

**BEOFRE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
ORIGINAL APPLICATION No. 38 of 2022**

IN THE MATTER OF:-

Dr. Bina Basnett

.... Applicant

Versus

State of Sikkim & Ors.

... Respondents

INDEX

Sr. No.	PARTICULAR	Pg No.
1.	Counter Affidavit on behalf of The Respondent No. 10 (Gangtok Municipal Corporation)	1-16
2.	<u>Annexure – R/1</u> True copy of the Counter Affidavit filed by the Respondent No. 10 before this Hon'ble Tribunal (without annexures)	17-24
3.	<u>Annexure – R/2</u> True copy of the Order dated 10.05.2022 passed by this Hon'ble Tribunal in the present Application	25-28
4.	<u>Annexure – R/3</u> True copy of C. A. No. 6168/ 2023 filed by the Applicant before the Hon'ble Supreme Court, along with its index (without annexures)	29-93
5.	<u>Annexure – R/4</u> True copy of the Order dated 17.07.2023 of the Hon'ble Supreme Court	94-240
6.	<u>Annexure – R/5</u> True copies of the Application for Condonation of Delay in Filing the Appeal and the Application for Condonation of Delay in Re-Filing the Appeal filed by the Applicant in C. A. No. 6168/ 2023 before the Hon'ble Supreme Court	241-249
7.	<u>Annexure – R/6</u> True copy of the Order dated 25.09.2023 passed by the Hon'ble Supreme Court in C. A. No. 6168/ 2023	250-253
8.	<u>Annexure – R/7</u> True copy of the Cabinet Memorandum dated 27.05.2021	254-258

9.	<u>Annexure – R/8</u> True copy of the Cabinet Decision dated 11.06.2021	259
10.	<u>Annexure – R/9</u> True copy of the NOC dated 30.06.2021 issued by the Gangtok Municipal Corporation	260
11.	<u>Annexure – R/10</u> True copy of the Letter bearing Memo No. 608/GSCDL/2021 dated 04.10.2021 of the Gangtok Smart City Development Ltd	261
12.	<u>Annexure – R/11</u> True copy of the Letter bearing Issue No. 3839/MISC/TPC/GMC/2021/936 dated 08.10.2021 of the Gangtok Municipal Corporation	262
13.	<u>Annexure – R/12</u> True copy of the Letter bearing Issue No. 381(A)/GMC/2021 dated 12.10.2021 of the Gangtok Municipal Corporation	263
14.	<u>Annexure – R/13</u> True copy of the Letter bearing Memo No. 651/GSDCL/2021-22 dated 12.10.2021 of the Gangtok Smart City Development Ltd	264
15.	<u>Annexure – R/14</u> True copy of the Site Stability Report dated 29.12.2021 of the Department of Mines & Geology, Govt. of Sikkim	265
16.	<u>Annexure – R/15</u> True copy of the Construction Order contained in the Letter bearing Issue No. 3839/MISC/TPC/GMC/2021/979 dated 31.12.2021 of the Gangtok Municipal Corporation	266-267
17.	<u>Annexure – R/16</u> True copy of the Form – V dated 10.01.2022 of the Respondent No. 12	268
18.	<u>Annexure – R/17</u> True copy of the Site Visit dated 12.01.2022 by the Assistant Town Planner of the Answering Respondent	269
19.	<u>Annexure – R/18</u> True copy of the Note Sheets 12.05.2022 of the Gangtok Municipal Corporation	270-271

20.	<u>Annexure – R/19</u> True copy of the Letter bearing Reference No. MIPL/SITE/29/2022-23 dated 10.10.2022 sent by MESASO Infrastructure Pvt. Ltd	272
21.	<u>Annexure – R/20</u> True copy of the Construction Order dated 11.11.2022 issued by the Gangtok Municipal Corporation	273-274
22.	<u>Annexure – R/21(Colly)</u> True copies of the Inspection Reports dated 15.03.2023 and 07.07.2023 conducted and signed by the Chief Town Planner of Gangtok Municipal Corporation	275-276
23.	<u>Annexure – R/22</u> True copy of the Letter bearing Ref. No. MIPL/HO/17/2023-24 dated 06.01.2024 from MESASO Infrastructure Pvt. Ltd	277
24.	<u>Annexure – R/23</u> True copy of the Occupancy Certificate dated 16.02.2024 issued by the Gangtok Municipal Corporation	278
25.	Proof of service	279



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PLACE: NEW DELHI

Dated:01.05.2024

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH AT KOLKATA
ORIGINAL APPLICATION NO. 38/2022/EZ**

IN THE MATTER OF:-

DR. BINA BASNETT

.... APPLICANT

Versus

STATE OF SIKKIM & ORS.

.... RESPONDENTS

**COUNTER AFFIDAVIT ON BEHALF OF THE RESPONDENT NO. 10
(GANGTOK MUNICIPAL CORPORATION)**

I, Gayden Chopel Bhutia, aged about 45 years, S/o Wangyal T. Bhutia, R/o Arithang, Gangtok and by occupation a Government Servant, do hereby solemnly affirm and state that:

1. I am the Chief Town Planner of Gangtok Municipal Corporation (hereinafter referred to as the '**Answering Respondent**'), and as such am competent to depose to and swear to the contents of this affidavit. I have gone through the contents of the Application and have understood its contents. The contents of the Application are denied in entirety, except to the extent specifically admitted hereinafter.

PRELIMINARY SUBMISSIONS:

2. A previous Application i.e. O. A. No. 05/2022 titled "*Dr. Bina Basnett v. State of Sikkim & Ors.*" ("**previous O. A.**") was first preferred by the Applicant herein before this Hon'ble Tribunal on 31.12.2021. At that stage, the Answering Respondent had filed its affidavit in opposition to the previous O. A. before this Hon'ble Tribunal. Vide the said affidavit, the Answering Respondent had made out a case of suppression of material facts on the part of the Applicant and also placed on record the true and correct facts as to all the necessary permissions and clearances which were in place for the project in question, before this Hon'ble Tribunal.


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 Gangtok Municipal Corporation

A true copy of the Counter Affidavit filed by the answering Respondent before this Hon'ble Tribunal (without annexures) are annexed herewith as **Annexure – R1 (Pages 17 to 24)**.

3. Thereafter, on a finding arrived at by this Hon'ble Tribunal that the Applicant had filed the previous O. A. on a misrepresentation of fact (and also obtained an interim order on the basis of such misrepresentation), vide its Order dated 02.03.2022, this Hon'ble Tribunal had permitted the Applicant to withdraw the previous O. A. with a cost of Rs. 5,000/- to be paid by the Applicant and the interim Order of stay was also vacated.
4. The present Application was then preferred by the Applicant before this Hon'ble Tribunal on 07.03.2022. As stated above, the answering Respondent had already filed its affidavit in opposition in the previous O.A., thereby placing on record the true and correct facts as to all the necessary permissions and clearances being in place for the project in question. This Hon'ble Tribunal was pleased to dismiss the present Application vide its Order dated 10.05.2022, with the following observation:

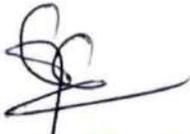
"8. This Environmental Clearance has not been filed along with the Original Application. We are of the view that if Environmental Clearance has been granted for this project, the Applicant has a remedy by way of appeal challenging the said Environmental Clearance.

9. The Original Application No. 38/2022/EZ is accordingly dismissed on ground of alternative remedy."

A true copy of the Order dated 10.05.2022 passed by this Hon'ble Tribunal in the present Application is annexed herewith as **Annexure – R2 (Pages 25 to 28)**.


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5. As is evident from the above Order, this Hon'ble Tribunal had been pleased to dismiss the present Application solely on the grounds of alternative remedy, thereby permitting the Applicant to prefer an appeal against the Environmental Clearance ("EC") dated 25.02.2022, which had already been placed on record, *inter alia*, by the Respondent No.s 1, 3, 4, 7 & 9. Notwithstanding the liberty granted by this Hon'ble Tribunal, the Applicant has not challenged the EC till date, before any forum whatsoever. The lack of seriousness on the part of the Applicant in properly agitating the cause which she claims to espouse is self-evident.
6. The Applicant thereafter preferred an Appeal i.e. C. A. No. 6168/2023 titled "*Bina Basnett v. the State of Sikkim & Ors.*" ("**Appeal**") against the Order dated 10.05.2022 passed by this Hon'ble Tribunal under Section 22 of the National Green Tribunal Act, 2010 ("**2010 Act**") before the Hon'ble Supreme Court of India on 11.10.2022, after a delay of 64 days. The Appeal preferred was replete with misrepresentations and suppression of material facts, similar to the previous O. A. and the present Application before this Hon'ble Tribunal. Further, notwithstanding the liberty granted by this Hon'ble Tribunal to challenge the EC for the project, no such challenge was preferred by the Applicant before the Hon'ble Supreme Court, nor has it so been preferred till date. Furthermore, the Applicant deliberately concealed the affidavit filed by the answering Respondent before this Hon'ble Tribunal in the previous O. A., by not annexing it to the Appeal paper book before the Hon'ble Supreme Court, so as to falsely convey to the Hon'ble Supreme Court that this Hon'ble Tribunal had dismissed the application *in limine* and without calling for any responses. It was only much later and by way of an Additional Documents Application that the said Affidavits were filed before the Hon'ble Supreme Court.



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A true copy of C. A. No. 6168/ 2023 filed by the Applicant before the Hon'ble Supreme Court, along with its index (without annexures) is annexed herewith as **Annexure – R3 (Pages 29 to 93)** . .

7. In addition to having preferred the Appeal before the Hon'ble Supreme Court with an inordinate, unexplained delay, the Applicant did not take any steps whatsoever for the listing and hearing of the Appeal before the Hon'ble Supreme Court. As a matter of fact, the Applicant chose to keep the Appeal pending in the Registry until such time as the Appeal was directed to be dismissed in default for non-curing of the defects in the Appeal within time. A last opportunity of six-weeks' time was granted to the Applicant to cure the defects on 17.07.2023 by the Hon'ble Supreme Court. It was only thereafter that the Applicant cured the defects and took steps for listing of the Appeal before the Hon'ble Court. It is submitted that such conduct on the part of the Applicant is demonstrative of the ulterior motive of the Applicant in preferring the present challenge, which is directed at gaining political advantage by the Applicant who is a politician in the State of Sikkim. In the very least, given her conduct of not acting with urgency to agitate her grievance against the project, the Applicant certainly cannot claim to be an individual interested in the protection of the environment in the State of Sikkim.

A true copy of the Order dated 17.07.2023 of the Hon'ble Supreme Court is annexed herewith as **Annexure – R4 (Pages 94 to 240)**.

8. The Hon'ble National Green Tribunal, Principal Bench in *Vijay Singh v. Balaji Grit Udyog (Unit-I and Unit-II) & Ors., MANU/GT/0036/2014* has held that a vexatious petition under the color of a Public Interest Litigation brought before the court for vindicating any personal grievance, deserves rejection at the threshold. That it is well settled that Courts cannot approve of approaches that would encourage


Gayden Chopel
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petitions filed for achieving oblique motives on the basis of wild and reckless allegations made by individuals i.e. busybodies, having little or no interest in the proceedings. That the credentials, the motive and the objective of the Applicant have to be apparently and patently aboveboard, otherwise the petition is liable to be dismissed at the threshold, and in appropriate cases, with exemplary costs. That the person approaching the Courts must be acting bonafide and not for personal gain or private motive or political motivation or other oblique consideration.

9. While the defects in the Appeal before the Hon'ble Supreme Court are required to be corrected within 90 days, the Applicant took an inordinately long time of 315 days to cure the defects and seek the listing of the Appeal. The explanation for the delay in re-filing of the Appeal (after curing the defects) and that in filing the Appeal before the Hon'ble Supreme Court in the first place, are near identical and therefore clearly indicative of the falsity of the claims made therein.

True copies of the Application for Condonation of Delay in Filing the Appeal and the Application for Condonation of Delay in Re-Filing the Appeal filed by the Applicant in C. A. No. 6168/ 2023 before the Hon'ble Supreme Court in are annexed herewith as **Annexure – R5 (Pages 241 to 249)**.

10. It is pertinent to mention that during the entire period where the Applicant chose not to take urgent measures for listing of the Appeal before the Hon'ble Supreme Court, the project in question had substantially advanced and had reached almost 14 stories. It is important to note that the construction of the project was in terms of all the permissions and clearances granted by the various authorities, including the answering Respondent. When all the aforesaid facts, including the above conduct of the Applicant, were brought to the


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notice of the Hon'ble Supreme Court, the Hon'ble Supreme Court was pleased to dispose of the Appeal in terms of the following Order dated 25.09.2023:

"Delay condoned.

This appeal impugns the order dated 10.05.2022 passed by the National Green Tribunal (NGT), Eastern Zone Bench, Kolkata. Paragraph 5 of the impugned order states that the proceedings initiated before the NGT were premature, as the construction, subject matter of the proceedings, had not yet reached 5½ storeys. We do not agree with the said finding and reason to dismiss the petition, as the construction post the permissions had admittedly commenced. It is informed at the bar that the construction is now complete.

Without expressing any opinion on the merits of the case, we set aside the impugned order and restore O.A. no. 38/2022/EZ to its original position, to be decided afresh without being influenced by the impugned order.

Learned counsel for the respondents have submitted that there has been a considerable delay in listing of the present appeal on account of lapses on the part of the appellant – Bina Basnett. This is disputed by the appellant - Bina Basnett, who also submits that the plea is contradictory. We express no opinion in this regard. As an order of remand, hearing and decision is being passed, all pleas and contentions of the parties are left open.

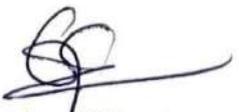
The appeal is allowed and disposed of in the above terms. No costs. Parties will appear before the NGT on 18.10.2023, when a date of hearing will be fixed.

Pending application(s), if any, shall stand disposed of."

A true copy of the Order dated 25.09.2023 passed by the Hon'ble Supreme Court in C. A. No. 6168/ 2023 is annexed herewith as **Annexure – R6 (Pages 250 to 253)**.

11. It is submitted that two things are evident from the Order of the Hon'ble Supreme Court:

- (i) From the submission of the Applicant recorded in the Hon'ble Supreme Court's Order, it is clear that the Applicant


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deliberately misrepresented the cause of dismissal of the present Application by this Hon'ble Tribunal before the Hon'ble Supreme Court; and

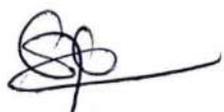
- (ii) That the Hon'ble Supreme Court has left all contentions of all parties as to the conduct of the Applicant (highlighted in the preceding paragraphs) open for consideration by this Hon'ble Tribunal.

12. Further in this regard, it is submitted that the Applicant herein has not come with clean hands before this Hon'ble Tribunal. As on the previous occasions, the Applicant has approached this Hon'ble Tribunal by suppressing vital information and documents and therefore, the present Application deserves dismissal at the very threshold. It is submitted that all the material allegations made in the present Application against the answering Respondent are false and fabricated and the instant Application is not maintainable either on facts or in law, against the Answering Respondent.

13. It is humbly submitted that the Original Applicant has failed to disclose any cause of action against the Answering Respondent that would warrant the jurisdiction of this Hon'ble Tribunal under Section 14, 15, and 17 of the NGT Act, 2010. The application is vexatious, speculative and has been filed for reasons best known to the Original Applicant.

14. Save and except what has been specifically admitted herein, the rest of the statements made in the instant Application are denied by the answering Respondent. The answering Respondent further craves the leave of this Hon'ble Tribunal to file an additional affidavit in reply if necessary.

THE ANSWERING RESPONDENT:


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15. The Respondent No. 10 is the Gangtok Municipal Corporation, a statutory body established under the Sikkim Municipalities Act, 2007 (which came into force on and from 19.05.2007) by the Government of Sikkim. The Respondent No. 10, as on this date, deals with trade license and looks after the cleanliness of Gangtok Municipality as per various Notifications issued by the State Government. It is pertinent to mention here that the building plan approval (by the Town Planning Cell) within the jurisdiction of the Gangtok Municipality, have been transferred to the Respondent No. 10 from the Respondent No. 4 in 2017.

REPLY TO THE CONTENTIONS MADE BY THE APPLICANT AGAINST THE ANSWERING RESPONDENT:

16. Due to limited land available in and around Gangtok, the Government of Sikkim, in order to give its citizens better infrastructure facilities, took a policy decision in 2018-2019 to demolish the old three-storied Taxi Stand near the Old West Point School Complex and to develop a Multi-Level Storied Car Park cum Commercial Plaza on the same area. It is humbly submitted that Gangtok is facing a serious parking problem and traffic congestion due to rapid urbanization and population growth over a short period of time. It is submitted that the Multilevel Car Parking cum Commercial Development at Old West Point School will help in resolving the parking problems, among other things.

17. The call for bids for the development of a multi-level car parking by demolishing the old Taxi Stand as well as the old delapidated govt structures was invited on 09.01.2019 by the Respondent No. 2. Subsequently, the bid was withdrawn due to a lack of clarity with reference to the legal status of the land of the old Taxi Stand.


Gayden Chopel
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18. That the Respondent No. 2 issued a requisition Letter bearing Memo No. 42/SPV/GSCDL/2019 dated 03.04.2019, seeking for a geological and geotechnical feasibility report for the multi-level car parking-cum-commercial development project ("**Project**") in the site from the Respondent No. 3 (which deals in providing the Site Stability Report).
19. That on 07.10.2020, the Respondent No. 2 again issued a Tender Notice inviting bids for a multi-level car parking-cum-commercial development project in the site and explaining the necessity of the said Project. The Respondent No. 2 also sought for a Request for Proposal, Draft Concession Agreement and a Project Information Memorandum from the bidders.
20. That thereafter, the Respondent No. 12 submitted the proposal for the multi-level car parking cum commercial development project along with the requisite stability assessment undertaken by Respondent No. 3 in March, 2020, to the highest office of the State and thereafter, the same was approved by the Cabinet on 11.06.2021, in compliance with Regulation 39 of the Sikkim Building Construction Regulations, 1991 ("**1991 Regulations**") in the interest of planned development of the State and in tune with the smart city development, as envisaged by the Government of India. The Cabinet also granted the approval for the demolition of the existing structure in the Project area, the removal of debris as a separate contract and the approval for 11 floors.
- A true copy of the Cabinet Memorandum dated 27.05.2021 is annexed herewith as **Annexure – R7.(254 to 258)**
- A true copy of the Cabinet Decision dated 11.06.2021 is annexed herewith as **Annexure – R8.(259)**


Gayden Chopel
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1320
21. On 30.06.2021, the Answering Respondent issued the NOC on shifting of water supply pipes and sewerage connection from the Old West Point School (South West Taxi Stand Parking Area) as the existing structure was being demolished for the purpose of constructing a new multi-level car parking cum commercial development project.

A true copy of the NOC dated 30.06.2021 issued by the Gangtok Municipal Corporation is annexed herewith as **Annexure – R9. (260)**

22. That thereafter, the Respondent No. 2, vide its Letter bearing Memo No. 608/GSCDL/2021 dated 04.10.2021, submitted one set of architectural & structural drawings pertaining to the Project at Old West Point School, seeking approval of its Blue Print Plan (“BPP”).

A true copy of the Letter bearing Memo No. 608/GSCDL/2021 dated 04.10.2021 of the Gangtok Smart City Development Ltd. is annexed herewith as **Annexure – R10 (Pages 261 to ----)**.

23. Thereafter, the Answering Respondent, having gone through the same, vide a Letter bearing Issue No. 3839/MISC/TPC/GMC/2021/936 dated 08.10.2021, sought for the following documents from the Respondent No. 2, Smart City:

- (i) Parcha/ Land Documents/ Land Details;
- (ii) Sale Deed/ Gift Deed/ Lease Deed/ Lease Agreement;
- (iii) Stability Report/ Site Stability Report vetted by the Respondent No. 3;
- (iv) Cadastral Map;
- (v) Site Plan/ Master Plan by Empanelled Architect;
- (vi) Details of Consultants/ Project Management Team;
- (vii) Company Registration and Signatory Authority;
- (viii) Structural Details and Analysis;
- (ix) Construction Management Plan; and


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- (x) Green Building Implementation (if any) and by which group, whether GRIHA/ IGBC.

A true copy of the Letter bearing Issue No. 3839/MISC/TPC/GMC/2021/936 dated 08.10.2021 of the Gangtok Municipal Corporation is annexed herewith as **Annexure – R11 (Pages 262 to ----)**.

24. Further, vide a Letter bearing Issue No. 381(A)/GMC/2021 dated 12.10.2021 to the Respondent No. 2, the Answering Respondent also specifically sought for any Government of Sikkim Order/ Approval/ Letter granting relaxation of floors above 5 ½ storeys and horizontal coverage, as per the 1991 Regulations. The Letter also informed Respondent No. 2 that the approval of the BPP would be accorded for only 11 floors in accordance to the Cabinet's Approval.

A true copy of the Letter bearing Issue No. 381(A)/GMC/2021 dated 12.10.2021 of the Gangtok Municipal Corporation is annexed herewith as **Annexure – R12 (Pages 263 to ---)**.

25. In reply to the Letter dated 08.10.2021 of the Answering Respondent, the Respondent No. 2, vide a Letter bearing Memo No. 651/GSDCL/2021-22 dated 12.10.2021, forwarded all the documents to the Answering Respondent to obtain the Sanction/ Construction Order as mandated under the Sikkim Allotment of Housing Sites & Construction of Building (Regulation & Control) Act, 1985 ("1985 Act") and the Regulations made therein.

A true copy of the Letter bearing Memo No. 651/GSDCL/2021-22 dated 12.10.2021 of the Gangtok Smart City Development Ltd. is annexed herewith as **Annexure – R13 (Pages 264 to ---)**.

26. After due verification of the documents submitted by Respondent No. 12, Respondent No. 3 conducted a thorough geological and


Gayden Chopel
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Gangtok Municipal Corporation

1322
geotechnical investigation of the site and prepared a detailed Site Stability Report dated 29.12.2021 of the same stating that the site falls within Zone 1 of the area Stability Zonation Mapping System adopted by the Respondent No. 3. Vide the same Report, the Respondent No. 3 further recommended for the foundation of the structure to be footed at considerable depth with uniform condition and for Respondent No. 12 to consult a competent structural engineer for appropriate foundation design of the structure, including earthquake resilience. It was also noted that *"the proposed area falls under zone 1 (one) as per the parameter notified by the Department of Mines and Geology vide Gazette no. 86 dated 06th April 2021"*.

A true copy of the Site Stability Report dated 29.12.2021 of the Department of Mines & Geology, Govt. of Sikkim is annexed herewith as **Annexure – R14 (Pages 265 to ---)**.

27. Subsequently, the Answering Respondent duly considered all the documents submitted by the Respondent No. 2 and approved the construction of the Gold Rated Green Building measuring 310071.87 sq. ft. for 11 stories, vide a Letter bearing Issue No. 3839/MISC/TPC/GMC/2021/979 dated 31.12.2021.

A true copy of the Construction Order contained in the Letter bearing Issue No. 3839/MISC/TPC/GMC/2021/979 dated 31.12.2021 of the Gangtok Municipal Corporation is annexed herewith as **Annexure – R15 (Pages 266 to 267)**.

28. In regard to Condition No. 1 set out in the above-mentioned Letter bearing Issue No. 3839/MISC/TPC/GMC/2021/979 dated 31.12.2021 of the Answering Respondent with respect to the commencement of construction, the Respondent No. 2 along with Respondent No. 12, duly obtained the said permission in Form V as per Regulation 10 of


Gayden Chopel
CHIEF TOWN PLANNING
Gangtok Municipal Corporation

- the Sikkim Building Construction Regulation, 1990 ("**1990 Regulation**") on 10.01.2022 from the answering Respondent.
A true copy of the Form – V dated 10.01.2022 of the Respondent No. 12 is annexed herewith as **Annexure – R16 (Pages 268 to ----)**
29. Further, on 12.01.2022, the Assistant Town Planner of the Answering Respondent visited the project site along with others. It was found that the set-back has been maintained as per the approved BPP.
A true copy of the Site Visit dated 12.01.2022 by the Assistant Town Planner of the Answering Respondent is annexed herewith as **Annexure – R17 (Pages 269 to ---)**.
30. The Answering Respondent also received a Letter dated 15.02.2022 forwarded by the Respondent No. 4, which stated that the Respondent No. 12 had requested for permission to construct three additional floors, in lieu of the reduced built up area. The different Officers of the Answering Respondent's perused the said request of Respondent No. 12 and noted in its Notesheet dated 12.05.2022 that the 14 storey-building design of the Project has been vetted by Indian Institute of Technology, Guwahati (Department of Civil Engineering). Further that the proposed structure is made in pre-fabricated steel structure and not in RCC, for efficient construction management, adapting modern machinery and ensuring maximum safe construction practice so that no obstruction to the existing pedestrian footpath is caused at any time.
Accordingly, the Answering Respondent forwarded the file/ request of Respondent No. 12 to the competent authority for seeking Cabinet Approval for allowing three additional floor as per Regulation 39 of the 1991 Regulations.
A true copy of the Note Sheets 12.05.2022 of the Gangtok Municipal Corporation is annexed herewith as **Annexure – R18. (270 to 271)**



31. On 29.07.2022, the Cabinet perused the proposal for the additional three floors of the Project. Based on the geotechnical investigation reports in regard to the soil bearing capacity and the plate load tests of M/s Geo-Informatic Consultancy & Services and M/s JP Geo Consultants for the additional three floors, the Cabinet noted that the structure of the Project would be tapered/ stepped, which has resulted in increase in the number of floors from eleven to fourteen. In view of the findings in the geotechnical investigation reports, which affirmed the overall safety and structure of the Project, the Cabinet approved the additional three floors for the Project in accordance with Regulation 39 of the Sikkim Building Construction (Amendment) Regulations, 2001 ("**2001 Amendment Regulations**").

32. Subsequently, the Respondent No. 12, vide a Letter bearing Reference No. MIPL/SITE/29/2022-23 dated 10.10.2022 to the Answering Respondent, submitted the drawings of the additional three floors. Accordingly, the Answering Respondent, vide a Construction Order dated 11.11.2022, granted approval for the additional three floors and the construction of an open air plaza over the Church Road.

A true copy of the Letter bearing Reference No. MIPL/SITE/29/2022-23 dated 10.10.2022 sent by MESASO Infrastructure Pvt. Ltd. is annexed herewith as **Annexure – R19.(272)**

A true copy of the Construction Order dated 11.11.2022 issued by the Gangtok Municipal Corporation is annexed herewith as **Annexure – R20.(273 to 274)**

33. It is humbly submitted that the along with Respondent no. 2 the Answering Respondent also is maintaining constant vigil regarding compliances of the Respondent No. 12 in the construction of this


Gayden Chopel
CHIEF TOWN PLANNING
Gangtok Municipal Corporation

GSCDL Project. It is stated that on 15.03.2023, the Answering Respondent inspected the site and reported that the steel structure erection for the 11th floor was complete and the mechanical, electrical, and plumbing work ("MEP") was seen in progress. It is stated that another site inspection was conducted by the Answering Respondent on 07.07.2023 and it was observed that the top floor erection may be done with utmost care on Level 14 and that the peripheral ramp was about 60% completed. It was further noted that as directed by the Government, the Respondent No. 12 was to comply with the provisions of the Concession Agreement dated 29.06.2021.

The true copies of the Inspection Reports dated 15.03.2023 and 07.07.2023 conducted and signed by the Chief Town Planner of Gangtok Municipal Corporation is annexed herewith as **Annexure – R21 (Colly).(275 to 276)**

34. It is further stated that the Answering Respondent received a Letter bearing Ref. No. MIPL/HO/17/2023-24 dated 06.01.2024 from the Respondent No. 12, requesting for the issuance of a Partial Completion Certificate of the Project up to Level 5 (i.e. Food Court and Multiplex area). To the same, the Answering Respondent on 16.02.2024, granted the Occupancy Certificate for partial completion and occupation of the Parking Level 4 to the Mall Level 4 of the Project.

A true copy of the Letter bearing Ref. No. MIPL/HO/17/2023-24 dated 06.01.2024 from MESASO Infrastructure Pvt. Ltd. is annexed herewith as **Annexure – R22. (277)**

The true copy of the Occupancy Certificate dated 16.02.2024 issued by the Gangtok Municipal Corporation is annexed herewith as **Annexure – R23. (278)**


Gayden Chopel
CHIEF TOWN PLANNING
Gangtok Municipal Corporation

35. It is humbly submitted that all BPP's of buildings in the notified Gangtok area are prepared in accordance with the 1991 Regulations and checked and approved by the Engineering & Town Planning Cell of the answering Respondent. It is stated that no site has been allotted on lands having a gradient of 70 degrees and above, in accordance with the Sikkim State Site Allotment Rules, 2012. Further, in case of private holdings, the BPP's are approved after maintaining proper set-backs in accordance with the 1991 Regulations.

36. The answering Respondent is aware of the geo fragile environment of Gangtok and the potential hazard and vulnerability to disasters. It has therefore issued the NOC and sanction to the proposed Project only after perusal of the required documents i.e. the site maps, the site stability report, the geotechnical investigation reports etc. by the concerned or dealing departments (for e.g. Mines & Geology Deptt). It is stated that further and as set out above, the Answering Respondent has conducted site visits to ensure compliance by the Respondents No. 2 and 12.

37. I say that the present affidavit is true to the best of my knowledge and information received from the Answering Respondent and nothing material has been concealed therefrom. The annexures are true copies of their respective originals.



DEPONENT
Gayden Chopel
CHIEF TOWN PLANNING OFFICER
 Gangtok Municipal Corporation

VERIFICATION:

Verified at Gangtok, Sikkim on the 30th day of April, 2024 that the contents of the above said affidavit are true and correct to the best of my knowledge and belief. Nothing material has been concealed therefrom.

IDENTIFIED BY:

Vari V. Chhetri
 Dargan, Tadong.



DEPONENT
Gayden Chopel
CHIEF TOWN PLANNING OFFICER
 Gangtok Municipal Corporation

Solemnly affirmed before me on this 30th day of April 24 by Shri/Smt/Miss Gayden Chopel of Gangtok who



ASHMEETA RAI
Oath Commissioner
High Court of Sikkim
 Notification No. 17/HCS Dtd. 21-10-2022

is known to me & identified by Shri/Smt/Miss Vari V. Chhetri of Dargan, Tadong.

ANNEXURE R/1

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH KOLKATA**



Original Application No. 05/2022/EZ

IN THE MATTER OF:

Dr. Bina Basnett

... Applicant

-Versus-

State of Sikkim and Ors.

... Respondents

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT**NO. 10, GANGTOK MUNICIPAL CORPORATION.**

TO

THE HONOURABLE CHAIRPERSON AND HIS

COMPANION MEMBER OF THE

HON'BLE NATIONAL GREEN TRIBUNAL

EASTERN ZONE BENCH KOLKATA

The Humble Counter Affidavit of the Respondent No. 10

MOST RESPECTFULLY SHEWETH:-

I, Hem Kumar Chettri aged about 49 years S/o Late P. B. Chettri R/o Gangtok, Sikkim by occupation a Government Servant, do hereby solemnly affirm and state as follows:

- I. I am the Municipal Commissioner, Gangtok Municipal Corporation, Government of Sikkim. The Gangtok Municipal Corporation has been arrayed as Respondent No. 10 herein. I am aware of the facts and circumstances of the present case and I am thus fit and competent to make, swear

and affirm this affidavit for and on behalf of the respondent
No. 10.

- II. I have personally perused a copy of Original Application No. 05/2022/EZ filed by the Original Applicant herein and sent by an email dated 21.01.2022 and have understood the intent and purport thereof. The allegations and submissions made in the said Original Application No. 05/2022/EZ which are contrary to records and those which are not specifically admitted are deemed to have been denied.
- III. That before traversing paragraph wise to the various statements and allegations contained in the said Application, the Respondent No. 10 deems it fit and essential to place the following facts and our preliminary submissions for the just decision of the present case: -

PRELIMINARY SUBMISSIONS

1. That the Gangtok Municipal Corporation, the Respondent No. 10 herein is a statutory body established under the Sikkim Municipalities Act, 2007 by the Government of Sikkim. The Sikkim Municipalities Act, 2007 came into force on and from 19.05.2007. The Respondent No. 10 as on date is an authority which basically deals with trade license and looks after the cleanliness of the Gangtok Municipality as per various notifications issued by the State Government. The building plan approval (by Town Planning Cell) within the jurisdiction of the Gangtok Municipality have also been transferred to the Respondent No. 10 from the Respondent No. 4 in the year 2017.



2. That due to limited land available in and around Gangtok, the Government of Sikkim in order to give its citizen a better infrastructure facilities took a policy decision in the year 2018 – 2019 to demolish the old three storied Taxi stand near the old West Point School Complex and to develop a multi-(level) storied car park cum commercial plaza on the same area. The State Government took this policy decision to commission this "BROWNFIELD" project taking into account the scarcity of suitable lands in the heart of the city that would cater to all.

The said project is to come up on land measuring 5707.80 sqm with commercial floor coverage at 50%, parking floor coverage @ 75% and the number of storeys at 14 as per the original proposal.

3. That the Respondent No. 2, Gangtok Smart City Development Limited vide its letter bearing Memo No. 608/GSCDL/2021 dated 04.10.2021 submitted one set of architectural & structural drawing pertaining to "Multilevel Car Parking cum Commercial Development" at Old West Point School seeking approval of its Blue Print Plan (hereinafter referred to as BPP). The answering respondent GMC having gone through the same and thereafter vide letter dated 08.10.2021 sought for various documents/reports including the stability report, if any, given by respondent No. 3. The answering respondent vide its letter dated 12.10.2021 also specifically sought for any order/letter granting approval or Government relaxing the norms as prescribed by Sikkim Building



Regulation 1991. True copy of the letters dated 04.10.2021, 08.10.2021 and 12.10.2021 are marked and collectively appended as **ANNEXURE R/1**

4. Subsequently, the answering Respondent duly considered all the documents and approved the Construction for 11 storied structure issued vide letter no: 3839/MISC/TPC/GMC/2021/979 dated 31.12.2021. True copy of the letter dated 31.12.2021 is marked and appended as **ANNEXURE R/2**. Further, among various conditions, one of the conditions categorically stated that before the commencement of the building, a prior permission was required from the GMC in Form V. The said permission was obtained on 10.01.2022. True copy of the permission dated 10.01.2022 is marked and appended as **ANNEXURE R/3**.

5. That through the documents so received it was learnt that the Respondent No. 2, Gangtok Smart City Development Limited vide its letter bearing Memo No. 42/SPV/GSCDL/2019 dated 03.04.2019 sought for Geo technical and feasibility report of Multilevel, Car Parking cum Shopping Hub from the Respondent No. 3- Department of Mining & Geology which has the statutory function to asses and provide site stability report. The Respondent No. 3 after carrying out a thorough geological and Geo- technical investigation of the project site at Old West Point School by the technique of Diamond Core drilling gave the "Site Stability

Report" dated 29.12.2021 stating that the said site falls in Zone One of areal Stability Zonation Mapping System adopted by it.

6. It is also submitted that this proposal of Respondent No. 4, Department of Urban Development was also approved by the State Cabinet in its Cabinet meeting held on 11.06.2021, however the said approval is for a 4+7 storeys building subject to confirmation of a Geotechnical investigation and Report. Further additional 3 floors may also be considered once clarity is obtained after completion of Geotechnical investigation and design report, as the DPR will have to be approved by the authority later.
7. That through the documents received it submitted that the Respondent No. 2-GSCDL, after the approval given by the Government of Sikkim for construction of the Multilevel Car Parking cum Commercial Development at Old West Point School, the said project would also fulfil the GREEN BUILDING criteria being Gold standard by the Indian Green Building Council. Further the said project is in Stability Zone – 1 and the structure had been designed for 14 floors as its original design. It is further submitted that the instant project is to come up on a "Brownfield site" on which there existed an old car parking building and an old school building both of which were in extremely dilapidated condition.
8. The answering Respondent would also like to bring to the kind attention of this Hon'ble Tribunal that this is a project on

a Government land and hence out of purview of the Notification No: GOS/UD&HD/6(294)2001 dated: 16/10/2001. In the said Notification, Point no: 1 part (4) which clearly states 'that they shall apply to both government allotted sites and private sites' only. Further the notification also mentions that as per Regulation No: 39 "Power to Relax"- *"incase of genuine difficulties arising out of the implementation of any of the regulations in regards to buildings & structures proposed to be constructed by the Govt. of Sikkim or Govt. of India or any registered organization the state government reserves the right to relax from application of any of the provisions which it considers justifiable on the merit of each case"*.

9. It is humbly submitted before this Hon'ble Tribunal that Gangtok as a city due to rapid urbanisation and population growth over a period of time is facing serious parking problem and traffic congestion and by implementation of the said project will help in resolving parking problem among other things.

PARAWISE REPLY:

1. That the contents of paragraph 1 and 3 of the Application does not warrant any response, however, anything to the contrary stands denied, and the Applicant be put to strict proof of the same.



2. That the contents of first part of paragraph 2 of the O.A. are matters of record and anything to the contrary stands denied. However, it is specifically denied that the answering Respondent is the 'authority' under which the construction of the building in question is taking place. It is pertinent to state here that respondent No. 10 as per the Government of Sikkim accorded approval for the 11 storied project and has approved the Blue Print Plan (BPP) for construction of multilevel car parking cum shopping complex of total 11 storied only, as sought by Respondent No. 2.

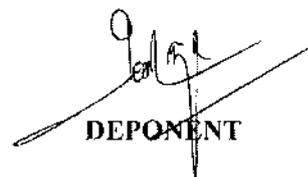
3. The content of the paragraph 3 need no response.

4. That the contents of paragraph 4 of the Application does not specifically pertain to respondent No. 10 and hence denied, and the Applicant be put to strict proof of the same. However, the para 4.4 is denied that there is any breach of the notification dated 19.03.2021. The permission of the extra floors has been obtained by the project proponent and acknowledged by the answering Respondent through a due process.

5. That the content of the para 5 is denied as the NGT Act, 2010 does not contemplate a continuous cause of action but cause of action first arose.



6. The content of the para 6 which relates to the facts of the Applicant, among others, which is denied for want of knowledge . The contents of the preliminary submissions may be read as response to this para.
7. That the contents of paragraph 7, i.e. the grounds set forth in the Application by the applicant are false, misconceived and hence not tenable in the eyes of law as well as facts. Hence, the present application deserves to be dismissed.

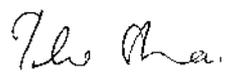

DEPONENT

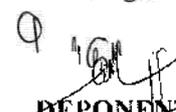
VERIFICATION

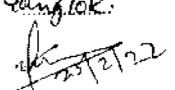
I, the above named deponent do hereby verify and state that the statements made in paragraphs 1 to 8 in the preliminary submissions and 1 to 4 in the parawise reply are true and information received through records, that no part of it is false and nothing material has been concealed therefrom.

Affirmed on this the 25th day of February, 2022 at Gangtok.

IDENTIFIED BY:


 Yash Sharma
 Govt. Advocate
 Gangtok, East Sikkim


 25th Feb, 2022
 Kunda Chilly, Gangtok
 Yash Sharma of Gangtok.


 Mr. Sujan Sunwar
 Civil Commissioner (East)
 High Court of Sikkim
 Gangtok, East Sikkim-735102

Annexure – R2

Item No. 2

Court No.1

**BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONE BENCH, KOLKATA
(Through Video Conferencing)**Original Application No.38/2022/EZ
(I.A. No.131/2022/EZ)**In the matter of:**Dr. Bina Basnett,
D/o Mr. P.B. Basnett,
Ranipool, East Sikkim,
Pin – 737135,**...Applicant(s)**

Versus

1. State of Sikkim,
Through Chief Secretary,
New Secretariat, Gangtok,
Pin – 737101,
2. Gangtok Smart City Development Limited,
Through its Chief Executive Officer,
Sokaythang, Below-ICAR Office,
Gangtok, Sikkim,
Pin – 737102,
3. Department of Mines & Geology,
Through Secretary,
Secretariat Road, Below Tashiling Secretariat,
Govt. of Sikkim, Gangtok,
Pin – 737101,
4. Urban Development Department,
Through its Secretary,
Govt. of Sikkim,
Paljor Stadium, Gangtok, Sikkim,
Pin – 737101,
5. Sikkim State Disaster Management Authority.
Through Relief Commissioner,
Manan Bhawan, Gangtok,
Sikkim – 737101,
6. Sikkim State Pollution Control Board,
Through Chairman,
Forest Secretariat, C Block,
Deorali, Gangtok, East Sikkim,
Pin – 737102,
7. District Magistrate/Collector,
Upper Sichey Road, Sungava, Gangtok,
Sikkim – 737101,

8. State Environment Impact Assessment Authority (SEIAA),
Through Chairman,
Kazi Road, Gangtok, Sikkim,
Pin – 737101,
9. Forest and Environment Department, Govt. of Sikkim,
Through Addl. Chief Secretary,
Forest Secretariat, Deorali,
Gangtok, East Sikkim,
Pin – 737102,
10. Gangtok Municipal Corporation,
Through Municipal Commissioner,
Near Deorali Stand, Gangtok, Sikkim,
Pin - 737101,
11. Ministry of Environment, Forests and Climate Change,
Through Secretary,
Indira Paryavaran Bhawan, Jor Bagh,
Lodhi Colony, New Delhi,
12. MESASO Infrastructure Private Limited,
Through its Authorised Signatory,
3rd Mile, Sevoke Road, Siliguri,
Pin – 734008,

...Respondent(s)

Date of hearing: 10.05.2022

**CORAM: HON'BLE MR. JUSTICE B. AMIT STHALEKAR, JUDICIAL MEMBER
HON'BLE MR. SAIBAL DASGUPTA, EXPERT MEMBER**

For Applicant(s) : Mr. Pratap Shanker, Advocate

For Respondent(s) : Mr. Sanjay Upadhyay, Advocate

ORDER

1. Heard Mr. Pratap Shanker, learned Counsel appearing for the Applicant.
2. This Original Application has been filed by the Applicant, seeking a direction to completely scrap the construction related projects in the State of Sikkim which are against the ecology and environment. It is also prayed that construction of Multi-level Car Parking-cum-Commercial Development at Old West Point of School area, be immediately stopped and a direction be given to revoke the

permission granted for construction of the above mentioned car park of 14 [11+3 (proposed)] storeyed building in Gangtok, Sikkim.

3. The Contention of the Applicant is that the Respondent No.12, MESASO Infrastructure Private Limited, is constructing a 14 storeyed Multi-level Car Park and also creating a Commercial Hub which is in violation of the Government of Sikkim, Department of Mines and Geology, Gangtok, Notification No. 17/DMG/20-21 dated 19.03.2021, copy of which has been filed as Annexure-A-4 (page no. 129 of the paper book) to the Original Application. The learned Counsel for the Applicant submitted that this Notification provides that in Stability Zone-1 the admissible number of floors is 5 ½ whereas the proposed Multi-level Car Paring-cum-Commercial Hub is a 14 storeys building.
4. We put a query to the learned Counsel as to what is the stage of the construction. The learned Counsel submits that it is still at the foundational stage but he added that the Cabinet has taken a decision that the construction should be of 14 storeys, therefore, there would be violation of environmental laws and degradation of environment and, therefore, the Tribunal would be justified in interfering at this stage.
5. We are not satisfied that at the foundational stage of the proposed construction of Multi-level Car Parking-cum-Commercial Hub, it can be said that there is environmental degradation or violation of environmental laws. The construction has not yet reached 5 ½ storeys. We are, therefore, of the view that this Original Application is absolutely premature and that the Applicant has no cause of action to maintain this Original Application on the assumption that

there would be violation of environmental laws or of Government of Sikkim notification at a future date.

6. We also queried from the learned Counsel as to whether any Environmental Clearance had been granted for this construction project. The learned Counsel submitted that he has no knowledge of this fact.
7. Mr. Sanjay Upadhyay, learned Counsel has put in appearance on behalf of the Respondent No.12, MESASO Infrastructure Private Limited, and submits that for this project Environmental Clearance has been granted on 25.02.2022.
8. This Environmental Clearance has not been filed along with the Original Application. We are of the view that if Environmental Clearance has been granted for this project, the Applicant has a remedy by way of appeal challenging the said Environmental Clearance.
9. The Original Application No. 38/2022/EZ is accordingly dismissed on ground of alternative remedy.
10. The I.A. No. 131/2022/EZ is also disposed of.
11. There shall be no order as to cost.

.....
B. Amit Sthalekar, JM

.....
Saibal Dasgupta, EM

May10, 2022,
Original Application No.38/2022/EZ
(I.A. No.131/2022/EZ)
AK

INDEX

Sl. No.	Particulars of documents	Page No. of Part of which it belongs		Remarks
		Part I (Contents of Paper Book)	Part I (Contents of file alone)	
I	II	III	IV	V
	Court Fee		A	
1.	O/R on Limitation			
2.	Listing Proforma	A1-A-2	A1-A-2	
3.	Cover Page of Paper Book		A-3	
4.	Index of Record of Proceedings		A-4	
5.	Defect List		A-5	
6.	Note Sheet		NS1 to	
7.	Synopsis and List of Dates	B - Q		
8.	<u>Impugned Order</u> Copy of the judgment and final order dated 10.05.2022 passed by the Hon'ble National Green Tribunal, Eastern Zone Bench, Kolkata in O.A. No. 38/2022/EZ.	1 - 6		

9.	Civil Appeal with Affidavit.	7-42		
10.	<u>Annexure-P-1</u> Copy of the report of engineering geology division, geological survey of India, Eastern region, Kolkata submitted on 18th of September, 2011 Sikkim earthquake.	43-50		
11.	<u>Annexure-P-2</u> Copy of the news item dated 24.09.2011 as published in the Indian Express regarding the collapse of two multi-storeyed buildings in the Gangtok.	51-52		
12.	<u>Annexure-P-3</u> Copy of the notification dated 20.09.2001 bearing No. 70/home/2001 issued by the government of Sikkim, Home Department, Gangtok.	53-55		
13.	<u>Annexure-P-4</u> Copy of the request for proposal dated 16.09.2020 issued by the Respondent No. 2, i.e., Gangtok Smart City Development Limited for the implementation of	56-124		

	multilevel car parking-cum-commercial development at old West point School area.			
14.	<u>Annexure-P-5</u> Copy of the Notification dated 19.03.2021 bearing No. 17/DMG/20-21 issued by Government of Sikkim, Department of mines and Geology, Gangtok-737101.	125-129		
15.	<u>Annexure-P-6</u> A Copy of OA No. 5 of 2022 filed before Hon'ble National Green Tribunal, Eastern Zone Bench, Kolkata dated 31.12.2021	130-167		
16.	<u>Annexure-P-7</u> A Copy of the order dated 18.01.2022 passed by the Hon'ble National Green Tribunal, Eastern Zone Bench, Kolkata in OA no. 5 of 2022.	168-170		
17	<u>Annexure-P-8</u> A Copy of the Order dated 02.03.2022 passed by the Hon'ble National Green Tribunal, Eastern Zone Bench,	171-174		

	Kolkata in OA no. 5 of 2022.			
18.	<u>Annexure-P-9</u> A Copy of the O.A. No.38/2022/EZ filed before Hon'ble National Green Tribunal, Eastern Zone Bench, Kolkata dated 07.03.2022	175-221		
19	<u>ANNEXURE P-10</u> A Copy of the Photographs to show the effect of landslides in the Arithang Area	222-230		
20	<u>ANNEXURE P-11</u> A Copy of the Photographs showing view of the Guardian Deity Mount-Kanchenjunga from the alleged construction site	231-239		
21	<u>ANNEXURE P-12</u> A Copy of the Photographs showing sinking of Bye-pass road Arithang	240		
22	<u>I.A. No. ____ of 2022</u> Application for Stay on the Impugned Construction	241-243		
23	<u>I.A. No. ____ of 2022</u> Application for Condonation of Delay in filing Civil Appeal	244-246		

24	I.A. No. _____ of 2022 Application for condonation of delay in refiling	247-252		
25	Filing Memo		253	
26	Vakalatnama		254	

SYNOPSIS & LIST OF DATES

That the present statutory Civil Appeal under Section 22 of the National Green Tribunal Act, 2010 is filed against the Impugned Order dated 10.05.2022 passed by the Hon'ble National Green Tribunal Eastern Zone, Kolkata in Original Application No. 38/2022/EZ, whereby the Hon'ble National Green Tribunal was pleased to dismiss the Original Application of the Appellant herein merely for want of cause of action.

That it is submitted that the Original application No. 38/2022 was filed by the Appellant against the construction of a 14 [11 + 3 (proposed)] storey building named as "Multi-level Car Parking cum Commercial Development at Old West Point School area" by the Respondent No. 1 and 2 in an ecologically fragile area of Gangtok which comes under the category of Geologically fragile Seismic Zone-IV, that too near the convergent boundary of the Indian and Eurasian Tectonic Plates and is subject to frequent Earthquakes coupled with incessant high rain fall throughout the year.

That it is respectfully submitted that the act of the Respondents in constructing a 14 [11+3 (proposed)] building in an ecological fragile area is a clear violation of the Environmental Rule of Law as has been held in the recent case of "*Himachal Pradesh Bus Stand Management and Development Authority vs. The Central Empowered Committee and Ors.*" bearing Civil Appeal Nos. 5231-32 and 5229-5230 of 2016, wherein, this Hon'ble Court has observed "Whatever else the environmental Rule of law may mean, it surely means that construction of this sort could not receive our endorsement, no matter what its economic benefits may be." The Applicant is filing the copy of the Judgement Additionally.

That the said project does not even conform to the plans prepared by third-party consultants hired by the Respondents.

That it is most respectfully submitted that the Impugned Order dated 10.05.2022 as passed by the Hon'ble NGT raises certain substantial Questions of laws for consideration before this Hon'ble Court:

- i. Whether the Hon'ble National Green Tribunal, East has erred in law in not recognizing the fact that the Appellant herein had raised "Substantial Questions" relating to environment, whereby the people at large is likely to be effected by the environmental consequences?
- ii. Whether the Hon'ble National Green Tribunal was correct in dismissing the Application of the Appellant for want of cause of action, while there was a flagrant breach of the Notification No.17/DMG/20-21 dated 19.03.2021 issued by Govt. of Sikkim, Department of Mines & Geology, wherein, the construction upto only 5^{1/2} floors has been permitted in Gangtok?
- iii. Whether the construction of such a huge building in a ecologically fragile area of Gangtok and that too against the settled building laws and guidelines, possess great threat to the life and limb of the people residing in the vicinity of the project in question?
- iv. Whether the Hon'ble National Green Tribunal was correct in holding that merely because the impugned

project is at the foundational stage of construction, there cannot be any judicial scrutiny or judicial examination of the merits of the project and chances of the project being a potential threat to environment?

- v. Whether a project like the one under question in this appeal can be allowed to be built in an area which comes under Seismic Zone - IV and is prone to high frequency of earthquakes?
- vi. Whether the Hon'ble National Green Tribunal erred in not considering the continuous cause of action of the Appellant and in not giving any reasons as to why the cause of action of the Appellant would not suffice for maintainability of the Original Application No.38/2022/EZ?
- vii. Whether the Hon'ble NGT has erred by focusing on the issue of Environment Clearance in its dismissal order, while ignoring the fact that when the interim relief of stay was granted earlier on the same project, vide its order dated 18.01.2022 in O.A. No.5/2022, exactly on

the same set of facts, then there was no Environment Clearance to the project?

- viii. Whether the construction of such a high rise building in the guise of Sustainable Development/substantial service improvement opposes the very objective of the same?

That the initial document pertaining to the alleged project, i.e., Request for Proposal (hereinafter referred to as RFP) dated 16.09.2020 clearly and manifestly provides for the construction of 14 [11 + 3 (proposed)] building. It is worthwhile to mention herein that the issuance of the very RFP give rise to the Cause of Action. It is settled proposition of law that a cause of action in substance denotes and determines the starting point of limitation.

That it is submitted that the Hon'ble NGT vide Impugned Order dated 10.05.2022 has tried to limit the subject matter to Environmental Clearance only. However, the project itself requires to be holistically examined with respect to other various issues, specially in the light of the

fact that Sikkim is just above Eurasian Tectonic Plates where it has been monitored that regular earthquakes of 3-5 magnitudes on the Richter Scale occurs in the state of Sikkim.

Further, the Application states the following facts:

- A. That the issuance of the RFP dated 16.09.2020 by the Respondent No. 2 is in flagrant abuse of the Notification dated 19.03.2021 issued by the Respondent No. 3.
- B. That the construction of a 14 [11+3 (proposed)] storey building in an ecologically fragile area of Gangtok is illegal and has grave environmental threats.

That the facts pleaded in the Application and as noted above clearly disclose a cause of action entitling the Applicant to maintain the Original Application before the Hon'ble NGT below.

Whether or not the Applicant is able to sustain the action or not is distinct from the maintainability of the action. Sustainability of the action would depend upon the evidence once led.

That the Appellant had contended before Hon'ble NGT that the impugned construction is against the Notification No. 17/DMG/20-21 dated 19.03.2021 issued by Respondent No.3, Department of Mines and Geology, Govt. of Sikkim which had prescribed the maximum permissible height of any structure in the respective zones. As per the Notification dated 19.03.2021, the admissible number of floors for any structure for the Zone-1 is 5 ½ storeys. Whereas the impugned construction is of a 14[11 + 3(proposed)] storey building.

The Applicant approached the Hon'ble NGT against the sanctions granted by various authorities to this project. The Appellant had highlighted the fact that the clearance to this project has been granted without circumspection and in complete disregard to the public interest related with environment. But the Hon'ble NGT used a flimsy ground to dismiss the Application of the Appellant. Hence, the Appellant has come in Appeal against the dismissal order invoking the power of the Hon'ble Supreme Court under Section 22 of the National Green Tribunal Act, 2010.

GANGTOK

That it is submitted that Gangtok is the capital of the State of Sikkim, which is placed in the lap of the HIMALAYAS. The Himalayas is made up of three parallel ranges often referred to as the Greater Himalayas, the Lesser Himalayas and the Outer Himalayas.

That the Himalayas are young mountains and their environmental degradation is being caused by population growth, unplanned urbanization, polluting industries and allied sectors.

That it is now well recognized that the rich and diverse Himalayan ecosystem is highly fragile. That whole of the State of Sikkim is an earthquake prone area, which comes under Seismic Zone – IV. The city of Gangtok is situated near the convergent boundary of the Indian and Eurasian Tectonic Plates and is subject to frequent earthquakes.

That it is pertinent to mention that the town falls under the Seismic Zone-IV, near the convergent boundary of the Indian and Eurasian tectonic plates. Within the

Gangtok Municipal Corporation, there is the Arithang Ward which is prone to frequent landslides caused due to high seismic activity and other human intervening factors. The quality of soil in Arithang Ward is very poor and has become one of the major reasons for frequent landslides in the area.

That the appellant had filed an Application dated 07.03.2022 before the Hon'ble National Green Tribunal, Kolkata against the illegal construction of a Multi-level Car Parking cum Commercial Development at Old West Point School Area.

That the said project was conceptualized by the Respondent No.2, a Public Company whereas the Respondent No.12 was made the concessionaire which has been given the responsibility to execute the construction of the impugned project.

That the aforesaid project is being constructed by the Respondent No.2 through Respondent No.12 with 14 floors

[11+3(proposed)] which is not at all permissible in a Seismic Zone - IV/earthquake prone area like the State of Sikkim.

LIST OF DATES

18.09.2011 That Engineering Geology Division, Geological Survey of India, Eastern region, Kolkata submitted its report on 18TH of September, 2011 regarding the Sikkim earthquake. Copy of the report of Engineering Geology Division dated 18.09.2011 is annexed herewith and marked as **ANNEXURE P/1@** pages (43 to 50).

24.09.2011 That the news item dated 24.09.2011 has been published in the Indian Express regarding the collapse of two multi-storeyed buildings in the Gangtok. A Copy of the news item dated 24.09.2011 is annexed

herewith and marked as **ANNEXURE P/2@** page (51 to 52).

20.09.2001 That the notification dated 20.09.2001 bearing No. 70/home/2001 was issued by the Government of Sikkim, Home Department, Gangtok. Copy of the Notification dated 20.09.2001 bearing No. 70/home/2001 is annexed herewith and marked as **Annexure P/-3@** Pages (53 TO 55).

16.09.2020 That Request for Proposal (RFP) for the implementation of Multi-Level Car Parking cum Commercial Development at Old West Point School Area was issued by Respondent No. 2. Copy of the request for proposal dated 16.09.2020 issued by the Respondent No. 2, i.e., Gangtok Smart City Development Limited for the implementation of multilevel car parking-cum-commercial development at old West

point School area is annexed herewith and marked as **Annexure P/4** @ Pages (56 TO 124).

19.03.2021 That a Gazette Notification of even date bearing No. 17/DNG/20-21 was issued by the Respondent No. 3, wherein, it was notified that the maximum floors that can be constructed with prior permission with the department is 5^{1/2} Floors as per the condition of the Soil and Ground. Copy of Gazette Notification of even date bearing No. 17/DNG/20-21, dated 19/03/2021 is annexed herewith and marked as **Annexure P/-5 @ Pages (125 TO 129)**.

31.12.2021 That the Appellant filed an Original Application bearing OA no. 5 of 2022 titled as "Dr. Bina Basnett Vs. State of Sikkim & Others" before the Hon'ble National Green Tribunal, Eastern Zone Bench, Kolkata. A

Copy of O.A. no. 05/2022 dated 31.12.2021 filed before the Hon'ble National Green Tribunal, Eastern Zone Bench, Kolkata is annexed herewith and marked as **Annexure P/-6@ Page @ (130 TO 167)** .

18.01.2022 That an interim order was passed in the aforesaid Original Application bearing OA no. 5 of 2022 titled as "Dr. Bina Basnett Vs. State of Sikkim & Others". A Copy of Order dated 18.01.2022 passed in O.A. no. 05/2022 by Hon'ble National Green Tribunal, Eastern Zone Bench, Kolkata is annexed herewith and marked as **Annexure P/-7@ Page (168 TO 170)** .

02.03.2022 That the Applicant withdrew the OA No. 5 of 2022, which was dismissed as withdrawn by way of Order of the even date. A Copy of Order dated 02.03.2022 in O.A. no. 05/2022, passed by the Hon'ble National Green Tribunal, Eastern Zone

Bench, Kolkata is annexed herewith and marked as **Annexure P/-8** @ Page (171 TO 174).

07.03.2022 That the O.A no. 38/2022 was filed by Appellant before the Hon'ble National Green Tribunal, Eastern Zone Bench, Kolkata on even date. Copy of O.A. no. 38/2022 is annexed herewith and marked as **Annexure P/-9** @ Page (175 TO 177).

That the Appellant is filing the photographs on record to show the effect of landslides in the Arithang Area, which is situated less than one aerial kilometer from the alleged construction site at Old West Point School Area. The Applicant is also filing on record certain photographs to show as to how the proposed construction of Multi-level Car Parking cum Commercial Development would effect the clear view of Guardian Deity Mount Kanchenjunga, which is

considered very close to the heart of people of Sikkim. The Applicant is further filing photographs to show as to how the bypass road is sinking because of the load of Arithang. A Copy of the Photographs to show the effect of landslides in the Arithang Area are annexed herewith and marked as **ANNEXURE P/10** @ Pages (~~222~~ to ~~230~~). A Copy of the Photographs showing view of the Guardian Deity Mount-Kanchenjunga from the alleged construction site are annexed herewith and marked as **ANNEXURE P/11** @ Pages (~~231~~ to ~~239~~). Copy of the Photographs showing sinking of Bye-passroad in Arithang are annexed herewith and marked as **ANNEXURE P/12** @ Pages (~~240~~ to -)

That it is respectfully submitted that high rise buildings are not at all allowed in hilly areas world-wide due to vulnerability of

landform and tectonic plates at hill stations
in as much as hill stations are prone to
frequent earthquakes.

10.05.2022 That the Hon'ble National Green Tribunal
vide Impugned Order of the even date
dismissed the Original Application bearing
No. 38/2022 filed by the Appellant.

10.10.2022 Hence the present Civil Appeal.

BEFORE THE NATIONAL GREEN TRIBUNAL**EASTERN ZONE BENCH, KOLKATA****(Through Video Conferencing)****Original Application No.38/2022/EZ****(I.A. No. 131/2022/EZ)****IN THE MATTER OF:**

Dr. Bina Basnett,
D/o. Mr. P.B. Basnett,
Ranipool, East Sikkim,
Pin-737135.

..Applicant(s)

Versus

1. State of Sikkim,
Through Chief Secretary,
New Secretariat, Gangtok,
Pin-737101.
2. Gangtok Smart City Development Limited,
Through its Chief Executive Officer,
Sokaythang, Below-ICAR Office,
Pin-737102.
3. Department of Mines & Geology,
Through Secretary,
Secretariat Road, Below Tashiling Secretariat,
Govt. of Sikkim, Gangtok,
Pin-737102.
4. Urban development Department,
Through its Secretary,
Govt. of Sikkim,
Paljor Stadium, Gangtok, Sikkim,
Pin-737101.

5. Sikkim State Disaster Management Authority,
Through Relief Commissioner,
Manan Bhawan, Gangtok,
Sikkim – 737101.
6. Sikkim State Pollution Control Board,
Through Chairman,
Forest Secretariat, C-Block,
Deorali, Gangtok, East Sikkim,
Pin-737102.
7. District Magistrate/Collector,
Upper Sichey Road, Sungava, Gangtok,
Sikkim-737101.
8. State Environment Impact Assessment Authority (SEIAA),
Through Chairman,
Kazi Road, Gangtok, Sikkim,
Pin-737101.
9. Forest and Environment Department, Govt. of Sikkim,
Through Addl. Chief Secretary,
Forest Secretariat, Deorali,
Gangtok, East Sikkim,
Pin-737102.
10. Gangtok Municipal Corporation,
Through Municipal Commissioner,
Near Deorali Stand, Gangtok, Sikkim,
Pin-737101.
11. Ministry of Environment, Forests and Climate Change,
Through Secretary,
Indira Paryavaran Bhawan, Jor Bagh,
Lodhi Colony, New Delhi.
12. MESASO Infrastructure Private Limited,
Through its Authorized Signatory,
3rd Mile, Sevoke Road, Siliguri,
Pin-734008.

.Respondent(s)

Date of hearing: 10.05.2022.

**CORAM : HON'BLE MR. JUSTICE B. AMIT STHALEKAR,
JUDICIAL MEMBER**

**HON'BLE MR. SAIBAL DASGUPTA, EXPERT
MEMBER**

For Applicant(s) : Mr. Pratap Shanker, Advocate

For Respondent(s): Mr. Sanjay Upadhyay, Advocate.

ORDER

1. Heard Mr. Pratap Shanker, Learned Counsel appearing for the applicant.
2. This Original Application has been filed by the Applicant, seeking a direction to completely scrap the construction related project in the State of Sikkim which are against the ecology and environment. It is also prayed that construction of Multi-level Car Parking-cum-Commercial Development at Old West Point of School area, be immediately stopped and a direction be given to revoke the permission granted for construction of the above-mentioned car park of 14 [11+3 (proposed)] storeyed building in Gangtok, Sikkim.

3. The Contention of the Applicant is that the Respondent No.12, MESASO Infrastructure Private Limited, is constructing a 14 storeyed multi-level Car Park and also creating a Commercial Hub of Mines and Geology, Gangtok, Notification No. 17/DMG/20-21 dated 19.03.2021, copy of which has been filed as Annexure A-4 (page no. 129 of the paper book) to the Original Application. The learned Counsel for the Applicant submitted that this Notification provides that in Stability Zone-1 the admissible number of floors is $5^{1/2}$ whereas the proposed Multi-level Car Paring-cum-Commercial Hub is a 14 storeyed building.
4. We put a query to the learned Counsel as to what is the stage of the construction. The learned Counsel submits that it is still at the foundational stage but he added that the Cabinet has taken a decision that the construction should be of 14 storeys, therefore, there would be violation of environmental laws and degradation of environment and, therefore, the Tribunal would be justified in interfering at this stage.

5. We are not satisfied that at the foundational stage of the proposed construction of Multi-level Car Parking-cum-Commercial Hub, it can be said that there is environmental degradation or violation of environmental laws. The construction has not yet reached 5½ storeys. We are, therefore, of the view that this Original Application is absolutely premature and that the Applicant has no cause of action to maintain this Original Application on the assumption that there would be violation of environmental laws or of Government of Sikkim notification at a future date.
6. We also queried from the learned Counsel as to whether any Environmental Clearance had been granted for this construction project. The learned Counsel submitted that he has no knowledge of this fact.
7. Mr. Sanjay Upadhyay, Learned Counsel has put in appearance on behalf of the Respondent No.12, MESASO Infrastructure Private Limited, and submits that for this project Environmental Clearance has been granted on 25.02.2022.

8. This Environmental Clearance has not been filed along with the Original Application. We are of the view that if Environmental Clearance has been granted for this project, the Applicant has a remedy by way of appeal challenging the said Environmental Clearance.
9. The Original Application No. 28/2022/EZ is accordingly dismissed on ground of alternative remedy.
10. The I.A. No. 131/2022/EZ is also disposed of.
11. There shall be no order as to cost.

.....
B. Amit Sthalekar, JM

.....
Saibal Dasgupta, EM

May 10, 2022,
Original Application No. 38/2022/EZ
(I.A. No.131/2022/EZ)
AK

/TRUE COPY/

Geology	No. 3	Respondent
Through its Secretary, Secretariat Road, Below Tashiling Secretariat Government of Sikkim, Gangtok-737101		No. 3

4. Urban Development Department	Respondent No. 4	Contesting Respondent No. 4
Through its Secretary, Government of Sikkim Paljor Stadium Road, Gangtok, Sikkim-737101		

5. Sikkim State Disaster Management Authority	Respondent No. 5	Contesting Respondent No. 5
Through its Chairman, Manan Bhawan, Gangtok Sikkim-737101		

6. Sikkim State Pollution Control Board, Through its Chairman,	Respondent No. 6	Contesting Respondent No. 6
Forest Secretariat, C Block, Deorali, Gangtok-737102 East Sikkim, India		

- | | | | |
|-----|---|----------------------|------------------------------------|
| 7. | District Magistrate/Collector
Upper Sichey Road,
Sungava,
Gangtok,
Sikkim-737101 | Respondent
No. 7 | Contesting
Respondent
No. 7 |
| 8. | State Environment Impact
Assessment Authority
(SEIAA),
Through Chairman,
Annexe1, Top Floor, Kazi
Road, Gangtok, Sikkim-
737101 | Respondent
No. 8 | Contesting
Respondent
No. 8 |
| 9. | Forest and Environment
Department, Government of
Sikkim Through Secretary
Forest Secretariat, Deorali,
Gangtok-737102,
East Sikkim | Respondent
No. 9 | Contesting
Respondent
No. 9 |
| 10. | Gangtok Municipal
Corporation
Through Chairman Near
Deorali Stand, Gangtok,
Sikkim-737101 | Respondent
No. 10 | Contesting
Respondent
No. 10 |
| 11. | Ministry of Environment,
Forest and Climate Change | Respondent
No. 11 | Contesting
Respondent |

Through Secretary, No.11
 Jor Bagh,
 Lodhi Colony New Delhi

12. MESASO Infrastructure	Respondent	Contesting
Private Limited,	No. 12	Respondent
Through its Authorised Signatory		No. 12
3 rd Mile, Sevoke Road		
Siliguri- 734008		

....All are Contesting Respondents

APPEAL UNDER SECTION 22 OF THE NATIONAL GREEN TRIBUNAL
 ACT, 2010

TO,

HON'BLE THE CHIEF JUSTICE OF INDIA AND HIS COMPANION
 JUSTICES OF THE SUPREME COURT OF INDIA, NEW DELHI.

THE HUMBLE PETITION OF THE
 PETITIONERS ABOVE NAMED

MOST RESPECTFULLY SHOWETH:

1. The present statutory Civil Appeal under Section 22 of the National Green Tribunal Act, 2010 is filed against the Impugned Order dated 10.05.2022 passed by the Hon'ble National Green Tribunal Eastern Zone, Kolkata (hereinafter referred to as "Hon'ble NGT") in Original Application No. 38/2022/EZ, whereby, the Hon'ble

National Green Tribunal was pleased to dismiss the Application filed by the Appellant holding that the Appellant does not have any Cause of Action to maintain her plea and that the Application was a premature one. The Hon'ble NGT also held that since the Impugned project is at the foundational stage, there cannot be said to have occurred any environmental degradation or violation of environmental laws.

2. QUESTIONS OF LAW:

The following substantial questions of law for the consideration of this Hon'ble Court in the present appeal, each of which is raised in the alternative and without prejudice to the others.

- i. Whether the Hon'ble National Green Tribunal was correct in dismissing the Application of the Appellant for want of cause of action while there was a flagrant breach of the Notification No.17/DMG/20-21 dated 19.03.2021?

- ii. Whether the Hon'ble National Green Tribunal erred in not considering the continuous cause of action of the Appellant and in not giving reasons as to why the cause of action of the appellant would not suffice for maintainability of the Original Application No.38/2022/EZ?
- iii. Whether the Hon'ble NGT was correct in taking a different view than it had taken in its interim order dated 18.01.2022 while granting interim relief in O.A. No. 5/2022, on the same set of facts and circumstances?
- iv. Whether a project like the one under question in this Appeal can be allowed to be built in an area which comes under Seismic Zone - IV and is prone to high frequency of earthquakes?
- v. Whether the Hon'ble National Green Tribunal was correct in holding that merely because the impugned project is at the foundational stage of construction, there cannot be any judicial scrutiny or judicial examination of the merits of the project?

- vi. Whether the Hon'ble National Green Tribunal was correct in holding that because the impugned project is at foundational stage, there cannot be environmental degradation or violation of environmental laws?
- vii. Whether a project of this scale and magnitude can cause degradation of Environment and violation of Environmental laws at the foundational stage?
- viii. Whether the Hon'ble NGT has erred by focusing on the issue of Environment Clearance in its dismissal order, while ignoring the fact that when the interim relief of stay was granted vide its order dated 18.01.2022 in O.A. No.5/2022 on the same set of facts, there was no Environment Clearance to the project?
- ix. Whether the Hon'ble National Green Tribunal erred in dismissing the O.A. No. 38/2022 without considering the fact that the construction of the building has been started without having assessment of its environmental impact upon the ecologically fragile area of State of Sikkim?

- x. Whether the Appellant had the locus to file a plea against the threat imposed by the impugned project on behalf of such general public praying for preventive remedy?
- xi. Whether the Hon'ble NGT has erred in law or in fact that in the similar/same facts and circumstances it is the Hon'ble NGT Principal Bench that has interfered with the haphazard erection/construction in the city of Shimla vide its Judgment/Order in the case of *Yogindra Mohan Sengupta v. Union of India (O.A. No. 121/2014)*?
- xii. Whether despite holding that the remedy with the applicant is to challenge the Environment Clearance of the impugned project, the Hon'ble NGT had the inherent powers to examine the veracity of permission granted to the project by various authorities and address the issues raised by the Appellant?
- xiii. Whether in the facts and circumstances of the case, the impugned construction of project poses threat to the life, limb and health of the general public?

- xiv. Whether the Hon'ble National Green Tribunal erred in not appreciating the fact that the Application filed by the Appellant involved a substantial question relating to environment and safety?

3. BRIEF FACTS:

- a) That the Appellant herein is a resident of East District Gangtok and a social worker, working for the protection of heritage and deteriorating environment conditions of Gangtok due to rapid urbanisation. That the Original Application bearing No. 38 of 2022 was filed by the Appellant in the interest of the local people of Sikkim, more specifically Gangtok, with respect to the various environmental problems, grievances, issues raised herein.
- b) That the Appellant filed the Original Application bearing No. 38 of 2022 to stop the illegal construction of Multi-level car parking cum commercial development at Old West Point School Area by the Respondent No. 2.

- c) That it is submitted that the Respondent No. 2 is hell bound to make rampant changes of the heritage look of the state capital of Sikkim in an arbitrary manner by placing the population under acute apprehension of risking their respective lives by pushing whole of the geographical area under ecological imbalance/threat.
- d) That the State of Sikkim falls under the category of Seismic Zone IV and is prone to high frequency of eathquakes.
- e) That the Engineering Geology Division, Geological Survey of India, Eastern region, Kolkata submitted its report on 18TH of September, 2011 regarding the Sikkim earthquake. Copy of the report of Engineering Geology Division dated 18.09.2011 is annexed herewith and marked as ANNEXURE P/1@ pages (42 to 50).
- f) That the fragile condition and high risk of earthquake in the State of Sikkim has also been covered by several news channels and media and experts have also showed their concerns regarding the same. A news item dated 24.09.2011 has also been published in the Indian Express

regarding the collapse of two multi-storeyed buildings in the Gangtok. A Copy of the news item dated 24.09.2011 is annexed herewith and marked as **ANNEXURE P/2@** page (51 to 52).

- g) That it is submitted that the construction of a 14 [11+3(proposed)] storey building will also obstruct the view of Mount Kanchenjunga from the National Highway and a portion of M.G. Marg which is a guardian Diety for the people of Sikkim. Moreover, vide Notification dated 20.09.2001 bearing No. 70/home/2001, issued by the Government of Sikkim, Home Department, Gangtok, Mount Kanchenjunga has been declared as a sacred peak/place of worship for the people of Gangtok. Copy of the Notification dated 20.09.2001 bearing No. 70/home/2001 issued by the Government of Sikkim, Home Department, Gangtok is annexed herewith and marked as **Annexure P/- 3@ Pages (53 TO 55)**
- h) That the Request for Proposal (RFP) for the implementation of Multi-Level Car Parking cum Commercial Development at Old West Point School Area

was issued by Respondent No. 2. Copy of the request for proposal dated 16.09.2020 issued by the Respondent No. 2, i.e., Gangtok Smart City Development Limited for the implementation of multilevel car parking-cum-commercial development at Old West Point School area is annexed herewith and marked as Annexure P/4- @ Pages (56 TO 124).

- i) That, accordingly, in accordance with Clause 2.1.6 of the Request for Proposal, the Respondent No. 12, i.e. MESASO Infrastructure Private Limited was formed by M/s Tirupati Private Limited as a Special Purpose Company for the implementation of Multi-level Car Parking cum Commercial Development at Old West Point School Area on Public-Private Partnership (PPP) and Design, Build Finance, Operate and Transfer (DBFOT) basis.
- j) That it is respectfully submitted that the aforesaid building in question is being constructed in flagrant breach of the Gazette Notification No. 17/DMG/20-21 dated 19.03.2021 passed by the Respondent No.3 wherein the construction of any building in the concerned area above

5½ storeys is illegal. As per Building bye-laws/code, no one can bring any construction/structure above the stipulated number of storeys in their corresponding zones as per the Notification dated 19.03.2021. Copy of Gazette Notification dated 19.03.2021 bearing No. 17/DNG/20-21, dated 19/03/2021 marked as Annexure P/-5 @ Pages (

125 TO 129)

- k) That vide Notification bearing No. GOS/UD&HD/6(294)2001/A dated 15.10.2001 issued by the Department of Urban & Housing Department, i.e., Respondent No.4, five categories of stability zones were introduced in the State of Sikkim and had simultaneously stipulated the admissible number of floors in any structure sought to be constructed in each of the five zones. The Respondent No.4, vide Gazette No.387 dated 15.10.2001 bestowed upon the Department of Mines & Geology, Respondent No.3 the authority to vary the maximum allotted height in accordance with the suitability and profile of the locations based on the stability map prepared by the Respondent No.3.

- l) That it was in pursuance of the notification of Respondent No.4 that the Department of Mines & Geology issued its Gazette Notification No. 17/DMG/20-21 dated 19.03.2021.

In the said notification it was stated,

“In continuation with notification No. GOS/UDSHD/6 (294)/A dated 15.10.2021 and gazette No 387 dated 15/10/2001 which notified that the maximum height of building constructed in allotted sites of private holdings within a notified area shall be in accordance with the suitability and profile of the locations based on the stability map of the area as prepared by Mines and Geology Department from time to time...”

- m) That Respondent No.3 in the notification dated 19.03.2021 mentioned the different parameters for the determination of stability zones of each zone. As per the said Notification, the admissible number of floors in the zone-1 is 5 ½ storeys. It is pertinent to mention herein that the site of the impugned project falls under zone-1. Hence, the maximum number of floors or storeys that the

impugned construction could have are only 5 ½ storeys whereas, in contradiction to the mandate of the Notification dated 19.03.2021, the Respondents No.2 & 12 are building 14 [11+3(proposed)] storeys.

- n) The Appellant/Applicant on 31.12.2021 filed an Original Application bearing O.A. No. 05/2022 before the Hon'ble NGT, Kolkata praying, *inter alia*, for revocation of the permission granted to the impugned project and scraping of the project. A Copy of O.A. no. 05/2022 dated 03.12.2021 filed before Hon'ble National Green Tribunal at Kolkata is annexed herewith and marked as Annexure P/-6@ Page @ (130 TO 167).
- o) That an interim order was passed in the aforesaid Original Application bearing OA no. 5 of 2022 titled as "Dr. Bina Basnett Vs. State of Sikkim & Others". A Copy of Order dated 18.01.2022 passed by Hon'ble National Green Tribunal at Kolkata in O.A. no. 05/2022 is marked as Annexure P/-7@ Page (168 TO 170)

- p) That the Appellant/Applicant was constrained to withdraw her application bearing O.A. No. 5/2022 as in the said OA, the name of the alleged illegal construction site was inadvertently mentioned as Multi-level Car Parking Cum Shopping Hub (STNM-Kanchenjunga Square below NH) at Old West Point School Area, Near Hotel Hungry Jack, Gangtok instead of correct name of construction/project as Multi-level Car Parking cum Commercial Development at Old West Point School Area. It is submitted that the OA No. 5 of 2022 was dismissed as withdrawn vide Order dated 02.03.2022. A Copy of Order dated 02.03.2022 in O.A. no. 05/2022 passed by the Hon'ble National Green Tribunal, Eastern Zone at Kolkata is annexed herewith and marked as **Annexure P/-8 @ Page (171 TO 174)**.
- q) That immediately after the withdrawal of the earlier O.A. No. 5/2022, the Appellant/Applicant again filed an Application against the same project bearing Original Application No.38/2022 on 07.03.2022. It is pertinent to mention herein that the challenge in the fresh Application was on the same set of grounds of law and fact as were in

the earlier Application. A Copy of O.A no. 38/2022 filed by Applicant before the Ld. National Green Tribunal, Eastern Zone at Kolkata on 07.03.2022 is annexed herewith and marked as Annexure P/-9 @ Page (175 TO 221).

- r) That it is respectfully submitted that permission to construct the aforesaid building has been wrongly given by the other Respondents under the garb of making Gangtok Smart City without considering and analyzing the risk of the construction of a 14 [11+3(proposed)] storey building in a seismic zone. That the people of Gangtok including Arithang and nearby areas as well the historical buildings/monuments and environment will be at great risk if the construction of the aforesaid building is not stopped immediately.
- s) That a 14 [11+3(proposed)] storey building will put a lot of pressure on the land and soil which can cause severe environment disaster in a hill station like Gangtok which will ultimately jeopardise the life and health of the people residing in the local vicinity.

- t) That the construction of the aforesaid building will have a severe impact on the environment of the Gangtok/Arithang and will lead to air, land and noise pollution in the area. It is submitted that the same also carries a very high risk of landslides which can lead to complete devastation.
- u) That the Appellant is filing the photographs on record to show the effect of landslides in the Arithang Area, which is situated less than one aerial kilometer from the alleged construction site at Old West Point School Area. The Applicant is also filing on record certain photographs to show as to how the proposed construction of Multi-level Car Parking cum Commercial Development would effect the clear view of Guardian Deity Mount Kanchenjunga, which is considered closed to the heart of people of Sikkim. The Applicant is further filing photographs to show as to how the bye-pass road is sinking because of the load of Arithang. Copy of the Photographs to show the effect of landslides in the Arithang Area are annexed herewith and marked as **ANNEXURE A/10 @ Pages (221 to 230)**. Copy of the Photographs showing view of the Guardian

Deity Mount-Kanchenjunga from the alleged construction site are annexed herewith and marked as ANNEXURE A/11@ Pages (231 to 239). Copy of the Photographs showing sinking of Bye-pass road Arithang are annexed herewith and marked as ANNEXURE A/12 @ Pages (240 to -)

4. GROUNDS OF APPEAL:

The Appellant is filing the present Appeal inter alia on the following grounds, each of which is raised in the alternative and without prejudice to the others:

- A. BECAUSE the Impugned Order passed by the Hon'ble National Green Tribunal is manifestly erroneous and deserves to be set aside.
- B. BECAUSE that the Hon'ble National Green Tribunal has erred in law by considering and issuing Notice in O.A. No. 5 of 2022 and dismissing O.A. No. 38 of 2022 for want of Cause of Action in as much as both Application were based on identical facts and circumstances and O.A. No. 5 was withdrawn by the Appellant on a smaller issue with respect to wrong address of the project in question.

- C. BECAUSE that the Hon'ble National Green Tribunal erred in not appreciating the fact that the Application filed by the Appellant involved a substantial question relating to environment and safety.
- D. BECAUSE that the Appellant while standing on behalf of the general public of the State of Sikkim had the right to pray not only for the corrective remedy but also for preventive remedy.
- E. BECAUSE that a duty has been casted on the Hon'ble NGT by the parent statute to adjudicate and resolve such glaring and serious environmental issues that apprehend public safety.
- F. BECAUSE that the Hon'ble NGT failed to appreciate that the environmental issue involved herein affects the interest of the public at large and the environmental law jurisprudence in India has allowed any public-spirited person to take up the cause of the masses by relaxing the requirement of *locus standi*.

- G. BECAUSE that the Hon'ble NGT failed to appreciate that the Construction of a 14 [11+3(proposed)] storey building is against the Notification dated 19.03.2021 issued by the Respondent No. 3 in as much as an exception cannot at all be created for Govt. Buildings, Hospitals, Colleges etc. especially when it poses such great threat to environment/ecology.
- H. BECAUSE that the Hon'ble NGT failed to appreciate that the alleged construction of 14 [11+3(proposed)] storey building is allowed to come up in complete contravention of Regulation 17 of the Sikkim Building Construction Regulations, 1991.
- I. BECAUSE that the Hon'ble NGT failed to appreciate that the permission for the construction of the aforesaid Building has been awarded wrongly and illegally without taking into account the threat it poses towards environment and people living in the near vicinity. That the Appellant further also apprehends that proper DPR has also not been conducted in accordance with law before sanctioning the permission to the Respondent No. 2 by the Respondent No. 1.

- J. BECAUSE that the Hon'ble NGT failed to appreciate that as per the Environmental Impact Assessment (EIA) Notification, 2006 as amended from time to time, restrictions and prohibitions have been imposed on new projects based on the potential environmental impact which has been indicated in the schedule to the notification, unless prior environmental clearance has been granted in accordance with the objectives of the National environment policy.
- K. BECAUSE that the Hon'ble NGT failed to appreciate that the alleged construction of a 14 [11+3(proposed)] storey building in an already ecologically fragile area is all against Articles 14, 19 and 21 of the Constitution of India, 1950, because that the construction of a 14 [11+3(proposed)] storey building in a hilly terrain like Gangtok is against the National as well as the State Building Laws/Code.
- L. BECAUSE that the Hon'ble NGT failed to appreciate that the construction of a 14 [11+3(proposed)] storey Building in a hilly terrain like Gangtok will lead to

severe environmental disasters which can result in the loss of lives and livelihood of the people living in the near vicinity.

- M. BECAUSE that the Hon'ble NGT failed to appreciate that Gangtok comes under Seismic Zone IV area which represent the highest levels of seismicity in India, and can experience earthquake of intensity VIII on the Modified Mercalli (MM) scale. Such an earthquake will cause total collapse of poorly built structures and partial collapse of ordinary buildings, therefore, a building as huge as having 14 [11+3(proposed)] floors cannot at all be permitted in such areas.
- N. BECAUSE that the Hon'ble NGT failed to appreciate that the base of Gangtok city is not a stable valley. Hence, all such construction of high-rise buildings is against all the architectural and geological norms, and this makes Gangtok highly unstable and susceptible for natural disasters and leads to soil erosion and landslides.

- O. BECAUSE that the Hon'ble NGT failed to appreciate that the Respondents herein have miserably failed to fulfill the legislative duties enshrined upon them and have risked the life of the people as well the heritage of Gangtok by allowing the construction of the aforesaid illegal building.
- P. BECAUSE that the Hon'ble NGT failed to appreciate that the inhabitants of Arithang and as well Gangtok will be forced to live under continuous threat to their life and limb in as much as regular frequency of micro and mini tremors is much more, which keep occurring, and this leads to weakening of the structural matrix of the body of Gangtok hill ecosystem, leading to a perceptible increase of its hazards.
- Q. BECAUSE that the Hon'ble NGT failed to appreciate that the construction of a 14 [11+3(proposed)] storey building in a seismic zone where only 5^{1/2} floors are permitted, is nothing but clear and categorical exploitation of the environment in the name of urbanisation and making Gangtok Smart City.

- R. BECAUSE that the Hon'ble NGT failed to appreciate construction of the aforesaid building will have an adverse impact on the whole of the ecology of the town of Gangtok in the form of earthquakes, landslides, air, water and noise pollution etc. It is further submitted that the said construction has been initiated without any proper planning and procedure which will lead to the complete mismanagement of biowaste being extracted from the construction of the said illegal building.
- S. BECAUSE, that the Hon'ble NGT failed to appreciate that the construction of a 14 [11+3(proposed)] storey building will obstruct the view of Mount Kanchenjunga, from the National Highway and as well from some part of M.G Marg, which is a Guardian Deity for the people of Sikkim and a centre of attraction for the tourist visiting Sikkim. It is pertinent to submit herein that the M.G Marg in Gangtok is also famous because some portions of it give a clear view of Mount Kanchenjunga, however, the construction of the above Building will lead to obstruction in the same which will lead to loss of

livelihood for the people residing there and doing business.

T. BECAUSE, that the Hon'ble NGT failed to appreciate that Right to View of the people is appended in the Right to Ecology which is getting infringed by the construction of the abovementioned illegal building.

U. BECAUSE, that the Hon'ble NGT failed to appreciate that the construction of such a huge building in such a highly densely populated residential area below the construction site and which has old heritage/historical monuments all around will not only jeopardise the existence of such heritage/historical monuments but also pose a threat of having grave environmental disaster.

V. BECAUSE that the Hon'ble NGT failed to appreciate that the construction of such a huge building will put excessive pressure upon the carrying capacity of the land of Gangtok/Arithang/Indira Bye-pass which is far less when compared to a land situated in a plain area.

- W. BECAUSE that the construction of aforesaid Building will be a major cause for pollution in the region and will affect the health of the people living nearby.
- X. BECAUSE that the Hon'ble NGT failed to appreciate that the value of biological diversity for subsistence, cultural or commercial purposes should be recognized. For its valuable contribution, the Himalayas need to be prevented and saved from indiscriminate invasion into its natural and biodiversity assets.
- Y. BECAUSE that the Hon'ble NGT failed to appreciate that Gangtok/Arithang is vulnerable to different kinds of disasters, natural as well as man made. These areas are especially vulnerable where development over the years has further accentuated the problems by upsetting the natural balance of various physical processes operating in the mountain eco-system.
- Z. BECAUSE that the Hon'ble NGT failed to appreciate that the Sustainable development requires that a city is developed keeping in view not only the residential population but also the floating population of tourists

and the consequent pressure exerted on the physical environment & infrastructure and hence protection of forest, biodiversity, water bodies, sky slopes, etc. should be essential ingredients for the planning process.

- AA. BECAUSE that the Hon'ble NGT failed to appreciate that the inaction on part of Respondents in failing to ensure compliance with the basic principle of environmental sustainability over such long period of time has led to increment in the losses caused to the Environment of the city already reeling under heavy industrial pollution.
- BB. BECAUSE that the Hon'ble NGT failed to appreciate that the soil of the lower area of Gangtok, i.e., Arithang and Indira Bye-Pass is poor in quality and is not in a position to bear/sustain the load of the concrete jungle being created and spread in Gangtok township and are prone to landslides even in the slightest rain.
- CC. BECAUSE that the Hon'ble NGT failed to appreciate that due to the incapability of the Soil of the area in question to bear heavy loads of the RC building, the

National Highway had sank earlier and presently continues to sink further.

- DD. BECAUSE that the Hon'ble NGT failed to appreciate that the proposed building is nothing but a private commercial building in the disguise of PPP model.
- EE. BECAUSE that the Hon'ble NGT failed to appreciate that the Respondents herein have acted as a mute spectator while allowing people to bring multistorey buildings of up to 8 storeys in Gangtok and adjoining area which is highly dangerous and can lead to heavy destructions.
- FF. BECAUSE that the Hon'ble NGT failed to appreciate that many of the RC buildings in Gangtok are poorly/non engineered and the residential or hotel buildings and are built on steep hill slopes on tight plots abutting each other.
- GG. BECAUSE that the Hon'ble NGT failed to appreciate that the RC construction of a 14 [11+3(proposed)] storey building will add chemical contents in the ecologically fragile climate of Gangtok and also will create water scarcity/ pollution in the town.

- HH. BECAUSE that the Hon'ble NGT failed to appreciate that the vehicular movements in the area for the construction of the said building will lead to noise pollution and traffic congestion in the area.
- II. BECAUSE that the Hon'ble NGT failed to appreciate that the alleged 14 [11+3(proposed)] storey project is located in the heart of a dense residential area, which is starved of open spaces. That, in the humble submissions of the Appellant herein, an open space in a densely populated urban environment is a natural resource viz Air, Light, Sunlight, Greenery, Wellbeing and Quality of life.
- JJ. BECAUSE that the Hon'ble NGT failed to appreciate that the proposed project is bound to deprive people of their connections with nature and their natural resources. Furthermore, the dense residential Arithang neighborhood will be forced to live in the shadow of this huge structure, which is going to block permanently their share of sunlight, which is going to have cascading adverse effects on their health and limb in as much as it

is only the Natural Sun Light, which is the main source of light and energy in the harsh climatic conditions of hills. As such blocking natural Sun light is nothing but a deprivation of natural resources of a person.

KK. BECAUSE that the Hon'ble NGT failed to appreciate that in the facts and circumstances of the case, the Hon'ble NGT had the premise to apply and use the much celebrated 'Precautionary Principle' as developed by a series of notable judgment of this Hon'ble Court as well as mandated by the Section 20 of the National Green Tribunal Act, 2010.

LL. BECAUSE that the Hon'ble NGT failed to appreciate that in sanctioning the impugned construction beyond the stipulated 5 ½ storeys as per the Notification dated 19.03.2021, the Respondent No. 1 violated the 'Principle of Non-regression' as developed in the International Environment Jurisprudence and adopted under Indian Law.

- MM. BECAUSE that the Hon'ble NGT failed to appreciate that the Respondent No. 1 has misused its power to override and allow the project under question and no case is made to relax the relevant rules and regulations from the facts and circumstances.
5. That the Appellant has not filed any other Appeal in this Hon'ble Court challenging the Impugned Order dated 10.05.2022 passed by the Hon'ble National Green Tribunal, Eastern Zone, Bench, Kolkata in O.A. No. 38/2022/EZ.
6. It is submitted here that no new facts or any new grounds has been raised for the first time in the present Appeal.

PRAYER

In the premises, it is respectfully prayed that this Hon'ble Court may graciously be pleased to:

- a) Admit & allow the present Civil Appeal and set aside the impugned final judgment and order dated 10.05.2022 passed by the Hon'ble National Green Tribunal, Eastern Zone, Kolkata in O.A. No. 38/2022/EZ.

- b) Pass such other, and further orders as this Hon'ble Court may deem fit and appropriate in the facts and circumstances of the case;

AND FOR WHICH ACT OF KINDNESS THE APPELLANT AS IN DUTYBOUND SHALL EVER PRAY.

DRAWN & FILED BY


(SWETANK SHANTANU)
ADVOCATE FOR THE APPELLANT

DRAWN ON: 17.09.2022
FILED ON: 10.10.2022

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. _____ OF 2022**

IN THE MATTER OF

Dr. Bina BasnettAppellant

Versus

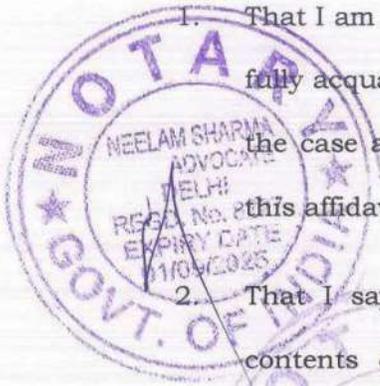
State of Sikkim and Ors. ...Respondents

AFFIDAVIT

I, Dr. Bina Basnett, D/o Mr. P. B. Basnett, aged about 37 years, R/o- Ranipool, East Sikkim, Pin-737135, Sikkim, presently at New Delhi do hereby solemnly affirm and stated as above:-

1. That I am the Appellant in this case and as such am fully acquainted with the facts and circumstances of the case and as such am fully competent to swear this affidavit.

2. That I say that I have read and understood the contents of the accompanying Civil Appeal from page 7 to 40, Synopsis & List of Dates from page no. B to Q and Applications. I say the facts stated therein are true to the best of my knowledge.



3. I say that the Annexure A-1 to A-12 annexed along with the Civil Appeal are true copies of their respective originals.

4. I say that the averments of facts stated herein above are true to my knowledge, no part of its false and nothing material has been concealed therein.

Neelam Sharma
I identified the deponent who has signed in my presence

[Signature]

DEPONENT

VERIFICATION:

I, Dr. Bina Basnett, the deponent mentioned above do hereby most solemnly affirm and verify that what is stated in the above Affidavit is true to my knowledge and I believe the same to be true.

17 SEP 2022

Verified at *[Signature]* on this ___ day of ___, 2022

[Signature]

DEPONENT



ATTESTED

[Signature]
NOTARY (Govt. of India)
Neelam Sharma
Advocate
Sh. No. 155A, Gate No. No.11,
Patela House Courts,
New Delhi-110001
MR. 8890402301

17 SEP 2022

Annexure – R4
SECTION XVI-A

ITEM NOS.1701-1952,1954-1961, COURT NO.14
1963-2035,2037-2071,2073-2222,
2224-2396,2398-2530,2532-2539,
2541-2607,2609-2671,2673-2752,
2754-2773,2775-2911,2913-3124,
3126-3130,3132-3196,3199-3218,
3220-3258,3260-3269,3271-3290,
3293-3436,3438-3451,3453-3456,
3458-3504,3507-3511,3513-3522,
3524-3526,3528-3556,3558-3595,
3597-3622,3624-3635,3637-3769,
3771-3837,3839-3846,3848-3857,
3859-3861,3863-3958,3960-3987,
3989-4035,4037-4089 & 4091-4107

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

ARBITRATION PETITION Diary No(s). 38757/2019

GLENMARK PHARMACEUTICA LTDA

Petitioner(s)

VERSUS

DR. REDDYS LABORATORIES LIMITED & ANR.

Respondent(s)

WITH

Diary No. 446-2020; Diary No. 3623-2020; Diary No. 7081-2020; Diary No. 7453-2020; Diary No. 21018-2021; Diary No. 24801-2021; Diary No. 26061-2021; Diary No. 26831-2021; Diary No. 26835-2021; Diary No. 30752-2021; Diary No. 30896-2021; Diary No. 1537-2022; Diary No. 8009-2022; Diary No. 8078-2022; Diary No. 8295-2022; Diary No. 8665-2022; Diary No. 17840-2022; Diary No. 19315-2022; Diary No. 19342-2022; Diary No. 19362-2022; Diary No. 19431-2022; Diary No. 19453-2022; Diary No. 19483-2022; Diary No. 19494-2022; Diary No. 19563-2022; [Diary No. 19631-2022](#); Diary No. 19646-2022; Diary No. 19652-2022; Diary No. 19653-2022; Diary No. 19676-2022; Diary No. 19725-2022; Diary No. 19730-2022; Diary No. 19748-2022; Diary No. 19774-2022; [Diary No. 19814-2022](#); Diary No. 19890-2022; Diary No. 19892-2022; Diary No. 19908-2022; Diary No. 19920-2022; Diary No. 19933-2022; Diary No. 19960-2022; Diary No. 19987-2022; Diary No. 19994-2022; [Diary No. 19995-2022](#); Diary No. 20001-2022; Diary No. 20020-2022; Diary No. 20043-2022; Diary No. 20132-2022; Diary No. 20158-2022; Diary No. 20160-2022; Diary No. 20162-2022; Diary No. 20163-2022; Diary No. 20165-2022; [Diary No. 20185-2022](#); Diary No. 20187-2022; Diary No. 20212-2022; Diary No. 20221-2022; Diary No. 20230-2022; Diary No. 20238-2022; Diary No. 20247-2022; Diary No. 20299-2022; Diary No. 20317-2022; Diary No. 20322-2022; [Diary No. 20353-2022](#); Diary No. 20360-2022; Diary No. 20374-2022; Diary No.

Signature of the
Digitally signed by
NIRAJ K. SINGH
Date: 2024.07.22
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Reason: I am the author

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Diary No(s). 38757/2019

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Diary No(s). 38757/2019

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Diary No(s). 38757/2019

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Diary No(s). 38757/2019

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Diary No(s). 38757/2019

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Diary No(s). 38757/2019

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 40955-2022; Diary No.; 41022-2022; Diary No. 41084-2022; Diary No.
 41088-2022; Diary No. 41109-2022; Diary No.; 41111-2022; Diary No.
 41119-2022; Diary No. 41120-2022; Diary No. 41128-2022; Diary No.;
 41136-2022; Diary No. 41177-2022; Diary No. 41255-2022; Diary No.
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 41290-2022; Diary No. 41301-2022; Diary No.; 41314-2022; Diary No.
 41322-2022; Diary No. 41328-2022; Diary No. 41349-2022; Diary No.;
 41358-2022; Diary No. 41368-2022; Diary No. 41372-2022; Diary No.
 41391-2022; [Diary No. 41395-2022](#); Diary No. 41397-2022; Diary No.
 41399-2022; Diary No. 41433-2022; Diary No.; 41439-2022; Diary No.
 41444-2022; Diary No. 41449-2022; Diary No. 41501-2022; Diary No.
 41502-2022; Diary No. 41506-2022; Diary No. 41529-2022; Diary No.
 41531-2022; Diary No.; 41538-2022; Diary No. 41553-2022; Diary No.
 41557-2022; Diary No. 41567-2022; Diary No. 41594-2022; Diary No.
 41629-2022; Diary No. 41654-2022; Diary No. 41662-2022; Diary No.
 41673-2022; Diary No. 41687-2022; Diary No. 41700-2022; Diary No.
 41703-2022; Diary No. 41707-2022; Diary No. 41720-2022; Diary No.
 41723-2022; Diary No. 41731-2022; Diary No. 41733-2022; Diary No.
 41738-2022; Diary No. 41750-2022; Diary No. 41764-2022; Diary No.
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 41829-2022; Diary No. 41831-2022; II; Diary No. 41833-2022; Diary

Diary No(s). 38757/2019

10

No. 41837-2022; Diary No. 41865-2022; Diary No. 41871-2022; Diary No. 41877-2022; Diary No. 41878-2022; Diary No. 41880-2022; Diary No. 41926-2022; Diary No. 41927-2022; Diary No. 41930-2022; Diary No. 41931-2022; Diary No. 41936-2022; Diary No. 41940-2022; Diary No. 41941-2022; Diary No. 41943-2022; Diary No. 41945-2022; Diary No. 41946-2022; Diary No. 41949-2022; Diary No. 41957-2022; Diary No. 41960-2022; Diary No. 41962-2022; Diary No. 41963-2022; Diary No. 41971-2022; Diary No. 41972-2022; Diary No. 41976-2022; Diary No. 41979-2022; Diary No. 41981-2022; Diary No. 41985-2022; Diary No. 41990-2022; Diary No. 41991-2022; Diary No. 41992-2022; Diary No. 41995-2022; ;Diary No. 41997-2022; Diary No. 41998-2022; Diary No. 42000-2022; Diary No. 42001-2022; IX; Diary No. 42004-2022; Diary No. 42006-2022; Diary No. 42015-2022; Diary No. 42018-2022; Diary No. 42025-2022; IX; Diary No. 42043-2022; Diary No. 42045-2022; ;Diary No. 42048-2022 ;Diary No. 42050-2022; Diary No. 42062-2022; Diary No. 42076-2022; Diary No. 42087-2022; Diary No. 42089-2022; Diary No. 42097-2022; Diary No. 42098-2022; Diary No. 42103-2022; Diary No. 42104-2022; Diary No. 42106-2022; Diary No. 42107-2022; Diary No. 42108-2022; Diary No. 42110-2022, Diary No. 42111-2022, Diary No. 42112-2022, Diary No. 42113-2022, Diary No. 42114-2022, Diary No. 42115-2022, Diary No. 42118-2022, Diary No. 42131-2022, Diary No. 42137-2022, Diary No. 42143-2022, Diary No. 42144-2022, Diary No. 42147-2022, Diary No. 42149-2022, Diary No. 42164-2022, Diary No. 42181-2022, Diary No. 42192-2022, Diary No. 42193-2022, Diary No. 42212-2022, Diary No. 42234-2022, Diary No. 42254-2022, Diary No. 42261-2022, Diary No. 42266-2022, Diary No. 42326-2022, Diary No. 42348-2022, Diary No. 42352-2022, Diary No. 42357-2022, Diary No. 42360-2022, Diary No. 42361-2022, Diary No. 42362-2022, Diary No. 42364-2022, Diary No. 42365-2022, Diary No. 42367-2022, Diary No. 42368-2022, Diary No. 42371-2022, Diary No. 42376-2022, Diary No. 42377-2022, Diary No. 42393-2022, Diary No. 42401-2022, Diary No. 42408-2022, Diary No. 42416-2022, Diary No. 42454-2022, Diary No. 42457-2022, Diary No. 42462-2022, Diary No. 42489-2022, Diary No. 42492-2022, Diary No. 42517-2022, Diary No. 42548-2022, Diary No. 42553-2022, Diary No. 42564-2022, Diary No. 42577-2022, Diary No. 42579-2022, Diary No. 42607-2022, Diary No. 42612-2022, Diary No. 42631-2022, Diary No. 42635-2022, Diary No. 42640-2022, Diary No. 42641-2022, Diary No. 42646-2022, Diary No. 42654-2022, Diary No. 42657-2022, Diary No. 42660-2022, Diary No. 42668-2022, Diary No. 42669-2022, Diary No. 42673-2022, Diary No. 42678-2022, Diary No. 42688-2022, Diary No. 42690-2022, Diary No. 42697-2022, Diary No. 42707-2022, Diary No. 42708-2022, Diary No. 42710-2022, Diary No. 42711-2022, Diary No. 42716-2022, Diary No. 42731-2022, Diary No. 15-2023, Diary No. 18-2023, Diary No. 40-2023, Diary No. 74-2023, Diary No. 79-2023, Diary No. 86-2023, Diary No. 90-2023, Diary No. 95-2023, Diary No. 98-2023, Diary No. 102-2023, Diary No. 113-2023, Diary No. 116-2023, Diary No. 126-2023, Diary No. 133-2023, Diary No. 143-2023, Diary No. 147-2023, Diary No. 163-2023, Diary No. 178-2023, Diary No. 185-2023, Diary No. 198-2023, Diary No. 240-2023, Diary No. 256-2023, Diary No. 275-2023, Diary No. 279-2023, Diary No. 310-2023, Diary No. 321-2023, Diary

Diary No(s). 38757/2019

No., 336-2023, Diary No. 342-2023, Diary No. 343-2023, Diary No. 344-2023, Diary No. 361-2023, Diary No. 381-2023, Diary No. 388-2023, Diary No. 418-2023, Diary No. 430-2023, Diary No. 451-2023, Diary No. 453-2023, Diary No. 477-2023, Diary No. 479-2023, Diary No. 480-2023, Diary No. 493-2023, Diary No. 500-2023, Diary No. 502-2023, Diary No. 561-2023, Diary No. 593-2023, Diary No. 603-2023, Diary No. 628-2023 (SCLSC), Diary No. 630-2023, Diary No. 638-2023, Diary No. 641-2023, Diary No. 665-2023, Diary No. 687-2023, Diary No. 705-2023, Diary No. 720-2023, Diary No. 727-2023, Diary No. 728-2023, Diary No. 732-2023, Diary No. 749-2023, Diary No. 806-2023, Diary No. 813-2023, Diary No. 825-2023, Diary No. 851-2023, Diary No. 869-2023, Diary No. 880-2023, Diary No. 948-2023, Diary No. 965-2023, Diary No. 969-2023, Diary No. 1008-2023, Diary No. 1010-2023, Diary No. 1013-2023, Diary No. 1014-2023, Diary No. 1016-2023, Diary No. 1018-2023, Diary No. 1032-2023, Diary No. 1049-2023, Diary No. 1055-2023, Diary No. 1061-2023, Diary No. 1127-2023, Diary No. 1130-2023, Diary No. 1145-2023, Diary No. 1159-2023, Diary No. 1160-2023, Diary No. 1251-2023, Diary No. 1256-2023, Diary No. 1262-2023, Diary No. 1274-2023, Diary No. 1281-2023, Diary No. 1307-2023, Diary No. 1312-2023, Diary No. 1337-2023, Diary No. 1359-2023, Diary No. 1370-2023, Diary No. 1405-2023, Diary No. 1423-2023, Diary No. 1438-2023, Diary No. 1446-2023, Diary No. 1469-2023, Diary No. 1481-2023, Diary No. 1488-2023, Diary No. 1495-2023, Diary No. 1498-2023, Diary No. 1568-2023, Diary No. 1632-2023, Diary No. 1634-2023, Diary No. 1648-2023, Diary No. 1653-2023, Diary No. 1688-2023, Diary No. 1705-2023, Diary No. 1706-2023, Diary No. 1707-2023, Diary No. 1721-2023, Diary No. 1723-2023, Diary No. 1724-2023, Diary No. 1771-2023, Diary No. 1775-2023, Diary No. 1778-2023, Diary No. 1811-2023, Diary No. 1816-2023, Diary No. 1821-2023, Diary No. 1884-2023, Diary No. 1888-2023, Diary No. 1890-2023, Diary No. 1892-2023, Diary No. 1959-2023, Diary No. 1981-2023, Diary No. 2021-2023, Diary No. 2038-2023, Diary No. 2086-2023, Diary No. 2104-2023, Diary No. 2141-2023, Diary No. 2163-2023, Diary No. 2164-2023, Diary No. 2201-2023, Diary No. 2212-2023, Diary No. 2227-2023, Diary No. 2231-2023, Diary No. 2278-2023, Diary No. 2286-2023, Diary No. 2313-2023, Diary No. 2324-2023, Diary No. 2340-2023, Diary No. 2341-2023, Diary No. 2377-2023, Diary No. 2409-2023, Diary No. 2423-2023, Diary No. 2428-2023, Diary No. 2459-2023, Diary No. 2477-2023, Diary No. 2481-2023, Diary No. 2509-2023, Diary No. 2522-2023, Diary No. 2551-2023, Diary No. 2554-2023, Diary No. 2567-2023, Diary No. 2587-2023, Diary No. 2601-2023, Diary No. 2619-2023, Diary No. 2635-2023, Diary No. 2638-2023, Diary No. 2640-2023, Diary No. 2646-2023, Diary No. 2673-2023, Diary No. 2688-2023, Diary No. 2702-2023, Diary No. 2712-2023, Diary No. 2719-2023, Diary No. 2720-2023, Diary No. 2730-2023, Diary No. 2761-2023, Diary No. 2788-2023, Diary No. 2802-2023, Diary No. 2884-2023, Diary No. 2900-2023, Diary No. 2907-2023, Diary No. 2925-2023, Diary No. 2944-2023, Diary No. 2953-2023, Diary No. 2962-2023, Diary No. 2975-2023, Diary No. 2983-2023, Diary No. 2994-2023, Diary No. 3022-2023, Diary No. 3023-2023,

Diary No(s). 38757/2019

Diary No. 3040-2023, Diary No. 3055-2023, Diary No. 3056-2023,
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Diary No(s). 38757/2019

2023, Diary No. 5230-2023, Diary No. 5268-2023, Diary No. 5281-
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Diary No(s). 38757/2019

2023, Diary No. 7360-2023, Diary No. 7369-2023, Diary No. 7378-
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 Diary No. 8415-2023, Diary No. 8419-2023, Diary No. 8441-2023,
 Diary No. 8443-2023, Diary No. 8466-2023, Diary No. 8470-2023,
 Diary No. 8473-2023, Diary No. 8477-2023, Diary No. 8485-2023,
 Diary No. 8487-2023, Diary No. 8514-2023, Diary No. 8516-2023,
 Diary No. 8524-2023, Diary No. 8527-2023, Diary No. 8548-2023,
 Diary No. 8553-2023, Diary No. 8575-2023, Diary No. 8577-2023,
 Diary No. 8588-2023, Diary No. 8603-2023, Diary No. 8620-2023,
 Diary No. 8644-2023, Diary No. 8656-2023, Diary No. 8657-2023,
 Diary No. 8661-2023, Diary No. 8679-2023, Diary No. 8681-2023,
 Diary No. 8723-2023, Diary No. 8724-2023, Diary No. 8730-2023,
 Diary No. 8756-2023, Diary No. 8794-2023, Diary No. 8802-2023,
 Diary No. 8818-2023, Diary No. 8825-2023, Diary No. 8827-2023,
 Diary No. 8855-2023, Diary No. 8863-2023, Diary No. 8865-2023,
 Diary No. 8888-2023, Diary No. 8895-2023, Diary No. 8907-2023,
 Diary No. 8942-2023, Diary No. 8965-2023, Diary No. 8995-2023,
 Diary No. 9008-2023, Diary No. 9016-2023, Diary No. 9056-2023,
 Diary No. 9059-2023, Diary No. 9065-2023, Diary No. 9071-2023,
 Diary No. 9072-2023, Diary No. 9093-2023, Diary No. 9101-2023,
 Diary No. 9106-2023, Diary No. 9116-2023, Diary No. 9132-2023,
 Diary No. 9141-2023, Diary No. 9167-2023, Diary No. 9200-2023,
 Diary No. 9210-2023, Diary No. 9222-2023, Diary No. 9229-2023,
 Diary No. 9235-2023, Diary No. 9244-2023, Diary No. 9251-2023,
 Diary No. 9261-2023, Diary No. 9264-2023, Diary No. 9267-2023,
 Diary No. 9271-2023, Diary No. 9281-2023, Diary No. 9288-2023,

Diary No(s). 38757/2019

Diary No. 9310-2023, Diary No. 9332-2023, Diary No. 9333-2023,
 Diary No. 9337-2023, Diary No. 9342-2023, Diary No. 9363-2023,
 Diary No. 9382-2023, Diary No. 9400-2023, Diary No. 9411-2023,
 Diary No. 9418-2023, Diary No. 9431-2023, Diary No. 9434-2023,
 Diary No. 9446-2023, Diary No. 9457-2023, Diary No. 9461-2023,
 Diary No. 9476-2023, Diary No. 9478-2023, Diary No. 9484-2023,
 Diary No. 9486-2023, Diary No. 9497-2023, Diary No. 9539-2023,
 Diary No. 9550-2023, Diary No. 9551-2023, Diary No. 9554-2023,
 Diary No. 9555-2023, Diary No. 9567-2023, Diary No. 9595-2023,
 Diary No. 9634-2023, Diary No. 9641-2023, Diary No. 9645-2023,
 Diary No. 9648-2023, Diary No. 9683-2023, Diary No. 9687-2023,
 Diary No. 9690-2023, Diary No. 9705-2023, Diary No. 9719-2023,
 Diary No. 9724-2023, Diary No. 9731-2023, Diary No. 9743-2023,
 Diary No. 9775-2023, Diary No. 9781-2023, Diary No. 9782-2023,
 Diary No. 9789-2023, Diary No. 9794-2023, Diary No. 9817-2023,
 Diary No. 9826-2023, Diary No. 9828-2023, Diary No. 9839-2023,
 Diary No. 9840-2023, Diary No. 9842-2023, Diary No. 9862-2023,
 Diary No. 9881-2023, Diary No. 9904-2023, Diary No. 9909-2023,
 Diary No. 9911-2023, Diary No. 9927-2023, Diary No. 9930-2023,
 Diary No. 9936-2023, Diary No. 9937-2023, Diary No. 9950-2023,
 Diary No. 9954-2023, Diary No. 9960-2023, Diary No. 9966-2023,
 Diary No. 9971-2023, Diary No. 9972-2023, Diary No. 9986-2023,
 Diary No. 10020-2023, Diary No. 10021-2023, Diary No. 10080-2023,
 Diary No. 10088-2023, Diary No. 10099-2023, Diary No. 10106-2023,
 Diary No. 10148-2023, Diary No. 10174-2023, Diary No. 10207-2023,
 Diary No. 10221-2023, Diary No. 10228-2023, Diary No. 10276-2023,
 Diary No. 10301-2023, Diary No. 10307-2023, Diary No. 10317-2023,
 Diary No. 10340-2023, Diary No. 10344-2023, Diary No. 10359-2023,
 Diary No. 10362-2023, Diary No. 10377-2023, Diary No. 10400-2023,
 Diary No. 10409-2023, Diary No. 10413-2023, Diary No. 10414-2023,
 Diary No. 10420-2023, Diary No. 10424-2023, Diary No. 10426-2023,
 Diary No. 10428-2023, Diary No. 10437-2023, Diary No. 10454-2023,
 Diary No. 10464-2023, Diary No. 10467-2023, Diary No. 10474-2023,
 Diary No. 10495-2023, Diary No. 10499-2023, Diary No. 10524-2023,
 Diary No. 10529-2023, Diary No. 10532-2023, Diary No. 10547-2023,
 Diary No. 10555-2023, Diary No. 10562-2023, Diary No. 10572-2023,
 Diary No. 10591-2023, Diary No. 10593-2023, Diary No. 10605-2023,
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 Diary No. 10650-2023, Diary No. 10659-2023, Diary No. 10660-2023,
 Diary No. 10668-2023, Diary No. 10681-2023, Diary No. 10701-2023,
 Diary No. 10719-2023, Diary No. 10722-2023, Diary No. 10735-2023,
 Diary No. 10736-2023, Diary No. 10801-2023, Diary No. 10831-2023,
 Diary No. 10925-2023, Diary No. 10959-2023, Diary No. 10965-2023,
 Diary No. 10972-2023, Diary No. 10983-2023,
 (SCLSC), Diary No. 10998-2023, Diary No. 11016-2023, Diary No.
 11018-2023, Diary No. 11019-2023, Diary No. 11034-2023, Diary No.
 11058-2023, Diary No. 11068-2023, Diary No. 11070-2023, Diary No.
 11075-2023, Diary No. 11087-2023, Diary No. 11099-2023, Diary No.
 11101-2023
 Diary No. 11110-2023, Diary No. 11112-2023, Diary No. 11115-2023,
 Diary No. 11123-2023, Diary No. 11126-2023, Diary No. 11137-2023,

Diary No(s). 38757/2019

Diary No. 11148-2023, Diary No. 11161-2023, Diary No. 11170-2023,
 Diary No. 11174-2023, Diary No. 11193-2023, Diary No. 11195-2023,
 Diary No. 11225-2023, Diary No. 11241-2023, Diary No. 11260-2023,
 Diary No. 11325-2023, Diary No. 11348-2023, Diary No. 11357-2023,
 Diary No. 11376-2023, Diary No. 11378-2023, Diary No. 11385-2023,
 Diary No. 11396-2023, Diary No. 11398-2023, Diary No. 11400-2023,
 Diary No. 11406-2023, Diary No. 11420-2023, Diary No. 11440-2023,
 Diary No. 11459-2023, Diary No. 11480-2023, Diary No. 11523-2023,
 Diary No. 11525-2023, Diary No. 11537-2023, Diary No. 11545-2023,
 Diary No. 11573-2023, Diary No. 11638-2023, Diary No. 11671-2023,
 Diary No. 11673-2023, Diary No. 11678-2023, Diary No. 11680-2023,
 Diary No. 11729-2023, Diary No. 11735-2023, Diary No. 11737-2023,
 Diary No. 11752-2023, Diary No. 11794-2023, Diary No. 11795-2023,
 Diary No. 11817-2023, Diary No. 11820-2023, Diary No. 11841-2023,
 Diary No. 11854-2023, Diary No. 11882-2023, Diary No. 11893-2023,
 Diary No. 11898-2023, Diary No. 11903-2023, Diary No. 11913-2023,
 Diary No. 11914-2023, Diary No. 11937-2023, Diary No. 11939-2023,
 Diary No. 11943-2023, Diary No. 11946-2023, Diary No. 11955-2023,
 Diary No. 11984-2023, Diary No. 12013-2023, Diary No. 12017-2023,
 Diary No. 12051-2023, Diary No. 12056-2023, Diary No. 12073-2023,
 Diary No. 12093-2023, Diary No. 12094-2023, Diary No. 12110-2023,
 Diary No. 12139-2023, Diary No. 12144-2023, Diary No. 12162-2023,
 Diary No. 12165-2023, Diary No. 12215-2023, Diary No. 12218-2023,
 Diary No. 12222-2023, Diary No. 12229-2023, Diary No. 12230-2023,
 Diary No. 12231-2023, Diary No. 12273-2023, Diary No. 12284-2023,
 Diary No. 12298-2023, Diary No. 12310-2023, Diary No. 12317-2023,
 Diary No. 12322-2023, Diary No. 12327-2023, Diary No. 12328-2023,
 Diary No. 12331-2023, Diary No. 12346-2023, Diary No. 12354-2023,
 Diary No. 12362-2023, Diary No. 12379-2023, Diary No. 12380-2023,
 Diary No. 12389-2023, Diary No. 12397-2023, Diary No. 12406-2023
 (SCLSC), Diary No. 12433-2023, Diary No. 12445-2023, Diary No.
 12451-2023, Diary No. 12475-2023, Diary No. 12480-2023, Diary No.
 12483-2023, Diary No. 12499-2023, Diary No. 12502-2023, Diary No.
 12517-2023, Diary No. 12532-2023, Diary No. 12556-2023, Diary No.
 12560-2023, Diary No. 12570-2023, Diary No. 12573-2023, Diary No.
 12574-2023, Diary No. 12584-2023, Diary No. 12593-2023, Diary No.
 12612-2023, Diary No. 12617-2023, Diary No. 12621-2023, Diary No.
 12622-2023, Diary No. 12636-2023, Diary No. 12646-2023, Diary No.
12661-2023, Diary No. 12714-2023
 Diary No. 12741-2023, Diary No. 12766-2023, Diary No. 12806-2023,
 Diary No. 12809-2023, Diary No. 12836-2023, Diary No. 12840-2023,
 Diary No. 12862-2023, Diary No. 12885-2023, Diary No. 12886-2023,
 Diary No. 12896-2023, Diary No. 12919-2023, Diary No. 12921-2023,
 Diary No. 12934-2023, Diary No. 12935-2023, Diary No. 12942-2023
 (SCLSC), Diary No. 12955-2023, Diary No. 12958-2023, Diary No.
 12970-2023, Diary No. 13007-2023, Diary No. 13031-2023, Diary No.
 13038-2023, Diary No. 13041-2023, Diary No. 13060-2023, Diary No.
 13074-2023, Diary No. 13085-2023, Diary No. 13099-2023, Diary No.
 13101-2023, Diary No. 13122-2023, Diary No. 13140-2023, Diary No.
 13142-2023, Diary No. 13218-2023, Diary No. 13234-2023, Diary No.
 13243-2023, Diary No. 13278-2023, Diary No. 13306-2023, Diary No.

Diary No(s). 38757/2019

13338-2023, Diary No. 13344-2023, Diary No. 13346-2023, Diary No.
13357-2023, Diary No. 13360-2023, Diary No. 13382-2023, Diary No.
13384-2023, Diary No. 13385-2023, Diary No. 13444-2023 AND Diary
No. 13516-2023

Date : 17-07-2023 These matters were called on for hearing today.

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Diary No(s). 38757/2019

10

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Diary No(s). 38757/2019

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Diary No(s). 38757/2019

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Diary No(s). 38757/2019

-3

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Diary No(s). 38757/2019

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Diary No(s). 38757/2019

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Petitioner-in-person(1890)

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Petitioner-in-person
(1892)

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Petitioner-in-person(1957)

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Diary No(s). 38757/2019

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Diary No(s). 38757/2019

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Diary No(s). 38757/2019

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Petitioner-in-person(2192)

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Diary No(s). 38757/2019

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Petitioner-in-person(2211)

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Diary No(s). 38757/2019

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Diary No(s). 38757/2019

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Diary No(s). 38757/2019

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Diary No(s). 38757/2019

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Diary No(s). 38757/2019

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Diary No(s). 38757/2019

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Diary No(s). 38757/2019

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Diary No(s). 38757/2019

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Diary No(s). 38757/2019

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Diary No(s). 38757/2019

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Diary No(s). 38757/2019

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Petitioner-in-person(2580)

Petitioner-in-person(2581)

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Diary No(s). 38757/2019

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Ms. Sugandh Rathor, Adv.

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Diary No(s). 38757/2019

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Diary No(s). 38757/2019

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Petitioner-in-person(2629)

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Diary No(s). 38757/2019

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Diary No(s). 38757/2019

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Petitioner-in-person(2668)

Diary No(s). 38757/2019

Petitioner-in-person(2669)

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Diary No(s). 38757/2019

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Diary No(s). 38757/2019

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Petitioner-in-person(2749)

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Diary No(s). 38757/2019

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Diary No(s). 38757/2019

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Diary No(s). 38757/2019

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Mr. Ravi Prakash, AOR

Ms. K. R. Chitra, AOR

Ms. Rooh-e-hina Dua, AOR
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Mr. Pradeep Kumar Kaushik, Adv.
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Mr. Gautam Jha, AOR

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Diary No(s). 38757/2019

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Diary No(s). 38757/2019

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Diary No(s). 38757/2019

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Diary No(s). 38757/2019

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Diary No(s). 38757/2019

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Diary No(s). 38757/2019

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Diary No(s). 38757/2019

106

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Diary No(s). 38757/2019

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Mr. Chandrashekhar A.chakalabbi, Adv.

Ms. Aishwarya N Hiremath, Adv.

M/S. Dharmaprabhas Law Associates, AOR

Mr. Risvi Muhammed, Adv.

Mr. Geo Joseph, Adv.

Mr. Sachin Patil, AOR

Mr. Rituraj Biswas, AOR

Ms. Nandadevi Deka, Adv.

Mr. Rohan Chandra, Adv.

Mr. Kwanpreet, Adv.

Mr. Rituraj Choudhary, Adv.

Mr. Wajeeh Shafiq, AOR

Mr. Sunil Kumar Sharma, AOR

Mr. Omkar Deshpande, Adv.

Mr. Siddharth Dharmadhikari, Adv.

Mr. Aaditya Aniruddha Pande, AOR

Mr. Bharat Bagla, Adv.

Mr. Sourav Singh, Adv.

Ms. Anshula Vijay Kumar Grover, AOR

Mr. Anup Kumar, AOR

Mr. Sudhir Naagar, AOR

Mr. Manohar Naagar, Adv.

Mr. Digvijay Chaudhary, Adv.

Mr. Parminder Singh Bhullar, AOR

Diary No(s). 38757/2019

Mr. Parijat Kishore, AOR

Mr. Ranbir Singh Yadav, AOR

Mr. R. Nedumaran, AOR

Mr. Ram Naresh Yadav, AOR

Mr. Suryavir, Adv.

Mr. T. Bhaskar Gowtham, Adv.

Mr. Raghav Kumar, Adv.

Mr. Sandeep Singh, AOR

Mr. Shekhar G Devasa, Adv.

Mr. Manish Tiwari, Adv.

M/S. Devasa & Co., AOR

Mr. Atul Kumar, AOR

Mr. Shail Kumar Dwivedi, AOR

Mr. A. Selvin Raja, AOR

Mr. V. Elanchezhiyan, AOR

Mr. Shafik Ahmed, Adv.

Mr. Danish Saifi, Adv.

Ms. Anju, Adv.

Mr. Ram Naresh Yadav, AOR

Mr. Suryavir, Adv.

Mr. Krishna Kumar Singh, AOR

Mr. Anoop Prakash Awasthi, AOR

Ms. Parthvi Ahuja, Adv.

Ms. Prapti Singh, Adv.

Mr. Varinder Kumar Sharma, AOR

Mr. R. Sathish, AOR

Ms. Charu Mathur, AOR

Mr. Kaustubh Shukla, AOR

Mr. Satyajit A Desai, Adv.

Mr. Siddharth Gautam, Adv.

Mr. Abhinav K. Mutyalwar, Adv.

Mr. Gajanan N Tirthkar, Adv.

Diary No(s). 38757/2019

Mr. Vijay Raj Singh Chouhan, Adv.
Ms. Anagha S. Desai, AOR

Mr. Chinmay Deshpande, Adv.
Mr. Anirudh Sanganeria, AOR

Mr. Mohit D. Ram, AOR
Ms. Monisha Handa, Adv.
Mr. Kishan H Dhiya, Adv.
Mr. Rajul Shrivastav, Adv.
Mr. Anubhav Sharma, Adv.

Mr. Navin Prakash, AOR

Mr. S. R. Setia, AOR

Mr. Bibek Tripathi, Adv.
Mr. Saurabh Chaudhary, Adv.
Mr. Noor Alam, Adv.
Mr. P. Soma Sundaram, AOR

Ms. Sneha Kalita, AOR

Mr. Mayank Kshirsagar, AOR

Mr. Lzafeer Ahmad B. F., AOR

Mr. G.Sivabalamurugan, AOR
Mr. Selvaraj Mahendran, Adv.
Ms. J. Merlyn Rachel, Adv.
Mr. C. Adhikesavan, Adv.

Mr. Raka Bejoy Phukan, Adv.
Mrs. Neha Tandon, Adv.
Mr. Bharadwaj S., AOR

Mr. Prithvi Pal, AOR
Mr. Anjani Kumar Singh, Adv.
Mr. Ashok Kumar Singh, Adv.
Mr. Sanjay Kumar Yadav, Adv.

Mr. Ranjan Mukherjee, AOR

Harvinder Chowdhury, AOR

Mr. Prakash Ranjan Nayak, AOR

Mr. Aftab Ali Khan, AOR

Mr. Kailash Prashad Pandey, AOR

Diary No(s). 38757/2019

Mr. Anurag Gharote, Adv.
Mrs. Pragya Baghel, AOR

Mr. Dinesh Gonda, Adv.
Mr. Shree Pal Singh, AOR

Mr. Lav Kumar Agrawal, Adv.
Mr. Debashis Sur, Adv.
Mr. Rajender Prasad, AOR
Mrs. Gunjan Gupta, Adv.

Ms. M. Venmani, AOR

Mr. Kartikeya Bhargava, AOR
Mr. Jasir Aftab, Adv.

Mr. Rajesh Mahale, AOR

Mr. Divakar Kumar, AOR

Mr. Ashwani Kumar Dubey, AOR

Mr. Mareesh Pravir Sahay, AOR

Mr. Jugul Kishor Gupta, AOR
Mr. Dilip Kumar, Adv.
Mrs. Babila K.k., Adv.
Mr. Manish Jain, Adv.

Mr. Rohit Amit Sthalekar, AOR

Mr. Pradeep Kumar Mathur, AOR

Mr. Mohit Paul, AOR
Ms. Rangoli Seth, Adv.

Mr. Hemal Kiritkumar Sheth, AOR

Mr. Manish Kumar Gupta, AOR

Mr. Shuvodeep Roy, AOR
Mr. Sai Shashank, Adv.
Mr. Deepayan Dutta, Adv.

Mr. Ankit Goel, AOR

Ms. Mridula Ray Bharadwaj, AOR
Mr. Amol Chitrvansi, Adv.

Mr. Anando Mukherjee, AOR

Diary No(s). 38757/2019

Mr. Shubham Bhalla, AOR
Mr. Pankaj Jain, Adv.
Mr. Sarthak Dugar, Adv.
Mr. Rishabh Jain, Adv.
Mr. Yajur Bhalla, Adv.
Ms. Anchita Nayyar, Adv.
Ms. Ragini Sharma, Adv.
Ms. Akansha Gulati, Adv.

Ms. Henna George , AOR

Mr. Vinodh Kanna B., AOR
Mr. Purushothaman Reddy, Adv.
Ms. Shagufa Khan, Adv.

Mrs. Prabha Swami, AOR

Mr. Namit Saxena, AOR

Mr. Adab Singh Kapoor, AOR

Mrs. Pragya Baghel, AOR
Ms. Shrika Gautam, Adv.

Mr. Ansar Ahmad Chaudhary, AOR

Mr. V. Ramasubramanian, AOR

Mr. Pashupathi Nath Razdan, AOR
Mr. Ramesh Thakur, Adv.

Mr. Abdul Qadir Abbasi, AOR

Mr. Irshad Ahmad, AOR

Mr. Gautam Awasthi, AOR

Mr. Ajay Awasthi, Adv.
Mr. Vikash Chandra Shukla, AOR
Mr. Akshay Kumar Panda, Adv.

Mr. Pawan Kumar Ray, Adv.
Mr. Ritesh Khara, Adv.
Mr. Deepak Goel, AOR

Mr. Sunil Kumar Sethi, Adv.
Mr. Dnyaneshwar N Telange, Adv.
Ms. Subasini Sethy, Adv.
Mr. Kailas Bajirao Autade, AOR

Diary No(s). 38757/2019

Mr. Yusuf, AOR
Mr. Mubarak Ahamad, Adv.
Dr. Ram Sankar, Adv.
Mr. T S Nanda Kumar, Adv.
Mr. Anand Kumar V, Adv.
Mr. Aditya Kishore Tyagi, Adv.
Mr. Amit Arora, Adv.
Mr. Amarjeet Singh Girsra, Adv.
Mr. G Jai Singh, Adv.

Mr. Mubarak Ahamad, Adv.
Dr. Ram Sankar, Adv.
Mr. T S Nanda Kumar, Adv.
Mr. Anand Kumar V, Adv.
Mr. Aditya Kishore Tyagi, Adv.
Mr. Yusuf, Adv.
Mr. G Jai Singh, Adv.
Ms. Rv Shaarumathi, Adv.
Ms. Sujatha Bagadh, Adv.
M/S. Ram Sankar & Co, AOR

Mr. Suvidutt M.s., AOR
Ms. Somlagna Biswas, Adv.
Ms. Deepika Singh, Adv.
Ms. Disha Puri, Adv.
Mrs. Renu Yadav, Adv.
Mr. Moirangmayum Chittaranjan Singh, Adv.

Mr. Sanjay Sharma, AOR

Mr. Pratap Shanker, Adv.
Mr. Manoj Bhardwaj, Adv.
Mr. Swetank Shantanu, AOR

Mr. Tarun Gupta, AOR

Mr. Aishwary Mishra, Adv.
Mr. Dhananjai Shekhwat, Adv.
Mr. Abhijeet Singh, Adv.
Mr. Anirudh Singh, Adv.
Mr. Dashrath Singh, Adv.
Mr. Gp. Capt. Karan Singh Bhati, AOR

M/s. VKC Law Offices, AOR

Ms Akriti Manubarwala, Adv.

Mr. Abhing, AOR

Mr. Ashok A., adv.

Diary No(s). 38757/2019

Mr. Manish Kumar Gupta, Adv.

Mr Rajesh P., AOR

Mr Sanjay K. Aggarwal, Adv.

Mr. C.Kannan, Adv.

Mr. Nizamuddin, Adv.

Ms. Simran Ved, Adv.

Mr. Rakesh K Sharma, AOR

Mr. Manoj Kumar Chowdhary, Adv.

Mr. Arjun Garg, AOR

Mr. C Bolomon, Adv.

Mr. Aswathi M.K., AOR

Mr. Vishnu Shankar Jain, AOR

Mr. Vijay Pal, Adv.

Mr. Umang Tripathi, Adv.

Mr. Anil Kumar, Adv.

Ms. Kajal Kumari, Adv.

Ms. Sundri, Adv.

Mr. Pramod Kumar Singh, Adv.

Mr. Kailash P.Pandey, Adv./AOR

Mr. Sunil Kumar Sethi, Adv.

Mr. Yogesh Ahirrao, Adv.

Mr. Devanshu Yadav, Adv.

Mr. Vedant Singh, AOR

M/s. Qua Legal, AOR

Ms. Renuka Sahu, AOR

Mr. Mahfooz Ahsan Nazki, AOR

Ms. Manreet Kaur, Adv.

Mr. Jasbir Singh Malik, Adv.

Mr. Kush Goel, Adv.

Ms. Muskan Agarwal, Adv.

Ms. Pallavi Sharma, Adv.

Mr. Amish Aggarwala, Adv.

Mr. Rajat Bhatia, Adv.

Diary No(s). 38757/2019

Mr. Mahesh Kumar, Adv.
Mr. Sudarshan Rajan, AOR

Mr. Sunil Kumar Sethi
Subasini Sethy, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Diary No. 38757-2019, Diary No. 24801-2021, Diary No. 26831-2021,
Diary No. 30896-2021, Diary No. 8295-2022, Diary No. 19362-2022,
Diary No. 19653-2022, Diary No. 19774-2022, Diary No. 19814-2022,
Diary No. 20581-2022, Diary No. 20963-2022, Diary No. 21065-2022,
Diary No. 21157-2022, Diary No. 21360-2022, Diary No. 21361-2022,
Diary No. 21364-2022, Diary No. 21367-2022, Diary No. 21401-2022,
Diary No. 21497-2022, Diary No. 21764-2022, Diary No. 21935-2022,
Diary No. 21958-2022, Diary No. 21968-2022, Diary No. 22027-2022,
Diary No. 23059-2022, Diary No. 23198-2022, Diary No. 23345-2022,
Diary No. 23535-2022, Diary No. 23742-2022, Diary No. 23782-2022,
Diary No. 24156-2022, Diary No. 24276-2022, Diary No. 24387-2022,
Diary No. 24745-2022, Diary No. 24756-2022, Diary No. 24784-2022,
Diary No. 25193-2022, Diary No. 25415-2022, Diary No. 25533-2022,
Diary No. 26099-2022, Diary No. 26294-2022, Diary No. 26393-2022,
Diary No. 26650-2022, Diary No. 26915-2022, Diary No. 27469-2022,
Diary No. 27813-2022, Diary No. 28182-2022, Diary No. 28250-2022,
Diary No. 28302-2022, Diary No. 28305-2022, Diary No. 28454-2022,
Diary No. 28732-2022, Diary No. 28808-2022, Diary No. 29363-2022,
Diary No. 29740-2022, Diary No. 30572-2022, Diary No. 30705-2022,
Diary No. 30884-2022, Diary No. 31625-2022, Diary No. 31874-2022,
Diary No. 32452-2022, Diary No. 33023-2022, Diary No. 33288-2022,
Diary No. 33444-2022, Diary No. 33531-2022, Diary No. 33651-2022,
Diary No. 33846-2022, Diary No. 33914-2022, Diary No. 33952-2022,
Diary No. 34379-2022, Diary No. 34474-2022, Diary No. 34736-2022,
Diary No. 34936-2022, Diary No. 35037-2022, Diary No. 35230-2022,
Diary No. 35939-2022, Diary No. 35946-2022, Diary No. 36035-2022,
Diary No. 36248-2022, Diary No. 36316-2022, Diary No. 36501-2022,

Diary No(s). 38757/2019

Diary No. 36598-2022, Diary No. 36665-2022, Diary No. 36833-2022,
Diary No. 37094-2022, Diary No. 37109-2022, Diary No. 37336-2022,
Diary No. 37618-2022, Diary No. 37921-2022, Diary No. 38601-2022,
Diary No. 39137-2022, Diary No. 39328-2022, Diary No. 39352-2022,
Diary No. 39430-2022, Diary No. 39455-2022, Diary No. 39571-2022,
Diary No. 39792-2022, Diary No. 41088-2022, Diary No. 41771-2022,
Diary No. 42254-2022, Diary No. 42352-2022, Diary No. 42564-2022,
Diary No. 42690-2022, Diary No. 98-2023, Diary No. 133-2023, Diary
No. 361-2023, Diary No. 430-2023, Diary No. 825-2023, Diary No.
1032-2023, Diary No. 1892-2023, Diary No. 3150-2023, Diary No.
3286-2023, Diary No. 3291-2023, Diary No. 3373-2023, Diary No.
3858-2023, Diary No. 3880-2023, Diary No. 4118-2023, Diary No.
4794-2023, Diary No. 4822-2023, Diary No. 4833-2023, Diary No.
4974-2023, Diary No. 5136-2023, Diary No. 5488-2023, Diary No.
5745-2023, Diary No. 5835-2023, Diary No. 5863-2023, Diary No.
5874-2023, Diary No. 5961-2023, Diary No. 6291-2023, Diary No.
6308-2023, Diary No. 6463-2023, Diary No. 7009-2023, Diary No.
7062-2023, Diary No. 7743-2023, Diary No. 8466-2023, Diary No.
8575-2023, Diary No. 9056-2023, Diary No. 9261-2023, Diary No.
10099-2023, Diary No. 10148-2023, Diary No. 10317-2023, Diary No.
10572-2023, Diary No. 11016-2023, Diary No. 11137-2023, Diary No.
11459-2023, Diary No. 12056-2023, Diary No. 12560-2023, Diary No.
13060-2023 (ITEM NOS.1701, 1707, 1709, 1712, 1716, 1721, 1730,
1735, 1736, 1788, 1826, 1837, 1846, 1863, 1864 1865, 1866,
1867,1871, 1890, 1895, 1897, 1898, 1901, 1939, 1946, 1952, 1958,
1967, 1973, 1991, 1996, 2003, 2014, 2018, 2015, 2033, 2038, 2043,
2065, 2079, 2081, 2094, 2105, 2130, 2137, 2163, 2164, 2165, 2166,
2182, 2189, 2192, 2225, 2258, 2298, 2304, 2317, 2354, 2371, 2401,
2421, 2437, 2451, 2456, 2464, 2477, 2484, 2486, 2514, 2519, 2528,
2542, 2550, 2564, 2601, 2603, 2609, 2619, 2623, 2633, 2639, 2642,
2647,, 2662, 2664, 2677, 2698, 2712, 2783, 2805, 2825, 2828, 2833,
2836, 2842, 2852, 2936, 2990, 3076, 3081, 3105, 3123, 3141, 3146,
3163, 3167, 3193, 3208, 3258, 3326, 3337, 3338, 3342, 3376, 3377,
3397, 3441, 3446, 3448 3461, 3473, 3501, 3520, 3526, 3529, 3530,

Diary No(s). 38757/2019

3533, 3558, 3562, 3571, 3607, 3611, 3660, 3722, 3734, 3765, 3785, 3865, 3867, 3875, 3902, 3927, 3943, 3966, 4004, 4048, 4084)

Learned counsel for the petitioner(s)/ applicant(s)/ appellant(s) submits that he/she does not want to proceed with the matter(s).

Hence, the same may be dismissed as withdrawn.

Ordered accordingly.

Pending application(s), if any, shall stand disposed of.

Diary No. 29569-2022 & Diary No. 29575-2022 (ITEM NOS.2235 & 2236)

Learned counsel for the petitioner(s) / appellant(s) submitted that the parties to the litigation have settled the matters amicably. Therefore, he may be permitted to withdraw the present petitions/matters.

Dismissed as withdrawn.

Diary No. 30682-2022 (ITEM NO.2301)

Learned counsel for the petitioner(s) submitted that the issue raised in the present matter has become infructuous.

Dismissed as infructuous.

Diary No. 33212-2022 (ITEM NO.2429)

Learned counsel for the petitioner(s) submitted that the present petition was filed at the stage when the FIR was registered. Now after the investigation, charge sheet has been filed, hence, he seeks permission to withdraw the petition with liberty to seek appropriate remedy against the charge sheet so filed.

Dismissed as withdrawn with the liberty as prayed for.

Diary No(s). 38757/2019

Diary No. 6189-2023 (ITEM NO.3552)

Learned counsel for the petitioner(s) submitted that after filing of the present petition in this Court, the client is not responding to enable him to remove the objection raised by the Registry.

In view of the above, the matter is dismissed for non-prosecution.

REST OF THE MATTERS

Six weeks' time is granted to cure the defects in the matter(s) failing which the matter(s) shall be deemed to be dismissed without any further reference to this Court.

(SNEHA DAS)
SR.PERSONAL ASSISTANT

(NIRMALA NEGI)
COURT MASTER (SH)

(VIDYA NEGI)
ASSISTANT REGISTRAR

Diary No(s). 38757/2019

Annexure – R5

IN THE SUPREME COURT OF INDIA

I.A. NO. OF 2022

IN

CIVIL APPEAL NO. OF 2022

IN THE MATTER OF

Dr. Bina Basnett

.....APPELLANT

VERSUS

State of Sikkim & ORS.

..... RESPONDENTS

AN APPLICATION FOR CONDONATION OF DELAY IN FILING THE**CIVIL APPEAL**

TO

THE HON'BLE CHIEF JUSTICE
AND HIS COMPANION JUSTICES OF
THE HON'BLE SUPREME COURT OF INDIA.THE HUMBLE APPLICATION ON
BEHALF OF THE APPELLANT
ABOVENAMED

MOST RESPECTFULLY SHOWETH:

1. The present statutory Civil Appeal under Section 22 of the National Green Tribunal Act, 2010 is filed against the order dated 10.05.2022 passed by the Hon'ble National Green Tribunal Eastern Zone, Kolkata in Original Application No. 38/2022/EZ (hereinafter referred to as

“Hon’ble NGT”), whereby the Hon’ble NGT had dismissed the Original Application of the Appellant.

2. That full facts and circumstances have been set out in the accompanying Civil Appeal, which may be treated as part and parcel of this petition and the same are not repeated herein for the sake of brevity.
3. That after the passing of the Impugned Order dated 10.05.2022, the Appellant herein approached the Counsel for filing of the present Civil Appeal and the drafting of the same started accordingly, however, due to some health exigencies in the family of the Counsel for the Appellant, the same could not be finalized on time.
4. That, as a result of the abovementioned reasons, there occurred a delay in filing of the Civil Appeal which was completely unintentional and beyond the control of the Appellant
5. That the present Application is being filed bonafide and in the interest of justice as the delay that has occurred is

unintentional and the same if not condoned would lead the Appellant to grave and irreparable injury.

PRAYER

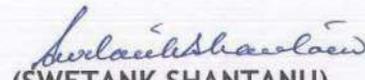
It is, therefore, most respectfully prayed that this Hon'ble Court may kindly be pleased to:

- (a) Condone the delay of⁶⁴... days in filing the Civil Appeal against the final Impugned judgment and order dated 10.05.2022 passed by the Hon'ble National Green Tribunal Eastern Zone, Kolkata in Original Application No. 38/2022/EZ.

AND/OR;

- (b) Pass any other order(s) or directions, as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

Drawn and Filed by


(SWETANK SHANTANU)
Advocate for the Appellant

DRAWN ON: 17.09.2022

FILED ON: 10.10.2022

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

I.A. NO. _____ OF 2023

IN

CIVIL APPEAL NO. _____ OF 2023

IN THE MATTER OF:

DR. BINA BASNETT

....PETITIONER

Vs.

STATE OF SIKKIM & ORS.

..... RESPONDENTS

**AN APPLICATION FOR CONDONATION OF DELAY
IN RE-FILING THE CIVIL APPEAL**

The Hon'ble Chief Justice of India
and His Companion Justices of This
Hon'ble Court.

The Humble Application of
the Petitioner Above named

MOST REPECTFULLY SHOWETH:

1. That the present Civil Appeal has been filed by the Petitioner against the final order and Judgement dated 10.05.2022 passed by the Hon'ble National Green Tribunal, Eastern Zone Bench, Kolkata in O.A. No. 38 of 2022.

2. That the facts stated in the Civil Appeal may be read as part and parcel of the present Application and the same is not being repeated herein for the sake of brevity.
3. That the present Special Leave Petition was filed on 10.10.2022, however some defects were raised by the registry which were being cured by the Petitioner, however, the same got delayed due to medical exigencies in the family of the Counsel for the Petitioner which was beyond the control of the Counsel for the Petitioner.
4. That, thereafter, unfortunately in the month of March, 2023, Aunty of the Counsel for the Petitioner was admitted to ICU in LNJP Hospital, Delhi, wherein she was admitted for almost a month and then unfortunately left for heavenly abode.
5. That, further, due to continued medical exigencies which crept up one after another, the present Civil Appeal could not be refiled and is being now refiled

after removing all the defects as raised by the registry.

6. That due to the abovementioned unforeseen events, the Counsel for the Petitioner could not get the refilling done within time and delay occurred which is completely unintentional
7. That the delay caused in re-filing the present petition is bonafide and for the reasons mentioned above and not at all intentional.
8. That it is respectfully submitted that the delay in re-filing the present petition be condoned or else the Petitioner would be put to grave and irreparable loss.
9. That the present Application is being made bonafide and in the interest of Justice.

PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court may kindly be pleased to:

- (a) Condone the delay of ____ days in re-filing the Civil Appeal against the final order and Judgement dated 10.05.2022 passed by the

Hon'ble National Green Tribunal, Eastern
Zone Bench, Kolkata in O.A. No. 38 of 2022.

And/or

- (b) Pass any other order(s) or directions, as this
Hon'ble Court may deem fit and proper under
the facts and circumstances of the case.

Drawn and Filed by


(SWETANK SHANTANU)
Advocate for the Petitioner

FILED ON: 21.08.2023

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. _____ OF 2023**

IN THE MATTER OF

Dr. Bina Basnett

.....Appellant

Versus

State of Sikkim and Ors.

...Respondents

AFFIDAVIT

I, Dr. Bina Basnett, D/o Mr. P. B. Basnett, aged about 37 years, R/o- Ranipool, East Sikkim, Pin-737135, Sikkim, presently at New Delhi do hereby solemnly affirm and stated as above:-

1. That I am the Appellant in this case and as such am fully acquainted with the facts and circumstances of the case and as such am fully competent to swear this affidavit.



2. That I say that I have read and understood the contents of the accompanying Application. I say the facts stated therein are true to the best of my knowledge.

4. I say that the averments of facts stated herein above are true to my knowledge, no part of its false and nothing material has been concealed therein.

B. Basnett

DEPONENT

VERIFICATION:

I, Dr. Bina Basnett, the deponent mentioned above do hereby most solemnly affirm and verify that what is stated in the above Affidavit is true to my knowledge and I believe the same to be true.

Anubhaver
Identified the Deponent who has signed in my presence

Verified at 12⁵ on this 11¹¹ day of 2023, 2023



B. Basnett

DEPONENT

CERTIFIED THAT THE DEPONENT
Dr. Bina Basnett
has signed at Delhi
on 12⁵ JUL 2023
and the contents of the affidavit are true & correct to his/her knowledge

Oath Commissioner
25 JUL 2023

Annexure – R6

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2023
(@ Diary No. 32544/2022)

BINA BASNETT

APPELLANT(S)

VERSUS

STATE OF SIKKIM & ORS.

RESPONDENT(S)

O R D E R

Delay condoned.

This appeal impugns the order dated 10.05.2022 passed by the National Green Tribunal (NGT), Eastern Zone Bench, Kolkata. Paragraph 5 of the impugned order states that the proceedings initiated before the NGT were premature, as the construction, subject matter of the proceedings, had not yet reached 5½ storeys. We do not agree with the said finding and reason to dismiss the petition, as the construction post the permissions had admittedly commenced. It is informed at the bar that the construction is now complete.

Without expressing any opinion on the merits of the case, we set aside the impugned order and restore O.A. no. 38/2022/EZ to its original position, to be decided afresh without being influenced by

Signature Not Verified
 Digitally signed by
 Deepak Gupta
 Date: 2024.09.26
 17:53:44
 Reason:

impugned order.

Learned counsel for the respondents have submitted that there has been a considerable delay in listing of the present appeal on

2

account of lapses on the part of the appellant - Bina Basnett. This is disputed by the appellant - Bina Basnett, who also submits that the plea is contradictory. We express no opinion in this regard. As an order of remand, hearing and decision is being passed, all pleas and contentions of the parties are left open.

The appeal is allowed and disposed of in the above terms. No costs. Parties will appear before the NGT on 18.10.2023, when a date of hearing will be fixed.

Pending application(s), if any, shall stand disposed of.

.....J.
(SANJIV KHANNA)

.....J.
(S.V.N. BHATTI)

NEW DELHI;
SEPTEMBER 25, 2023.

ITEM NO.61

COURT NO.3

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL Diary No. 32544/2022

(Arising out of impugned final judgment and order dated 10-05-2022 in OA No. 38/2022 passed by the National Green Tribunal, Eastern Zone Bench, Kolkata)

BINA BASNETT

Petitioner(s)

VERSUS

STATE OF SIKKIM & ORS.

Respondent(s)

(IA No.171217/2023-CONDONATION OF DELAY IN FILING and IA No.171216/2023-STAY APPLICATION and IA No.171219/2023-CONDONATION OF DELAY IN REFILEING / CURING THE DEFECTS)

Date : 25-09-2023 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE S.V.N. BHATTI

For Petitioner(s)

Mr. Sukumar Pattjoshi, Sr. Adv.
Mr. Prakash Kumar, Adv.
Mr. Pratap Shanker, Adv.
Mr. Rahul Ranjan Singh, Adv.
Mr. Ankit Kumar, Adv.
Mr. Manoj Bhardwaj, Adv.
Mr. Swetank Shantanu, AOR

For Respondent(s)

Mr. Basava Prabhu S. Patil, Sr. Adv./AG
Mr. Sameer Abhyankar, Adv./AOR
Ms. Nishi Sangtani, Adv.
Ms. Vani Vandana Chhetri, Adv.
Mr. Naman Jain, Adv.

Mr. Pinaki Misra, Sr. Adv.
Mr. Sanjay Upadhyay, Adv.
Ms. Mayuri Raghuvanshi, AOR
Ms. Mansi Bachani, Adv.
Ms. Sonali Sen Gupta, Adv.
Mr. Kazi Sangay Thupdan, Adv.
Mr. Soumitra Jaswal, Adv.
Mr. Vyom Raghuvanshi, Adv.

Mr. Balbir Singh, ASG

Mr. Shyam Gopal, Adv./AOR

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.

The appeal is allowed and disposed of in terms of the signed
order.

Pending application(s), if any, shall stand disposed of.

(DEEPAK GUGLANI)
AR-cum-PS

(R.S. NARAYANAN)
ASSISTANT REGISTRAR

(signed order is placed on the file)



GOVERNMENT OF SIKKIM
URBAN DEVELOPMENT DEPARTMENT
GANGTOK, SIKKIM

ANNEXURE R/7

Memo No: 215/Secy/UDD/2021

Dated: 27-05-2021

CABINET MEMORANDUM

Minister in Charge
Secretary in Charge

-
-

Mr. Arun Kumar Upreti
Ms. Sarala Rai, I.A.S.

Subject: Multi Level Car Parking cum Shopping Plaza at old West Point School-PPP Project under Gangtok Smart City Development Ltd.

1. The construction of Multilevel Car Parking cum Commercial Development at Old West Point School having its Project ID as SIK GAN 062 is a part of Smart City Proposal under Gangtok Smart City Development Limited.
2. The approval of the Board of Directors of the company has been obtained for implementation of the Project under Public Private Partnership (PPP Mode) on its 17th Board Meeting held on 23rd October 2020.
3. The 1st call for bids for development of a multi level car park cum commercial plaza, by demolishing the existing Taxi Stand as well as the old school buildings in the Old West Point School Complex area was invited on 9th January 2019. Unfortunately, the 1st call for bid was invited without verification of the status of land. Besides, owing to changed specifications and requirements the entire bidding process was cancelled. The changed criteria/concept of the project, envisages the construction of a structure with Green Building Concept. Moreover, on verification of the title deed of the land, it is found recorded in the name of Private Estate, and a separate file has been processed to acquire the same, in-principle approval of the Government has been obtained for its acquisition.
4. The second call for bids was invited on 07.10.2020. The approval of the Board of Directors of the Company has been obtained for the project, however, as the 'project aspects' requires further administrative considerations, formal approval of the State Government is also being solicited duly highlighting the salient features and aspects related to the project as indicated hereunder.
5. The project is being taken up on PPP mode with an estimated investment of Rs 294.98 crore. As per the requirements for PPP projects, the bid has been evaluated for the lowest viability gap funding (VGF) keeping all other parameters fixed. The financial modelling for the project was done before inviting the bids and the VGF of 37% of the project cost viz., Rs 109 crore approx. was considered reasonable.
6. The other fixed parameters are (a) Development period of 4 years, (b) Lease Rent to be paid by concessionaire @ Rs 1 per sqm per annum of the maximum carpet area, (c) Concession Fee to be paid by Concessionaire @ Rs 1 per accounting year, (d) Operation period of 26 years.

The other parameters have been fixed so as to ensure that bid evaluation is error free; if the bids are invited on multiple parameters, the evaluation and identification of the preferred bidder becomes cumbersome and generally leads to litigation with different parties having different justifications for selection of the preferred bidder.
7. Briefly, the salient features of the Project as per Request for Proposal (Bidding Document) is indicated as follows:-
 - a. As per the preliminary survey, the land area in the old West Point complex is 5707.80 square metre.
 - b. Proposal envisages construction of 11 storeyed structure. The structure will have four levels of car parking. Level 0 and 1 are ordinary parkings and the upper levels viz.,

level 2 and 3 will be electro-mechanically operated stack/puzzle parking, to accommodate 415 equivalent car spaces, approximately. The structure shall be 11 storeyed building subject to norms of the Government. The details are tabulated as below: -

SI No.	Particulars	Details
1.	Site Area at Old West Point School	5707.80 sqm
2.	Commercial Floor Coverage	50%
3.	Parking Floor coverage	< 75%
4.	Total Nos of Floors	11 storied
5.	Lower Parking Floors	4 Nos (Levels :0 to 3)
6.	Ground and above(Nos)	7 Nos (Levels :4 to 10)
7.	Commercial Carpet area (sqm)	13,680.00 sqm +/- 10%
8.	Parking levels	4 Levels (0,1,2 &3)

- c. The Concessionaire shall be entitled to construct/ develop such components which it deems appropriate from commercial viability point of view provided; however, such component shall not fall in the category of prohibitive item as per Authority or Govt. of Sikkim or Govt. of India, norms or applicable law. Broadly the following components are allowed: -
- Shopping Mall and Multiplex
 - Hotel, Food Courts/Restaurants/coffee shop
 - Commercial (Retail cum Office) area would include retail shopping, branded showrooms, anchor stores, and entertainment complex/zone and business spaces.
 - Banks, Coaching institutes
 - Gaming zone/children play home, Gymnasium or Health Centre,
 - Any other activity with the approval of the authority.
- d. Level 0 and 1 will be handed over to the authority during the operation period and rest of the floors will be with the concessionaire for 26 years of operation after which it is to be handed over to the authority in terms of the agreement. However, the period of operation may be extended by another 26 years subject to approval of the Government., by entering into a separate agreement, the process of which can only be taken up after finalizing the DPR and all aspects of the building known to both the concessionaire and the authority.
- e. The documents viz., Volume I- Instruction to Bidders, Volume II- Concession Agreement and Volume III- Project Information Memorandum is appended for perusal.
8. The timelines of the Bid process that has been completed is tabulated below:

SI No	Event Description	Date
1	Publication of 2 nd Call for Bids	07.10.2020
2	Submission of Queries by Bidders	12. 11.2020
3	Pre-Bid Meeting	12. 11.2020
4	Reply to Pre-Bid Queries	24.12.2020
5	Submission of Bid	11. 01.2021
6	Opening of Technical Bid	11. 01.2021
7	Opening of Financial Bid	22.01.2021
8	Letter of Award LOA to the Preferred Bidder*	15.02.2021
9	Signing of Concession Agreement *	27.02.2021
10	Submission of Performance Security, preparation of DPR and its approval and environmental management plan, employee deployment plan, construction / rehabilitation plan etc. Opening of Escrow Account, establishment of SPV specifically for the project, obtaining of permits etc.*	26.02.2022
11	Construction and Development period*	After approval
12	Operation period*	26 years

* after accord of Government approval.

9. An Independent Engineer has to be appointed for overseeing the works during the development period plus first 4 (four) years of operation period, as well as one year before the expiry of the concession period. In the event of termination, such independent Engineer will be appointed to perform such roles as required to complete the termination proceedings. The salary of the Independent Engineer will have to be borne equally by the authority and the concessionaire.
10. Within the indicated timelines, six applicants had submitted their Expression of Interest, for the project and the bid documents were sold to all six applicants:
1. Pave Infrastructure Pvt. Ltd., Salugara, Siliguri
 2. Tirupati Plaza Pvt Ltd, Sevoke Rd, Siliguri
 3. Siotia Infratech, HB Road, Guwahati
 4. SIBIN Group, Middle Sichey, Gangtok
 5. SM Infrastructure Pvt Ltd, GS Road, Guwahati
 6. Mungipa Trade Links Pvt Ltd, Singtam.

However only the following three submitted their bids for the project quoting the VGF as follows:

1. Pave Infrastructure Pvt. Ltd., Salugara, Siliguri	Rs 106.19 cr
2. Tirupati Plaza Pvt Ltd, Sevoke Rd, Siliguri	Rs 103.98 cr
3. Mungipa Trade Links Pvt. Ltd, Singtam.	Rs 107.67 cr

11. The lowest VGF has been quoted by Tirupati Plaza Private Limited and is the preferred bidder (L1). Accordingly based on the pre-bid estimated cost of Rs 294.98 cr the lowest bid is of 35.25% (Rs 103.98 cr) which is within the estimated VGF. The difference amount of Rs 191 cr has to be invested by the concessionaire. The project development period is of 4 years. The investor (concessionaire) will operate and maintain the asset for 26 years operation period. The VGF will be released as per the terms of the agreement into an Escrow Account created for the purpose. The Bank fees for the Escrow account has to be shared equally by the authority and the Concessionaire. During the operation period, the concessionaire will have complete freedom for O&M including leasing and rental and will remit the prescribed fees to the authority.

12. The VGF has to be released as per the terms of the agreement laid in schedule M: Project Grant to the concessionaire as follows: -

Sl No	Project Milestone	% of the Project Grant	Project Grant (Crore)	State share (50%) crore	Central Share (50%) in crore
1	Signing of Concession Agreement	Rs 294.98 X 35.25% X 15%	15.60	7.80	7.80
2	Project Mile stone-I	Rs 294.98 X 35.25% X 15%	15.60	7.80	7.80
3	Project Mile stone-II	Rs 294.98 X 35.25% X 15%	15.60	7.80	7.80
4	Project Milestone-III	Rs 294.98 X 35.25% X 15%	15.60	7.80	7.80
5	Car Parking Facility Completion Date	Rs 294.98 X 35.25% X 20%	20.80	10.40	10.40
6	Project Milestone-IV	Rs 294.98 X 35.25% X 05%	5.20	2.60	2.60
7	Project Milestone-V	Rs 294.98 X 35.25% X 05%	5.20	2.60	2.60
8	Project Milestone-VI	Rs 294.98 X 35.25% X 05%	5.20	2.60	2.60
9	Commercial Development Completion Date	Rs 294.98 X 35.25% X 05%	5.20	2.60	2.60
		Total	103.98	51.99	51.99

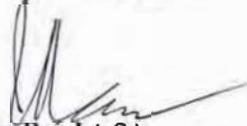
13. The above matching fund to the ratio of 50:50: is in line with the revised administrative approval approved by the Cabinet vide Memo No: 002/SPV/GSCDL/2018-(II)/203/SECY Dated 15/02/2021. The funds as required as highlighted above for the construction of the project under Smart City Guidelines has to be made available during the Development period which is targeted to be completed within 4 years. However, during the current financial year Rs 31.20 crore will be required to meet the expenditure against Sl (1) and (2) for this specific project during 2021-22.

14. The Concept drawing submitted by the preferred bidder proposes the construction of 14 number of floors. The bottom 4 floors are to be car parking (MLCP); Level 0 and Level 1 as ordinary parking and Level 2 and 3 as electro mechanically operated stacked / puzzle parking. Tentatively the parking is proposed for 415 car parking spaces; the actual capacity, however, will be known after finalization of the DPR and its approval by the authority. Rest of the floors will be for commercial development with a maximum carpet area of 13,680 sqm with permissible deviation of plus or minus 10%.

15. For the city, this will be the first ever multi level car park with commercial development (shopping mall + hotel) on the upper floors having modern aesthetics and green concepts. It will change the skyline of the city and will be point of tourist interest as well as a convenient place for the city dwellers for shopping and leisure. The facility will have an atmosphere of modern comfort and convenience, cleanliness and hygiene with top quality ambience, whilst enjoying the panorama of the majestic mountains and underlying valleys in the backdrop of the setting sun. It is expected that the living quality index of the city will improve due to this asset. As per the concept, the elevation of the structure is of a reducing building profile, instead of a solid building mass as is generally seen in other building projects; as the building rises in elevation its commercial area will reduce and will have open plazas and green spaces for the public to enjoy. This further justifies the need to add extra floors to compensate the revenue loss on account of the open spaces being kept at the lower levels. Moreover, the structure will have its own sewage treatment plant with partial solar lighting for green energy.
16. As per the bid requirements, Level 4 to 10 shall be commercial development. To achieve open public plazas and green plantation areas, the building floor plate shall be reduced gradually so that every upper level will have reduced floor area as a result. Accordingly, in the concept plan submitted by the preferred bidder, the bidder has proposed for additional 3 floors (Level 11,12 and 13) on partial horizontal area in order to achieve the required carpet area. This is within the permissible carpet area as mentioned in the tender document. This decreasing or reducing building profile or building mass is also conducive for setting up green spaces on such open areas as well as improved aesthetics and green performance of the building. The proposed commercial development submitted by the preferred bidder comprises of 10 levels; level 4 to 9 shall be shopping plaza / mall and level 10 to 13 shall be hotel.
17. Also, the bidder has conceived for a plaza of about 600 – 650 sqmtr. which will improve the ambience and quality of exposure / experience in the facility. Hence, keeping in view the concept presented by the selected bidder, the extra floors could be considered, subject to the condition that the maximum carpet area of 13680 sqmtr., with a deviation of plus or minus 10% is not exceeded.
18. The actual details with regard to the structure will be availed only after conducting thorough geo-technical investigation, engineering / structural design and architectural drawings by the concessionaire as per the timeline given above- which is the DPR stage. Though the preferred bidder has submitted a concept drawing for 14 levels, in view of the RFP, we may at present consider for 11 floors only. Accordingly, approval of the Government is solicited for relaxation of norms to build the structure having 11 floors. However, keeping in view the reduction in the building mass as the floor level rises, we may consider additional 3 floors once clarity is obtained after completion of geo-technical investigation and design reports, as the DPR will have to be approved by the authority later.
19. Status of land at Old West Point:-The construction of Multilevel car parking cum Commercial Development at Old West Point School is to be constructed on plot no.715 & 716 which is found recorded in the name of Private Estate as per the verification report received from the Revenue Authorities vide memo no.71/765/G/DD/DC(E) dated 22/02/2021. However, on the request of the Department, the Estate Manager, Private Estate & Authorized Attorney of Chogyal Wangchuk Namgyal has agreed to transfer the land measuring 61,398.00 sft to the Urban Development Department as per the Circle rate of Gangtok Block vide application Dated 15th March 2021 addressed to the Hon'ble Minister, UDD . The same has been approved by the Government.
20. The Smart City Mission is funded as a 50:50 centrally sponsored scheme and the Government of India has already released Rs 243 crores. Therefore, in terms of the mission guidelines, equal matching share has to be provided by the State Government. Till date only Rs 5 crore State Share has been released, hence to match the GOI release, an amount of Rs 238 crore need to be released for implementing the mission activities.

21. In view of the timely requirement of funds for the project, requirement of land free from encumbrances and high value of the project as well as the need for relaxation of norms for building the structure having 11 floors, proposal is being submitted for consideration by Council of Ministers for the following: -

- i) approval for demolition of existing Government structures in the Project Area and removal of debris as a separate contract;
- ii) approval for mortgage of land by the Concessionaire to fund the project, subject to entering into a separate agreement with the administrative Department for the purpose;
- iii) approval for accepting of the Bid of the L1 Bidder M/S Tirupati Plaza Pvt. Ltd with a VGF of Rs 103.98 crores in terms of Volume- I, II and III of the Bidding documents. The letter of award to the lowest bidder as per the event description was scheduled for 15/02/2021 as per the Request for Proposal;
- iv) approval to allow the concessionaire to undertake operation and maintenance including leasing and rental during the operation period.
- v) approval for appointment of Independent Engineer as described herein above and for sharing the salary of such independent engineer equally by the authority and the concessionaire.
- vi) approval for relaxation of the norms of the proposed building having 11 floors subject to confirmation of the geotechnical investigation and report.
- vii) approval for extending the operation period by another 26 years subject to signing of a separate agreement, after finalizing the DPR and all aspects of the building being known to both the concessionaire and the authority and
- viii) approval for provisioning the State Share of Rs 238 crore in the Budget 2021-22 equivalent to the amount already released by the Central Government.


(Sarala Rai, I.A.S.),

Secretary to the Government of Sikkim.

File no: J (536) / GOS/UDD/MISC/2021

ANNEXURE R/8

**EXTRACT OF THE CABINET MEETING HELD ON 11th JUNE, 2021, AT 10 A.M IN
THE CABINET HALL OF TASHILING SECRETARIAT, GANGTOK, SIKKIM**

URBAN DEVELOPMENT DEPARTMENT

283.5 The proposal seeks of approval to take up various activities for construction of Multi Level Car Parking cum Shopping Plaza at old West Point School under Gangtok Smart City Development Limited, as detailed in the Cabinet Memo.No.215/Secy/UDD/2021 Dated 27.06.2021.

CABINET DECISION: The Cabinet approved the proposals contained in para 21 (i) to 21 (vi) only.

sd/-
(S.C GUPTA)IAS
Cabinet Secretary

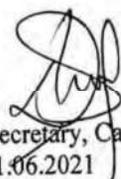
Cabinet Extract No. CON/CAB/283/2021/6655

Dated: 11.06.2021

To,

~~The Secretary
Urban Development Department
Government of Sikkim, Gangtok~~

Copy forwarded for onward action, please.


Joint Secretary, Cabinet
11.06.2021




14.6.21

**ANNEXURE R/9**

**GANGTOK MUNICIPAL CORPORATION
DEORALI, EAST SIKKIM**

Email:- gmc.sikkim@gmail.com

Website:-www.gmc.sikkim.in

Memo No: 138 /GMC/2021

Dated: 30.06.2021

TO WHOM IT MAY CONCERN

The Gangtok Municipal Corporation has 'no objection' on shifting of water supply pipes and Sewerage connection from Old West Point School (South West Taxi Stand parking area) for demolition of said structure for purpose of constructing new Multi-Level Car Parking cum Commercial Development by Mesaso Infrastructure Private Limited.




Municipal Commissioner
Gangtok Municipal Corporation

**Municipal Commissioner
Gangtok Municipal Corporation**



ANNEXURE-R/1 (Col)

Gangtok Smart City Development Limited,
Level 5 Kissan Bazar, Gangtok,
Sikkim - 737101
E Mail - gangtoksmartcity@gmail.com
CIN - U9309090WB2017SGC223807

Memo No: 608/GSCDL/2021

Dated: 04/10/2021

To

The Additional Chief Town Planner,
Gangtok Municipal Corporation,
Gangtok, East Sikkim.

Subject: Submission of one set of architectural & structural drawing pertaining to the work 'Multilevel-Level Car Parking cum Commerical Development at old West Point School near MG Marg, Gangtok, East Sikkim'.

Sir,

I am forwarding herewith one set of architectural & structural drawing pertaining to the work 'Multilevel-Level Car Parking cum Commercial Development at old West Point School near MG Marg, Gangtok, East Sikkim' for accord of approval from Gangtok Municipal Corporation.

Thanking you

Yours faithfully

Enclosure: as above

Chief Executive Officer
Gangtok Smart City Dev. Ltd.

Chief Executive Officer
Gangtok Smart City Development, Ltd,
Kishan Bazar, Gangtok-737102
Sikkim.

ATP-I

for need but pls.

**ANNEXURE R/11**

GANGTOK MUNICIPAL CORPORATION

DEORALI, SIKKIM

Issue No. 3839/Misc./TPC/Gme/2021/936

Date 8/10/2021

To,

The Chief Executive Officer,
Gangtok Smart City Dev. Ltd.,
Gangtok, Sikkim

Sub: for Documents

Sir,

As directed by the higher authority and as per the Ref. Memo No: 608/GSCDL/2021 dated: 04/10/2021 from Gangtok Smart City Dev. Ltd. regarding approval of drawings for BPP purpose the Gangtok Municipal Corporation is in receipt of Architectural & Structural drawings for the project "**Multi-Level Car Parking cum Commercial Development**" at old West Point School, Gangtok, East Sikkim.

However for the purpose of BPP process following document may be kindly furnished please:

- i) Parcha / Land Documents / Land Details
- ii) Sale Deed/Gift Deed/Lease Deed / Lease Agreement
- iii) Stability Report / Site Stability Report vetted by Mines & Geology Department, GOS
- iv) Cadastral Map
- v) Site Plan / Master Plan by Empanelled Architect
- vi) Details of Consultants / Project Management Team
- vii) Company Registration & Signatory Authority
- viii) Structural Details & Analysis
- ix) Construction Management Plan
- x) Green Building Implementation (if any) & by which group whether GRIHA / IGBC

Thanking you

Yours faithfully

Assistant Town Planner II
Gangtok Municipal Corporation

Assistant Town Planner - II
Gangtok Municipal Corporation

**ANNEXURE R/12****GANGTOK MUNICIPAL CORPORATION**

DEORALI, SIKKIM.

Issue No. 381(A)/GMC/2021

Date..12/10/2021

To,

Chief Executive Officer,
Gangtok Smart City Dev. Ltd,
Gangtok, Sikkim.

Sub: Submission of architectural & structural drawing pertaining to the work " Multi-Level Car Parking cum Commercial Development at old West Point School near MG Marg".

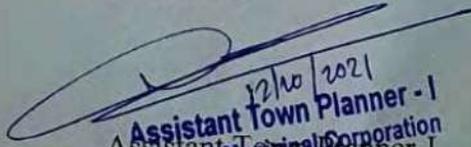
Sir,

The undersigned has been directed to send this letter pertaining to the above mentioned project regarding any approval or documents from the Government of Sikkim for relaxation of floors above five and half storey and horizontal coverage as per Sikkim Building Construction Regulation 1991.

The documents mentioned above may be kindly be furnished which would enable GMC to further process the above mentioned project for approval.

Further, it is to inform you that the approval of B.P.P will be accorded for only 11 floors against the 14 floors as submitted in accordance to the cabinet approval.

Thanking you,


12/10/2021
Assistant Town Planner - I
Gangtok Municipal Corporation

Gangtok Municipal Corporation.

GANGTOK SMART CITY

LEVEL 5, KISAN BAZAAR, LAL MARKET ROAD,

GANGTOK- 737101, SIKKIM, INDIA

CIN-U93090WB2017SGC223807

DEVELOPMENT LIMITED

Memo No: - 651/GSCDL/2021-22

Dated: - 12/10/2021

To,
The Assistant Town Planner-II,
Gangtok Municipal Corporation,
Gangtok, East Sikkim.

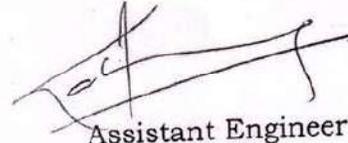
Ref letter no: - 3839/Misc/TPC/GMC/2021/936 Dated: - 08/10/2021

Sub: - Forwarding of documents

Sir,
With reference to the afore-mentioned letter, the undersigned is hereby
forwarding the documents as requested by your office.

Thanking you

Yours sincerely



Assistant Engineer
Gangtok Smart City Dev. Ltd.

Enclosed: as above

Assistant Engineer
Gangtok Smart City Dev. Ltd.
Gangtok, East Sikkim

**ANNEXURE R/14****DEPARTMENT OF MINES & GEOLOGY
GOVERNMENT OF SIKKIM**

Ref.No:F.1/62 (3)DM&G/21-22/478
Challan No:33300/SI. No:138545

Date: 29.12.21

Site Stability Report

Reference: - Applicant's Letter.

Dated: 29.12.2021

1. (i) **Name of Applicant-** M/S Mesaso Infrastructure Pvt. Ltd. (Authorized vide Memo no. 197/GSCDL/2021-22 dated 30.06.2021).

(ii) **Name of Land owner-** Secretary, UD & HD, Government of Sikkim.

2. **Location of Site-** Old West point school Complex, Gangtok, East Sikkim

3. **Location (with reference to prominent Structure within area and physical features with appropriate distance & direction)-** 10 meters SW of the Police Headquarter at Gangtok, East Sikkim land bearing plot no.683/P,715,716 under Gangtok Revenue Block, East Sikkim.

4. **Bounded by-** East: Road Leading to Primula lodge.

West: Footpath

North: Footpath

South: Footpath

5. Physical features

a) Slope- Gentle.

b) Drainage system – No erosion potential Jhora present nearby plot.

c) Status of structure in the vicinity – No adverse situation presents at the time of inspection.

6. Geological setup

a) Type & condition of Lithology – The area comprises of medium grade metamorphic rock sequence represented in the area by mica schist with and without quartz veins overlain by medium thick to thin soil cover.

b) Fractures / Faults / Weathering- Surficial weathering.

c) Overburden – Medium thick to thin soil cover.

d) Dip of bed rock – Favourably oriented.

e) Ground water activities – Low surface/sub-surface water regime.

f) Nature of contact zone of rock & overburden materials – Undulating surface with high frictional resistance is expected.

g) Other geo-features – No any other adverse geological features were observed at the time of inspection.

7. **Conclusion** – Falls within Zone one (1) of areal Stability Zonation Mapping System adopted by department of Mines & Geology.

8. **Recommendation** – The foundation of the structures should be footed at considerable depth with uniform condition, also consult a competent structural engineer for appropriate foundation design of the structures including earthquake resilience.

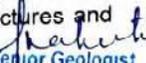
Further,

1. The proposed area falls under zone one (1) as per the parameters notified by the department of Mines and Geology vide Gazette no.86 dated 06th April 2021. However as Sikkim lies over young fold mountains, seismic zone IV and with fragile geological condition micro seismic studies in the area and load impact assessment of the surrounding areas, to be carried out prior to construction of multi-storied structures and provide suitable mitigation measures, if required, to avoid future complications.


Joint Director (Geology)
Mines & Geology Department,
Government of Sikkim,
Gangtok



/TRUE COPY-


Senior Geologist
Dept. of Mines & Geology
Govt of Sikkim
Gangtok



ANNEXURE R/15

GANGTOK MUNICIPAL CORPORATION

DEORALI, SIKKIM

Issue No. 3839/MSC/TPC/Gmet/2021/979

Date 81/12/2021

FORM - III

(See regulation 09 of the Sikkim Building Construction Regulation, 1991)

Form of Sanction

To,

(Party -1)

The C.E.O.,

Gangtok Smart City Dev. Ltd.,

Gangtok, Sikkim

(Party - 2)

M/s MESASO Infrastructure Pvt. Ltd.

3rd mile, Siliguri,

West Bengal - 734003

CONSTRUCTION ORDER

(VALIDITY OF THIS ORDER IS FOR THREE YEARS)

With reference to your application dated 12/10/2021, approval has been granted (as per Cabinet Approval accorded by the cabinet vide Cabinet Extract no: CON/CAB/283/2021/6655 dated: 11.06.2021) for construction of proposed eleven storied GOLD RATED Green Building measuring 310071.87 sq.ft. to come up at old West Point parking area, Gangtok revenue block. Arithang Ward No. 09

The proposed structure is approved for registered landed property having Private Site Measuring: 60984sq.ft. (1.40 acre) vide Parcha/Sale Deed bearing Khatiyon No. 686(P), 715 & 716.

Project Mode : PPP under Gangtok Smart City Dev. Ltd.

Key Consultant's for the Project:

	EXPERTISE	Name of expert
1	Independent Engineer	Mr. Eshwar Shrestha
2	Architecture, Landscape & Interior Design	Mr. Vikram Rathod (SALIENT Consultants)
3	Structural Design	Mr. Sanjiv Parekh (SPA Consultants)
4	MEPF	Pankaj Dharkar Associates, Ahmedabad
5	Green Building Consultant	Pankaj Dharkar Associates, Ahmedabad
6	Hospitality Consultant	ENVEE Engineering Pvt. Ltd. New Delhi



This construction order is approved on the following conditions:-

1. Prior permission for commencement of the building should be sought for on **Form V** obtainable from Gangtok Municipal Corporation or GSCDL.
2. In case, the ownership is found to be defective at any stage of time the approval accorded and this order shall stand automatically revoked and the

structure/work building thus constructed shall be considered as without proper approval and shall be dealt accordingly.

3. The construction of the building should be completed no later than three years from the date of issue of construction order. Failure to do so the B.P. Plan automatically shall stand cancelled and the B.P. Plan should be submitted for renewal.
4. No new building or part thereof shall be occupied or allowed to be occupied or used or permitted to be used by any person until permission has granted in that behalf.
5. The construction should be as per approved BPP and no deviation is permissible without the prior permission of the Government.
6. The construction should be as per the order and supervision of Gangtok Municipal Corporation Town Planner/Engineer.
7. The Engineer/Town planner of Gangtok Municipal Corporation must be informed before the foundation is laid. Only after the foundation is passed by Divisional Engineer/Town planner, the construction shall be allowed to continue.
8. Strict quality control to be maintained in the process of construction.
9. There should be enough facilities for good sanitation and drainage system.
10. The door or window panels shall be fixed in such a way that they shall not, when open project on any street.
11. The building shall not be constructed within 10 ft. of the live electric wire running on any public street.
12. The land vacated in consequence of the enforcement of the set back limit shall form part of the public street.
13. The excavated earth obtained from site development & foundation, shall not be dumped on public street, road, gully and jhoras. Moreover any building materials found lying on the road setback or over drains shall be seized and auctioned without ant notice whatsoever, and action shall be taken as per the bye-laws against the defaulters.
14. **No construction involving earth excavation works shall be allowed with effect from 1st of June 2022 to 30th of September 2022.** Anyone found carrying out construction in contravention of the above shall be penalized as per the relevant clause of the Sikkim Allotment and House Sites and Construction of Building (Regulation and Control) Act, 1985 as amended in 2000, and the Sikkim Building Construction Regulation, 1991 as amended in 2000. Such person shall also be solely responsible for the loss of life and property, as a result of such unauthorized excavation/construction.

Two copies of the approved B.P. Plans are returned herewith for your record.



[Handwritten Signature]
 Town Planner
 Gangtok Municipal Corporation
 Town Planner

Gangtok Municipal Corporation.

Note: Contact: Mr. Naresh Pradhan, Assistant Town Planner - I, G.M.C, Mob No: 94344 47827



ANNEXURE R/16

GANGTOK MUNICIPAL CORPORATION
DEORALI, SIKKIM

FORM - V

(See regulation 10 of the Sikkim Building Construction Regulation, 1990)

To,

Date: 10/01/2022

The Municipal Commissioner,
Gangtok Municipal Corporation,
Deorali, Sikkim.

Subject: Notice of commencement of the Construction / reconstruction / alteration / repair of building

Dear Sir/Madam,

I/We, hereby certify that the construction / reconstruction / alteration / repair in
Khasara No. 683/3114, 715, 716 Khatiyan No. 1440 at
Old West Point School Area, Gangtok will be commenced on _____ as per your
approval vide construction order no. 3889/MISC/TPC/GMC/2021/999 dated 31.12.2022
in accordance with the Blue Print Plan approved.

Yours faithfully,

Signature of Owner:- _____ For, **Mesaso Infrastructure Private Limited**Name (in Block letter):- SHUBHAM MALUAdd:- Old West Point School Complex,Near M.G. Marg, Gangtok, SikkimPhone no:- 6380944250

Shubham
Authorized Signatory
10.01.2022

-TRUE COPY-

-//TRUE COPY//-

Dated - 12/01/2022

The undersigned visited the site of proposed 04 level parking + 10 level commercial development @ Old West Point School, Geytola Sikkim along with the Kumar Manish, VP - (Project), Asit Mukhopadhyay (Site Engineer), Sh. Subham Mahu (Engineer) of Mesaso Infra Infrastructure Private Limited dated 12/01/2022 for demarcation.

Further this to certify that the sit-back has been maintained as the per the approved Blue print plan in G.M.C.:

Further, 04 level parking + 10 level plan has to be demarcated. Later and the office of T.P Cell of G.M.C may be informed.

Meso Infrastructure Private Limited
 Infrastructure Private Limited
 Acknowledged by:
 Authorised Signatory
 Authorised Signatory

[Signature]

Sum.

[Signature]

[Signature]
 12/01/2022
 Assistant Town Planner - I
 Gangtok Municipal Corporation

ANNEXURE R/18**Note Sheet**Page No. 07MLC

Ref. notes of Town Planner at pre page, there are two issues at hand that needs consideration: - Additional three floors and Front Plaza.

1) Additional Floors:

It has been observed that from the 'stepped terrace' approach of the design the city will benefit largely in terms of the build mass which is receding at every level thereby allowing for more sunlight, visual appreciation of the surroundings and most importantly adding to open terraces in the building at many level which will be accessible for all public use as an open space.

However, this 'stepped terrace' approach along with 20ft clear access road all around the site, which is much more than what the Sikkim Building Construction Regulations or SBCR states, has created a hurdle for the Concessioner as his built up area has been horizontally limited. Therefore, to make the project feasible and also ensure the 'stepped terrace' concept, an application requesting extra 3 floors on the western corner of the building has been requested by the Concessioner. This will not be applicable for the entire built-up but is proposed to be limited to only one corner of the site. (the design and details area enclosed for reference).

2) Plaza connecting the site to existing pedestrian footpath at highway:

It was further observed that the site boundary was actually away from the main road thereby making the public open spaces disconnected and alienated from the existing pedestrian network. This would be of a lesser benefit to the citizens as a whole therefore it was suggested to the Concessioner to explore connecting the building to the existing pedestrian network along the highway. In view of this the Concessioner has prepared a detail plan of the 'Plaza' for feasibility of the proposal.

This plaza is planned as a open yard connecting the MLCP cum Mall (WestPoint Mall) and the existing pedestrian footpath along the highway so that citizens can have a direct access and serve as a arrival yard to connect the city with this infrastructure. This yard is proposed to be built as a Pre Engineered Structure (PES) to be made in steel for ease and speed of construction so that minimum inconvenience is made to the users of church road at any given point of time. Further, this Plaza is planned as a 674sqM single floor structure to connect at the level of the road thereby allowing a height of 18ft clear as an underpass to Church road.

OBSERVATION:

For Additional floor request: upon technical scrutiny it is found that the structure is already designed and foundation design have all been vetted by Indian Institute of Technology. (Certificate enclosed at 'X').

The Structure has been actually designed as a 14 storey building by Sh. S. J. Parekh (SPA Consultants) who is one of the foremost structural designers in the country and has been vetted by Indian Institute of Technology, Guwahati (Department of Civil Engineering) a premier institute of the country for design vetting etc. Detailed geological investigations conducted by Mines & Geology Deptt have been adapted by the structural designer to achieve the design of 14 floors.

RECOMENDATION: In view of the above, it is possible to consider three additional floors only and can be covered by Order Amended vide order no. GOS/UD&HD/6(294) 2001 dated 16/10/2001 in Sikkim Building Construction Regulation 1991 the Regulation No. 39 states "Power to relax". This clause has not been invoked for this project at any point of time till now and the earlier stated approved floor height clearly states construction of a 11story building with Parking of 4 floors as per the RFP floated by GSCDL.

Note SheetPage No. 08**OBSERVATION:**

For Plaza at Road Ivj: The plaza is the best part of the project in many ways. Firstly, it will not be above the road level thereby not being visible virtually. It will encourage universal accessibility to public spaces and be disable friendly open space which the city needs and should facilitate.

An area of 674sqM of open yard will be added to the pedestrian network which will be for the use of the citizens. The plaza will also add to the quality of street life as one can have small temporary installations and kiosks during special days and events for the enjoyment of the citizens.

Now to construct this plaza of 674sqM, we must refer to the notes of TP at NSP-05 wherein the illustration mentions that out of the total area of the plaza, the proposed plaza spreads over three entities namely:

- (A) Within site area: 200sqM
- (B) Over Church Road: 357sqM
- (C) In Police Service Yard: 117sqM

While (A) is well within the custody of the Concessioner, the area under (B) and (C) are under the State govt. with UDD and Sikkim Police as the custodian respectively.

RECOMENDATION: While creation of this open space has many benefits and use for the city, it is also felt prudent that a project of this magnitude should have a large arrival area which can also double up as a disaster mitigation open yard. Also on any given day the yard will be a enjoyable destination for morning joggers, pedestrians and useful for all walks of life.

This plaza should be considered as a complete open space only and no permanent structure of any kind should be allowed on this. Further the area of 117sqM falling in the custody of Police Dept should be re-allotted to Police Dept. and the same can be well accommodated under the yard along Church Road and not in any way over the Plaza to retain and protect the pedestrian priority.

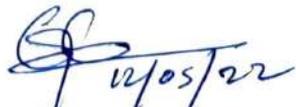
As the portion (B) falls under urban roads, Urban Development Deptt. can decide on the method of its use and utility post plaza creation. Likewise, Police Department will need to be kept in loop for utilising part of their service yard as proposed in (C).

Hence, file is forwarded to the competent authority to seek cabinet approval for: -

1) Allowing three additional floors under Amended vide order no. GOS/UD&HD/6(294) 2001 dated 16/10/2001 in Sikkim Building Construction Regulation 1991 the Regulation No. 39 states "Power to relax" and

2) Permission to construct the part of plaza proposed to come up Over Church Road: 357sqM & Police service Yard: 117sqM. (details and conditions can be worked out post approval) to be used exclusively as an open space for public and pedestrian use only.

Secretary
UD Deptt.



Addl. Chief Town Planner
Gangtok Municipal Corporation.

Forwarded file -
Pangye
12/5

ANNEXURE R/19

Ref. No. MIPL/SITE/29/2022-23

Date: 10th October, 2022

To,
**The Town Planner,
Gangtok Municipal Corporation
Deorali, Gangtok - 737102**

Sub.: In reference to the approval of Form of Sanction (Form-III) issue no.3839/Misc/TPL/GMC/2021/979 dated 31/12/2021 regarding Construction Order for WEST POINT[®]- Integrated Commercial cum MLCP Complex at Old West Point School, near M. G. Marg, Gangtok, Sikkim by MESASO Infrastructure Pvt. Ltd.

Sir,

This is to inform you that we are submitting the additional 3 Floors drawing over and above 11 floors already approved as per the above mentioned construction order and also plaza drawing for the approval

For **Mesaso Infrastructure Pvt. Ltd.**
Kumar Manish
Vice President Project

Received
J. J. J.
Town Planner
Gangtok Municipal Corporation

MESASO Infrastructure Private Limited | Reg. Off. : 3rd Floor, Vega Circle Mall, 3rd Mile, Sevoke Road, Siliguri, West Bengal - 734001 | info@mesaso.in | + 91 9907311645
Project Site : Old West Point School Area, Near M.G. Marg, Gangtok, East Sikkim 737101
CIN: U45309WB2021PTC243031 | PAN: AAOCM2843E | GSTIN: 11AAOCM2843E1ZQ
IGBC Membership No. : IGBCBD210233 | IGBC Project Reg. No. : IGBCNBT210211

ANNEXURE R/20



GANGTOK MUNICIPAL CORPORATION

DEORALI, SIKKIM

Issue No. 3898/M.S.C./Hq./2021/1322

Date 11/11/2022

FORM – III

(See regulation 09 of the Sikkim Building Construction Regulation, 1991)

Form of Sanction

To,

(Party -1)

The C.E.O.,

Gangtok Smart City Dev. Ltd.,

Gangtok, Sikkim

(Party – 2)

M/s MESASO Infrastructure Pvt. Ltd.

3rd mile, Siliguri,

West Bengal - 734003

CONSTRUCTION ORDER

(VALIDITY OF THIS ORDER IS FOR THREE YEARS)

With reference to your application dated 10/10/2022, approval has been granted [as per Cabinet Approval held on 03/08/2022 vide 307.97 the proposal sought (i) additional 3 floors over partial horizontal area of the building duly relaxing the Sikkim Building Construction (Amendment) Regulation 2001 within the approved project cost, and (ii) construction of an open air plaza over the Church Road and portion of land under the utilisation by Sikkim Police Hq.] for construction of proposed fourteen storied GOLD RATED Green Building measuring 35,385.69 sq.m. to come up at old West Point parking area, Gangtok revenue block. Arithang Ward No. 09

The proposed structure is approved for registered landed property having Private Site Measuring: 60984sq.ft. (1.40 acre) vide Parcha/Sale Deed bearing Khatiyani No. 686(P), 715 & 716.

Project Mode : PPP under Gangtok Smart City Dev. Ltd.

Key Consultant's for the Project:

	EXPERTISE	Name of expert
1	Independent Engineer	Mr. Eshwar Shrestha
2	Architecture, Landscape & Interior Design	Mr. Vivek Singh Rathore (SALIENT Consultants)
3	Structural Design	Mr. Sanjiv Parekh (SPA Consultants)
4	MEPF	Pankaj Dharkar Associates, Ahmedabad
5	Green Building Consultant	Pankaj Dharkar Associates, Ahmedabad
6	Hospitality Consultant	ENVEE Engineering Pvt. Ltd. New Delhi

This construction order is approved on the following conditions:-

1. In case, the ownership is found to be defective at any stage of time the approval accorded and this order shall stand automatically revoked and the structure/work building thus constructed shall be considered as without proper approval and shall be dealt accordingly.
2. The construction of the building should be completed no later than three years from the date of issue of construction order. Failure to do so the B.P. Plan automatically shall stand cancelled and the B.P. Plan should be submitted for renewal.
3. No new building or part thereof shall be occupied or allowed to be occupied or used or permitted to be used by any person until permission has granted in that behalf.
4. The construction should be as per approved BPP and no deviation is permissible without the prior permission of the Government.
5. The construction should be as per the order and supervision of Gangtok Municipal Corporation Town Planner/Engineer.
6. The Engineer/Town planner of Gangtok Municipal Corporation must be informed before the foundation is laid. Only after the foundation is passed by Divisional Engineer/Town planner, the construction shall be allowed to continue.
7. Strict quality control to be maintained in the process of construction.
8. There should be enough facilities for good sanitation and drainage system.
9. The door or window panels shall be fixed in such a way that they shall not, when open project on any street.
10. The building shall not be constructed within 10 ft. of the live electric wire running on any public street.
11. The land vacated in consequence of the enforcement of the set back limit shall form part of the public street.
12. The excavated earth obtained from site development & foundation, shall not be dumped on public street, road, gully and jhoras. Moreover any building materials found lying on the road setback or over drains shall be seized and auctioned without any notice whatsoever, and action shall be taken as per the bye-laws against the defaulters.
13. **No construction involving earth excavation works shall be allowed with effect from 1st of June 2022 to 30th of September 2022.** Anyone found carrying out construction in contravention of the above shall be penalized as per the relevant clause of the Sikkim Allotment and House Sites and Construction of Building (Regulation and Control) Act, 1985 as amended in 2000, and the Sikkim Building Construction Regulation, 1991 as amended in 2000. Such person shall also be solely responsible for the loss of life and property, as a result of such unauthorized excavation/construction.

Two copies of the approved B.P. Plans are returned herewith for your record.


Town Planner
Gangtok Municipal Corporation

Town Planner
Gangtok Municipal Corporation.

Note: Contact: Mr. Naresh Pradhan, Assistant Town Planner - I, G.M.C, Mob No: 94344 47827

SITE INSPECTION

15/03/23

Inspected the site along with officers of GME, GSEDC, MESASO and the following points were observed at site :-

- 1) 11th level steel ducts erection is complete. Consistency of the beds may be of best quality and waterproof.
- 2) Insulation of metal components should be well secured & tested.
- 3) Perimeter ramp is to be completed BOP.
- 4) Maximum care to be given for external foundation anchorage of piling.
- 5) Quality is to be ascertained.

Proj of team to take note of the above pt

Gangtok
 Addl. Chief Town Planner
 Gangtok Municipal Corporation

Mesaso Infrastructure Private Limited

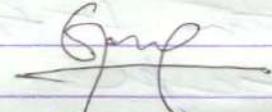
Kamuk
 Vice President

SITING INSTRUMENTS

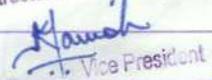
07/07/23

- 1) Top floor evaluation may be done at that time on lot- 14 pt.
- 2) Urban expansion on Met may be awarded the program is, Subsidy.
- 3) Program on Ramp is about 60%. This may be expedited while ensuring safety of the neighbourhood.
- 4) 40% program on external facade is seen.

As directed by the govt the concerned shall deploy all means of method to complete the project on time for requests on the 31/12/23 as decided by the govt.


 Gayden Chopel
 CHIEF TOWN PLANNER
 Gangtok Municipal Corporation

Mesaso Infrastructure Private Limited


 Vice President

Ref. No. MIPL/HO/17/2023-24

DLC

Date: 06.01.2024

To,
Chief Town Planner
Gangtok Municipal Corporation,
Government of Sikkim,
Gangtok, East Sikkim - 737101

Sub.: Request for Partial Completion Certificate for "Implementation of Multi-Level Car Parking cum Commercial Development at Old West Point School Area on Design, Build, Finance, Operate and Transfer (DBFOT) basis"

Sir,

With reference to above subject matter, this is to inform you that the project Implementation of Multi-Level Car Parking cum Commercial Development (West Point) at Old West Point School Area, Near MG Marg, Gangtok, East Sikkim has been completed upto the Level- 05 i.e., Food Court & Multiplex area on 31.12.2023.

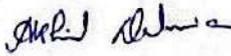
Therefore, we hereby request to your good office to issue us a partial completion certificate upto the Level-05 i.e., Food Court & Multiplex area.

Thanking You.

Yours Faithfully,

For, MESASO Infrastructure Private Limited

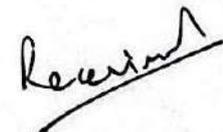
MESASO Infrastructure Private Limited



Chief Financial Officer
Authorised Signatory

- Encl.: 1. Latest Electricity Bill,
2. Latest Water Connection Bill &
3. Latest Sewerage Connection Bill.




Town Planner
Gangtok Municipal Corporation

MESASO Infrastructure Private Limited | Reg. Off. : 3rd Floor, Vega Circle Mall, 3rd Mile, Sevoke
Road, Siliguri, West Bengal - 734001 | info@mesaso.in | + 91 9907311645
Project Site : Old West Point School Area, Near M.G. Marg, Gangtok, East Sikkim 737101
CIN: U45309WB2021PTC243031 | PAN: AAOCM2843E | GSTIN: 11AAOCM2843E1ZQ
IGBC Membership No. : IGBCBD210233 | IGBC Project Reg. No. : IGBCNBT210211



ANNEXURE R/23

**GANGTOK MUNICIPAL CORPORATION
DEORALI, SIKKIM**

No. LOSSE/G.M.C./T.P.C./24.....Date 16/02/2024.....**FORM – VII**

(See regulation 13 of the Sikkim Building Construction Regulation, 1990)

OCCUPANCY CERTIFICATE

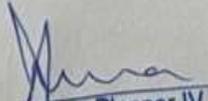
To,

MESASO Infrastructure Private Limited
Arithang - 1, Ward no 9,
Gangtok Municipal Area.

With reference to your application, dated 06.01.2024 permission is hereby granted for the partial completion certificate & occupation of parking level – 04 to mall level -04 of Multi-Level Car Parking cum Commercial Development (West-Point) at Old West Point School Area, Near M.G Marg Gangtok, East-Sikkim.

This occupancy certificate is for the following landed property:

- Name of the Landowner -Government of Sikkim.
- Location of Landed Property - Arithang - 1, WardNo.9
- Details of holding
Khatiyon no. 1440
Plot no. 686/3114,715,716
Area of Plot: 61398 Sqft (1.41 Acres)


Assistant Town Planner IV
Gangtok Municipal Corporation

**Assistant Town Planner
Gangtok Municipal Corporation**

**Proof of Service****279**

Office of Sameer Abhyankar <contactadvsa@gmail.com>

Advance Service in EZ/O.A. No. 38 of 2022- Dr. Bina Basnett v State of Sikkim & Ors

1 message

Office of Sameer Abhyankar <contactadvsa@gmail.com>

Wed, May 1, 2024 at 6:55 PM

To: Legal Consultus <legalconsultus@gmail.com>, Amrita Pandey <amritalegal@gmail.com>, Advocate KS Thupden <Thupden2009@gmail.com>, Saumitra Jaiswal <saumitra.jaiswal@gmail.com>, arushi@eldfindia.com, Sonali Sengupta <sonalisengupta.93@gmail.com>, Mansi Bachani <mansi.bachani08@gmail.com>, Gitanjali Sanyal <gitanjalisanyal@gmail.com>, eldflegal@gmail.com

Dear Sir

Please find attached a scanned copy of the Counter affidavit on behalf of the Respondent No. 10 (Gangtok Municipal Corporation) in the captioned Matter.

Thanks
Prince Kumar
For
Mr. Sameer Abhyankar,
Standing Counsel State of Sikkim



Counter Affidavit R-10.pdf

--

Address for Correspondence:

D-247, LGF, Defence Colony,
New Delhi 110024
Ph. +91-11-49402169