

BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN BENCH, PUNE
ORIGINAL APPLICATION NO. 28 OF 2019

Mr. Tanaji Balasaheb Gambhire

...Applicant

Versus

Union of India & Ors.

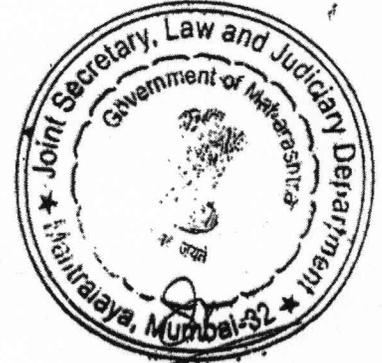
...Respondents

ADDITIONAL DOCUMENTS ON BEHALF OF RESPONDENT NO. 16

Sr. No.	Description	Exhibit	Page No.
1	Report filed by the Chief Secretary to the Government of Maharashtra post the Judgement passed by the Hon'ble Supreme Court in M/s Goel Ganga Developers India Ltd. Vs. Union of India in Civil Appeal 10901 of 2016 and 5157-5158 of 2018	A	2732-2740
2	Copy of the Special Leave Petition filed by Credai Pune Metro before the Hon'ble Supreme Court, wherein the Respondent No. 16 is a member (please see page no. 1833 of Affidavit in Reply by the Respondent No. 16)	B	2741-2789



CANCELLED



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ANNEXURE-A-12

IN THE NATIONAL GREEN TRIBUNAL, ~~NEW DELHI~~
Pune Bench (WZ)
APPLICATION NO. 184 OF 2015

Shri. Tanaji Balasaheb Gambhire

...Applicant

V/s.

Mr. Goel Ganga Developers India Pvt. Ltd. And others

..Respondents

Report by the Chief Secretary of the State of Maharashtra

I, Dinesh Kumar Jain, Chief Secretary, Government of Maharashtra, having office at Mantralaya, 6th floor, Hutatma Rajguru Chowk, Madam Cama Road, Mumbai - 400032 hereby submit report in adherence to the direction of the Hon'ble Supreme Court of India under Judgment and order dated 10th August 2018 in Civil Appeal No. 10854 of 2016.

1. I say that, the Hon'ble Supreme Court vide order dated 10th August, 2018, *inter-alia*, directed as under-

"We may also observe that prima facie we are of the view that the Principal Secretary, Environment Department, Govt. of Maharashtra has not acted in a fair and transparent manner. The allegations made by the original applicant cannot be

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lightly brushed aside. In the original order dated 27.09.2016, the NGT held as follows :-

"42. From the extracted portion of the order dated 31st May, 2016 of Principal Secretary, Environment Department, it is seen that he has declared construction of 18 buildings on the site instead of 12 buildings is permissible which, according to him, only a changes on configuration of buildings. This opinion undoubtedly is based on his erroneous conclusion that total BUA which is nothing but F.S.I. consumed i.e. 48617.14 sq.mts which is within the EC limit as against the actual construction activity which has exceeded over 100000 sq.mtrs BUA. Hence we set aside that order/communication dated 31st May, 2016."

The official holding the post of Principal Secretary must have been aware of these directions because he was a party to the proceedings before the NGT. Despite that, while granting fresh EC on 20.11.2017, this official noticed that reference to the Environment Department for verification of files was withdrawn vide letter dated 31.05.2016 and the matter has been considered afresh. When the letter dated 31.05.2016 had been quashed the obvious result would be that action had to be taken in accordance with the earlier directions in the 27th meeting of SEAC III (Non-MMR) held from 10th to 13th March, 2015 and the 87th meeting of SEIAA held on 10th to 12th August, 2015. This was not done. His actions need to be looked into and, therefore, we uphold the direction given by the NGT directing the Chief Secretary to the State of Maharashtra to take notice of the conduct of the concerned officers. We further direct the Chief Secretary to file detailed report in respect of the conduct of the then Principal Secretary, Department of Environment to the NGT within 3 months which will thereafter pass appropriate directions in the matter"

2. At the outset, I tender my unconditional apology for delay in adhering to the directions of the Hon'ble Supreme Court of filing report within 3 months before the Hon'ble Tribunal. The delay is unintentional and caused due to time taken for ascertaining the facts and chronology in the matter and preoccupations in the important issues of the State.
3. I further say and submit that in adherence to the directions of the Hon'ble Supreme Court, I have perused the Environmental Clearance dated 4th April 2008 issued by MoEF to the Project Proponent(PP), Notification dated 4th

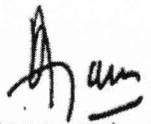
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April 2011 issued by MoEF&CC, communication/order dated 31st May, 2016 issued by the then Additional Chief Secretary, Environment Department and order of the Hon'ble NGT dated 27th September, 2016 in the matter, file related to the subject matter under consideration, legal opinion given by the Law and Judiciary Department in the Government, clarification submitted by the then Additional Chief Secretary to the then Chief Secretary as per the order of the Hon'ble NGT and other related documents.

4. I say that considering the aforesaid documents, I have prepared my fact finding report, in the matter, specially, conduct of the then Additional Chief Secretary, Environment as directed by the Hon'ble NGT and reiterated by the Hon'ble Supreme Court. I have prepared this report on the basis of the facts and documents presented before me. The said Report is attached herewith and marked as Exh. 'A', for kind perusal of the Hon'ble NGT.
5. The Hon'ble Tribunal, therefore, may kindly accept the Report.

Place - Mumbai

Date: 07th January 2019


Deponent

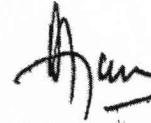


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VERIFICATION

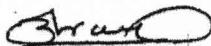
I, Dinesh Kumar Jain, age 59, presently working as the Chief Secretary, Government of Maharashtra, Mantralaya, Mumbai, do hereby state on solemn affirmation that the contents of this affidavit and annexed report are derived from the official record and I believe the same to be true and correct.

Solemnly affirmed at Mumbai
this 07 January, 2019.



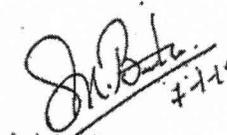
(Dinesh Kumar Jain)
Chief Secretary,
Maharashtra State

I identify the Deponent


Dattatray Si Bhuleruo
Scientist-II,
Environment Dept
Mantralaya Mumbai.

SOLEMNLY AFFIRMED
BEFORE ME BY THE DEPONENT
SHRI DINESH KUMAR JAIN.
TO WHOM I PERSONALLY KNOW,




Mumbai, Joint Secretary
Law and Judiciary Department
Dated & Oath Officer Appointed
under oaths Act, 1969

EXHIBIT

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EXHIBIT 'A'

Report of the Chief Secretary to the Government of Maharashtra in compliance of the Order dated 10.08.2018 passed by Hon'ble Supreme Court of India in the matter of M/s Goel Ganga Developers India Pvt. Ltd. V/s U.o.I. in C.A. No. 10901 of 2016 and C.A. No. 5157-5158 of 2018.

The Environment Department, Government of Maharashtra has submitted facts of the above matter to the Office of the Chief Secretary for further necessary action in compliance of the findings and direction no. viii) at para no. 59 of the order passed by the Hon'ble Supreme Court of India on 10th August, 2018.

Accordingly, I have gone through the entire documents submitted by the Environment Department, Government of Maharashtra along with the provisions of the Environment (Protection) Act, 1986 r/w EIA Notification dated 14.9.2006 issued by the Ministry of Environment, Forest and Climate Change, Government of India (i.e. MoEF&CC, GoI). I have also gone through the Clarifications dated 04.04.2011 issued by the Ministry of Environment, Forest and Climate Change, Government of India with reference to the definition of the Built up area (BUA).

After perusal of the above documents along with Notification and Clarifications thereto issued by the MoEF&CC, GoI, I have arrived at a conclusion that:

- a) The State Environment Impact Assessment Authority (i.e. SEIAA) and the State Expert Appraisal Committee (i.e. SEAC) are constituted by the MoEF&CC, GoI, under Section 3(3) of the Environment (Protection) Act, 1986 to appraise the proposals received under the Environment Impact Assessment Notification 2006 for grant of Environmental Clearance. SEIAA and SEACs are responsible for taking collective decisions in the matters placed before them during the meeting after due deliberations. It may also be noted that Secretary, Environment Department is also Member Secretary of the SEIAA as per the notification. Further MoEF&CC vide Office Memorandum (i.e. O.M.) dated 12.12.2012 also prescribed procedure for dealing with the proposals wherein provisions of EIA Notification 2006 are observed to be violated. Vide

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this OM concerned State Government was required to follow the procedure to verify the violation as stipulated in the Environment (Protection) Act, 1986 and report its final decision on violation to SEIAA. Secretary, Environment Department is also empowered to take action under Section 5 of the Environment (Protection) Act, 1986 in the matters of violation.

b) In the above said matter, it is seen that SEAC-III recommended the matter to SEIAA for Environment Clearance after making due site visit and verifying the facts on ground. However, during further scrutiny, SEIAA observed that there is alleged violation of EC granted by MoEF dated 04.04.2008 and the matter was referred to the Environment Department as per the procedure stipulated above.

c) Prima facie, on the basis of observations made on alleged violations, the then Additional Chief Secretary, Environment had issued Proposed Directions u/s 5 of the Environment (Protection) Act, 1986 r/w EIA Notification dated 14.9.2006 to M/s Goel Ganga Developers (I) Pvt. Ltd. (i.e. the Project Proponent) vide letter dated 03.08.2015, in the principle of natural justice to submit their say. Hence, it is seen that the process of verification of violation was started by the Environment Department, Government of Maharashtra in the month of August, 2015 i.e. prior to filing of an Application No. 184/2015 by Shri. Tanaji Gambhire before the Hon'ble National Green Tribunal, WZ Bench, Pune, in December, 2015. The Environment Department, GoM, also submitted in its affidavit dated February, 2016 to the Hon'ble Tribunal that the hearing of violation proceedings against the project proponent are under progress with the Environment Department and as mentioned in the 87th meeting of SEIAA, the proposal would be considered by SEIAA only after decision communicated by the Environment Department about the violation proceedings. The process in Government was independently started and was not part of the Hon'ble NGT hearing. The Hon'ble NGT in its subsequent order dated 23.02.2016 directed that application be processed strictly in accordance with the law. Further the Hon'ble NGT, at no point of time, issued any injunction on this process.

d) Meanwhile, on the basis of the reports received from the Pune Municipal Corporation and Maharashtra Pollution Control Board, the then Additional Chief Secretary, Environment Department, extended hearing to the PP by following the due procedure as per the Environment (Protection) Act 1986 and

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concluded on the basis of facts that even though the PP had constructed 18 buildings at site instead of 12 buildings by changing configuration of buildings, the total BUA (i.e. FSI) constructed at site was 48617.14 m², which was within the EC limit granted by the MoEF&CC on 04.04.2008. It also revealed that the actual construction carried out on site was 99416.72 m² at Plot no. 1 & 2 (i.e. FSI 48617.14 m² + non-FSI 50799.58 m²) but the FSI constructed at site was 48617.14 m² which was less than total BUA admeasuring 57,658.42 m² permitted in previous EC granted by the MoEF&CC dated 04.04.2008. It must be noted in this regards that prior to the Clarification issued by the MoEF&CC, GoI, vide Notification dated 04.04.2011, Environment Clearances granted were on the basis of the BUA which was defined in relevant DCRs which considered FSI area as BUA and non-FSI area was not considered. It was only in the Notification issued on 04.04.2011 the clarification was issued in this respect that BUA included all covered area, i.e. FSI and Non-FSI. This clarification was not applied retrospectively, since all Environment Clearances were issued as per DCR prevalent then by both MoEF&CC, GoI and SEIAA. Hence, it was concluded by the then Additional Chief, Environment Department that there is no case of violation and the Proposed Directions issued u/s 5 of the Environment (P) Act, 1986 r/w EIA Notification dated 14.9.2006 were withdrawn on 31st May, 2016. Thereafter, the matter was referred back to SEIAA for appropriate decision as per the provisions of the EIA Notification 2006.

(e) It is seen from the documents submitted by the Environment Department, Government of Maharashtra that in compliance of the direction no. 3) of para 54 of the Order dated 27.9.2016 passed by the Hon'ble National Green Tribunal, Western Zone, Pune, the Environment Department, Government of Maharashtra had submitted a brief note to the office of the then Chief Secretary, Government of Maharashtra for perusal in February, 2017. The then Chief Secretary, Government of Maharashtra has already noted the fact of the case in compliance of the said order dated 27.09.2016, of Hon'ble NGT.

f) The matter was again referred to the Office of the Chief Secretary, Government of Maharashtra in compliance of the findings and directions no. viii) at para no. 59 of the order passed by the Hon'ble Supreme Court of India on 10th August, 2018 by the Environment Department, Government of

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Maharashtra, the same was referred to the Law and Judiciary Department, Government of Maharashtra for advice in the matter. The Law and Judiciary Department, Government of Maharashtra has given advice on the said issue.

(g) After perusal of the documents of the matter, it is concluded that the then Additional Chief Secretary, Environment Department has withdrawn the Proposed Directions issued to the Project Proponent relying upon the report of Planning Authority. The reference to Pune Municipal Corporation, the Planning Authority in the matter was necessary since the Planning Authority was the Competent Authority for interpretation of MR&TP Act, especially for distinguishing the FSI and Non-FSI under the applicable DCRs.

(h) Further, there was a practice of issuance of Environment Clearances by the MoEF&CC, GoI, as well as S.E.I.A.A. on conceptual plans submitted by the Project Proponent as per the prevailing Rules and Regulations of the Ministry. Therefore, it also appears that the MoEF&CC, GoI appraised the proposal on the basis of the Conceptual Plan for the total BUA admeasuring 57,658.42 sq.m., submitted by the Project Proponent while granting the E.C. dated 04.04.2008.

(i) The Environment Clearance was granted by the MoEF&CC, GoI vide letter dated 4.4.2008 i.e. prior to amendment in EIA Notification 2006 dated 04.04.2011, for construction of 12 buildings, 552 flats, 50 shops and 34 offices with total BUA admeasuring 57658.42 sq.m., which was as per DCR 2.13 on the basis of the conceptual plan.

The MoEF&CC, GoI vide amendment dated 04.04.2011 to the EIA Notification dated 14.9.2006 issued clarification regarding definition of BUA that, *"the built-up or covered area on all the floors put together including basement(s) and other service areas, which are proposed in the building / construction projects"*.

(j) Considering above facts of the case and relying upon the documents submitted by the Environment Department, it appears that during relevant period there was ambiguity in interpretation which lead to the Planning Authority reporting BUA, taking into account the FSI area only. This formed the basis on which the decision was arrived at. It also appears that the then Additional Chief Secretary, Environment Department has followed due

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procedure under the Environment (Protection) Act, 1986 r/w EIA Notification dated 14.9.2006 (as amended from time to time) and the prevailing Office Memoranda issued by the MoEF&CC, GoI. In view of the foregoing, it appears that any other officer in the given set of circumstances may have arrived at the same conclusion.

Therefore, it appears that there was no malafide intention on the part of the then Additional Chief Secretary, Environment Department, Government of Maharashtra on the decision of withdrawing the proposed directions issued to PP.

(TRUE COPY)

AW ✓

CIVIL APPELLATE JURISDICTION

[SCR ORDER XXI RULE 3(1)(a)]

(UNDER ARTICLE 136 OF CONSTITUTION OF INDIA)

SPECIAL LEAVE PETITION (CIVIL) NO. _____ OF 2019

[WITH PRAYER FOR INTERIM RELIEF]

[ARISING OUT OF THE IMPUGNED FINAL JUDGEMENT AND ORDER DATED 29.03.2019 PASSED BY THE HONBLE HIGH COURT OF JUDICATURE AT BOMBAY IN WRIT PETITION NO. 954 OF 2019]

IN THE MATTER OF:

CREDAI PUNE METRO

..... APPLICANT/PETITIONER

VERSUS

UNION OF INDIA AND ANR

..... RESPONDENTS

WITH

I.A. NO. _____ OF 2019

APPLICATION PERMISSION TO FILE THE PRESENT SPECIAL LEAVE PETITION.

AND

I.A. NO. _____ OF 2019

APPLICATION FOR EXEMPTION FROM FILING THE CERTIFIED COPY OF IMPUGNED JUDGMENT AND ORDER

AND

I.A. NO. _____ OF 2019

APPLICATION FOR CONDONATION OF DELAY IN FILING THE PRESENT SPECIAL LEAVE PETITION

(PAPER BOOK)

(FOR INDEX KINDLY SEE INSIDE)

ADVOCATE FOR THE PETITIONERS: PRAGYA BAGHEL

INDEX OF PROCEEDINGS

SL.NO.	DATE OF RECORD OF PROCEEDINGS	PAGES
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DECLARATION**Diary No. 32134/2019**

All defects have been duly cured, whatever has been added/deleted/modified in the petition is the result of curing of defects and nothing else. Except curing the defects, nothing has been done. Paperbooks are complete in all respects.

Signature:.....PRAGYA.....

Advocate for Petitioner(s) Pragma Baghel

Date: 03/09/2019

Contact No.: 9654172683

14.	<u>ANNEXURE-P/2.</u> A True copy of Notification dated 14/09/2006 issued by Ministry of Environment and Forest, Government of India.	79-120		
15.	<u>ANNEXURE-P/3.</u> A True copy of Environment Clearance dated 29/04/2008 granted to one of the members of the Petitioner Association.	121-136		
16.	<u>ANNEXURE-P/4.</u> A True copy of Environment Clearance dated 08/05/2008 granted to one of the members of the Petitioner Association.	137-150		
17.	<u>ANNEXURE-P/5.</u> A True copy of judgment and order dated 03/12/2010 passed by this Hon'ble Court in the case of T.N. Godavarman Thirumulpad Versus Union of India & Ors. (I.A. Nos.2609-2610 of 2009 In Writ Petition (Civil) No.202 OF 1995).	151-191		
18.	<u>ANNEXURE-P/6.</u> A True copy of Notification Dated 04/04/2011 issued by the Ministry of Environment and Forests.	192-197		
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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (CIVIL) _____ OF 2019
IN THE MATTER OF:

CREDAI PUNE METRO

..... APPLICANT/PETITIONER

VERSUS

UNION OF INDIA AND ANR

.....RESPONDENTS

OFFICE REPORT ON LIMITATION

1. The above mentioned Special Leave Petition is within time.
2. The petition is barred by time and there is delay of 68 days in filing the same against Order dated 29/03/2019 and the application for condonation of 68 days has been filed.
3. There is delay of _____ days in refiling the petition and application for condonation of delay of _____ days in refiling _____ been filed.

NEW DELHI

DATED: 03/09/2019

BRANCH OFFICER

"A-1"

PROFORMA FOR FIRST LISTING

SECTION: IX

The case pertains to (Please tick/check the correct box): N/A

- Central Act : Article 32 in The Constitution Of India 1949.
- Section : N/A
- Central Rule: N/A
- Rule No(s) : N/A
- State Act : N/A
- Section : N/A
- State Rule : N/A
- Rule No(s) : N/A
- Impugned Interim Order : N/A
- Impugned Final Order/Decree: 29.03.2019
- High Court/Trial Court: High Court of Judicature at Bombay.
- Name of Judges: Hon'ble Mr.Justice B.R.Gavai & Dama Seshadri Naidu, JJ.
- Tribunal/Authority : N/A
1. Nature of Matter : **CIVIL** **CRIMINAL**
- 2.(a) Petitioner/Appellant No.1 : Credai Pune Metro.
- (b) e-mail ID : N/A
- (c) Mobile Phone Number : N/A
- 3(a) Respondent No.1 : Union Of India And Anr.
- (b) e-mail ID : N/A
- (c) Mobile Phone Number : N/A
- 4(a) Main category classification : 18
- (b) Sub-classification : 1807
5. Not to be listed before : N/A
6. (a) Similar disposed of matter with citation, if any, & case details : No Similar disposed of matter
- (b) Similar pending matter with case details : SLP-CR No: 10078/2019

"A-2"

7. CRIMINAL MATTERS : No
- (a) Whether accused/convict has surrendered?

YES	NO
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- (b) FIR No. : N/A
- (c) Police Station. : N/A
- (d) Sentence Awarded : N/A
- (e) Period of sentence undergone including period of detention/custody undergone. : N/A
8. LAND ACQUISITION MATTERS: N/A
- (a) Date of Notification Section 4 : N/A
- (b) Date of Notification Section 6 : N/A
- (c) Date of Notification Section 17 : N/A
9. TAX MATTERS: State the tax effect : N/A
10. SPECIAL CATEGORY (First Petitioner/Appellant only) : N/A
- Senior Citizen, SC/ST, Woman/Child, Disabled, Legal Aid, Case In Custody N/A
11. Vehicle number (in case of Motor Accident Claim matters) : N/A

FILED BY:

Date: 03/09/2019

PRAGYA
 [PRAGYA BAGHEL]
 Advocate for Petitioner(s)/Appellant(s)
 A-207-DEFENCE COLONY
 NEW DELHI-110024
CODE No. : 1841
EMAIL:pragysingh@gmail.com

B**SYNOPSIS**

The issue that arises for kind consideration of this Hon'ble Court in the present case is whether in the facts and circumstances of the present case, the construction projects developed by the members of the Petitioner Association between 2006 to 2011, for which environment clearances were granted on the basis of built up area as defined in the Development Control Regulations (Hereinafter referred to as "DCRs"), ought to be protected, notwithstanding the judgment dated 10/08/2018 passed by this Hon'ble Court in the case of Goel Ganga Developers V. Union of India (in C.A. No. 10854 of 2016 and connected matters).

It is submitted that the Builders Association of India (BAI) had approached this Hon'ble Court by way of Writ Petition No. 24 of 2019 filed under Article 32 of the Constitution of India seeking the aforementioned relief. By order dated 12/02/2019 this Hon'ble Court was pleased to grant liberty to BAI to approach the High Court and in view of the said liberty, Writ Petition No. 24 of 2019 was withdrawn.

BAI approached the Hon'ble High Court of Bombay by filing Writ Petition (L) No.954 of 2019. By the impugned

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judgment and order dated 29/03/2019 the Hon'ble High Court was pleased to reject the Writ Petition by holding that judicial propriety did not permit it to clarify the law laid down by this Hon'ble Court in the case of Goel Ganga Developers V. Union of India on the basis of judgment dated 03/12/2010 passed by the three judge bench of this Hon'ble Court in the case of T.N. Godavarman Thirumulpad Versus Union of India & Ors. in I.A. Nos.2609-2610 of 2009 in Writ Petition (Civil) No.202 of 1995.

Being aggrieved by the impugned judgment and order dated 29/03/2019 passed by the Hon'ble High Court in Writ Petition (L) No.954 of 2019, the BAI preferred Special Leave Petition (Civil) No. 10078 of 2019 before this Hon'ble Court challenging the same. By order dated 03/05/2019 this Hon'ble Court was pleased to issue notice in the matter and directed that in the meantime no coercive steps shall be taken.

That the Petitioner is an Association of Builders and Promoters of Pune and Pimpri Chinchwad area. It was established in 1982 and since then it is operating for the promotion of Real Estate Sector in the region for over more than 37 years. It has a membership consisting of Promoters and Builders of Pune and PCMC which accounts

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for about 70% of the construction activities in Pune Metro area. Grave prejudice will be caused to the members of the Petitioner Association in case the Notification dated 04/04/2011 is not applied prospectively. Not only the projects for which environmental clearances have been granted prior to 2011 on the basis of calculation of Built Up Area as provided for in the DCRs will be affected but also the projects for which no environmental clearances were obtained as they did not come within the purview of the Notification dated 14/09/2006 on the basis of calculation of Built Up Area as provided for in the DCRs, will also stand affected. The members of the Petitioner Association would be penalized for no fault of theirs.

That in view of the impugned order dated 29/03/2019 passed by the Hon'ble High Court, no useful purpose would be served by the Petitioner Association approaching the Hon'ble High Court by filing a separate Writ Petition and getting a similar order and challenging the said order before this Hon'ble Court. In this view of the matter, the Petitioner is approaching this Hon'ble Court challenging the impugned order on the grounds raised in the Special Leave Petition.

Hence the present Special Leave Petition.

E**LIST OF DATES**

The Petitioner is an Association of Builders and Promoters of Pune and Pimpri Chinchwad area. It was established in 1982 and since then it is operating for the promotion of Real Estate Sector in the region for over more than 37 years. It has a membership consisting of Promoters and Builders of Pune and PCMC which accounts for about 70% of the construction activities in Pune Metro area.

A True Copy list of members of the Petitioner Association is annexed hereto and marked as

ANNEXURE P/1 .(Pg. No. 26 to 78)

14/09/2006 The Ministry of Environment and Forest, Government of India, issued a Notification dated 14/09/2006 under subsection (1) read with clause (v) of subsection (2) of section (3) of the Environment (Protection) Act, 1986 and clause (d) of the sub rule (3) of rule 5 of the Environment (Protection) Rules, 1986 and directed that on and from the date of its publication, the required construction of new

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projects or activities or the expansion or modernisation of existing projects or activities listed in the schedule to the said notification entailing the capacity addition with change in process or technology and/or product mix shall be undertaken in any part of India only after prior environmental clearance From the Central Government or as the case may be, by the State Level Environment Impact Assessment Authority, duly constituted by the Central Government under subsection (3) of section 3 of the said act, in accordance with the procedures specified therein.

Sub clause (a) of Clause 8 of the schedule to the Notification provided that building and construction projects more than 20,000 Sq. Mts and less than 1,50,000 Sq.Mts of built up area fall in category B thus requiring prior environmental clearance from the State/Union Territory Environment Impact Assessment Authority. Sub clause (b) of clause 8 of the schedule provides that townships and area development projects

G

covering an area of more than 50 Ha and or built up area of more than 1,50,000 Sq. Mts. should be appraised as category B1 meaning thereby that such projects would require, in addition to the scrutiny by the concerned State level Expert Appraisal Committee, further environmental studies for preparation of an environmental impact assessment. The relevant portion of the notification is extracted hereinbelow:

(1)	(2)	(3)	(4)	(5)
8		Building/Construction projects/Area Development projects and Townships		
8(a)	Building and Construction projects		>20000 sq. mtrs. and < 1,50,000 sq. mtrs. Of builtup area#	#(built up area for covered construction; in the case of facilities open to the sky, it will be the activity area)
8(b)	Townships and Area Development projects		Covering an area >50 ha and or built up area >1,50,000 sq. mtrs. ++	++All projects under Item 8(b) shall be appraised as Category B1.

A True copy of Notification dated 14/09/2006 issued by Ministry of Environment and Forest, Government of India is annexed hereto and marked as **ANNEXURE P/2** .(Pg. No. 79 to 120).

H

2006
onwards.

The concept of "built up area" was not defined in the notification dated 14/09/2006 issued by the Ministry of Environment and Forests. In view thereof, the built up area of building and construction projects was determined on the basis of the definition as contained in the DCRs for Pune Municipal Corporation, Pune, 1982 and the Environmental Clearances were also granted on the basis of built up area calculated on the basis of DCR.

Rule 2.13 of the DCR defines built up area as follows:-

"2.13 Built-up Area - Area covered immediately above the plinth level by the building or external area of any upper floor whichever is more excepting the areas covered by Rule No. 15.4.2."

Rule 15.4.2 of the DCR provides as under;

"15.4.2 In addition to Rule No. 15.4.1.1 (a) (b) and (c) and 17.7.3 the following shall not be included in covered area or F.A.R. and Built-up Area calculations

- (a) A basement or cellar space under a building constructed on stilts and used as parking space, and air-conditioning plant rooms used as accessory to the principal use;
- (b) Electric cabin or substation, watchman's booth of maximum size

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of 1.6 sq.m. with minimum width or diameter of 1.2 m, pump house, garage shaft, space required for location of fire hydrants, electric fittings and water tanks;

(c) Projections as specifically exempted under these rules.

(d) Stair case room and/or lift rooms above the top most storey, architectural features, chimneys, elevated tanks of dimensions as permissible under these rules.

Note: The shaft provided for lift shall be taken for covered area calculations only on one floor upto the minimum required as per these rules.

(e) One room admeasuring 2m x 3m on the ground floor of co-operative housing societies or apartment owners/co-operative societies buildings and other multistoreyed building as office-cum-letter box room.

(f) Rockery, well and well structures, plant, nursery, water-pool, swimming pool, (if uncovered) platform round a tree, tank fountain, bench, chabutra with open top and unenclosed sides by walls, ramps, compound wall, gate, slide, swing, overhead water tank on top buildings;

(g) Deleted.

(h) Sanitary block subject to provision of rules no. 15.4.1 (a) and Built-up area not more than 4, sq. m."

A True copy of Environment Clearance dated 29/04/2008 granted to one of the members of the Petitioner Association is annexed hereto and marked as ANNEXURE P/3. (Pg. No. 121 to 136).

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A True copy of Environment Clearance dated 08/05/2008 granted to one of the members of the Petitioner Association is annexed hereto and marked as ANNEXURE P/4. (Pg. No. 137 to 150).

03/12/2010 A three Judge bench of this Hon'ble Court in its judgment and order dated 03/12/2010 in the case of T.N. Godavarman Thirumulpad Versus Union of India & Ors. (I.A. Nos.2609-2610 of 2009 In Writ Petition (Civil) No.202 OF 1995) while considering the provisions of Sub clause (a) and (b) of Clause 8 of the schedule to the Notification dated 14/09/2016 has held as under;

"47. Item 8(a) deals with Building and Construction projects and the threshold mark that would bring the project within the ambit of the notification is equal to or more than 20,000 square metres and less than 1,50,000 square metres of 'built-up area'. It is further clarified that the aforementioned figures relate to built-up area for covered construction; in case of facilities open to the sky, the built up area would be the activity area. Item 8(b) deals with Townships and Area Development projects and the threshold mark for the project to come within the ambit of the notification is an area equal to or more than 50 hectares or built-up

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area of more than 1,50,000 square metres." (Emphasis Supplied.)

A True copy of judgment and order dated 03/12/2010 passed by this Hon'ble Court in the case of T.N. Godavarman Thirumulpad Versus Union of India & Ors. (I.A. Nos.2609-2610 of 2009 In Writ Petition (Civil) No.202 OF 1995) is annexed hereto and marked as ANNEXURE P/5. (Pg. No. 151 to 191).

04/04/2011 The Ministry of Environment and Forests for the first time issued a notification dated 04/04/2011 whereby the words of Column 5 against Item 8(a) in the schedule annexed to the notification dated 14/09/2006 were replaced and substituted as under:

"The built up area for the purpose of this Notification is defined as "the built up or covered area on all the floors put together including basement(s) and other service areas, which are proposed in the building/construction projects".

A True copy of Notification Dated 04/04/2011 issued by the Ministry of Environment and Forests is annexed hereto and marked as ANNEXURE P/6. (Pg. No. 192 to 197).

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07/07/2017 Ministry of Environment, Forest and Climate Change, Government of India, issued an Office Memorandum dated 07/07/2017 clarifying that the operation of the Notification dated 04/04/2011 was prospective, in the following words;

"The definition provided in the Ministry's notification will have its effect from the prospective date of the notification only. The projects which are not covered in the period of above notifications should be assessed as per the definition of built up area provided in the building bye-laws or Development Control Regulation (DCR) of the local authorities in the States."

A True copy of Office Memorandum dated 07/07/2017 issued by the Ministry of Environment, Forest and Climate Change, Government of India is annexed hereto and marked as ANNEXURE P/7. (Pg. No. 138 to 139).

10/08/2018 This Hon'ble Court, by judgment and order dated 10/08/2018 passed in Civil Appeal No. 10854 of 2016 in the case of Goel Ganga Developers V. Union of India has interpreted the term "built up area" in the Notification dated 14/09/2006, as under;

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"15. From a bare perusal of the two hash tags (#) in Column 4 and 5 of Item 8(a), it is apparent that what is shown under Column 5 is actually a continuation of Column 4 and basically it describes or defines 'built up area' to mean 'covered construction' and if the facilities are open to the sky, it will be taken to be the activity area. ***This by itself clearly shows that under the notification of 2006, all constructed area, which is covered and not open to the sky has to be treated as 'built up area'.***"

"16. As far as environmental laws are concerned, ***all covered construction, which is not open to the sky is to be treated as built up area in terms of the EIA Notification dated 14.09.2006.***"
(Emphasis Supplied.)

While dealing with the Notification dated 04/04/2011 this Hon'ble Court observed as under:

"19.In our opinion, it is not at all necessary to decide whether this notification is clarificatory or is in substitution of the original notification of 2006. We say this because as held by us above, there is no ambiguity with regard to the definition of 'built up area' even under the notification of 2006 and it covers all constructed area not open to the sky."

The O.M. Dated 07/07/2017 was quashed and set aside by this Hon'ble Court by observing thus;

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"23. We are also of the view that the so called office memorandum is not at all clarificatory in nature. As held by us above the notification of 2006 with regard to 'built up area' was absolutely clear and needed no clarification. We fail to understand how the concept of built up area as understood in the building bye-laws or DCR could be introduced into the notification of 2006 by this office memorandum which virtually made the notification of 2006 totally redundant. Therefore, we quash the office memorandum dated 07.07.2017."

A True copy of judgment and order dated 10/08/2018 passed by this Hon'ble Court in Civil Appeal No. 10854 of 2016 is annexed hereto and marked as **ANNEXURE P/8.(Pg. No. 200 to 218)**.

2019

As the judgment dated 03/12/2010 passed by the three judge bench of this Hon'ble Court in the case of T.N. Godavarman Thirumulpad Versus Union of India & Ors. I.A. Nos.2609-2610 of 2009 In Writ Petition (Civil) No.202 OF 1995 was not noticed in the judgment and order dated 10/08/2018 passed by this Hon'ble Court in Civil Appeal No. 10854 of 2016 and considering the wide spread impact on environment clearances

granted during the period between 2006 to 2011 on the basis of built up area as defined in the DCRs, the Builders Association Of India (BAI) had approached this Hon'ble Court by way of a Writ Petition No. 24 of 2019 filed under Article 32 of the Constitution of India seeking protection of the construction projects developed by its members between 2006 to 2011 for which environment clearances were granted on the basis of built up area as defined in the DCRs.

12/02/2019 By order dated 12/02/2019 this Hon'ble Court was pleased to grant liberty to the Builders Association Of India to approach the High Court and in view of the said liberty, Writ Petition No. 24 of 2019 was withdrawn.

A True copy of order dated 12/02/2019 passed by this Hon'ble Court in Writ Petition No. 24 of 2019 is annexed hereto and marked as ANNEXURE P/9. (Pg. No. 219).

2019

In view of the liberty granted by this Hon'ble Court, the Builders Association Of India approached the Hon'ble High Court of Bombay by filing Writ Petition (L) No.954 of

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2019 seeking protection of the construction projects developed by its members between 2006 to 2011 for which environment clearances were granted on the basis of built up area as defined in the DCRs.

29/03/2019 By the impugned judgment and order dated 29/03/2019 the Hon'ble High Court was pleased to reject the Writ Petition by holding that judicial propriety did not permit it to clarify the law laid down by this Hon'ble Court in the case of Goel Ganga Developers V. Union of India on the basis of judgment dated 03/12/2010 passed by the three judge bench of this Hon'ble Court in the case of T.N. Godavarman Thirumulpad Versus Union of India & Ors. I.A. Nos.2609-2610 of 2009 In Writ Petition (Civil) No.202 OF 1995.

10/04/2019 Being aggrieved by the impugned judgment and order dated 29/03/2019 passed by the Hon'ble High Court in Writ Petition (L) No.954 of 2019 the Builders Association Of India preferred Special Leave Petition (Civil) No. 10078 of 2019 before this Hon'ble Court challenging the same.

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03/05/2019 By order dated 03/05/2019 this Hon'ble Court was pleased to issue notice in the matter and directed that in the meantime no coercive steps shall be taken.

A True copy of order dated 03/05/2019 passed by this Hon'ble Court in Special Leave Petition (Civil) No. 10078 of 2019 is annexed hereto and marked as ANNEXURE P/10.(Pg. No. 220)).

03/09/2019 The Petitioner Association, being in a similar position as that of the Builders Association Of India, is approaching this Hon'ble Court, by filing the present Special Leave Petition.

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.954 OF 2019

Builders' Association of India (BAI) ..Petitioner
Versus
Union of India ..Respondent

Mr. Anshuman Srivastava I/by Mr. Rushabh M. Sheth, Advocate for
the Petitioner.

Mr. R. S. Apte, Senior Advocate a/w Mr. Girish Paryani, Advocate
for the Respondent.

CORAM : B. R. GAVAI &
DAMA SESHADRI NAIDU, JJ.
DATE : 29th MARCH, 2019

P.C.

1] It is the contention of the Petitioner that in the
Notification dated 14th September 2006, issued by the sole
Respondent, the term 'Building and Construction projects area' was
not defined and it was vague.

2] It is submitted that the said notification came up for
consideration before the Hon'ble Supreme Court in the case of
Anand Arya and another Vs. Union of India and others reported
in 2011 (1) SCC 744. A reliance is placed on the following
observations of the Hon'ble Apex Court in para 84, which are as
under :-

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“84. Before putting down the records of the case a few observations may not be out of place. The EIA Notification dated 14-9-2006 urgently calls for a close second look by the authorities concerned. The projects/activities under Items 8(a) and 8(b) of the schedule to the notification need to be described' with greater precision and clarity and the definition of built-up area with facilities open to the sky needs to be freed from its present ambiguity and vagueness.”

3] It is submitted that after the aforesaid observations were made by the Hon'ble Apex Court, sole Respondent issued a further notification dated 4th April 2011, vide which for the first time, the term 'build up area' is defined.

4] It is the contention of the learned counsel for the Petitioner that between 2006-2011, the local authorities as well as the sole Respondent granted clearances to the projects on the basis of the local Development Control Rules, since the definition of built up area was not there.

5] It is submitted that however, the Hon'ble Supreme Court in the case of M/s. Goel Ganga Developers India Pvt. Ltd. Vs. Union of India and others with connected matters decided on 10th August 2018 has observed thus :-

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"13. From a bare perusal of the two hash tags (#) in Column 4 and 5 of Item 8(a), it is apparent that what is shown under Column 5 is actually a continuation of Column 4 and basically it describes or defines 'built up area' to mean covered construction and if the facilities are open to the sky, it will be taken to be the activity area. This by itself clearly shows that under the notification of 2006, all constructed area, which is covered and not open to the sky has to be treated as 'built up area'. There is no exception for non-FSI area."

6] It is the contention of the Petitioner that due to the aforesaid observations of the Hon'ble Apex Court all the projects which were executed by the members of the Petitioner's Association during 2006-2011, which were otherwise legal, are now capable of being termed as illegal with retrospective effect.

7] It is the contention of the Petitioner that the Petition under Article 32 was also filed by the Petitioner before the Hon'ble Apex Court, which Petition came to be withdrawn vide order dated 12th February 2019, with liberty to approach this Court.

8] In effect, in our considered view, what the Petitioner seeks from this Court is a clarification that the observations made by the Hon'ble Apex Court in the case of *M/s. Goel Ganga Developers India Pvt. Ltd. (supra)* by a Bench consisting of two Hon'ble Judges

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of the Hon'ble Supreme Court are *per-incuriam* the observations of
the Hon'ble Apex Court in the case of *Anand Arya and another*
(*supra*).

9] With great respect, the judicial propriety would not
permit us to venture into such an exercise. The Writ Petition is
therefore rejected.

[DAMA SESHADRI NAIDU, J.]

[B. R. GAVALI, J.]

"TRUE COPY"

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IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

[ORDER XXI RULE 3 (1) (a)]

(UNDER ARTICLE 136 OF CONSTITUTION OF INDIA)

SPECIAL LEAVE PETITION (CIVIL) NO. OF 2019[WITH PRAYER FOR INTERIM RELIEF]

[ARISING OUT OF THE IMPUGNED FINAL JUDGEMENT AND ORDER DATED 29.03.2019 PASSED BY THE HON'BLE HIGH COURT OF JUDICATURE AT BOMBAY IN WRIT PETITION (L) NO. 954 OF 2019]

IN THE MATTER OF:

POSITION OF PARTIES

HIGH COURT THIS COURT

Credai Pune Metro
Through Its Secretary
Having Its Office At No.T-1,
3RD Floor, Nucleus
Jeejeebhoy Towers, Church
Road Pune-411 001
Maharashtra.

NOT A PARTY PETITIONER

- V E R S U S -

- | | | |
|--|------------|--------------------------------|
| 1. Union Of India
Through its secretary
Ministry of Environment,
Forest And Climate
Change Indira Paryavaran
Bhawan Jorbagh Road,
New Delhi-110003. | RESPONDENT | PROFORMA
RESPONDENT
NO.1 |
| 2. Builders Association Of
India(BAI)
Through its Authorized
Representative
Mr. Rajendra @ Nirmal
Kumar.
G1/G20, 7 th Floor,
Commerce Centre,
J. Dadaji Road, Tardeo, | PETITIONER | PROFORMA
RESPONDENT
NO.2 |

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Mumbai-400034.
Maharashtra.

TO

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS
COMPANION JUSTICES OF THE HON'BLE SUPREME
COURT OF INDIA

THE HUMBLE PETITION OF
THE PETITIONER
ABOVENAMED

MOST RESPECTFULLY SHOWETH:

1. That the present Special Leave Petition is being filed against the impugned Final Judgment and Order dated 29.03.2019 passed by the Hon'ble High Court of judicature at Bombay in Writ Petition (L) No. 945 of 2019 whereby the Hon'ble High Court was pleased to reject the said Writ Petition filed by the Builders Association Of India.
- 1A. The Petitioners humbly submit that no Letters Patent Appeal or Second Appeal is maintainable against the impugned judgment and order.
2. **QUESTIONS OF LAWS:**
 - 2.1. Whether the Hon'ble High Court was justified in the facts and circumstances of the present case in dismissing the Writ Petition?

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- 2.2. Whether in the facts and circumstances of the present case, the construction projects developed by the members of the Petitioner Association between 2006 to 2011 for which environment clearances were granted on the basis of built up area as defined in the DCRs ought to be protected?
- 2.3. Whether the projects developed by the members of the Petitioner Association between 2006 to 2011, for which environment clearances were granted on the basis of built up area as defined in the DCRs ought to be protected, in light of the fact that it was only on 04/04/2011 that the Ministry of Environment and Forests issued a notification clarifying that the built up area for the purpose of Notification dated 14/09/2006 was to mean the built up or covered area on all the floors put together including basement(s) and other service areas, which are proposed in the building/construction projects?
- 2.4. Whether the projects developed by the members of the Petitioner Association between 2006 to 2011 for which environment clearances were granted on the basis of built up area as defined in the DCRs ought to be protected in light of the fact that prior to the Notification dated 04/04/2011 the authorities

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- themselves had granted such clearances on the basis of built up area calculated as defined in the DCRs?
- 2.5 Whether the members of the Petitioner Association can be penalized for no fault of theirs?
- 2.6 Whether the projects which have long been completed with requisite permissions and without any objections from the authorities can now considered in violation of the EIA Notification dated 14.09.2006 from the retrospective dates?
- 2.7 Whether the projects developed by the members of the Petitioner Association between 2006 to 2011 for which environment clearances were granted on the basis of built up area as defined in the DCRs ought to be protected in light of the fact that this Hon'ble Court itself had held that the threshold of 20,000 square metres built-up area was for covered construction and in case of facilities open to the sky, the built up area would be the activity area?
- 2.8. Whether the Notification dated 04/04/2011 issued by the Ministry of Environment and Forests ought to be applied prospectively?

3. **DECLARATION IN TERMS OF RULE 3(2):**

The Petitioners state that Special Leave Petition (Civil) No. 10078 of 2019 has been filed by Builders Association Of India challenging impugned judgment and order dated 29/03/2019 passed by the Hon'ble High Court in Writ Petition (L) No.954 of 2019. By order dated 03/05/2019 this Hon'ble Court was pleased to issue notice in the said Special Leave Petition and directed that in the meantime no coercive steps shall be taken.

4. **DECLARATION IN TERMS OF RULE 5**

The Annexures P/1 to P/10 produced along with the Special Leave Petition are true copies of the pleadings/documents. As the Petitioner was not a party to the proceedings in which the impugned order has been passed, the Annexures produced along with the Special Leave Petition were not part of the records of the Court/Authority below against whose order special leave to appeal is sought for in this petition.

5. **GROUND**

- 5.1. FOR THAT the Hon'ble High Court erred in dismissing the Writ Petition.

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- 5.2. FOR THAT the Hon'ble High Court, ought to have entertained the Writ Petition and granted the relief as prayed for in the Writ Petition.
- 5.3. FOR THAT the Hon'ble High Court ought to have appreciated that prior to the Notification dated 04/04/2011 Environmental Clearances were issued to the members of the Petitioner association by the concerned authorities on the basis of calculation of Built Up Area as provided for in the DCRs.
- 5.4. FOR THAT the Hon'ble High Court ought to have appreciated that there was no default on part of the members of the Petitioner association in carrying out construction on the basis of the Environmental clearances granted by the concerned authorities on the basis of calculation of Built Up Area as provided for in the DCRs.
- 5.5. FOR THAT the Hon'ble High Court ought to have appreciated that the members of the Petitioner Association could not have been penalized for no fault of theirs.
- 5.6. FOR THAT the Hon'ble Court ought to have appreciated that it was for the first time by notification dated 04/04/2011 issued by the Ministry of Environment and Forests, whereby the words of

Column 5 against Item 8(a) in the schedule annexed to the notification dated 14/09/2006 were replaced and substituted.

5.7. FOR THAT the Hon'ble High Court ought to have appreciated that notification dated 04/04/2011 issued by the Ministry of Environment and Forests ought to be applied prospectively to applications received for environmental clearance after the said Notification.

5.8. FOR THAT the Hon'ble High Court ought to have appreciated that the term 'built up area' came to be understood in terms of the state / municipal bye laws at least till the issuance of the 2011 notification even for the purposes of grant of environmental clearance. It is most respectfully submitted that in absence of a definition of the term 'built-up area' in the EIA Notification 2006, the same was calculated and/interpreted in consonance with the state bye-laws to fill in the vacuum until the 2011 Notification came into effect. That the construction industry as well as the Appropriate Authorities including MoEF had understood and proceeded the term built up area with respect to granting ECs'.

5.9. FOR THAT the Hon'ble High Court ought to have appreciated that prior to the 2011 Notification, the description of 'built up area' under the original EIA Notification 2006 was limited to covered construction, while in cases of facilities open to the sky it would be the activity area. However, there was guidance available as to the meaning of the term 'built up area' under the relevant state bye laws, and the practice adopted by the appropriate authorities was to interpret 'built up area' for the purpose of granting ECs in consonance with the applicable state bye laws. That most of the state-bye laws calculate 'built-up area' on the basis of Floor Space Index (FSI). It is submitted that the appropriate authorities were granting ECS on the basis of FSI.

5.10. FOR THAT the Hon'ble High Court ought to have appreciated that that this Hon'ble Court observed the ambiguity in the term 'built-up area' in the EIA Notification 2006 in the judgment and order dated 03/12/2010 in the case of T.N. Godavarman Thirumulpad Versus Union of India & Ors and expressed the need for redefining the same in the following words:

"The EIA notification dated September 14, 2006 urgently calls for a close second look by the concerned authorities. The projects/activities under items 8(a) and 8(b) of the schedule to the notification need to be described with greater precision and clarity and the definition of built-up area with facilities open to the sky needs to be freed from its present ambiguity and vagueness."

It is submitted that in compliance with the direction given by this Hon'ble Court in the aforementioned judgment, the MoEF brought into effect the 2011 Notification which contained a clear definition of the term 'built-up area' stating that

"the built-up area for the purpose of this Notification is defined as the built up area or covered area on all floors put together including basements and other service areas, which are proposed in the building/construction project."

5.11.FOR THAT the Hon'ble High Court ought to have appreciated that even the facts recorded in the judgment and order dated 03/12/2010 in the case of T.N. Godavarman Thirumulpad Versus Union of India & Ors reflect the general practice adopted by the appropriate authorities of interpreting 'built up area' in consonance with the state bye laws. The said Judgment pertained to a project undertaken by the Govt. of Uttar Pradesh to develop a recreational park at

NOIDA. The project involved massive construction inter alia including dedicatory columns, commemorative plaza, national memorial, plinth with sculptures, larger than life statutes etc.; and was undertaken without any prior environmental clearance as required under the EIA Notification 2006. When an issue was raised with respect to the project being undertaken without prior environmental clearance, the stand taken by the SEIAA UP was that the built-up area was less than 20,000 square meters and the EIA Notification 2000 would not be applicable. In submitting so, the SEIAA UP had calculated the 'built up area' on the basis of state bye-laws. Furthermore, during the course of the proceedings of the 2010 Judgment, the MoEF also took the unequivocal stand that the project in question did not require prior environmental clearance (*paras 38-49*). As was noted in para 42 of the 2010 Judgment:

The built-up area has been calculated by the state of Uttar Pradesh on the basis of its building bye-laws.'

"..... The MoEF, however reiterated its stand in very definite and unequivocal terms that the project in question did not fall within the ambit of the EIA Notification 2006 and no environmental clearance was required for such kind of projects. The stand of the MoEF was based on the premise that the area of the project (33.43ha) was less than 50ha and its built up area (9542 sq m) was less than 20,000 sq.m."

The aforesaid is an example of the manner in which the different states' SEIAA, as well as the MoEF, were routinely calculating 'built up area' in consonance with state bye laws while granted environmental clearance prior to 04.04.2011.

5.12.FOR THAT the Hon'ble High Court ought to have appreciated that the definition of the term 'built-up area' as provided under 2011 notification ought to be applied prospectively. It is most respectfully submitted that the application of the 2011 Notification to projects granted ECs between 14.09.2006 - 04.04.2011 or to those projects which were exempted from an EC prior to the 2011 Notification shall oppress the vested rights of such project proponents, create new disabilities or obligations or impose new duties in respect of constructions already completed. The same shall cause chaos, disruption and disarray in the entire construction industry.

5.13.FOR THAT the Hon'ble High Court ought to have appreciated that prior to 04.04.2011, the widely followed practice for the project proponents was to specify the FSI area as the built-up area, and for the appropriate authority to grant the EC after noting such FSI area as the built-up area in the EC. It is

pertinent to note that even though most of the applications made prior to the 2011 notification specified 'built up area' to be the same as FSI, due to the practice followed, the applications submitted nonetheless contained:

- a) disclosures, details and or designs and drawings of non FSI area to the relevant authority
- b) Details of the entire usable area to the relevant authority
- c) disclosures and details of environmental impact of the project such as water consumption, sewage, energy consumption, pollution generated etc.

All these factors would be independent of the manner in which 'built up area' was considered and remained the same. However, notwithstanding the disclosure of the entire area, ECs were routinely granted by the appropriate authorities with reference only to the FSI area specified in the application as the built-up area.

5.14. FOR THAT the Hon'ble High Court ought to have appreciated that even though the ECs may have been granted by the appropriate authorities for the projects

on the basis of 'FSI Area' for the purpose of calculating 'built up area' for the period between 2006-2011; the overall impact on the environment caused by the construction, including crucial factors such as water consumption, sewerage facilities, energy, consumption, welfare of the people, road requirements, pollution generated etc., remains unchanged. This is notwithstanding the use of non-FSI Area of the projects for the calculation of the built up area. Therefore, so long as the overall environmental impact remains unchanged, merely due to the fact that non-FSI area while being disclosed, was not taken as a part of 'built up area' by the appropriate authorities while granting ECs prior to 2011, (due to the then general understanding of the provisions of the 2006 notification), ought not to by itself trigger a violation of the EIA Notifications 2006 and ECs issued thereunder.

5.15 FOR THAT the Hon'ble High Court ought to have appreciated that from the years 2006-2011; i.e. prior to the introduction of the 2011 Notification, it was a common practice of the appropriate authorities to grant EC to project proponents on the basis of 'built up area' as defined in the state bye laws. That most of the state bye laws equated the terms 'built up area' and

'FSI' and many of the ECs granted used the terms 'built up area' and 'FSI' interchangeably.

5.16. FOR THAT the Hon'ble High Court ought to have appreciated that the application of the 2011 Notification to projects granted ECs between 14.09.2006 - 04.04.2011 or to those projects which were exempted from an EC prior to the 2011 Notification; shall oppress the vested rights of such project proponents, create new disabilities or obligations or impose new duties in respect of constructions already completed.

5.17 FOR THAT the Hon'ble High Court ought to have appreciated that the retrospective operation of notification dated 04/04/2011 issued by the Ministry of Environment and Forests will result in grave consequences. Not only the projects for which environmental clearances have been granted prior to 2011 on the basis of calculation of Built Up Area as provided for in the DCRs will be affected but also the projects for which no environmental clearances were obtained as they did not come within the purview of the Notification dated 14/09/2006 on the basis of calculation of Built Up Area as provided for in the DCRs, will also stand affected.

5.18. FOR THAT the Hon'ble High Court ought to have granted protection of the construction projects developed between 2006 to 2011 for which environment clearances were granted on the basis of built up area as defined in the DCRs.

5.19. FOR THAT the Petitioner craves leave of this Hon'ble Court to add/alter/amend the grounds if so advised.

6. **GROUND FOR INTERIM RELIEF:**

6.1 That as demonstrated above, the Petitioner has a good prime facie case on merits. The Petitioner has been advised that they have good chances of succeeding in the matter.

6.2 That grave prejudice would be caused to the members of the Petitioner Association if the interim relief as per for is not granted. Not only the projects for which environmental clearances have been granted prior to 2011 on the basis of calculation of Built Up Area as provided for in the DCRs will be affected but also the projects for which no environmental clearances were obtained as they did not come within the purview of the Notification dated 14/09/2006 on the basis of calculation of Built Up Area as provided for in the DCRs, will also stand affected. The members of the

Petitioner Association would be penalized for no fault of theirs. On the other hand no prejudice would be caused to the Respondents if the interim relief as prayed for is granted.

6.3 The balance of convenience tilts overwhelmingly in favour of the Petitioner.

7. **MAIN PRAYER :**

In the facts and circumstances of the case, it is, therefore, respectfully prayed that this Hon'ble Court may graciously be pleased to:

- (a) grant Special Leave to appeal to the Petitioners against the impugned final judgment and order dated 29.03.2019 passed by the Hon'ble High Court of judicature at Bombay in Writ Petition (L) No. 945 of 2019 and;
- (b) pass such other or further order or orders as this Hon'ble Court may deem fit and proper in the facts of the case;

8. **PRAYER FOR INTERIM RELIEF :**

In the facts and circumstances of the case, it is, therefore, respectfully prayed that this Hon'ble Court may graciously be pleased to:

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- (a) pass an ex parte interim order granting stay of the operation of the impugned final judgment and order dated 29.03.2019 passed by the Hon'ble High Court of judicature at Bombay in Writ Petition (L) No. 945 of 2019 and;
- (b) pass an ex parte interim order directing that no coercive steps shall be taken against the members of the Petitioner Association, a list whereof is annexed at Annexure P/1, who had taken valid environmental clearances as per notification dated 14/09/2006 on the basis of calculation of built up area as provided for in the DCRs notwithstanding the judgment dated 10/08/2018 passed by this Hon'ble Court in the case of Goel Ganga Developers V. Union of India (in C.A. No. 10854 of 2016 and connected matters) till the final disposal of the present Special Leave Petition;
- (c) pass an ex parte interim order directing that notwithstanding the judgment dated 10/08/2018 passed by this Hon'ble Court in the case of Goel Ganga Developers V. Union

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of India (in C.A. No. 10854 of 2016 and connected matters), no coercive steps shall be taken against the members of the Petitioner Association, a list whereof is annexed at Annexure P/1, who had not taken environmental clearances as per notification dated 14/09/2006 as they did not come within the purview of the said notification on the basis of calculation of built up area as provided for in the DCRs, till the final disposal of the present Special Leave Petition;

(d) pass an ex parte ad interim order in terms of prayer clause (a), (b) and (c) above and;

(e) pass such other or further order or orders as this Hon'ble Court may deem fit and proper in the facts of the case

AND FOR WHICH ACT OF KINDNESS THIS HUMBLE
PETITIONERS AS DUTY BOUND SHALL EVERY
PRAY

DRAWN ON. 26/08/2019

FILED BY:

FILED ON: 03/09/2019

PRAGYA BAGHEL.
Advocate for the Petitioner

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**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SPECIAL LEAVE PETITION (CIVIL) _____ OF 2019
IN THE MATTER OF:**

CREDAI PUNE METRO APPLICANT/PETITIONER

VERSUS

UNION OF INDIA AND ANRRESPONDENTS

C E R T I F I C A T E

Certified that this Special Leave Petition is confined only to the pleadings before the Court whose order is challenged and the documents relied upon in those proceedings. No additional fact, documents, or grounds have been taken or are relied upon in this Special Leave Petition. It is, further certified that the copies of the documents (Annexure attached herewith) are necessary to answer the question of law raised in the SLP and to make out grounds urged in the SLP. This certificate is given on the basis of the instructions given by the persons authorized by the petitioners whose affidavit is filed in support of this Special Leave Petition.

DRAWN BY:

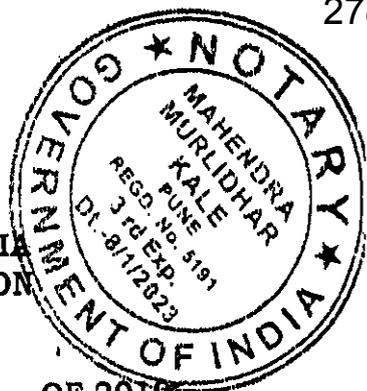
FILED BY:

DATE: 26/08/2019

DATE: 03/09/2019

PRAGYA BAGHEL
(Advocate for the Petitioner)

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
I.A. NO. OF 2019
IN
SPECIAL LEAVE PETITION (CIVIL) NO. OF 2019

IN THE MATTER OF:-
CREDAI PUNE METRO
THROUGH ITS SECRETARY.....PETITIONER
VERSUS

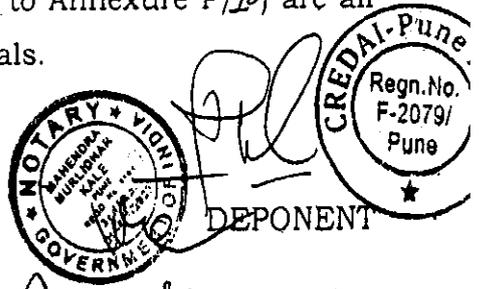
UNION OF INDIA AND ANR.....RESPONDENTS

AFFIDAVIT

I, MR. ADITYA VILAS JAVDEKAR S/o MR. VILAS YASHWANT JAVDEKAR aged 41 yrs, having office at Nucleus Jeejeebhoy towers, 3rd floor, Office T-1, T-2, T-3, Church Road, Opp. Commissioner Office, Camp, Pune- 411001, do hereby solemnly affirm and say as follows:

1. That I am the Secretary of the Petitioner herein and as such I am conversant and acquainted with the facts and circumstances of the instant case. I am competent and authorized to affirm this affidavit.
2. That the contents of the accompanying Synopsis and List of Dates (pages 8 to 2), Special Leave Petition (pages 5 to 24) ; para 1 to 8) and the Applications filed therein are true to my knowledge and belief and/or are based on the information received from the records and believed by me to be true.
3. That the Annexures (Annexure P/1 to Annexure P/10) are all true copies of their respective originals.

29 AUG 2019



DEPONENT

VERIFICATION

Verified at Pune on this 29th day of September, 2019 that the contents of the foregoing affidavit are true to my knowledge based on record, no part is false and nothing material has been concealed therefrom.

9 AUG 2019

NOTED AND REGISTERED AT
SERIAL NUMBER

6689/19

MAHENDRA MURLIDHAR KALE
ADVOCATE & NOTARY
GOVT. OF INDIA
605, HARIPRIYA, VASANT KAMAL VIHAR,

DEPONENT

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APPENDIX**Article 32 in The Constitution Of India 1949**

32. Remedies for enforcement of rights conferred by this Part

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part

(3) Without prejudice to the powers conferred on the Supreme Court by clause (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2)

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution

//TRUE COPY//