

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

ORIGINAL APPLICATION NO. 174 OF 2022

U/S 14 OF THE NATIONAL GREEN TRIBUNAL ACT 2010

IN THE MATTER OF

DHARMENDRA KUMAR SINGH

.....APPLICANT

VERSUS

UNION OF INDIA AND OTHERS

.....RESPONDENTS

INDEX

Sl. No	Particulars	Page
1.	Written Submissions on behalf of Applicant	02-19
2.	Proof of Service	20

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**New Delhi
15/02/2024**

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WRITTEN SUBMISSION ON BEHALF OF APPLICANT

By way of Original Application filed under Section 14 of the National Green Tribunal Act – 2010, applicant has requested URGENT INTERVENTION of the Honble Apex Green Tribunal of World's largest Democracy.

It is respectfully submitted that applicant has made the following prayers in the Original Application No. 174 of 2022:

- a. Direct Respondent No. 04 (Uttar Pradesh Pollution Control Board) to forthwith seal the Brick Kiln Manufacturing Unit of Respondent No. 08 and Respondent No. 09.
- b. Direct Respondent No. 04 (Uttar Pradesh Pollution Control Board) to impose Environmental Compensation against Respondent No. 08 and Respondent No. 09 for illegally operating its unit in violation of the Law of the Land.

It is respectfully submitted that Respondent No. 08 is a Brick Kiln Unit namely M/S AAKANSHA INT BHATTA which is located at Araji No. 165, 173 Sarni, Koth, Ikandarpur, District Balia.

That Respondent No. 09 is a Brick Kiln Unit namely ASHOK KUMAR SHARMA INT BHATTA which is located at Araji 1712, Sarni, Koth, Ikandpur, District Balia, Uttar Pradesh.

REGARDING ILLEGAL OPERATION OF RESPONDENT NO. 08

Respondent No. 08, a Brick Kiln Unit namely M/S AAKANSHA INT BHATTA, is located at Araji No. 165, 173 Sarni, Koth, Sikandarpur, District Balia, Uttar Pradesh.

That as per the Action Taken Reports filed by Committee constituted by this Honble Court, applicant has learnt that the said Brick Kiln has been purchased time and again by different persons resulting into change of name of the said BRICK KILN (INT BHATTA).

For the sake of convenience of this Honble Court, applicant has provided the list of names which has operated the said BRICK KILN UNIT situated at Araji No. 165, 173, Sarni, Koth, Sikandarpur, District Balia:

Sl No.	Name of the Brick Kiln Unit which operated at Araji No. 165, 173, Sarni, Koth, Ikandarpur, District Balia	Time Period
1.	Khan & Ansari Birck Kilns	2000 to 2003

2.	Raj Brick Udyod	2004 to 2011
3.	Samarsen Bahadur Singh Sarni	2011 to 2016
4.	Akansha Brick Kiln	2016 onwards

That as far as Respondent No. 08 is concerned, applicant has learnt the followings from Action Taken Report dated 03/06/2022 and Action Taken Report dated 23/09/2022:

- a. As per the affidavit dated 10/05/2022 (**Annexure II of Action Taken Report dated 03/06/2022**), the owner namely Mrs. Geeta Singh has herself stated that she purchased the said Brick Kiln Unit in 2016 and due to reasons of unavailability of soil and poor economic condition, owner of Respondent No. 08 is closing down the operation of Brick Kiln Unit.
- b. That as per Action Taken Report dated 23/09/2022, Brick Kiln was operated without consent to operate from UPPCB since 2000. (**Point No. 04, Page 4 of Action Taken Report dated 23/09/2022**)
- c. That during the course of argument, Counsel for Respondent No. 08 also submitted that owner of Respondent No. 08 has closed down the operation of said Brick Kiln because of unavailability of soil and poor economic condition.

From the above, it is crystal clear that Mrs. Geeta Singh after the purchase of M/s Akansha Int Bhatta operated it illegally and without CONSENT TO OPERATE from 2016.

In view of the above, applicant prays before this Honble Court for following two things:

- a. Direction to Uttar Pradesh Pollution Control Board to impose Environmental Compensation against Respondent No. 08 for illegal operation of Brick Kiln.
- b. Demolition of Brick Unit with a direction to restore the area where the Brick Kiln was established.

REGARDING ILLEGAL OPERATION OF RESPONDENT NO. 09

That Respondent No. 09 is a Brick Kiln Unit namely ASHOK KUMAR SHARMA INT BHATTA situated at Araji No. 1712, Phulpur, Koth, Sikandarpur, District – Ballia, Uttar Pradesh. It is respectfully submitted that now the said Brick Kiln is owned by Respondent No. 10 (newly impleaded Respondent).

- a. That as per the Action Taken Reports filed by Committee constituted by this Honble Court, applicant has learnt that the said Brick Kiln has

been purchased time and again by different persons resulting into change of name of the said BRICK KILN (INT BHATTA).

- b. For the sake of convenience of this Honble Court, applicant has provided the list of names which has operated the said BRICK KILN UNIT situated at Araji No. 1712, Phulpur, Koth, Ikandarpur, District Balia:

Sl No.	Name of the Brick Kiln Unit which operated at Araji No. 165, 173, Sarni, Koth, Ikandarpur, District Balia	Time Period
1.	GBS Brick Kiln	2000 to 2010
2.	Ashok Kumar Int Bhatta	25/03/2010 to 02/12/2021
3.	Pragati Brick Kiln	03/12/2021 onwards

- c. It is respectfully submitted that applicant has learnt followings from Action Taken Report dated 03/06/2022:

Relevant Page Number	Date	Particulars
Para 1 Page 6	05/10/2000	No objection certificate dated 10/10/2000 was issued on the basis of Inspection Report dated 05/10/2000. <u>Imp</u> It is respectfully submitted that the Inspection Report is also annexed with the ATR (Annexure III).

		<p>As per Inspection report, Inspection was done on dated 05/10/2000 and following was the detail on all the 4 directions of the said Brick Kiln Unit:</p> <ul style="list-style-type: none"> a. Uttar (North) – 400 m @ village 10 m @ Bagh b. Dakshin (South) – 400 m @ Bagicha 500 m @ village c. Pashim (West) – 300m @ Mix Bagicha d. Purab (East) - 600 m @village 400m @ village
Para 3 Page 7	15/07/2021	Brick Kiln was being operated without valid consent to operate certificate, resulting into issuance of Closure Order dated 15/07/2021.
Para 4 Page 7	21/01/2022 & 28/01/2022	<p>Applicant filed a complaint regarding illegal running of Respondent No. 09 on dated 21/01/2022</p> <p>Based on the complaint preferred by applicant, Officials from UPPCB inspected the Brick Kiln.</p>
Para 5 Page 8	28/02/2022	Online CTO application for renewal with a request to Revocation of Closure Order was preferred by representative of Brick Kiln, resulting into issuance of Revocation letter dated 28/02/2022.
Para 6 Page 8	27/04/2022	<p>Joint Inspection carried out by Committee constituted by NGT</p> <p>Siting Criteria as per NGT Committee:</p> <ul style="list-style-type: none"> a. Uttar (North) – 2 km @ No population b. Dakshin (South) – 30 m @ Local Road

		<p style="text-align: right;">1 km @ Open Area</p> <p>c. Pashim (West) – 1.5 km @ Open Area</p> <p style="text-align: right;">@ No Population</p> <p>d. Purab (East) - 30 m @Road & Canal</p> <p style="text-align: right;">2km @ Open Area & No Population</p>
Point 7 Page 9	13/05/2022	Consent to Operate issued on dated 13/05/2022.

d. That applicant has learnt the followings from Action Taken Report dated 23/09/2022:

Relevant Page Number	Date	Particulars						
Point 4 Page 3		Brick Kiln was operated without CTO from UPPCB till 18/05/2022						
Point 11 Page 3 & Page 4		<p>Lekhpal and Kanungo measures the distance of Road, Population, School, Hospital etc through Digitally. As per report, details are as follow:</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;">S. No.</th> <th style="width: 45%;">Siting Criteria</th> <th style="width: 45%;">Direction from Brick Kiln</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1</td> <td>Distance from Residential Area</td> <td> a. East @ 1km Village Uchwar b. North @ 740 m Village Kalyani c. South @ 1.1 Km Village Sarni </td> </tr> </tbody> </table>	S. No.	Siting Criteria	Direction from Brick Kiln	1	Distance from Residential Area	a. East @ 1km Village Uchwar b. North @ 740 m Village Kalyani c. South @ 1.1 Km Village Sarni
S. No.	Siting Criteria	Direction from Brick Kiln						
1	Distance from Residential Area	a. East @ 1km Village Uchwar b. North @ 740 m Village Kalyani c. South @ 1.1 Km Village Sarni						

				d. West <ul style="list-style-type: none"> • @730m Village Phulpur, Koth • @560 m 3 houses • @640m 1 house
		2	Distance from Hospital	North-West @1610 m
		3.	Distance from School	East @810 m
		4.	Distance from PWD Road	East @51m
		5.	Distance from nearby Brick Kiln	North – West 870m (Village Koth) South – East 1110 m (Village Sarni)

e. That Respondent No. 09 has filed a Counter Affidavit dated 23/11/2022.

That followings are the important points which applicant has learnt from the Counter Affidavit dated 23/11/2022:

- i. Point 4 – For the reason that Respondent No. 09 is functioning since 2000, Distance Criteria mentioned in Uttar Pradesh Brick Kilns (Siting Criteria for Establishment) Rules-2011, notified on 27/06/2012, is not applicable to them. As per Respondent No. 09 the Uttar Pradesh Brick Kilns (Siting Criteria for Establishment) Rules, 2011 is applicable only on installation of a new brick.

- ii. Point 10 – Vide Consent Letter dated 19/05/2022, the UPPCB has issued Consolidated Consent and Authorization) to Pragati Brick Kiln.

It is respectfully submitted that from the pleadings, followings are the **Substantial Questions of Law relating to Environment** which arose in the present Original Application for adjudication by this Honble Court:

1. WHETHER Uttar Pradesh Brick Kilns (Siting Criteria for Establishment) Rule, 2011 is applicable on Respondent No. 09 / Respondent No. 10 (Newly impleaded Respondent)?
2. If yes, whether, as per the siting criteria, provided by Action Taken Report dated 23/09/2022, Respondent No. 09 / Respondent No. 10 can operate the Brick Kiln at Araj No. 1712, Phulpur, Koth, Sikandarpur, District – Ballia, Uttar Pradesh?

WHETHER UTTAR PRADESH BRICK KILNS (SITING CRITERIA FOR ESTABLISHMENT) RULES, 2011 IS APPLICABLE ON RESPONDENT NO. 09 / RESPONDENT NO. 10 (NEWLY IMPLEADED RESPONDENT)?

Case of the applicant is that UTTAR PRADESH BRICK KILNS (SITING CRITERIA FOR ESTABLISHMENT) RULES, 2011 IS APPLICABLE ON RESPONDENT NO. 09 FOR THE FOLLOWING REASONS:

- A.** This Honble Court in ‘2019 SCC Online NGT 2284’ titled as Rajbeer Singh Versus State of Uttar Pradesh” has relied upon the Order dated 10/07/2019 issued in Review Application No. 34 of 2019 which expressly observed that **siting criteria can be invoked for future while renewing the Consent to Operate and No vested right is created by mere establishment.**

For the sake of convenience of this Honble Court relevant part is reproduced herein below:

‘2. Accordingly, report has been filed by joint committee on 19/11/2019 that 43 brick kilns were inspected. 482 more brick kilns were in existence. The siting criteria was laid down under the Uttar Pradesh Brick Kiln (Siting Criteria for Establishment) Rules. 2012.

Though it is stated that siting norms will apply to kilns established after 2012, the report does not show how many brick kilns existed prior to 2012. Compliance of air quality norms is also not mentioned. It is undisputed that unit set up

after 2012, in violation of the lead down siting criteria, cannot be allowed to continue. With regard to others, this tribunal has already held vide order dated 10.07.2019, in Review Application Number 34/2019 Bhag Singh Vs. Union of India, that the **siting criteria can be invoked for future while renewing the Consent to Operate. No vested right is created by mere establishment.** If such establishment affects public health and environment, consent to operate may not be renewed, having regard to environmental status.....

B. That this Honble Court in '2023 SCC Online NGT 365' titled as 'Vipin Kumar Vs. Uttarakhand Pollution Control Board and Others' has again settled the issue regarding 'APPLICABILITY OF THE SITING CRITERIA FOR THE UNITS WHICH WERE IN OPERATION PRIOR TO THE ISSUANCE OF NOTIFICATION' & 'WHETHER THE NOTIFICATION IS EFFECTIVE FROM RETROSPECTIVE EFFECT OR FROM PROSPECTIVE EFFECT'.

For the sake of convenience of this Honble Court, relevant part is produced herein below:

8.the Tribunal by order dated 18.08.2023 had formulated the following questions involved in the original application:—

“4. The question involved in this application is applicability of the siting criteria for the units which were in operation prior to the issuance of the notification. It is further for consideration as to whether this notification is effective from retrospective effect or from prospective effect and as to whether the conditions of EC are complied with by the unit.”

19. It is undisputed before the Tribunal that Respondent Nos. 5 and 6 were operating since 2020 and 2021 without obtaining Consent to Operate (CTO) and Consent to Establish (CTE) or Consolidated Consent and Authorization (CCA). Hence, undisputedly, Respondent Nos. 5 and 6 were set up in 2020 and 2021 illegally and were also operating illegally till they had obtained the CCA vide orders dated 13.01.2023 and 30.01.2023. Therefore, **these units cannot be given the benefit of their illegal operation at the stage of consideration of their application for CCA. Such an illegal operation has no recognition in law.**

20. That apart, Respondent Nos. 5 and 6 had no vested right to obtain the CCA, therefore, the law which was prevailing on the date of consideration of their applications for CCA will be attracted. It is not open to the

Respondent Nos. 5 and 6 to contend that the law which was prevailing on the date they had illegally set up the brick kiln should be applied for consideration of their applications whereas their applications were considered much after coming into force of the amended environment protection rules in terms of the notification dated 22.02.2022. Hence, we do not find any merit in the argument of Counsel for Respondent Nos. 5 and 6 that notification dated 22.02.2022 is being attracted retrospectively. In fact, the notification effective on the date of consideration of their applications in 2023 will apply as that was the law prevailing on that date.

23. Somewhat similar issues had come up before the Tribunal in the matter of *Jai Hanuman Ent Udyog v. UP Pollution Control Board* in Appeal No. 74/2014, wherein the case of the Appellant was that the brick kiln was in existence since 2010, therefore, U.P. Brick Kilns (Siting Criteria for Establishment) Rules, 2012 will not be applicable. In that case UPPCB had granted consent on 06.09.2013, the said consent was set aside by the

Appellate Authority taking the view that while issuing the consent order dated 06.09.2013, the Board ought to have been guided by the Rules of 2012. The Tribunal by order dated 07.05.2015 passed in Appeal No. 74/2014 upholding the order of the Appellate Authority dated 06.09.2013.

29. Having regard to the aforesaid, **we are of the considered opinion that the CCA dated 13.01.2023 and 30.01.2023 have been issued to the Respondent Nos. 5 and 6 without considering the siting criteria prescribed in the notification dated 22.02.2022**, therefore, the CCA dated 13.01.2023 and 30.01.2023 cannot be sustained and are hereby set aside with a direction to the competent authority to reconsider the application for grant of CCA filed by the Respondent Nos. 5 and 6 after duly considering the siting criteria prescribed in the notification dated 22.02.2022.

C. Applicant herein also wishes to highlight Proviso attached of Rule 7 of the UTTAR PRADESH BRICK KILNS (SITING CRITERIA FOR ESTABLISHMENT) RULE, 2011.

For the sake of convenience of this Honble Court, relevant part is reproduced herein below:

“Provided that a Brick Kiln which was established/**operated** previously but not being operative in the last season, want to operate or change the name / ownership and have valid consent under the Air (Prevention and Control of Pollution) Act, 1981 and Water (Prevention and Control of Pollution) Act, 1974 may operate the same if it informs in writing to the State Board but shall be bound to comply with all the conditions subject to the consent which was granted.”

It is respectfully submitted that said **proviso is of no use / help to Respondent No. 09** for the reason that the expression used in Proviso is “BRICK KILN WHICH WAS ESTABLISHED / **OPERATED** PREVIOUSLY”.

Case of the applicant is that by way of using the expression ‘OPERATED’ the Legislature has provided relief **ONLY** to those BRICK KILN which were ‘**OPERATING after issuance of VALID CONSENT TO OPERATE**’.

However, in the present case, it is clear from the Action Taken Report dated 23/09/2022 issued by Committee constituted by this

Honble Court that Respondent No. 09 Brick Kiln was operating its Brick Kiln Unit without CONSENT TO OPERATE from UTTAR PRADESH POLLUTION CONTROL BOARD till 18/05/2022.

It Is respectfully submitted that from the above that SITING CRITERIA mentioned in UTTAR PRADESH BRICK KILNS (SITING CRITERIA FOR ESTABLISHMENT) RULE, 2011 is applicable on Respondent No. 09 / Respondent No. 10 (newly amended Respondent) and as such the CONSOLIDATED CONSENT TO OPERATE AND AUTHORIZATION DATED 19/05/2022 issued by officials of Uttar Pradesh State Pollution Control Board is in violation of Law of Land and as such is BAD IN LAW.

IF YES, WHETHER, AS PER THE SITING CRITERIA, PROVIDED BY ACTION TAKEN REPORT DATED 23/09/2022, RESPONDENT NO. 09 / RESPONDENT NO. 10 CAN OPERATE THE BRICK KILN AT ARAJI NO. 1712, PHULPUR, KOTH, SIKANDARPUR, DISTRICT – BALLIA, UTTAR PRADESH?

Case of the applicant is that, once it is held that 'Siting Criteria' mentioned in UTTAR PRADESH BRICK KILNS (SITING CRITERIA FOR ESTABLISHMENT) RULES-2011 is applicable, Respondent No. 09 / Respondent No. 10 (newly amended Respondent) has no authority to

OPERATE its Brick Kiln at Araji No. 1712, Puhulpur, Koth, Sikandarpur, District Balia, Uttar Pradesh for the following reasons:

A. Applicant has learnt from the Action Taken Report dated 23/09/2022 that Committee constituted by this Honble Court has found the following SITING PARAMETERS as far as establishment of Respondent No. 09 / 10 Brick Kiln is concerned:

- i. On WEST SIDE distance of Brick Kiln from Residential Area (Village Phulpur, Koth) is 730 meter.
- ii. On NORTH SIDE distance of Brick Kiln from Residential Area (Village Kalyani, Koth) is 740 meter.
- iii. On NORTH WEST SIDE distance of Brick Kiln from SCHOOL is 810 meter.
- iv. On EAST SIDE distance of Brick Kiln from PWD ROAD is 51 meter.

B. That as per UTTAR PRADESH BRICK KILNS (SITING CRITERIA FOR ESTABLISHMENT) RULE, 2011 the following is the SITING CRITERIA which Uttar Pradesh State Pollution Control Board has to follow while issuing NOC under Air Act and Water Act:

- i. As per Rule 2 (i) Brick Kiln shall be established **at least 1.0 kilo meter away** from a Residential Area.
- ii. As per Rule 2 (ii), Brick Kiln **shall not be established within 1.0 km from SCHOOL.**

It is clear from the above facts that Respondent No. 09/Respondent No. 10 Brick Kiln is violating the Rules {more specifically Rule 2 (i) and Rule 2 (ii)} of the UTTAR PRADESH BRICK KILNS (SITING CRITERIA FOR ESTABLISHMENT) RULE, 2011, hence can't be allowed to OPERATE at Araj No. 1712, Phulpur, Koth, Sikandarpur, District – Ballia, Uttar Pradesh

In view of the above mentioned facts and circumstances, applicant requests this Honble Court to allow the relief as prayed in the present Original Application.



Applicant

Through



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New Delhi
15/02/2024

Service of Written Submissions filed in Original Application No. 174 of 2022

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Sir,

Please find the attached Written Submissions filed on behalf of Applicant.

Regards

Gaurav Kumar Bansal

Advocate

9811164777



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