

BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE, BENCH PUNE
APPLICATION NO.56 OF 2019 (WZ)

(Application under Sections 14 and 20 of the NGT Act, 2010)

Mangesh Mahadev Parab

...Applicant

Versus

M/s. New Monarch Builders & Contractors & Ors ... Respondents

AFFIDAVIT ON BEHALF OF RESPONDENT NO.4

I, Hanumant A. Masal, adult, Indian Inhabitant, Indian inhabitant, resident of Mumbai, working as the Executive Engineer, of Slum Rehabilitation Authority ("SRA"), having my office at Administrative Building 3rd Floor, Anand Kanekar Marg, Bandra(E), Mumbai, do hereby state on solemn affirmation as under;

1. I say that I am the authorized officer of Respondent No.4 and I have perused the afore-captioned Application and am also otherwise aware of the records, facts and permissions pertaining to the issue raised in the captioned Application, as the same are available with the office of Respondent No.4. Thus, I am well versed with the relevant facts connected to the instant Application and am competent to depose the instant Affidavit.
2. The Respondent No.3 is a planning authority as per the MRTTP

Act, 1966 for all slum areas within the Municipal Corporation of Greater Mumbai. The instant Applicant has raised issues with regards to illegal construction of Slum Rehabilitation scheme on Plot CTS Nos. 706, 706/1 to 10, 106/11, 706/14 to 15 and 706/22 of Village Marol at Andheri(E) ("Said Rehabilitation Scheme") as the same have been constructed without obtaining prior Environment Clearance ("EC").

3. The Respondent No.3 grants permissions and issues Letter of Intent ("LOI"), Commencement Certificate ("CC"), Occupational Certificate ("OC"), Intimation of Approval ("IOA") inter-alia other planning permissions. Thus the answering Respondent is placing the present Affidavit on record for a bounded purpose of bringing the true and correct facts on record for the sake of proving that EC is not required for the said Rehabilitation Scheme and craves leave of this Hon'ble Tribunal to file a detailed Affidavit, if circumstances demand.
4. At the outset I say and submit that the said Rehabilitation scheme does not require an EC as alleged by the Applicant. As MOEF notification No. CHE/629/DPC/Gen dated 24th September 2004 mandates only new construction project and projects which have not completed construction upto the plinth level to obtain EC. The said notification categorically observes that, if at the time of issuance of amendment dated 7th July 2004, the construction has come upto plinth level then an EC will not be required under this notification.

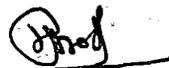




5. It is apposite to mention that the Respondent No.3 had first issued a LOI in the 1996 and had issued the first CC in the year 1998, thus it is way prior to the aforesaid notice coming into force i.e.2004. In pursuance of various LOI's and CC's issued by the Respondent No.3, detailed out herein below, the construction of the said Rehabilitation Scheme upto the plinth was completed before 7th July 2004. In these premise, in the instant case, there is no requirement for obtaining EC for construction under the afore-said notification.
6. Furthermore, as per government notification bearing No. S.O1533 (E), dated 14th September 2006 only those new projects and expansion of projects, having built up area 20,000sq.mts.or over 20,000 sq.mts. require EC. In the instant case the Rehabilitation Scheme has secured an LOI much prior to the afore-said notification coming into force, the construction undertaken by Respondent No.1 has not exceeded the built-up area as envisaged in these LOI, thus the project does not qualify to be an expansion and/or a new project. Therefore, the said Rehabilitation Scheme is not required to obtain EC under the notification bearing No. S.O1533 (E), dated 14thSeptember 2006.
7. I say and submit that in the facts and circumstances carved out herein below, the said Rehabilitation scheme is not required to obtain an EC;
8. In or around 5TH August 1996, the said Rehabilitation scheme

was envisaged as a Slum Redevelopment Scheme. In furtherance there of, the said project got approval from the SRD committee and a LOI was issued dated 5th August 1996.

9. I say and submit that subsequently the Slum Redevelopment Scheme was converted into a Slum Rehabilitation Scheme. Resultantly a fresh LOI was issued by the Respondent No.4 on 9th August 1997.
10. Subsequently a revised LOI came to be passed on 5th June 2003. There after the LOI was revised on two occasions i.e. 4th December 2015 and 18th January 2018.
11. Hence for the said Rehabilitation scheme, LOI was granted prior to both the Government Notifications dated 7th July 2004 and 14th September 2006. In pursuance of the LOI construction began and was completed upto the plinth before 7th July 2004. Further more, the construction carried out and proposed to be carried out is within the Built up Area as prescribed in the LOI granted prior to the Government Notification dated 14th September 2006. Therefore, there is no expansion of the said Rehabilitation Scheme, resultantly no requirement of procuring EC as per the notification dated 7th July 2004 and 14th September 2006.
12. For the sake of convenience and brevity, the Respondent No.3 shall detail out building wise permissions obtained by the Respondent No.1, the construction carried out in furtherance of such permissions and the current state of the individual building;





12.1 Rehabilitation Building No.1;

The Building No.1 was envisaged in the IOA dated 25th August 1998. Commencement certificate for the said building was received on 25th August 1998. The construction commenced in furtherance of the IOA and CC and completed fully and full OCC was received on 20th February 2004. Thus it is evident that Building No.1 is complete and full OCC has been issued prior to the notification dated 7th July 2004. Hence, there is no requirement of obtaining EC.

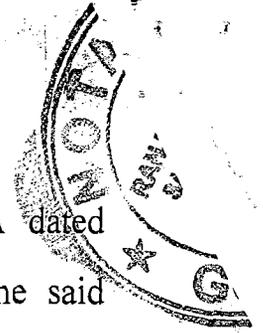
12.2 Rehabilitation Building No.2;

The Building No.2 was envisaged in the IOA dated 29th October 2007. Commencement certificate for the said building was received on 29th October 2007. That construction commenced in furtherance of the IOA and full was granted on 10th June 2008. Thus it is evident that as on date, Building No.2 is complete and full OC has been issued.

12.3 Rehabilitation Building No.4;

The Building No.4 was envisaged in the IOA dated 9th August 2007. Commencement certificate for the said building was received on 9th August 2007. That construction commenced in furtherance of the IOA and CC and full OC was received on 16th May 2008.

Thus it is evident that as on date, Building No.4 is complete and full OC has been issued.



12.4 Rehabilitation Building No.5;

The Building No.5 was envisaged in the IOA dated 4th April 2004. Commencement certificate for the said building was received on 7th July 2007. That construction commenced in furtherance of the IOA and CC and full OC was received on 28th August 2007.

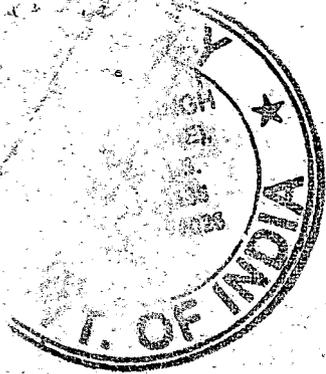
Thus it is evident that as on date, Building No.5 is complete and full OC has been issued.

12.5 Rehabilitation Building No.6;

The Building No.6 was envisaged in the IOA dated 20th July 2007. Commencement certificate for the said building was received on 24th July 2007. That construction commenced in furtherance of the IOA and CC and full OC was received on 30th January 2008. Thus it is evident that as on date, Building No.6 is complete and full OC has been issued.

12.6 Rehabilitation Building No.7;

The Building No.7 was envisaged in the IOA dated 29th December 2007. Commencement certificate for the said building was received on 27th April 2015. Furthermore, the plan for Building No.7 was amended on various occasions; 3rd December 2014, 9th December 2015 and 5th February 2018. That construction commenced in furtherance of the IOA and CC and amendment and part OC was received on 5th September 2018. Full OCC was received on 2nd March 2022.



12.7 Sale Building No.1;

The sale building 1 was envisaged in the IOA dated 8th November 2007. Commencement certificate for the said building was received on 22nd February 2008. Further more, the plan for sale Building No.1 was amended on various occasions 6th November 2012, 1st June 2016. That construction commenced in furtherance of the IOA and CC and OCC was received on 6th February 2020.

13. It is pertinent to note that the Respondent No.3, after applying its mind and after considering whether there was violation of the EC condition, has granted revision of plan in the 2011. The Respondent No.3 has passed a speaking order giving in details the reasons why the EC is not required in the instant case, relevant portion of the revision permission are produced herein under for the sake ready reference;

"As per the provision of MOEF Notification under No.CHE/629/DPC/Gen Dated 02.09.2004, it is mentioned that if the construction has come up to plinth level at the time of issuance of amendment dated 07.07.2004, it shall not return an environmental clearance from Govt. of India. As in this case, the LOI was approved under SRD dated 05.07.1996 and the 1st CC to the rehab building was issued on 25.08.1998 which is prior to 07.07.2004 hence MOEF NOC was not insisted.

As per the Government of India's notification No.S.O.

1533 (E), dtd, 14/09/2006 environmental clearance from MOEF, Govt. of India is required for new projects or expansion of existing projects after the date of notification having built up area above 20,0000 sq. mt.

Architect vide representation at page 513-517 has stated that in this case, the approvals and construction work of S.R. Scheme of Sagbaug Snehsagar SRA CHS Ltd. is started much prior to said notification under SRD scheme and was later converted to SRA project vide LOI dated 09.09.1997. Thereafter revised LOI was granted on 05.06.2003. And the dates of approvals to the other rehab buildings already granted areas tabulated under.

First LOI under SRD dated 05.08.1996.

LOI converted to SRA dated 09.08.1997.

Revised LOI under SRA dated 05.06.2003 for total BUA approved 75603.55 sq. mtr.

First Layout for the S.R. scheme approved on 05.08.1998.

Revised Layout for the S.R. Scheme approved on 21.02.2008.

And the details of the various approvals already granted in the S.R. scheme and the present status of the project is as tabulated in the table at page: 520 (brief history of this report)

Architect has stated as per the table that almost 80% the



project is either approved or constructed on site except the approval to rehab building No.8 and sale building No.3 and the rehab tenants of the registered society have been shifted to their permanent accommodation. The last revised LOI parameters are approved on 05.06.2003 and in the said parameters the rehab component is approved admeasuring 44725.69 sq.mtr. and the sale permissible @ 1:1 is approved admeasuring 44725.69 sq. mtr. and the total BUA approved for the scheme admeasures 75603.55 sq.mtr. Architect has stated that as the plans of the rehab buildings which have been approved and those already constructed on site for which OC has been granted the rehab parameters have reduced and hence are within the approved rehab and sales LOI parameters and hence there is no expansion of the project. In view of above representation, he has requested not to insist the MOEF NOC."

14.I say that the Government of Maharashtra through Environment Department by their letter dated 17th August 2017 addressed to project proponent Respondent No.1 issued clarification on non applicability of EC for ongoing SR Scheme. It is stated that even if one plinth of the building in the project is completed ,the entire constructed area would be eligible for exemption as per the explanation given under Clause 1 of para 3 of EIA Notification dated 27th January 1994 amended on 7th July 2004.



The Law and Judiciary Department's opinion was obtained by Environment Department which was also reproduced in the said letter by Environment Department. It is therefore stated that EC is not required to the extent of area approved in LOI issued by SRA prior to the publication of Environment Impact Assessment Notification dated 14.09.2006. Hereto annexed and marked **EXHIBIT "A"** is the copy of the said letter dated 17th August 2017.

15. Thus the said Rehabilitation scheme along with its sale buildings does not require an EC as per the extant laws. Therefore there is absolutely no violation of any environmental rule, law or regulation at the behest of Respondent No.1 as alleged by the Applicant.

16. I reiterate that all construction work carried out in the said project is as per permissions granted by the Respondent No.3 and as per relevant laws inter alia, Government notification dated 7th July 2004 and 14th September 2006.

Solemnly affirmed at Mumbai)

This ^{9th} day of December, 2023.)

Identified by me.


Deponent.

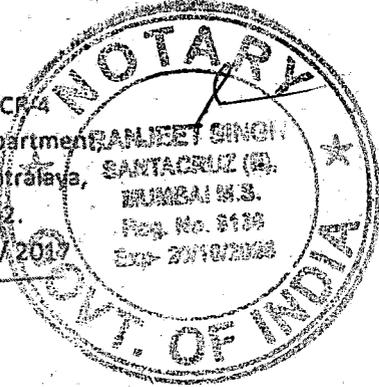
Before me.

Advocate for Respondent SRA

GOVERNMENT OF MAHARASHTRA

Tel. No. : 2279 3132
Fax No. : 2281 3947

ENV-2017/Legal/CF/4
Environment Department,
217(Annex), Mantralaya,
Mumbai - 400 032.
Date: 17/06/2017



To,

M/s-New Monarch Builders & Contractors,
B/701-705, Raylon Arcade, Ramkrishna Mandir Road,
Kondivita, Andheri (E),
Mumbai - 400 059.

Sub. :- Seeking clarification on applicability of E.C. for ongoing S.R. Scheme u/s 33 (10) on property bearing CTS No. 7-6/2 to 8, 706/11, 706/14 to 16 & 706/22 of village Marol at Andheri (East), Mumbai - 400 059 for "Sagbaugh Sneha Sagar C.H.S. Ltd."

Ref. :- Your representation dtd. 25.1.2017.

Sir,

We refer to your representation dtd. 25.1.2017 seeking clarification on applicability of E.C. for ongoing S.R. Scheme u/s 33 (10) on property bearing CTS No. 706/2 to 8, 706/11, 706/14 to 16 & 706/22 of village Marol at Andheri (East), Mumbai - 400 059 for "Sagbaugh Sneha Sagar C.H.S. Ltd."

The Environment Department has scrutinized your representation wherein it appears that the 1st plinth Commencement Certificate was issued by the SRA on 25.8.1998 for construction of rehab building No.1 upto Plinth level. It appears that the work of this particular rehab building No.1 Wing A had come upto 7th floor and part O.C. was issued by the SRA vide letter dtd. 20.2.2003. The work of Wing B of rehab building No.1 had come upto 7th floor, part O.C. was issued by the SRA vide letter dtd. 20.2.2004 and full O.C. was granted on 21.1.2015. It appears that both part Occupation Certificates were issued prior to amendment dtd. 7.7.2004 in the EIA Notification, 1994.

Considering above facts of the case, the Environment Department has obtained legal opinion from the Law and Judiciary Department on presumptions of the department that in sium (SRA) projects, given the financially interdependent nature of the project components, even if one plinth of the project were completed, the entire constructed area would be eligible for exemption as per explanation given under clause 1 of para 3 of EIA Notification dtd. 27.1.1994 amended on 7.7.2004.

Accordingly, Law & Judiciary Department has given clarification in their opinion which is reproduced hereunder :-

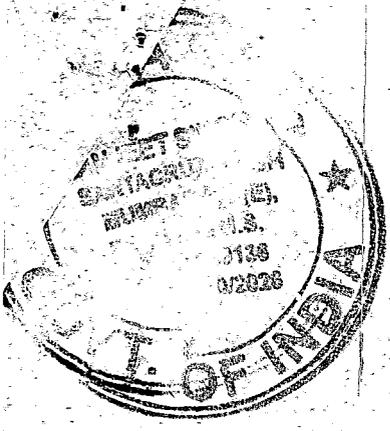
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" In the present matter, as stated by the Environment Department the Slum Redevelopment Authority has approved the Slum Redevelopment Scheme on 5.8.1996 and accordingly issued the Letter of Intent approving the proposed scheme. Thereafter, revised LOI has been issued by the Slum Rehabilitation Authority on 5.6.2003 for entire scheme which includes construction of rehab component as well as sale component. Further, the Commencement Certificate for work of up to Plinth level in respect of rehab building no. 1 wing 'A' and wing 'B' and rehab building no.5 was issued prior to enforcement of Notification dated 07.07.2004. It is also seen that in case of rehab building no.1 wing 'A' and wing 'B' the work upto 7th floor was completed and part O.C. was issued before issuance of Notification dated 07.07.2004. Admittedly the project of Slum Rehabilitation Scheme under reference was started before issuance of Notification dated 07.07.2004 and also the work of rehab buildings upto 7th floor was completed before the amended provision of Notification dtd. 07.07.2004 come into force.

Having considered this factual position and also the clause (i) of explanation given under Para - 3 of Notification dated. 7.7.2004 it is clear that the condition of Environment Clearance as required under Notification dated 27.1.1994 and 7.7.2004 may not be applicable in case of the Slum Rehabilitation Scheme under reference."

Based upon the information provided by you, in view of the opinion preferred by the Law & Judiciary Department reproduced above, for the specific SRA project under reference above, Environment Clearance is not required to the extent of area approved in Letter Of Intent issued by the Slum Rehabilitation Authority prior to the publication of Environment Impact Assessment Notification dtd. 14.9.2006. This answers your request for clarification.


(Satish M. Gavai)
Addl. Chief Secretary,
Environment Department.



VERIFICATION

I, Hanumant A. Masal, adult, Indian Inhabitant, resident of Mumbai, working as Executive Engineer, Slum Rehabilitation Authority, for & on behalf of Respondent SRA, having office at New Administrative Building, Anant Kanekar Marg, Bandra – E, Mumbai 400 051, do hereby solemnly affirm and say that what is stated in above paragraphs is true to my knowledge and I believe the same to be true.

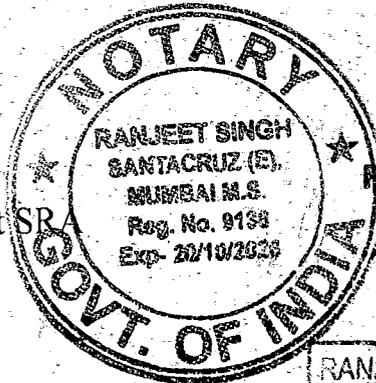
Solemnly affirmed at Mumbai)

This ^{22nd} day of December, 2023)

[Signature]

Deponent

[Signature]
(Girish Utangle)
Advocate for Respondent SRA



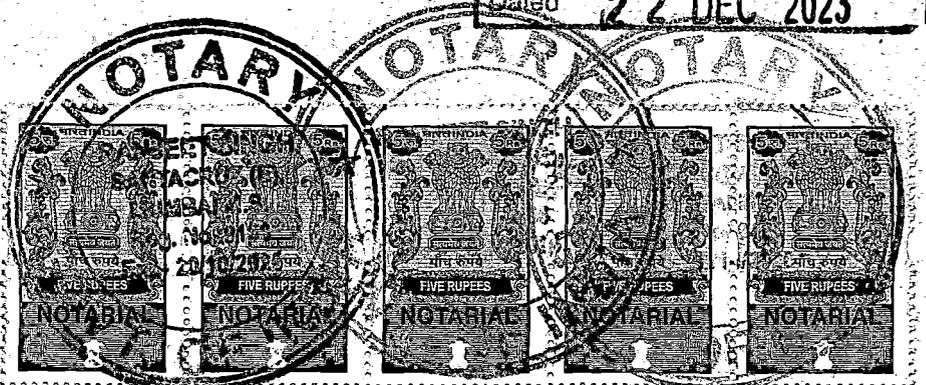
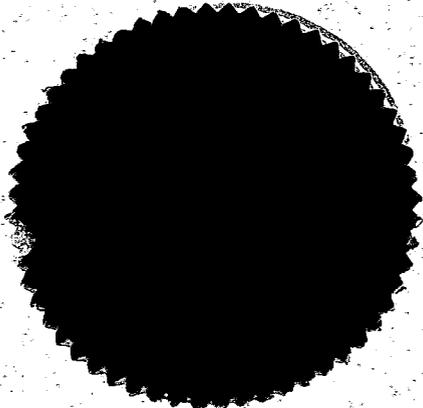
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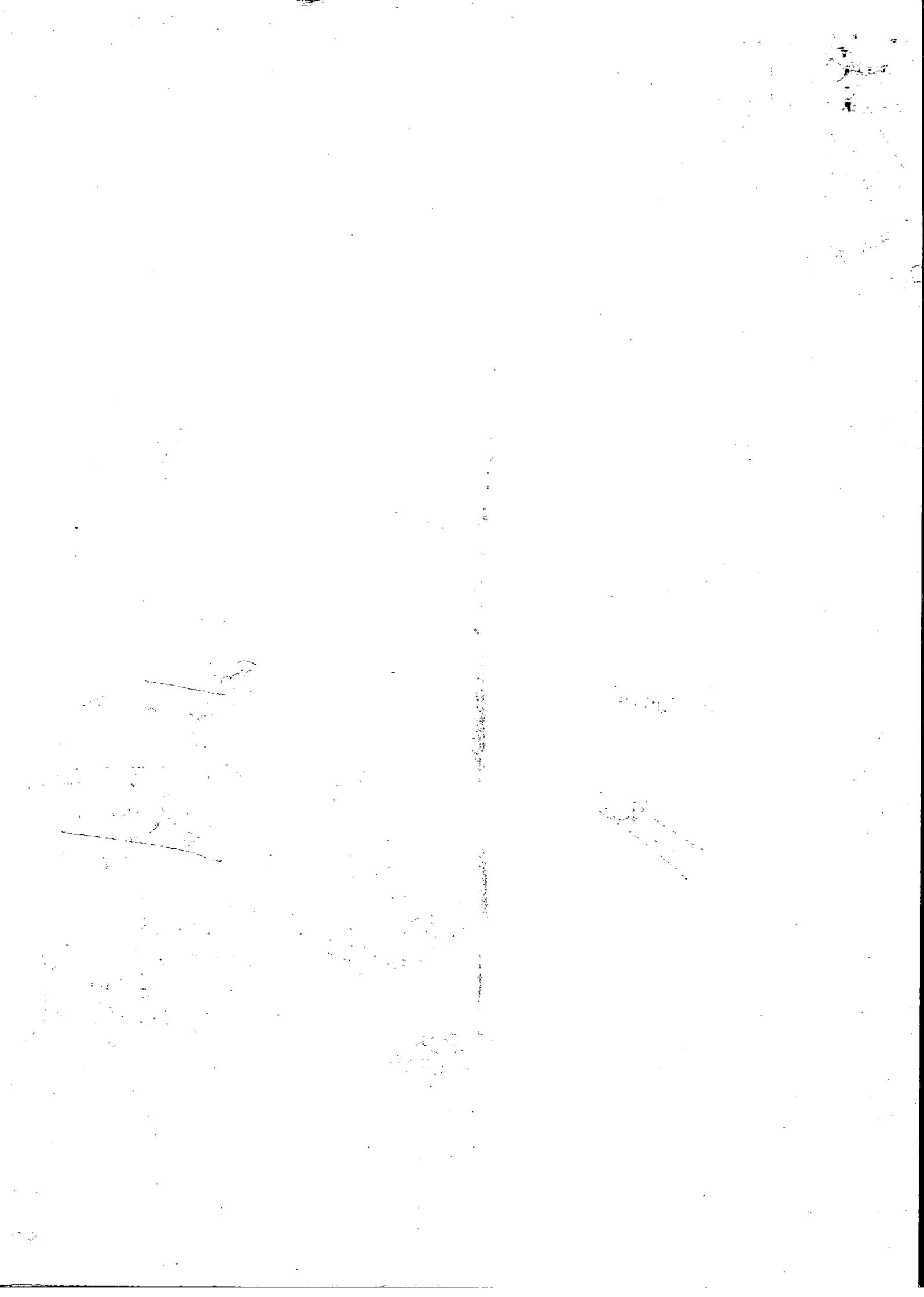
[Signature]

RANJEET SINGH
M.Sc LL.B

NOTARY
MAHARASHTRA
GOVT. OF INDIA

RANJEET SINGH (Notary Govt. of India)
Register No 6941
Dated 22 DEC 2023





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WESTERN ZONE, BENCH PUNE

APPLICATION NO.56 OF 2019 (WZ)

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Versus

M/s. New Monarch Builders & Contractors & Ors. ...Respondents

AFFIDAVIT IN REPLY

Dated this 22th day of DECEMBER 2023

M/S. UTANGALE & CO.

ADVOCATES & SOLICITORS

Office No. 602, 6th Floor, Oval House, British Hotel Lane,

Opp. Commerce House, Fort, Mumbai 400 023.

Tel Nos. 22682027/28