

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

WESTERN ZONE BENCH, PUNE

MEMORANDUM 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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**AFFIDAVIT-IN-REPLY ON BEHALF OF APPLICANTS PLACING
OBJECTIONS TO THE UNDATED DRAFT FINAL REPORT OF
NCSCM SUBMITTED BY CIDCO**

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 affidavit-in-reply as a response to an undated "Final Draft Report" prepared by National Centre for Sustainable Coastal Management, Chennai ("NCSCM") filed by Respondent No. 1. I reserve my right to file an additional detailed Affidavit as and when required.

1. Report is not a final report as it is titled as 'Final Draft Report' which is undated and bears no entry number on the file of NCSCM

1. At the outset, I say that the report of NCSCM filed by R-1 is merely a 'Final Draft Report' and not a final report on the basis of which I take an objection as to its contents and veracity as a perusal of the said report

clearly reveals that it has been prepared as a 'Final Draft Report' bearing no date, no signature or details of any signing officer/scientist and no entry number that demonstrates that the report is on the file of NCSCM. I say that in light of the above glaring irregularities and inconsistencies, the draft report submitted by R-1 is inadmissible in the eyes of law and the Applicants herein take strong objections as to its contents, veracity and admissibility.

2. Further, I say that upon the query made by this Hon'ble Tribunal regarding the status of the report on whether the same is final or any other supplementary report is likely to be submitted, the Senior Planner, CIDCO (Dr. Priya K.) who was present before the Tribunal had stated that '*this report should be treated to be as final report*'. I say that CIDCO has no role whatsoever in deciding which report is to be treated as final for two reasons:



- (i) *firstly*, NCSCM is an autonomous expert institution under the MoEFCC, which is an independent scientific institution and therefore, it is only the NCSCM, either by itself or through MoEFCC, who can inform this Hon'ble Tribunal as to which report requires to be treated as a final report.
- (ii) *Secondly*, the report is prepared not at the behest of CIDCO but is prepared at the behest of the letter dated 15.02.2022 issued by Under Secretary, Environment & Climate Change Department, State of Maharashtra to Director of NCSCM seeking the CRZ Map in 1:4000 scale of the plot in question and a subsequent order dated 10.01.2023 passed by this Hon'ble Tribunal by which CIDCO was directed to pay Rs. 4.5 lakhs as professional fees of

NCSCM to prepare the report, which was to be submitted within a period of one month.

Therefore, a solitary statement of an officer of CIDCO (R-1) who states that “*this report should be treated to be as final report*” deserves to be rejected as neither CIDCO has any role to play in the formation of the report nor the concurrence of CIDCO is required when an independent report is prepared by an independent institution.

II. Report confirms that the plot is affected by (i) CRZ-I as the project boundary covers Mangroves and its buffer zone and (ii) CRZ-II

3. Without prejudice to what is stated in the foregoing paras, I say that the ‘Final Draft Report’ has declared that the project is affected by mangroves, its 50-meter buffer zone and CRZ-II on the basis of the approved CZMP Maps and field verification by its scientific team (at Para 10.2). At Para 8.0, it is made abundantly clear that the landcover around the site comprises of mangroves and waterbodies.

4. I say that Figure 2 of the Report is prepared as per the approved CZMP Maps under the CRZ Notification, 2011, which shows the extent of the plot affected by CRZ-I & CRZ-II. It is pertinent to note that at the time of issuance of CRZ Notification in 2011, Development Plan of 2008 was in operation, which reveals that the said plot has continued to be earmarked as a “No Development Zone” and falls on the seaward side of an existing road, which is indicated in the red coloured line that runs north of the said plot. That subsequently in the Development Plans of 2012 and upto 2020, no ‘proposed roads’ or new roads have been earmarked around the said plot and therefore, the plot has always remained on the seaward side of the existing road.



5. I say that the alleged reference to a 'road' in the report at Figure 3 is not found on any of the development plans or the CZMP as an 'existing' or a 'proposed road' for the simple reason that the dirt-laden patch cannot be termed as a road as this patch is an isolated and a solitary patch that has no connection to any road in any direction and connects 'nowhere to nowhere'. I say that as held by the Hon'ble Apex Court, the words 'existing road' will have to be interpreted to mean the road which was existing as on the date of the promulgation of the CRZ Notification, 2011 and therefore, the development plans of Navi Mumbai as existed as on January, 2011 (and thereafter) demonstrate that no road exists to the South of the plot in question and therefore, the plot falls on the seaward side of the existing road and therefore, it attracts the restrictions on building permissions on the CRZ-II portion.



6. Without prejudice to what is stated hereinabove and at any rate, the aforesaid 'road' has no route as it does not lead to or connect from one place to another and that no vehicle, whether motorable or not, of any kind has ever used or uses this alleged 'road' for any travel. I say that the said alleged 'road' is merely an isolated patchy path having no connection on either end and has a dead end at both ends, which thereby renders this patch as unusable and non-operational for a 'road'. I say that Cambridge online dictionary defines a road to mean "*a long, hard surface built for vehicles to travel along*". Therefore, this isolated patchy length of a path cannot be termed as a 'road' by any stretch of imagination as it is neither long nor used by vehicles for any travel. A copy of the photographs dated 25.08.2023 demonstrating the two ends of the alleged 'road' is marked and annexed hereto as **ANNEXURE R-1**. A perusal of the said photos makes it's clear that in any manner of logic and by definition, this path cannot be termed as a 'road'.

7. In light of what is stated hereinabove, I say that I deny the existence and contents of the 'Final Draft Report' and the same cannot be taken into evidence. In light of the aforesaid objection raised by the Applicants, I say that the Original Final Report or a certified copy of the original report requires to be produced by R-1 or by MoEFCC and until then, the genuineness of the document cannot be presumed and cannot be admitted into evidence as such a 'Final Draft Report' can neither be treated as a primary evidence under Section 62 of the Evidence Act, 1872 or a secondary evidence under Section 63 of the Evidence Act, 1872.



Solemnly affirmed at Mumbai)
 Dated this 11th Day of September, 2023)

Identified by Me

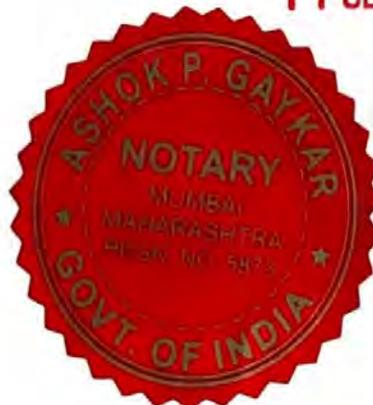
Zaman Ali,
 Advocate for Original Applicants

DEPONENT

BEFORE ME

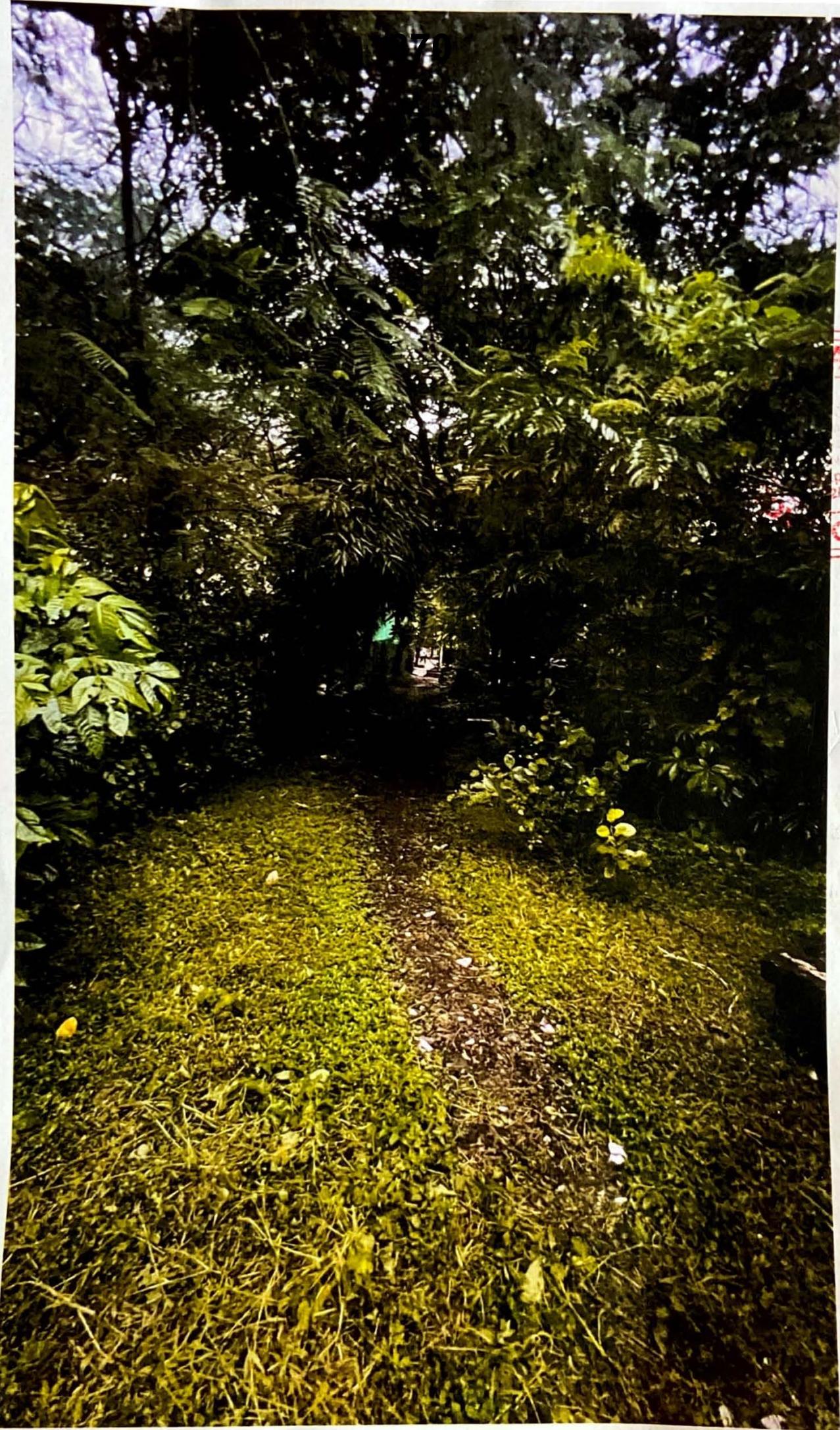
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Adv. ASHOK P. GAYKAR
 B.Com., LL.B., G.D.C. & A.
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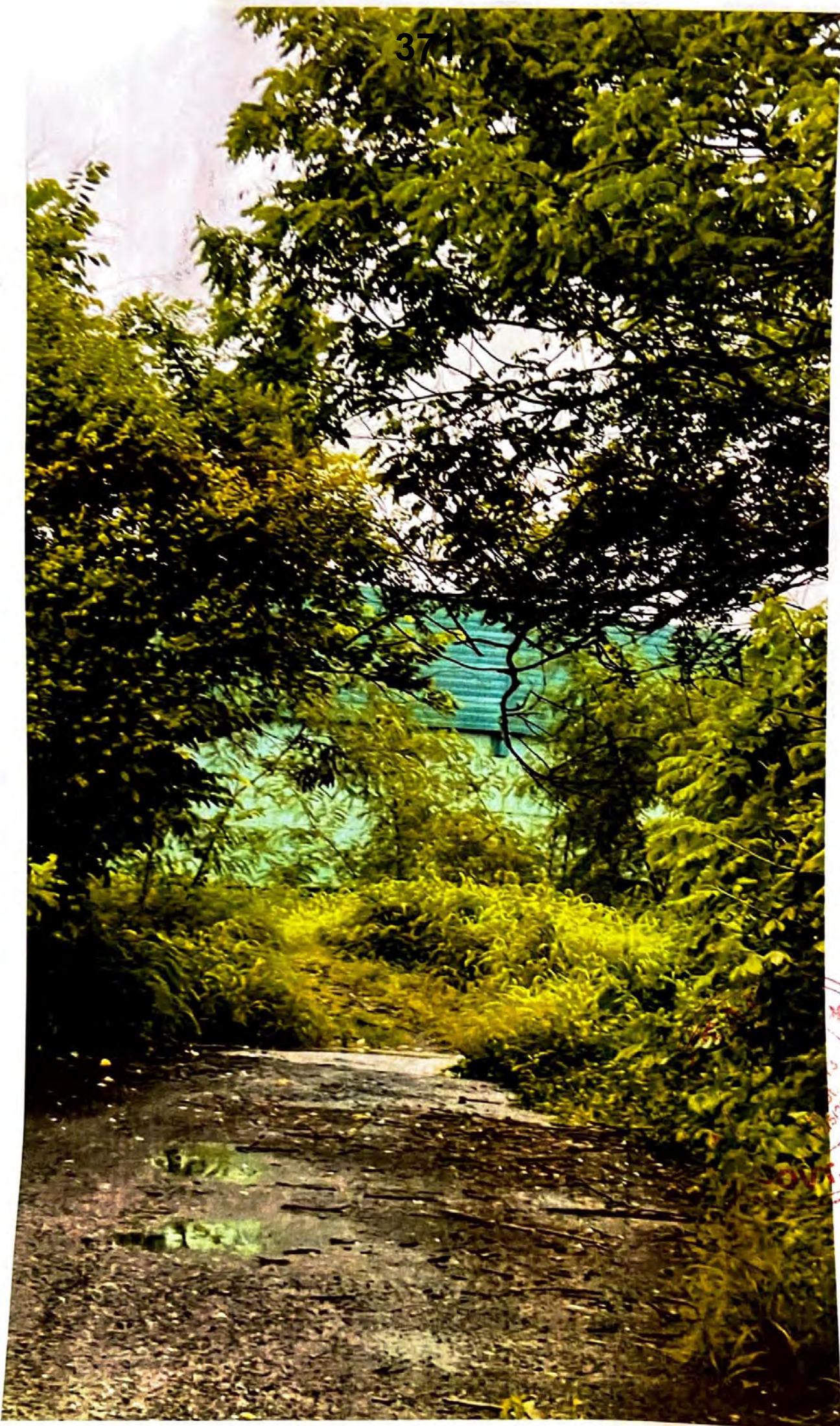


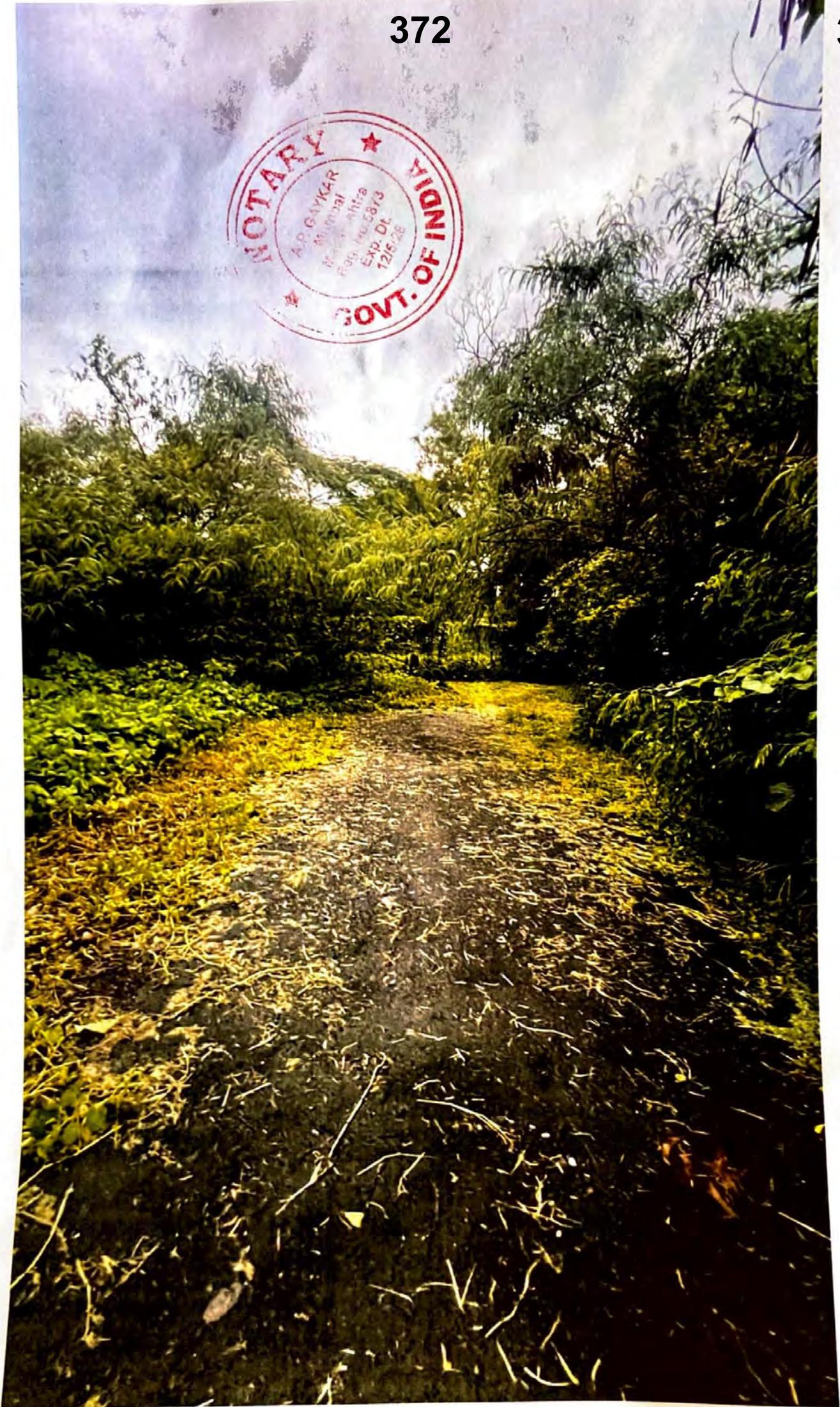
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DRAFT FINAL REPORT OF NCSCM
SUBMITTED BY CIDCO**

Dated this day of August, 2023

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