

BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, AT PUNE
INTERIM APPLICATION NO. 257 OF 2024

IN

Appeal no. 122 OF 2018 (Pune Bench)

[Earlier Appeal no. 09 of 2014 (Western Bench)]



Anil Tharthare

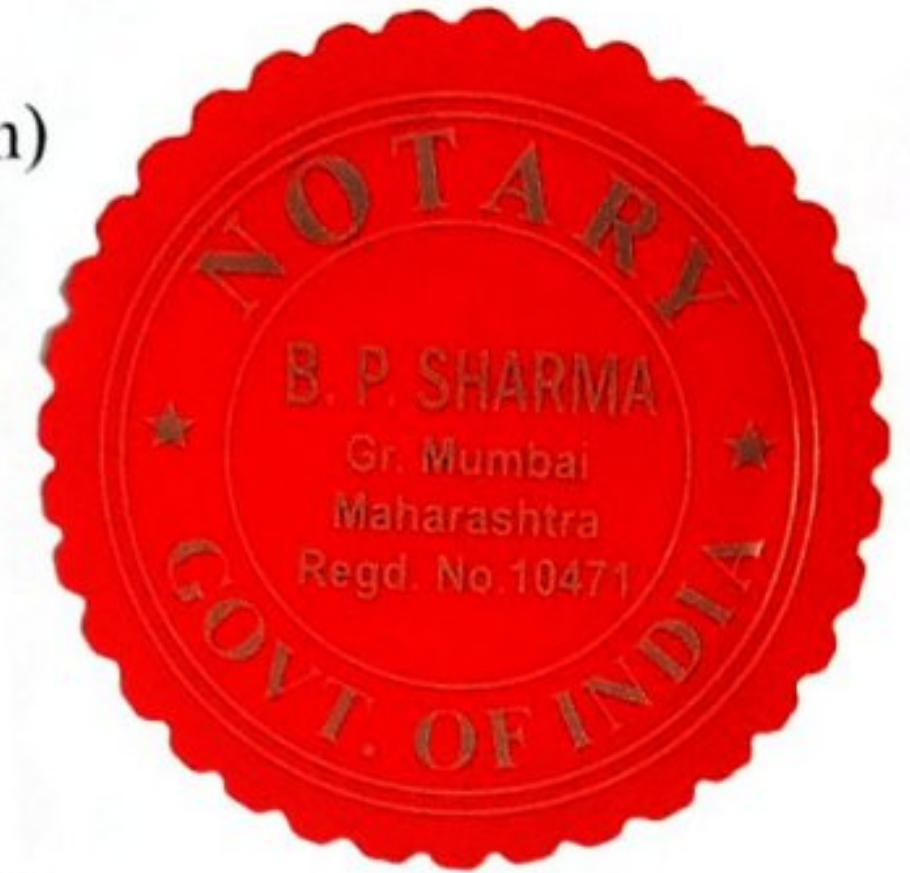
..... Appellant

V/s

The Secretary,

Environment Department,

Government of Maharashtra and Others. Respondents



**AFFIDAVIT-IN- REJOINDER OF THE APPELLANT TO
THE REPLY AFFIDAVIT FILED BY RESP. NO. 6 AS
SERVED UPON THE APPELLANTS ON 28TH SEPT, 2024
THROUGH EMAIL.**

I, Anil Tharthare Aged-59 yrs, Occ-Bussiness, residing at B70-8776,MIG Colony, Bandra East, Mumbai, do hereby state on solemn affirmation as under :

1. I have filed IA no.257 of 2024 before this Hon'ble Court for the reliefs claimed therein and served the copy on all the Respondents through E-mail. The Respondent no. 6 has filed his Affidavit-in-reply dated 26/9/2024 which he has served upon the Advocate for the appellant through email on 28 Sept, 2024 at 5.30 pm. By this reply the Respondent No. 6 has made several wrong and misleading statements for which it is necessary to counter the same by filing the rejoinder, for which I seek leave of this Hon Court and submit as under.
2. I say that the entire project has been wrongly categorized under B2 category whereas it is admittedly an 'expansion

project' having built up area of more than 1,50,000/- sq mtr as such it falls within 'B1 category'. I have raised and pleaded this ground specifically in my Appeal as ground no. 8. Respondents have not countered the same. In the instant reply also, Respondent No. 6 has not denied the same and it is necessary to decide this issue with direction the the concerned authority for issuance of 'Terms of References' by holding this project in Category B1.

3. I say that the Respondent local authority and Project Proponent have violated the provisions contained under Regulation no. 23 (i) (a) of DCR, 1991 which provides for recreational/Amenities/open spaces **excluding** the areas of accesses/ internal roads / designations or reservations etc. In the present case, the Respondent no.6 and respondent no.5 (MCGM) have wrongly counted and included the "Open Access" around the wings A and B for the fire engine and vehicles as part of "RG". This Open Access for fire engine/ vehicles is not the 'RG area' within the meaning and provisions under regulation no.23.
4. I say that the expression "Paved RG" is neither defined in the Prior Environment Clearance (PEC) nor in the Development Control Regulation, 1991. The expression "Paved RG" is alien to the DCR and/or any law for the time being in force, as such "Paved RG" cannot be considered as "RG Open space" for the purposes of PEC or DCR. In the present case, MCGM and the Respondent no. 6 have wrongly treated the entire "Paved RG" as "RG Open space" area. Therefore, lawful RG area in the redevelopment project is actually NIL.





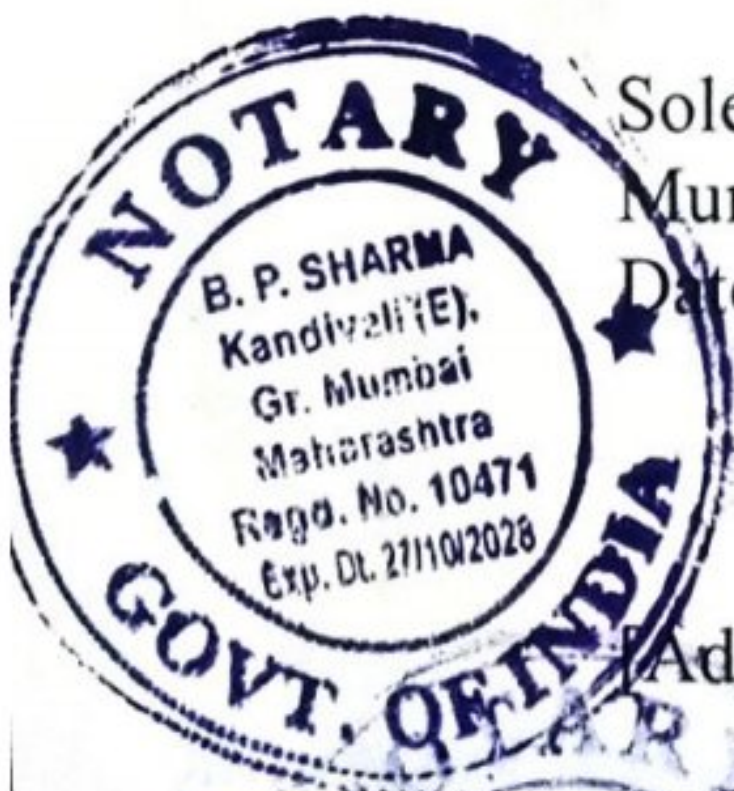
5. The Respondent no. 6 has constructed "Paved RG" on the top of the basement building's structure, also including the common access roads leading to the respective buildings. I have raised this illegality since inception viz. 2014, but the respondent authorities and the respondent no. 6 (Developer) have failed to take any remedial measures to rectify the same. This has aggravated the damage to the environment and it is a continuous process.
6. That, DCR- 23 (i) (f) (a) provides for planting the trees "*at the rate of 5 trees per 100 sq mtrs part thereof of the said recreational space to be grown within the entire plot.*" Respondent number 6 ought to have planted approximately 85 trees on the real RG Area, but nothing as such is visible at sight because the Respondent no. 6 has created "Paved RG" on the top of the basement which is a Fake RG area.
7. That, condition no. xiii of PEC provides for the plantation of the specified trees, however due to non-availability of genuine "RG Area" as provided under regulation no 23, the Respondent Nos. 6 and 5 [MCGM] have chosen to violate this condition. This is not permissible in the law. It is necessary that this Hon NGT be pleased to direct the Respondent No. 6 and 5 [MCGM] to remedy this requirement by providing RG area with plantation of the Trees as per the guidelines prescribed.
8. That, following conditions under PEC have not been complied with viz.: -
 - (i) EC Condition no.30 for providing STP;
 - (ii) Providing a control/ monitoring unit and Six monthly Report to the Pollution control board.
 - (iii) Condition no. 33 separation of grey and black water;

- (iv) Condition no.7 STP MSW Disposal facility;
- (v) Condition no. (ix) for treatment of wet garbage by the OWC-[Organic Waste Converter] and the Manure to be utilized in the existing premises for gardening. This condition has not been complied with till today. Without Green Belt Layout, the OWC cannot function. This damage to environment is also continued as the buildings are occupied.
- (vi) As per Condition no. (xiii), Green Belt Development has not been carried out considering CPCB guidelines including selection of plant species and in consultation with local DFO or Agricultural department. This condition has not been fulfilled and there is not even a single tree on the site as specified in the Environment Clearance (EC). Pertinently, the Project Proponent has admitted this plantation in his own application FORM 1A submitted to the Authorities to procure the PEC.

9. In view of the above brazen violations of PEC and DCR, the applicant respectfully prays before this Hon'ble Court to direct the Joint Committee to assess the Environmental harm caused by Respondent nos. 6 and 5 [MCGM] due to willful violation of the above PEC conditions.
10. Since RG area is not provided but it is wrongly claimed on on the top of the basement referred as "Paved RG", the amenity, facility of constructing a swimming pool, play ground, green belt etc. are practically not possible on the said "Paved RG". "Paved RG" cannot be considered or treated or equated to "RG Open space area".



11. Therefore, I respectfully submit before this Hon'ble Court to direct the Joint Committee to assess the damage caused by the Respondent no.6 and 5 due to non-compliance of the above conditions of the PEC dated 30/9/2024, due to non-plantation of the trees on the mother earth and by not providing lawful "R.G. Open Space" admeasuring 1351 sq mtr. without having any basement or construction underneath.
12. In compliance with the condition no. xxix of "PEC", this Hon'ble Court may be pleased to cancel the O.C. dtd. 7th Nov, 2015 claimed by Respondent no. 6 and 5 [MCGM] till the above stated PEC violations are remedied to the satisfaction of the Joint Committee or as may deem fit by this Hon Court, to be done within a reasonable time bound manner under the supervision of this Hon NGT.
13. In view of the above submissions, it is respectfully prayed to accept this rejoinder on record being necessary for proper adjudication of the present appeal.
14. I say that the facts stated hereinabove are true and correct to the best of my knowledge and no material is concealed therefrom.



Solemnly affirmed,
Mumbai
Date: 30.09.2024

Anil Tharthare

Anil Tharthare
Deponent
Before Me

BEFORE ME

B. P. Sharma
B. P. SHARMA
B.Sc., LL.B.
NOTARY
MAHARASHTRA
(GOVT. OF INDIA)
Reg. No. 10471

[Advocate for the Appellant]



Notarial Serial. No. 110124
Dated 30 SEP 2024