

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL, PRINCIPAL BENCH, AT NEW
DELHI.

ORIGINAL APPLICATION NO. 543 OF 2023

IN THE MATTER OF:

ROHIT THAKRAN

.....APPLICANT

VERSUS

STATE OF HARYANA & ORS.

.... RESPONDENTS

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THROUGH





A.R TAKKAR, SHRIYA TAKKAR, ASMITA DUGGAL, UNNATI ANAND,






BHARGAVA RAVIKUMAR, KAPIL BAKSHI, NIDHI JHA & MANAN TAKKAR

ADVOCATES

M/S ARTLO

P-6/2 E, DLF PHASE-2,

GURGAON 122002

EMAIL ID: ARTAKKAR@ARTLO.IN

MOB: 8826200005/9643014849

PLACE-GURUGRAM

DATE-23.05.2024

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REPLY ON BEHALF OF THE APPLICANT TO THE AFFIDAVIT FILED BY THE
RESPONDENT NO.2 I.E. HARYANA SHEHRI VIKAS PRADHIKARAN.

MOST RESPECTFULLY SHOWETH:

1. That the present Original Application has been filed by the Applicant herein for directions to the respondents to restore the water bodies which existed in Khasra No. 24 and 28 in village Adampur Gram Panchayat Jharsa Gurugram Haryana and to stop all construction activities in the land of said water bodies and to plant the trees in lieu of trees which have been illegally cut from the same. That the present matter is pending adjudication before this Hon'ble Tribunal and is now listed for final hearing on 24.05.2024.
2. That the Respondent No.2 – Haryana Shehri Vikas Pradhikaran filed an affidavit dated 19.04.2024 (uploaded on the website on 20.04.2024) in which it stated as follow:

“That keeping in consideration the environmental principles as well as rights of allottees, the proposal for allotting alternative land admeasuring approx. 1.9 acres within Haryana, in lieu of land in question at Khasra No. 28, Village Adampur, Gurugram has been

sent to the Competent Authority for approval and necessary exercise for identification and allotment of alternate land in lieu of Khasra No. 2 as mentioned above shall be completed within a period of 90 day with the approval of Competent Authority and further the same will be restored as waterbody .It is also submitted that present case may not be treated as precedent."

Hence, the present reply is being filed by the Applicant herein.

PRELIMINARY SUBMISSIONS:

1. That it is relevant to mention herein that as per the law of the land and as per catena of judgments passed by the Hon'ble Supreme Court of India as well as this Hon'ble Tribunal and other Hon'ble Courts, the water bodies which existed in Khasra No. 24 and 28 in village Adampur Gram Panchayat Jharsa, Gurgram, Haryana are liable to be restored to their original form by removing the construction that has been undertaken and ther water bodies cannot be relocated or shifted to some other location.

Judgments in support:

- i. HINCH LAL TIWARI VS. KAMALA DEVI & ORS. (2001) 6 SCC 496 (SUPREME COURT).
- ii. SUNDER SINGH VS. STATE OF NCT OF DELHI & ORS. (OA-174/2014) (ORDER DATED 09.12.2016 PASSED BY THE PRINCIPAL BENCH, NATIONAL GREEN TRIBUNAL, NEW DELHI).
- iii. JAGPAL SINGH & ORS. VS. STATE OF PUNJAB & ORS. (2011) 11 SCC 396 (SUPREME COURT)
- iv. JAYA THAKUR VS. STATE OF MADHYA PRADESH & ORS. (OA – 43/2020) (ORDER DATED 05.04.2022 (UPLOADED ON 07.04.2022) PASSED BY THE BHOPAL BENCH, NATIONAL GREEN TRIBUNAL, CENTRAL ZONE BENCH, BHOPAL)

That in the aforementioned judgments it has been observed by the Hon'ble Supreme Court as well as this Tribunal that land recorded as a pond must not be allowed to be allotted to anybody for construction of a house or any allied purpose. Hence, similar orders are required to be passed by this Hon'ble Tribunal in the present matter as well since the water bodies existing in Khasra No. 24 and Khasra No.28 have illegally and systematically been obliterated by the Respondent authorities, who in turn are responsible to preserve and maintain these natural resources.

PARAVISE REPLY TO THE AFFIDAVIT FILED BY THE RESPONDENT NO.2:

1. That the contents of the corresponding paragraph needs no reply from the Applicant herein. That the contents of the preliminary submissions are reiterated and not repeated for the sake of brevity.
2. That the contents of the corresponding paragraph needs no reply from the Applicant herein. That the contents of the preliminary submissions are reiterated and not repeated for the sake of brevity.
3. That the contents of the corresponding paragraph are true and hence need no reply from the Applicant herein. That the contents of the preliminary submissions are reiterated and not repeated for the sake of brevity.
- 4-5. That the contents of the corresponding paragraphs are wrong and hence denied except those which are specifically admitted herein. It is denied that the development works were complete in 2014. It is in the humble submission of the Applicant herein that the road that is being claimed to having been laid down in the year 2014 was a non-concrete, non-metallic road and it was told to the villagers at that time that a footpath was being made for the development of the pond similar to the one already existing in Khasra No.24. However, it is imperative to mention herein that at that point of time, the Municipal

Corporation ensured the gram panchayat of the village concerned that the nature of the land i.e. Khasra No. 24 and 28 will not be changed and that the water bodies existing on the land will be preserved for use of local residents. That as ensured by the Municipal Corporation the water body existing at Khasra No. 24 was developed and when the non-metalled road was being laid down in the year 2014, all throughout the Applicant herein along with other villagers were under the impression that similar development of the pond existing at Khasra No. 28 was being carried out by the Municipal Corporation and hence the footpath was being made by the Municipal Corporation in Khasra No. 28. That it was only in the year 2021 when the public notice for auction was issued by the Respondent No.2, that the Applicant herein got to know that plots are being carved out in Khasra No. 28 for the purpose of developing a Residential Colony. It is imperative to mention herein that roads have been laid down in Khasra No. 28 only in the year 2022 and the photographs of the same have been attached with the Rejoinder to the Reply filed by HSVP. That the sewage lines were also laid down only in July 2023 and the photographs of the same have already been annexed @ Annexure-A/18 @ page 222 of the Original Application filed by the Applicant herein. Further, it was only in 2021-2022 when Respondent No.2 initiated the process of auctioning of the plots that the Applicant herein became aware of the present scenario. That as admitted by the Respondent No.2 itself that the auction happened in the year 2021-2022, there is continuing cause of action against the Respondent No.2 in destroying the water bodies situated in Khasra No. 24 and 28. That further the contents of the preliminary submissions are reiterated and not repeated for the sake of brevity.

6-8 That in response to the contents of the corresponding paragraph it is submitted that as per the law of the land and as per catena of judgments passed by the Hon'ble Supreme Court of India as well as this Hon'ble Tribunal and other

Hon'ble Courts, the water bodies which existed in Khasra No. 24 and 28 in village Adampur Gram Panchayat Jharsa, Gurgram, Haryana are liable to be restored to their original form by removing the construction that has been undertaken and the water bodies cannot be relocated or shifted to some other location. That the Hon'ble Supreme Court in **HINCH LAL TIWARI VS. KAMALA DEVI & ORS. (2001) 6 SCC 496** held that:

"11. Reverting to the first part of the question, from the report of the Tahsildar dated 18-4-1990 which is termed as the first report, it is clear that in the said Survey No. 774-KA, there is a pond (talab). The same is the substance of the report of the SDO dated 20-4-1990. Two more reports were called for by the orders of the High Court. They are dated 12-9-1999 and 3-4-2000. We do not find any substantial difference between these reports and the reports prepared by the Tahsildar and the SDO. We may also mention here that in khasra khatauni for the years 1387 to 1392 Fasli (corresponding to years 1980 to 1985) and 1393 to 1398 Fasli (1986-92) the description of the said survey number is given as pond. Consistent with those entries the Additional Collector found it to be a pond (talab) and cancelled the allotment of plots in favour of the said respondents. The Commissioner rightly confirmed the order of the Additional Collector. In writ petition, the High Court, in the impugned order, noted :

"From the report of the Sub-Divisional Officer dated 3-4-2000 it is clear that the land had the character of a pond but due to passage of time most of its part became levelled. But some of the portion had still the character of a pond and during the rainy season it is covered by water. The area which is covered by water or may be covered by water in the rainy season

could not be allotted as abadi site to any person."

12. On this finding, in our view, the High Court ought to have confirmed the order of the Commissioner. However, it proceeded to hold that considering the said report the area of 10 biswas could only be allotted and the remaining five biswas of land which have still the character of a pond, could not be allotted. In our view, it is difficult to sustain the impugned order of the High Court. There is concurrent finding that a pond exists and the area covered by it varies in the rainy season. **In such a case no part of it could have been allotted to anybody for construction of house building or any allied purposes.**

13. **It is important to notice that the material resources of the community like forests, tanks, ponds, hillock, mountain etc. are nature's bounty. They maintain delicate ecological balance. They need to be protected for a proper and healthy environment which enables people to enjoy a quality life which is the essence of the guaranteed right under Article 21 of the Constitution. The Government, including the Revenue Authorities i.e. Respondents 11 to 13, having noticed that a pond is falling in disuse, should have bestowed their attention to develop the same which would, on one hand, have prevented ecological disaster and on the other provided better environment for the benefit of the public at large. Such vigil is the best protection against knavish attempts to seek allotment in non-abadi sites.**

15. For the aforementioned reasons, we set aside the order of the High Court, restore the order of the Additional Collector dated 25-2-1999 confirmed by the Commissioner on 12-3-1999. **Consequently, Respondents 1 to 10 shall vacate the land, which was allotted to them, within six months from today. They will,**

however, be permitted to take away the material of the houses which they have constructed on the said land. **If Respondents 1 to 10 do not vacate the land within the said period the official respondents i.e. Respondents 11 to 13 shall demolish the construction and get possession of the said land in accordance with law. The State including Respondents 11 to 13 shall restore the pond, develop and maintain the same as a recreational spot which will undoubtedly be in the best interest of the villagers. Further it will also help in maintaining ecological balance and protecting the environment in regard to which this Court has repeatedly expressed its concern. Such measures must begin at the grass-root level if they were to become the nation's pride.**

That the Hon'ble National Green Tribunal (Bhopal Bench) in **JAYA THAKUR VS. STATE OF MADHYA PRADESH & ORS. (OA – 43/2020) (ORDER DATED 05.04.2022 (UPLOADED ON 07.04.2022)**, held that:

"18. In the present case it is undisputed that the pond area has been converted into the cultivation of crops, construction of residential, commercial activities which is not permissible in law. The inevitable conclusion therefore is the same has to be restored.

....

20. When the law protector becomes the law violators, how law will be protected. The basic principle of rule of law is to follow rule/ law and not to break or violate it. For the negligence of those to whom public duties have been entrusted can never be allowed to cause public mischief. Public servants if committing wrong in discharge of statutory functions and later on if it was found not be in accordance with law within the knowledge of the officer concerned then it cannot be said to be the work and duty within the definition of State Act.

.....

31. **The philosophy of the judgment as laid-down and quoted above are very much clear that it is the pious duty of the State and Local Authorities that the tanks and ponds of the villages are properly maintained and necessary steps be taken so that there is no water shortage and ecology is preserved. It is nowhere mentioned, authorizing anybody and everybody to make encroachment on waterbodies anywhere or everywhere.**

....

39. *It is the pious duty of the Municipal Corporation to make a planning including town planning, planning for economic and social development, roads and bridges, water supply for domestic, industrial and commercial purposes, public health, sanitation conservancy and Solid Waste Management, urban forestry, protection of the environment and promotion of ecological aspects, slum improvement and up-gradation, urban poverty alleviation. Provisions of urban amenities and facilities such as parks, gardens, playgrounds promotion of cultural educational and aesthetic aspects. Cattle ponds prevention of cruelty to animals and public amenities. It is nowhere mentioned that the Municipal Corporation has been directly or indirectly empowered to encroach on the public land or water bodies and to disturb environmental laws.*

.....

42. **In the conclusion, Hon'ble the Supreme Court of India has directed to demolish the illegal and unauthorised construction and the cost of demolition and all incidental expenses including the fees payable to the experts are directed to be borne by the person who have constructed illegally.**

.....

43. *When the Law Protector becomes the Law Violator, how the Law will be Protected. The action and construction by the Respondent, Municipal Corporation is*

not only disregard to the law but it is negation of the authority of the State by the public official doing the act and utilising the budget in contravention of the settled Principal of Law, in accordance with their wishes. An action specifically punitive action does lie for doing what the legislature has authorised, if it is done negligently, carelessly and in violation of the law. The State has never permitted the Municipal Corporation for encroachment of the water bodies. There is no authority from the Collector or from the Chief Secretary or from the State and in reply thereof the Collector has filed the affidavit to the effect that no permission has been taken by the State Authorities or from the State Government and in the guise of the concept of imaginary power, it is argued that Municipal Corporation that the Municipal Corporation is the owner of the land and can use the property according to the wishes. On the garb of beautification commercial multiplex building has been constructed on the area which is recorded as pond. It is settled law that the public property is vested in the State. The corporation is denying the powers and authority of the State. It is negation of law. The functionaries of the State in exercise of statutory power cannot claim immunity for the acts which are in contravention of the law, except to the extent protected by the statute itself. Perpetually authorities acting in violation of Constitution or Statutory Provisions oppressively are accountable for their behaviour before the authorities created under the statute for maintaining the Rule of Law. The contention of the Municipal Corporation that there was a discharge of untreated water or sewage water into the water body and to protect the water body, the Municipal Corporation has permitted to construct and constructed the commercial building is not the aim and objective of the Environmental Laws. The Law provides that it is the sole responsibility of the Municipal Corporation or local authorities monitoring it to ensure that there shall not be any discharge of untreated water into the water bodies or open land or rivers and in case if it is found that

untreated water or sewage water is being discharged by any authority or the person, he must be dealt with in accordance with law and environmental compensation must be assessed and realized according to the parameter laid down by the CPCB.

42. On the basis of above discussions and on the basis of the records and submissions of the parties, we direct as follows:

1. The Collector Sagar is directed that the area which is the subject matter of encroachment must be removed in accordance with law. In this regard the Collector has to follow the law and order and the orders passed by the Hon'ble High Court as referred above....."

That the present case is squarely covered by Hinchlal Tiwari Vs Kamla Devi (2001) 6 SCC 496 followed and quoted in Jagpal Singh Vs State of M.P. (2011) 11 SCC 396 and in Jaya Thakur vs. State of Madhya Pradesh & Ors. (OA – 43/2020). It is authoritatively reiterated in Hinchlal Tiwari and Jagpal Singh that land recorded as pond must not be allotted to anybody for construction of a house or any allied purpose. The court ordered the respondents in the case of Hinchlal Tiwari and Jagpal Singh to vacate the land they had illegally occupied after taking away the material of the house. That similar orders are required to be passed by this Hon'ble Tribunal in the present matter and the water bodies in Khasra No.24 and Khasra No. 28 are liable to be restored to their original form. It is also important to mention herein that as such no construction has been undertaken on Khasra No. 28 by the private Respondents due to the status quo order passed this Hon'ble Tribunal. That before the status quo order was passed by this Hon'ble Tribunal and only after the present Original Application was filed by the Applicant herein, a small kutcha structure of two floors was got built intentionally by the private Respondents in connivance with the Respondent No.2. It is in the humble submission of the Applicant herein that being a

Government Authority entrusted with the protection of environment, it was the duty of the Respondent No. 2 and 3 to preserve the water body existing in Khasra No. 28. That the Respondent Authorities have violated the public trust doctrine by destroying the water body existing in Khasra No. 28 by carving out plots and thereafter auctioning the same for allotment. That since no concrete construction has taken place till date, the Respondent Authorities are hence liable to return the auction money received from the private Respondents No. 10-20 and thereby restore the water body in Khasra No. 28.

PRAYER

In view of the submissions made herein above, the Applicant most respectfully prays that this Hon'ble Tribunal after summoning the entire official record concerned and perusing it may kindly be pleased to:

- i. Take the present reply on record;
- ii. Pass any such and further orders as deemed fit and proper in the peculiar facts and circumstances of this case and in the interest of environment as well as restoration of the water bodies;

THROUGH



A.R TAKKAR, SHRIYA TAKKAR, ASMITA DUGGAL, UNNATI ANAND,






BHARGAVA RAVIKUMAR, KAPIL BAKSHI, NIDHI JHA & MANAN TAKKAR

ADVOCATES

M/S ARTLO

P-6/2 E, DLF PHASE-2,

GURGAON 122002

EMAIL ID: ARTAKKAR@ARTLO.IN

MOB: 8826200005/9643014849

PLACE-GURUGRAM

DATE-23.05.2024

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DELHI

ORIGINAL APPLICATION NO. 543 OF 2023

IN THE MATTER OF:

ROHIT THAKRAN

...PETITIONER/APPLICANT

VERSUS

STATE OF HARYANA & ORS

...RESPONDENTS

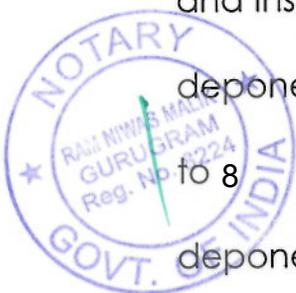
AFFIDAVIT

I, Rohit Thakran S/o Late Sh. Amarpreet Thakran, aged about 35. R/o New Plot No. 136-137, Dear Wood Chase, Nirwana, Sector-50, Village Adampur, Gram Panchayat Jharsa, Gurugram-Haryana.

I the above named deponent do hereby solemnly affirm and declare as under:-

1. That the above titled Reply has been drafted under the authority and instructions of the deponent and after perusing its contents, the deponent has duly signed it, and the contents of paragraph Nos. 1 to 8 thereof are true and correct to the knowledge of the deponent, and the same may be read as contents of this affidavit also, which are not being reproduced for the sake of brevity. No part of it is false and nothing material has been kept concealed therefrom.

2. That the contents of paragraphs no. 1 to 8 of above tilted Reply are true and correct to my knowledge, no part of that is false and nothing has been kept concealed therefrom.



3. That the Annexures attached with the Reply are true copies of their respective originals.

Ranit

DEPONENT

VERIFICATION

Verified that the contents of paragraphs no. 1 to 3 of my above affidavit are true and correct to my knowledge. No part of it is false and nothing has been concealed therein.

Ranit

DEPONENT



ATTESTED
RAM NIWAS MALIK, ADVOCATE
NOTARY: 82222222 1234 5678

ROHIT THAKRAN VS STATE OF HARYANA REPLY & REJOINDER

14

Unnati <Unnati@artlo.in>

Thu 5/23/2024 12:31 PM

To: noopur4@gmail.com <noopur4@gmail.com>; lokeshsinhalassoc@gmail.com <lokeshsinhalassoc@gmail.com>;
rkhuranalegal@gmail.com <rkhuranalegal@gmail.com>; legalrajan@gmail.com <legalrajan@gmail.com>; adv.adityasingh@gmail.com
<adv.adityasingh@gmail.com>
Cc: Rahul Chaudhry <rahul@artlo.in>

📎 3 attachments (29 MB)

Rejoinder Rohit 1 (1).pdf; Rohit Thakran vs State of Haryana Reply.pdf; ROHIT THAKRAN REJOINDER 2.pdf;

Dear Sir/Ma'am,

Please find attached the following in the matter titled as Rohit Thakran vs. State of Haryana (OA/543/2023):

1. Rejoinder to the Reply filed by HSVP.
2. Rejoinder to the Reply filed by Respondent No. 10-20.
3. Reply to the affidavit filed by HSVP.

Kindly treat this as advance service.

Regards

Unnati Anand
Advocate
Sr. Associate
ARTLO

email : unnati@artlo.in
website : www.artlo.in

NEW DELHI :
P-6/2E, DLF Phase 2, Gurgaon 122002, India
Mob : [+91 8527973155](tel:+918527973155)
Tel : [+91 124 6469005](tel:+911246469005)
Fax: [+91 124 4210005](tel:+911244210005)

CHANDIGARH :
#844 , Sector-8 ,Panchkula-134109
Chamber No-19 ,New Bar Room ,
High Court Complex, Chandigarh
Tel: [+91 172 2562681](tel:+911722562681)

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