED QUESTIONS OF FACTS**

29. In light of the above discrepancies and contrary, fickle, and capricious stance taken by the various authorities in the various reports submitted by them regarding the measurement of the encroachment free area of the 'Park' in the Alleged Layout Plan, and in light of the fact the even the correct approved layout plan is not available before this Hon'ble Tribunal, it is imperative that this Hon'ble Tribunal may not rely on the findings of such committees and conduct an independent enquiry/trial into the disputed facts as have arisen in this present matter.

30. Further, the Hon'ble Supreme Court in *Grasim Industries Limited v. The State of Madhya Pradesh and Another, 2024 INSC 926* has held that a tribunal like this Hon'ble Tribunal cannot outsource an opinion and base its decision on such an opinion. The relevant paragraph of the judgment is reproduced hereinbelow for ready reference of this Hon'ble Tribunal:

**"9. Another glaring error that has been committed by the NGT is that it has based its decision only on the basis of the report of the**

**Joint Committee. The NGT is a tribunal constituted under the National Green Tribunal Act of 2010. A tribunal is required to arrive at its decision by fully considering the facts and circumstances of the case before it. It cannot outsource an opinion and base its decision on such an opinion. A reliance in this respect should be placed on the judgment of this Court in Kantha Vibhag Yuva Koli Samaj Parivartan Trust and Others v. State of Gujarat and Others.**”

*(Emphasis Supplied)*

31. Further, since the captioned Original Application involves disputed question of facts i.e., whether the Alleged Layout Plan is correct or not and whether the 30 Feet Wide Road being used by Respondent No. 12 is an encroachment upon the ‘Park’ area, this Hon’ble Tribunal ought to decide by fully considering the facts and circumstances of the case placed before it by all the concerned parties including Respondent No. 12.

### **PRELIMINARY SUBMISSIONS**

Without prejudice to the above-stated contentions, Respondent No. 12 submits as under:

#### **RESPONDENT NO. 12 HAS THE RIGHT OF WAY ON THE 30 FEET WIDE ROAD BY WAY OF EASEMENT**

32. That, on 22.06.2004, Plot No. 80-K (which is landlocked from three sides) was purchased by Respondent No. 12, and a 30 Feet Wide Path on the southern side of the property existed as the only way of ingress and egress.

33. That it is relevant to state that Respondent No. 12 herein does not have any alternate access to his property other than the 30 feet wide path.

34. That Respondent No. 12 has been using the aforesaid 30 Feet Wide Path since the past 20 years and Respondent No. 12 has the right of way by

easement of prescription as per Section 15 of the Indian Easement Act, 1882, wherein it is provided that a right of way which has been peaceably and openly enjoyed by any person claiming title thereto, as an easement, and as of right, without interruption, and for twenty years, the right to such access shall be absolute. The relevant provision of the Indian Easement Act, 1882, is reproduced hereinbelow for the ready reference of this Hon'ble Tribunal:

**“15. Acquisition by prescription.**—Where the access and use of light or air to and for any building have been peaceably enjoyed therewith, as an easement, without interruption, and for twenty years, and where support from one person's land or things affixed thereto has been peaceably received by another person's land subjected to artificial pressure or by things affixed thereto as an easement, without interruption, and for twenty years, and where a right of way or any other easement has been peaceably and openly enjoyed by any person claiming title thereto, as an easement, and as of right, without interruption, and for twenty years, the right to such access and use of light or air, support or other easement shall be absolute. Each of the said periods of twenty years shall be taken to be a period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

Explanation I.—Nothing is an enjoyment within the meaning of this section when it has been had in pursuance of an agreement with the owner or occupier of the property over which the right is claimed, and it is apparent from the agreement that such right has not been granted as an easement, or, if granted as an easement, that it has been granted for a limited period, or subject to a condition on the fulfilment of which it is to cease.

Explanation II.—Nothing is an interruption within the meaning of this section unless where there is an actual cessation of the enjoyment by reason of an obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorising the same to be made.

Explanation III.—Suspension of enjoyment in pursuance of a contract between the dominant and servient owners is not an interruption within the meaning of this section.

Explanation IV.—In the case of an easement to pollute water, the said period of twenty years begins when the pollution first prejudices perceptibly the servient heritage.

When the property over which a right is claimed under this section belongs to <sup>3</sup>[Government] this section shall be read as if, for the words “twenty years”, the words “<sup>4</sup>[thirty years]” were substituted.”

*(Emphasis Supplied)*

35. That Respondent No. 12 came into the possession of the property in 2004 and has been using the 30 Feet Wide Path since then as a matter of right and not by way of any contract or otherwise. Furthermore, the said 30 Feet Wide Path is also being used by nine (9) other factory/property owners as well in a similar manner, and whose industrial plots are situated in the same row as that of Respondent No. 12, and the same is in existence and has been enjoyed as a right of way to access the plots in that area decades prior to 2004.

36. That Respondent No. 12 himself has been in uninterrupted and continuous usage of the 30 Feet Wide Path for a period of 20 years. Respondent No. 12 has been using the 30 Feet Wide Path for all purposes and for running his business, such as transportation of goods and materials and also as the only approach for Plot No. 80-K for more than 20 years. Furthermore, the usage of the 30 Feet Wide Path as a right of way was within the knowledge and acquiescence of the owner of the servient tenement, i.e., Ghaziabad Development Authority.

37. That the Bombay High Court in *Manikrao v. Maheshkumar, 2001 SCC OnLine Bom 478*, has laid down the following ingredients which are required to be satisfied to claim right of way by easement of prescription:

- a. Right must be certain
- b. It must have been enjoyed
- c. The enjoyment must be independent, and
- d. It must be peaceably and openly as of right without any interruption for more than 20 years.

The relevant portion of the judgment is reproduced herein for the reference of the tribunal:

*“17. Combined reading of sections 13 and 15 of the Act shows that they are independent provisions providing for easementary rights of different nature of rights. To repeat, section 13 of the Act provides for easements of necessity and*

quasi-easements, while section 15 of the Act provides for easements by prescription. These are thus clearly independent provisions and there is no overlapping of exercise of easementary rights falling under sections 13 and 15 of the Act. **If the parties are legally entitled to exercise easementary right under both these provisions, it is open for them to do so. In other words, if a party has easementary right under section 13 of the Act and also under section 15 of the Act, it can claim such parallel rights.** The Appellate Court however recorded a finding in the instant case that for exercising right of prescription under section 15 of the Act availability of the alternate way clearly ruled out the easements of necessity and therefore, right by way of prescription could not be granted to the plaintiffs which is wrong. **Rights created under section 13 of the Act have nothing to do with the prescriptive rights under, section 15 of the Act. Even if easement of necessity was not available in law to the plaintiffs as held by me earlier, it is not necessary that the plaintiffs also must fail for claiming right under section 15 of the Act.** Therefore, it will have to be held that sections 13 and 15 of the Act are the provisions-independent of each other and there is no overlapping of rights created therein. Now examining the right under section 15 of the Act, it is clear that the **following ingredients are required to be satisfied to claim right of way by easement of prescription.**

- (a) right must be certain,
- (b) it must have been enjoyed,
- (c) the enjoyment must be independent, and
- (d) it must be peaceably and openly as of right without any interruption for more than 20 years.”

Applying the aforementioned tests to the fact and circumstances of the of present case, it would emerge that (i) Respondent No. 12 has been using the 30 Feet Wide Path on the southern side of Plot No. 80-K as a right of way for the effective enjoyment of Plot No. 80-K since 2004, when it was purchased by Respondent No. 12; (ii) this right of way has been in usage peaceably and openly by Respondent No. 12 without any interruption from the servient owner; (iii) as of today, the right of way has been in usage for a period of more than 20 years as Respondent No. 12 came in possession on 22.06.2004; (iv) Respondent No. 12 has been using the 30 feet wide path as a matter of right and not by way of grant by the Seller i.e., DHFC through any contract.

38. That the Bombay High Court in *Jivanlal v. Krishnarao D. Sathone, 2003 SCC OnLine Bom 994* has held that a right of way may be acquired by

prescription where the same has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right without any interruption and for 20 years. The relevant extract of the judgment is reproduced herein for the reference of the tribunal:

*“10. An easement can be acquired by prescription under Section 15 of the Act. Every occupier of the land is prima facie entitled to the exclusive use and enjoyment thereof and of the natural advantages arising from its situation and environments without let or hindrance. Every right of easement claimed is a restriction on such exclusive right and is an evasion of it. Hence the burden of proof of the element constituting a right of easement lies on the person who asserts that right and thereby invades the natural right of the occupier of the land on which the right is claimed. The law is jealous of a claim to an easement and the burden is on the party asserting such a claim to prove it clearly. This he must do by showing a grant conferring an easement in express term or by necessary implication or where an easement is claimed by prescription, he must prove the facts essential to the acquisition of the prescriptive title. Thus, he must show that the user was open and notorious, that it was with the knowledge and acquiescence of the owner of the servient tenement, that the use was continuous and uninterrupted hostile and under a claim of right, exclusive and continued for the period requisite for the acquisition of an easement by prescription without change or material variation. A right of way may be acquired by prescription where the same has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right without any interruption and for 20 years. However, it all depends upon the facts and circumstances of each case. In the present case, the plaintiff has proved that he has acquired the right of easement by prescription under Section 15 of the Act and that the acquisition was being used as of a right within two years of the institution of the suit.”*

39. That Respondent No. 12 has no other alternate right of way to access and enjoy Plot No. 80-K. The property can effectively be enjoyed only through the 30 Feet Wide Path since the raw material and finished goods from Respondent No. 12's factory requires trucks/commercial vehicles and other transport vehicles to be parked for loading and unloading in front of his factory and in the absence of the 30 Feet Wide Path, the same will not be possible.

40. That if the area alleged as 'Park' in the Alleged Layout Plan comes to be blocked/declared as a park, then Respondent No. 12's access to Plot No.

80-K would completely cease. Such cessation would lead to depriving Respondent No. 12 of enjoyment of Plot No. 80-K and his right to livelihood as well as the persons employed in the modest micro-scale establishment of Respondent No. 12. This would not only affect the rights of Respondent No. 12 and the employees of Respondent's industrial unit adversely but also the rights of around nine (9) other plot owners who collectively support hundreds of families (nearly 250 workers are employed in these factories).

41. That larger public interest i.e., restoration of the area earmarked as 'Park' needs to be considered in the light of right of way of Respondent No. 12 and other facto owners and workers and their right of life and personal liberty as guaranteed under article 21 of the Constitution which is duly recognized under the Indian Easement Act, 1882.

**PROTECTION OF THE CONSTITUTIONAL RIGHT OF RESPONDENT NO. 12.**

42. Further, being a citizen of India, Respondent No. 12 has the right to practice any profession, or to carry on any occupation, trade or business under Article 19 and also the right to lead a dignified and respectable life as provided for under Article 21 of the Constitution of India.

43. Therefore, now belatedly after 20 years of continuous usage by Respondent No. 12 alone and the existence of the 30 Feet Wide Road even long before, Respondent No. 12 cannot seek to right a wrong at the cost of Respondent No. 12's right as enshrined under Article 19 and Article 21 of the Constitution of India.

44. That notably, the said 30 Feet Wide Path is being used for accessing the factory and also for the movement of material and finished goods in and out of Respondent No. 12's factory and, as such, if the same is obstructed Respondent No. 12 shall be deprived of his right of easement to access his property and also be deprived of his right to livelihood for no fault of his own.
45. Further, any alleged violation of any Right of the Original Applicant under Article 21 of the Constitution of India, cannot in any manner be decided in isolation, without considering the Right to livelihood and the Right to a dignified life of Respondent No. 12 under Article 19 and Article 21 of the Constitution of India, respectively.

#### **PARA WISE REPLY**

46. That the contents of Para I are denied for want of knowledge as they solely pertain to the details of the Original Applicant and do not solicit a reply from Respondent No. 12.
47. That the contents of Para II are denied for want of knowledge as they solely pertain to the details of the Original Applicant and do not solicit a reply from Respondent No. 12.
48. That the contents of Para III are denied for want of knowledge as they do not pertain to Respondent No. 12. It is submitted that the 30 Feet Wide Road in between the plot by the name 'Factory and Bungalow' and 'Park' has been in existence even before Respondent No. 12 bought and came into possession of his property in the year 2004. Further, the 30 Feet Wide Road has been enjoyed as a right of way to access the plots in that area for decades prior to 2004. Notably, various authorities, including but not limited to the electricity department, municipal corporation, etc., have themselves erected/ installed/ provided facilities such as light poles,

electricity poles, transformers, gas meters, etc., on and around and near the 30 Feet Wide Road in question. If this were a 'Park' land installation of poles and transformers, etc. would not be undertaken by other government departments. Pertinently, the Alleged Layout Plan (Annexure A-1 in the Original Application) is wrong as it does not reflect the true and correct position of Rajendra Nagar Industrial Colony. Further, the measurements given by the various committees in their respective reports of the alleged encroached 'Park' area and the encroachment-free 'Park' area do not coincide with the measurements given in the Alleged Layout Plan. Furthermore, the Original Applicant has failed to annex any photographs or videos showing the alleged construction undertaken by Respondent No. 12.

49. That the contents of Para IV are denied for want of knowledge as they do not pertain to Respondent No. 12. It is submitted that the observation in *Residents Welfare Association v. State of Haryana, 2019 SCC OnLine NGT 2797*, is based on different facts and circumstances and hence not applicable in the captioned matter.
50. That the contents of Para V are denied for want of specific knowledge.
51. That the contents of Para VII are denied for want of specific knowledge.
52. That the contents of Para 1 are denied for want of knowledge as they solely pertain to the details of the Original Applicant and do not solicit a reply from Respondent No. 12.
53. That the contents of Para 2 are denied for want of specific knowledge as they pertain to the details of the Original Respondents, i.e., Respondent No. 1 to Respondent No. 11.
54. That the contents of Para 3 are denied in toto for being false and incorrect. It is submitted that the contents of Para nos. 3 to 9 of the present reply be read in response, and the same are not repeated herein for the sake of brevity.

55. That the contents of Para 4 are denied in toto for being false, concocted and misleading. It is submitted that the contents of Para nos. 12 to 19 of the present reply be read in response and the same are not repeated herein for the sake of brevity.
56. That the contents of Para 5 are denied for want of knowledge as they solely pertain to the Original Applicant and do not solicit a reply from Respondent No. 12.
57. That the contents of Para 6 are denied for want of specific knowledge as they do not pertain to Respondent No. 12. It is submitted that Respondent No. 12 has purchased his property, i.e., Plot No. 80-K, by the developer of Rajendra Nagar Industrial Colony, i.e., DHFC.
58. That the contents of Para 7 are denied in toto for being misleading. It is submitted that the Original Applicant has incorrectly and in isolation quoted the part of the order passed in *Residents Welfare Association v. State of Haryana, 2019 SCC OnLine NGT 2797* that purportedly felt convenient to the Original Applicant.
59. That the contents of Para 8 are denied in toto for being misleading. It is submitted that firstly, the alleged 'Park' land has not been converted to some other wise; the 30 Feet Wide Road has existed even before Respondent No. 12 bought his property in 2004. Secondly, the Original Applicant has incorrectly and in isolation quoted a part of the order passed in *Bangalore Medical Trust v. B.S. Muddappa (1991) 4 SCC 54* that purportedly felt convenient to the Original Applicant.
60. That the contents of Para 9 are denied in toto for being false, concocted and misleading. It is submitted that the 30 Feet Wide Road has been in existence even before 2004. Further, the contents of Para nos. 3 to 9, 30 to 34 and 37 to 39 of the present reply be read in response, and the same are not being repeated herein for the sake of brevity.

61. That the contents of Para 10 are denied in toto for being misleading. It is submitted that there has been no conversion of the 'Park' area by the answering respondent, and it is reiterated again that the 30 Feet Wide Road has been in existence even before 2004.
62. That the contents of Para 11 are denied in toto for being misleading.
63. That the contents of Para 12 are denied in toto for want of specific knowledge.
64. That the contents of Para 13 are denied in toto for want of specific knowledge.
65. That the contents of Para 14 are denied in toto for want of specific knowledge.
66. That the contents of Para 15 are denied in toto for want of specific knowledge.
67. That the contents of Para 16 are denied in toto for want of specific knowledge.
68. That the contents of Para 17 are denied in toto for want of specific knowledge.
69. That the contents of Para 18 are denied in toto for want of specific knowledge.
70. That the contents of Para A are denied in toto for want of specific knowledge and don't concern the answering respondent.
71. That the contents of Para B are denied in toto for want of specific knowledge.
72. That the contents of Para C are denied in toto for want of specific knowledge. Further, at the cost of repetition, it is submitted that the 30 Feet Wide Road has been in existence since 2004.
73. That the contents of Para D are denied in toto for want of specific knowledge.

74. That the contents of Para E are denied in toto for want of specific knowledge.
75. That the contents of Para F are denied in toto for want of specific knowledge.
76. That the contents of Para G are denied in toto for want of specific knowledge.
77. That the contents of Para H are denied in toto for want of specific knowledge.
78. That the contents of Para I are denied in toto for want of specific knowledge.
79. That the contents of Para J are denied in toto for want of specific knowledge.
80. That the contents of Para K are denied in toto for being misleading. It is submitted that the Original Applicant has incorrectly and in isolation quoted the part of the order passed in *Residents Welfare Association v. State of Haryana, 2019 SCC OnLine NGT 2797*, that purportedly felt convenient to the Original Applicant, and the same does not apply to the facts and circumstances of the present case.
81. That the contents of Para L are denied in toto for being misleading. It is submitted that the Original Applicant has incorrectly and in isolation quoted the part of the order passed in *Ram Bhajan Singh v. State of U.P., Writ Petition (C) No. 15691 of 2020* that purportedly felt convenient to the Original Applicant and the same does not apply to the facts and circumstances of the present case.
82. That the contents of Para M are denied in toto for being misleading. It is submitted that the Original Applicant has incorrectly and in isolation quoted the part of the order passed in *M.S Rangarajan v. The Pammal Municipality, Pammal, Chennai Writ Petition (C) 26581 of 2017* that

purportedly felt convenient to the Original Applicant and the same does not apply to the facts and circumstances of the present case

83. That the contents of Para N are denied in toto for being misleading. It is submitted that the Original Applicant has incorrectly and in isolation quoted the part of the order passed in *Super Complex R.W.A. v. Uttar Pradesh Pollution Control Board and others, 2022 SCC OnLine NGT 2318* that purportedly felt convenient to the Original Applicant and the same is does not apply the facts and circumstances of the present case
84. That the contents of Para O are denied in toto for being misleading. It is submitted that the Original Applicant has incorrectly and in isolation quoted the part of the order passed in *Municipal Corporation of Greater Mumbai v. Ankita Sinha 2021 SCC OnLine SC 897* that purportedly felt convenient to the Original Applicant, and the same does not apply to the facts and circumstances of the present case
85. That the contents of Para P are denied in toto for being misleading. It is submitted that the Original Applicant has incorrectly and in isolation quoted the part of the order passed in *Harpreet Singh Bedi v. Vijay Singh 2021 SCC Online NGT 1695* that purportedly felt convenient to the Original Applicant, and the same does not apply to the facts and circumstances of the present case
86. That the contents of Para Q are denied in toto for being misleading. It is submitted that the Original Applicant has incorrectly and in isolation quoted the part of the order passed in *NHAI v. Aam Aadmi Lokmanch, (2021) 11 SCC 566*, that purportedly felt convenient to the Original Applicant, and the same does not apply to the facts and circumstances of the present case
87. That the contents of Para R are denied in toto for being incorrect and misleading interpretation of Article 48A and Article 51A (g). It is submitted that the Original Applicant has erroneously attempted to supplement his

own interpretation into the aforementioned Articles. Even otherwise, both the Articles are not applicable in the present matter.

88. That the contents of Para S to the extent that it relates to the environmental jurisprudence are not denied. However, the judgments cited by the Original Applicant are denied for being misleading, as they are not applicable in the present circumstances.

89. That the contents of Para T are denied in toto for want of specific knowledge.

90. That the contents of Para U are denied in toto for want of specific knowledge.

91. That the contents of Para V are denied in toto for want of specific knowledge.

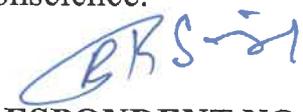
92. That the contents of the paragraph titled as Limitation are denied in toto for being false, concocted, misleading and a figment of the imagination of the Original Applicant. At the cost of repetition, it is reiterated that the captioned Original Application is hopelessly time-barred and out of limitation period; the 30 Feet Wide Road being used by Respondent No. 12 has been in existence even prior to the 2004 Sale Deed by virtue of which Respondent No. 12 acquired his property and has been enjoyed by Respondent No. 12 since 2004. Further, even as per the Joint Committee report dated 02.02.2024, no work related to the construction of any drain or shifting of boundary wall was carried out. It is submitted that the contents of Para nos. 12 to 19 of the present reply be read in response and the same are not being repeated herein for the sake of brevity.

93. That the contents of the last paragraph, i.e., the Prayer clause are denied in toto for being incorrect, false and misleading.

**PRAYER**

In light of the facts and circumstances as narrated above, it is most humbly prayed that this Hon'ble Tribunal may be pleased to:

- (i) Dismiss the application filed by the Original Applicant for being time-barred and hopelessly out of the period of limitation;
- (ii) Declare the 30 Feet Wide Road as an encroachment-free area;
- (iii) Declare the 30 Feet Wide Road as a right of way by easement of Respondent No. 12;
- (iv) Pass any such other order(s)/direction(s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case and in the interest of equity, justice and good conscience.

  
RESPONDENT NO. 12

THROUGH

  
MAYANK ARORA/VIKRAM SINGH/

MAANISH MOHAN CHOUDHARY/ SAKSHAM TYAGI

Office at: D-146, LGF, Defence Colony, New Delhi – 110024

Also at: 922, JMD Megapolis, Sohna Rd, Sector 48,  
Gurugram, Haryana – 122018

Email: contact@advocatemayank.in

Contact No.: 9971220936

Place: New Delhi

Date: 04.07.2025

**VERIFICATION:**

Verified at 928 on this 02<sup>nd</sup> day of July 2025 that the contents of para 1 to 93 of the present Reply are true and correct to the best of my knowledge. The last para is a prayer to this Hon'ble Court.

  
DEPONENT

**BEFORE THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI  
IN  
ORIGINAL APPLICATION NO. 710 OF 2023**

**IN THE MATTER OF:**

**SUSHIL RAGHAV**

**...APPLICANT**

**VERSUS**

**STATE OF UTTAR PRADESH & ORS.**

**...RESPONDENTS**

**AFFIDAVIT**

I, Shri Brij Raj Singh, S/o Sahab Singh R/o House No.-2017, Near Axis Bank ATM, Sahibabad Village, Sahibabad, Ghaziabad, Uttar Pradesh – 201005, aged 60 years, do hereby solemnly affirm and declare as under:

1. That I am the Respondent No. 12 in the above-titled Original Application and conversant with the facts and circumstances of the case, and hence, competent to depose and swear the present affidavit.
2. That the accompanying reply has been drafted by my counsel under my instructions, and the contents thereof have been read over and explained to me. That the statements made in Paragraph 1 to 93 are true and correct to the best of my knowledge.
3. That all the annexures are true copies of their originals. There are no false statements or concealment of any material fact, documents or records, and I have included information that is according to me relevant for the present reply.



*BR Singh*

**DEPONENT**

**VERIFICATION:**

Verified at GZB on this 02<sup>nd</sup> day of July 2025 that the contents of the above said affidavit are true and correct to the best of knowledge and no part of it is false and nothing material has been concealed therefrom.



S. No. (4) Date 2/7/2025  
 Sri. Brij Raj Singh  
 S/o Sri. Sahab Singh  
 R/o 2017, Near Axis Bank ATM  
Vill-Sahibabad  
 Vijay Kumar Advocate  
 Regd. 2453  
 NOTARY GHAZIABAD (U.P.) 2/7/2025

*BR Singh*

**DEPONENT**

Item No. 08

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI**

Original Application No. 710/2023  
(IA NO 835/2023, IA NO 480/2024, IA NO 479/2024,  
IA NO 478/2024, IA NO 325/2025, IA NO 300/2025,  
IA NO 299/2025, IA NO 298/2025, IA NO 36/2025)

Sushil Raghav

Applicant

Versus

State of Uttar Pradesh &amp; Ors.

Respondent(s)

Date of hearing: 21.05.2025

**CORAM: HON'BLE MR. JUSTICE PRAKASH SHRIVASTAVA, CHAIRPERSON  
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Applicant: Mr. Rahul Choudhary & Ms. Shreepurna Dasgupta, Advs. for Applicant

Respondents: Mr. Bhanwar Pal Singh Jadon, Mr. Harsh Vardhan Singh Rajawat, Ms. Anjali Sharma & Ms. Gargi Chaturvedi, Advs. for the State of UP & UPPCB (Through VC)  
Mr. Malak Bhatt, Mr. Shreyansh Chopra & Ms. Somya Saxena, Advs. for R - 11  
Dr. Divya Swamy & Mr. Yagyawalkya Singh, Adv. for R - 7 (GDA).  
Mr. Mayank Arora & Mr. Vikram Singh, Advs. for R - 12  
Mr. Raj Kumar, Adv. for CPCB  
Mr. Narender Singh Yadav, Mr. Abhishek Yadav & Mr. Mayank Kr. Singh, Advs. in I.A No. 298/2025  
Ms. Sthavi Asthana, Adv. for UPSIDA

**ORDER**

1. In this Original Application, Tribunal is examining the grievance of the applicant concerning the encroachment on the park earmarked as Rajendra Nagar Industrial Colony at GT Road Mile 8/7, Sahibabad, Ghaziabad, UP.

2. On the previous date i.e. 02.04.2025 Tribunal had taken note of response of respondent no.7-Ghaziabad Development Authority disclosing

that a committee of high officials had done the inspection of the site on 22.08.2024 considered the history of the land, layout map and comprehensive report was submitted.

3. Tribunal in the previous proceedings had reproduced the gist of the said comprehensive report disclosing that total area of the park as 12040 sq.mt and extent of encroachment being 3157 sq.mt leaving only an area of 8883 sq. mt. available as open park. In terms of the direction of the Tribunal, a fresh report has been filed by respondent no.7- Ghaziabad Development Authority dated 19.05.2025, reflecting the details of the action initiated as under:-

- “4. *That in compliance of the directions passed by this Hon'ble Tribunal and in extension of the previous compliance, the Respondent No. 7 has issued 112 more show cause notices dated 01.04.2025, 03.04.2025 & 04.04.2025 under Section-27 of the Uttar Pradesh Town Planning and Development Act-1973. A true copy of the show cause notice dated 01.04.2025, 03.04.2025 & 04.04.2025 is marked and annexed herein as ANNEXURE A-4 (Colly).*
- 5 *That it is humbly submitted that in total the Respondent No. 7 had issued 49 show cause notices under Section-27 of the Uttar Pradesh Town Planning and Development Act-1973 earlier - 9 show cause notice dated 30.12.2024 to the industries and 40 show cause notices dated 30.12.2024 & 31.01.2025 (Annexed in the short reply of Respondent No. 7) to the residents of the approximately 172 houses built in the area. Therefore, in total 161 show cause notices have been issued in a phased manner.*
6. *That it is humbly submitted that in pursuance of the show cause notice dated 30.12.2024 issued to the 9 industries wherein reply was sought and the noticees stated that the issue is pending before this Hon'ble Tribunal. It was further stated that the sale deed 22.06.2004 is a part of freehold industrial area bearing plot 80-K which states that CC Road was already present and the noticees have not constructed any road.*
7. *That it is humbly submitted that a letter was sent to Additional Municipal Commissioner, Municipal Corporation of Ghaziabad and Deputy Commissioner, Police Commissionerate, Ghaziabad requesting for a team and assistance for demolition of unauthorized construction. Thereafter, on 08.05.2025 with the*

*assistance of the local police and authority the demolition of the unauthorized construction was carried out.*

8. *It is humbly submitted that in pursuance of the same, further action has been taken by the Respondent No. 7 in accordance with law and the unauthorized road has been demolished. It is further humbly submitted that the process of restoration of the green belt is being resisted by the locals. A true copy of the photographs of the demolition are duly marked and annexed herein as the ANNEXURE A-5 (Colly)."*

6 Above report reveals that 161 show cause notices have been issued to the concerned persons who have allegedly encroached upon the park/road constructed in the park.

7 Learned Counsel for respondent no.7 has submitted that as per her instruction no reply to the show case notices have been received till now and respondent no.7 will wait for another 45 days for receipt of the reply and thereafter action will be taken.

8 Learned Counsel for the State of UP has referred to the paragraph 18 of the reply affidavit dated 30.09.2024 filed by respondent-Chief Secretary, State of UP stating as under:

*"18. The deponent here state that appropriate and necessary directions has been issued to concerned departments and appropriate steps will be taken following the due process of law to resolve the issue in question. It is further stated that the required remedial actions will be taken in consideration of the issue in hand and by adopting the due process of law. "*

9 Learned Counsel for the State has also referred to minutes of the meeting dated 06.09.2024 Chaired by Chief Secretary, UP wherein following directions were issued"

"

क्र० सं०	मा० राष्ट्रीय हरित अधिकरण, नई दिल्ली में विचाराधीन वाद संख्या एवं पारित आदेश दिनांक	कार्यवाही के निर्देश	कार्यवाही किये जाने वाले संबंधित विभाग
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1	<p>Execution Application No-33/2021 In O.A No-68/2021 Sushil Raghav Vs State of Uttar Pradesh &amp; Ors में पारित आदेश दिनांक 16.05.2024</p>	<ul style="list-style-type: none"> <li>विषयगत प्रकरण के संबंध में नगर निगम, गाजियाबाद द्वारा उक्त क्षेत्रों में अवस्थित घरों की संख्या, कुल सीवर कनेक्शनों की संख्या, पूर्व में डाली गयी सीवर लाइन की लम्बाई का डाटा उपलब्ध कराया जाए।</li> </ul>	<ul style="list-style-type: none"> <li>नगर आयुक्त, नगर निगम, गाजियाबाद।</li> </ul>
		<ul style="list-style-type: none"> <li>विषयगत वाद में बची हुई सीवर लाइन, हाउस कनेक्शन इत्यादि के संबंध में डी०पी०आर० तैयार कर उपलब्ध कराया जाए।</li> <li>डी०पी०आर० प्राप्त होने के पश्चात संबंधित विभाग द्वारा यथाशीघ्र अमृत 2.0 योजनान्तर्गत प्रशासकीय एवं वित्तीय स्वीकृति निर्गत किये जाने के संबंध में अग्रतर कार्यवाही की जाए।</li> </ul>	<ul style="list-style-type: none"> <li>नगर विकास विभाग, उ०प्र० शासन।</li> <li>प्रबन्ध निदेशक, उत्तर प्रदेश जल निगम (नगरीय), लखनऊ।</li> <li>मुख्य अभियन्ता (गाजियाबाद क्षेत्र), उत्तर प्रदेश जल निगम (नगरीय), गाजियाबाद।</li> </ul>
		<ul style="list-style-type: none"> <li>उक्त रिपोर्ट/आख्या तथा डी०पी०आर० प्राप्त होने के पश्चात संबंधित विभाग</li> </ul>	<ul style="list-style-type: none"> <li>नगर विकास विभाग, उ०प्र० शासन।</li> </ul>

		द्वारा ससमय प्रतिशपथपत्र का आलेख्य तैयार कर उपलब्ध कराया जाए।	
2	ओ०ए० संख्या-710/2023 Sushil Raghav Vs State of Uttar Pradesh & Ors में पारित आदेश दिनांक 24.07.2024	<ul style="list-style-type: none"> <li>विषयगत प्रकरण के संबंध में नगर निगम, गाजियाबाद द्वारा बाबू जगजीवन राम पार्क का मूल क्षेत्रफल, पार्क में बसें हुए लोगों एवं घरों की संख्या, पार्क से होकर गुजरने वाले पक्के मार्ग की अवस्थिति एवं लम्बाई चौड़ाई तथा मार्ग से जुड़ने वाले औद्योगिक इकाईयों की संख्या व उनमें कार्य करने वाले श्रमिकों का सर्वे कर डाटा उपलब्ध कराया जाए।</li> </ul>	<ul style="list-style-type: none"> <li>नगर आयुक्त, नगर निगम, गाजियाबाद।</li> </ul>
		<ul style="list-style-type: none"> <li>उक्त पार्क में अवैध रूप से अवस्थित घरों तथा औद्योगिक इकाईयों हेतु उपलब्ध एकमात्र सम्पर्क मार्ग को हटाये जाने की कार्यवाही विधिक/न्यायसंगत (due process of</li> </ul>	<ul style="list-style-type: none"> <li>जिलाधिकारी, गाजियाबाद</li> <li>नगर आयुक्त, नगर निगम, गाजियाबाद</li> <li>उपाध्यक्ष, गाजियाबाद विकास</li> </ul>

		law) तरीके से की जाए।	प्राधिकरण, गाजियाबाद।
		<ul style="list-style-type: none"> <li>उक्त रिपोर्ट/आख्या प्राप्त होने के पश्चात संबंधित विभाग द्वारा ससमय प्रतिशपथपत्र का आलेख्य तैयार कर उपलब्ध कराया जाए।</li> </ul>	<ul style="list-style-type: none"> <li>नगर विकास विभाग, उ०प्र० शासन।</li> </ul>

”

10. He has also sought four weeks time to place on record the fresh action taken report on behalf of Chief Secretary, State of UP.

11. Learned Counsel appearing for respondent no.12 has submitted that respondent no.12 is not the encroacher and that he has also objected to the original application by referring it to be time-barred. Tribunal in the previous order dated 02.04.2025 had granted respondent no.12 an opportunity to file the reply which has not been filed till now.

12. Learned Counsel for the applicant submits that these objections be considered after the reply is filed.

13. Learned Counsel appearing for respondent no.12 submits that reply to the original application will be filed within two weeks, thereafter rejoinder, if any, can be filed within four weeks.

14. I.A. No. 298/2025: has been filed by Subhas Singh and others. This is an IA at the instance of as many as 22 applicants who are stated to have their houses in the area concerned. Prayer for impleadment is not opposed by Counsel for the applicant even otherwise applicants in IA 298/2025 are

likely to be affected, therefore, they are required to be impleaded. Hence, IA 298/2025 is allowed. Let the cause title of the original application be amended and an amended memo of parties be filed.

15. IA No. 299/2025: has been filed by the applicant seeking exemption from filing of certified and official translation of the annexures. On due consideration IA is allowed, subject to the conditions that applicant in the IA will place on record legible translated copies of the document on which he wants to rely upon during the course of argument.

16. Learned Counsel for the applicant in the original applicant seeks three weeks' time to file reply to IA No. 300/2025.

17. So far as IA 325/2025 is concerned with afflux of time, said IA has become infructuous which is accordingly dismissed.

18. Let the reply to the original application be filed by all the concerned parties within three weeks and rejoinder, if any, be filed within three weeks thereafter.

19. List on 09.07.2025.

Prakash Shrivastava, CP

Dr. Afroz Ahmad, EM

May 21, 2025  
Original Application No. 710/2023  
(IA NO 835/2023, IA NO 480/2024, IA NO 479/2024,  
IA NO 478/2024, IA NO 325/2025, IA NO 300/2025,  
IA NO 299/2025, IA NO 298/2025, IA NO 36/2025)  
JG..





Saksham Tyagi &lt;advsaksham09@gmail.com&gt;

**ADVANCE SERVICE - Sushil Raghav v. State of Uttar Pradesh & Ors. (OA NO. 710/2023)**

1 message

**Saksham Tyagi** <advsaksham09@gmail.com>

Fri, Jul 4, 2025 at 1:40 PM

To: malak@malakbhatt.com, bhanwar jadon <bhanwar09jadon@gmail.com>, yagyawalkya@dylawchambers.com, Gargi Chaturvedi <gargichaturvedi001@gmail.com>, dclaw160@gmail.com, divya@dylawchambers.com, jadonchetan969@gmail.com, sruthik96@proton.me

Cc: Mayank Arora <contact@advocatemayank.in>, vikram singh <advocate.vikramsingh89@gmail.com>

Dear all,

Please find attached a copy of the reply to the Original Application in OA No. 710/2023 being filed on behalf of Respondent No. 12 i.e., Sh. Brij Raj Singh.

I request that you acknowledge the receipt of the same by reverting to this email.

Regards,

**Saksham Tyagi**

Counsel

**Chambers of Bharat Chugh**

D-146 (LGF), Defence Colony, Delhi-24

Gurugram: 922, JMD Megapolis, Sohna Road,

Sector-48, Gurugram, Haryana-122018

**The Chambers of Bharat Chugh** **Reply to OA - R12.pdf**  
10270K