

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNALWESTERN ZONE BENCH, PUNEMEMORANDUM OF APPLICATION

(UNDER SECTION 14 AND SECTION 18(1) READ WITH
SECTION 20 OF THE NATIONAL GREEN TRIBUNAL ACT, 2010)
ORIGINAL APPLICATION NO. 74 OF 2022

IN THE MATTER OF:

Navi Mumbai Environment Preservation SocietyApplicant

Versus

City and Industrial Development Corporation of Maharashtra

(CIDCO) & Ors.

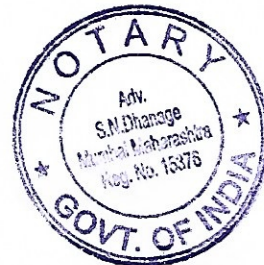
.....Respondents

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Advocate for the Applicant



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**APPLICANT'S AFFIDAVIT IN RESPONSE TO ADDITIONAL
AFFIDAVIT OF R-1 DATED 28.12.22 FILED IN OA NO. 75 OF 2022**

I, Anupam Verma, aged 47 years, Indian inhabitant, Authorised signatory of the Applicant & having my address at 205, CITI Tower, C Wing, Plot 55, Sector 15, CBD Belapur, Navi Mumbai - 400614, do hereby solemnly state that I am filing this short response to the additional affidavit dated 28.12.2022 filed by Respondent No. 1 in OA No. 75 of 2022, which has been relied upon by R-1 to argue/place additional facts on record in the instant OA as well. I say that R-1 has not formally filed this affidavit in the instant OA. I reserve my right to file an additional detailed Affidavit as and when required.

1. At the outset, I deny each and every statement, allegation and averment made in the affidavit dated 28.12.2022 and say that nothing should be



deemed to have been admitted by me for lack of specific denials unless the same is specifically admitted by me herein.

2. With respect to Paras 1 & 2, I say that the contents thereof are not applicable to the instant OA as the prayers referred to in Para 2 relate to OA No. 75 of 2022 alone and that no reference has been made to prayers of the instant OA. It is reiterated that the instant OA does not seek any prayer for withdrawal of any specific tender but it seeks to permanently restrain R-1 from selling, transferring or creating leasehold rights on the CRZ-I and CRZ-II affected areas of Plot No. 2A, Sector 54, 56 & 58 in Nerul (W), Navi Mumbai for the purposes of construction of residential and commercial buildings and a declaration thereof. That the relief in the instant OA is sought in the manner as stated above for the reason that Plot 2A falls on the seaward side of the existing road and in light of prohibition on construction of building/structures on such CRZ affected areas, a relief in the nature of permanent restriction is sought.
3. With respect to Para No. 3, I say that the order dated 20.12.2022 records the statement of R-1 to the extent that R-1 admits that the construction in a buffer zone of CRZ-I is prohibited and therefore, it cannot proceed with any such construction. It is reiterated that there remains a complete prohibition on construction of buildings in CRZ-I and also in those CRZ-II areas that fall on the seaward side of the roads that were existing in the year 2011 and therefore, there is no question of R-1 seeking to retain only CRZ-I portion and then proceeding to sell, transfer or create leasehold rights over the CRZ-II affected portion of Plot 2A.
4. With respect to Paras 4 & 5, I say that R-1, on its own accord, has proceeded to withdraw the tender for commercial reasons and not for



any environmental reason. I reiterate that no construction of commercial/residential buildings can commence in the CRZ-I and CRZ-II affected region of Plot 2A and therefore, any re-tendering with modified conditions undertaken by R-1 will not change or alter the instant cause of action and that if a fresh tender is issued, the same will continue to remain *non est* in law. I say that R-1's proposition that it will make "*suitable modifications at the time of re-tendering on the basis of NGT's order*" is void, baseless and without any authority of law as it is trite law that neither can a Court sit over the manner in which tender conditions are required to be framed nor can any pre-tender conditions be approved by a Court in any manner. Further, an action of the State that is void *ab initio* and against the public policy of India & the law of the land is required to be ceased at the first instance so that public resources are not unnecessarily wasted.

5. With respect to Paras 6 to 8, I say that this Hon'ble Tribunal cannot pass any orders accepting the conditions for the purpose of re-tendering a plot after an earlier tender is withdrawn. I say that withdrawal and issuance of a tender is the prerogative of the tender issuing authority alone and that *vide* order dated 10.01.2023, this Hon'ble Tribunal has correctly recorded the simpliciter withdrawal of the tender issued by R-1 and that R-1 would restrain itself from tendering the process any further.
6. In view of what is stated above, I say that the any tender that is re-issued for leasing the plots for residential and commercial buildings will continue to remain void, illegal and *non-est* in law and therefore, this application deserves to be allowed with costs so that there is a



permanent end to the abuse of process of law that R-1 has undertaken
qua Plot 2A.

Solemnly affirmed at Mumbai)

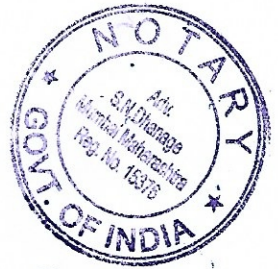
Dated this 13th Day of February, 2023)

18 FEB 2023

Identified by Me

Zaman Ali,

Advocate for Original Applicants



DEPONENT

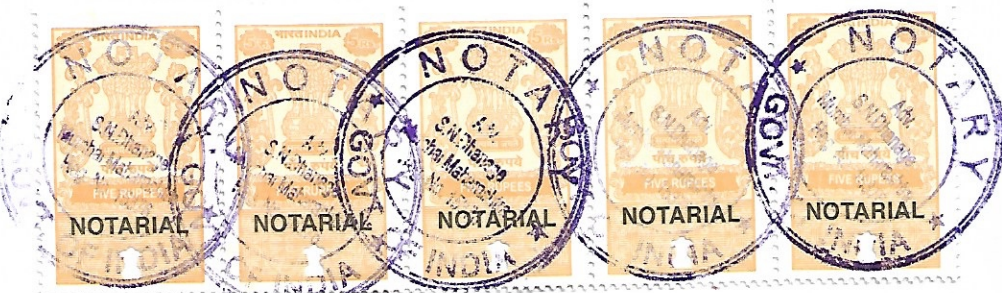


BEFORE ME

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SR. No. 1664
Date: 18 FEB 2023
NOTARY REGISTER



**BEFORE THE NATIONAL GREEN
TRIBUNAL, WESTERN BENCH
SITTING AT PUNE
ORIGINAL APPLICATION
NO. 74 OF 2022**

BETWEEN:

Navi Mumbai Environment Preservation
Society ...APPLICANTS

Versus

CIDCO & Ors. ...RESPONDENTS

**APPLICANT'S ADDITIONAL
AFFIDAVIT**

Dated this 13TH day of February, 2023

18 FEB 2023



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