

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL

SITTING AT PUNE

MEMORANDUM OF APPEAL

APPEAL NO. 21 OF 2023

BETWEEN:

Santosh Daundkar

...Appellant

Versus

The Secretary, MoEF & Ors.

...Respondents



AFFIDAVIT-IN-REPLY TO THE CAPTIONED APPEAL ON BEHALF

OF RESPONDENT NO. 10, i.e., M/s. MACROTECH DEVELOPERS LTD.:

I, Piyush Thakkar, aged 50 years, Indian Inhabitant, the Authorised Signatory of Respondent No. 10, having my office address at 412, 4th Floor, 17G, Vardhaman Chamber, Cawasji Patel Road, Horniman Circle, Fort, Mumbai – 400001 and also at Lodha Excelus, N.M. Joshi Road, Mahalaxmi, Mumbai - 400011, do solemnly state on oath and affirm as under:-

1. I am the Authorised Signatory of Respondent No. 10 having my address as mentioned above. I have gone through the captioned Appeal and the documents filed along with the captioned Appeal by the Appellant. I am familiar with the facts of the case from personal knowledge as well as from office records available with Respondent

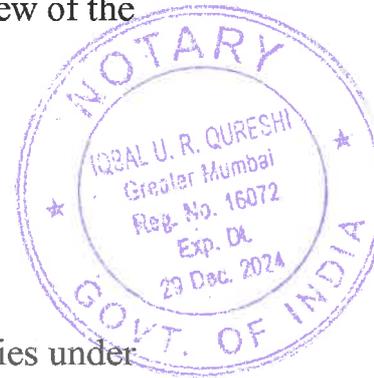
No. 10 and am competent to depose to the facts in this Affidavit-in-Reply (the “Reply”).

2. I am filing the Reply for the purpose of opposing the Appeal and also opposing the grant of any relief(s) as prayed for by the Appellant against this Respondent No. 10. I crave leave of this Hon’ble Tribunal to file a further affidavit(s) if circumstances so warrant.
3. At the outset, I deny all allegations, contentions, and submissions made in the Appeal, which are contrary to or inconsistent with what is stated in the Reply. Further, I oppose the reliefs prayed for in the Appeal against Respondent No. 10. None of the allegations, contentions, or submissions in the Appeal which have not been specifically dealt with or denied by me, should be deemed to be admitted for want of specific traverse. Each ground, contention, averment, and/or pleading that is being taken by this Respondent are without prejudice to each other and are to be read independently of each other.



4. Respondent No. 10 has previously filed an Affidavit in Reply dated 10th July 2023, *inter alia*, raising the following preliminary issues regarding the maintainability of the present Appeal:

- a) Allegations qua alleged violations of Development Control Regulations do not come under the purview of the National Green Tribunal (“NGT”);
- b) Plurality of Remedies;
- c) No locus standi to file the captioned Appeal; and
- d) The challenge to the statutory powers of authorities under Section 5 of the Environment Protection Act, 1956.



However, the issues of maintainability raised in the Affidavit-In-Reply dated 10th July 2023 have not been reproduced for want of repetition, and for the sake of brevity.

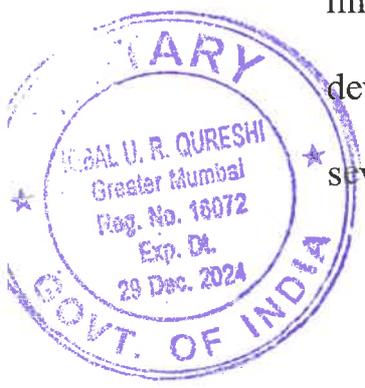
5. Without prejudice to the contentions raised herein, Respondent No. 10 adopts the stand taken in its Affidavit-In-Reply dated 10th July 2023 and also adopts the stand taken by the Respondent No. 9 in their Affidavit-In-Reply dated 10th July 2023, Additional Affidavit dated 25th July 2023 and Affidavit in Reply of Respondent No. 9 to the captioned Appeal dated 27th September 2023. The Affidavit-In-

Reply dated 10th July 2023 of Respondent No. 10 and Affidavit-In-Reply dated 10th July 2023 of Respondent No. 9, Additional Affidavit Respondent No. 9 dated 25th July 2023 and Affidavit in Reply of Respondent No. 9 to the captioned Appeal dated 27th September 2023, may be read as part and parcel of the present Reply. In light of the aforesaid, Respondent No. 10 submits that this Hon'ble Tribunal ought to decide the issue of maintainability and dismiss the captioned Appeal at the threshold without going into the merits of the memo of Appeal, as the same is not maintainable as per the extant applicable law.

6. Without prejudice to the aforesaid preliminary objections, Respondent No. 10 prefers the present Reply to address issues that have been raised in the captioned Appeal on merits and to place the correct facts on record as regards Respondent No. 10.

BRIEF BACKGROUND

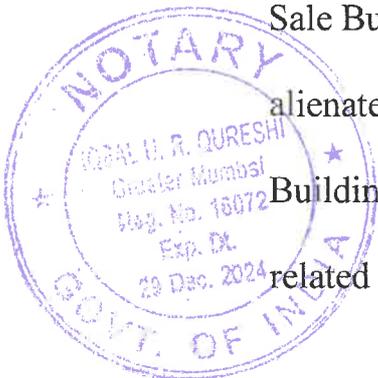
7. Macrotech Developers Limited, Respondent No. 10 is a public limited company engaged in the business of real estate property development and is part of the prestigious Lodha Group having several residential and commercial real estate projects in Mumbai,



Pune, Hyderabad, Bangalore and London. The main purpose of Respondent No. 10 is to promote the construction and provide services to the customers and their families with a particular focus on congenial, comfortable and luxurious living and infrastructure.

8. Respondent No. 9, i.e. Safal Developers Private Limited is the Project Proponent which took up the construction of the proposed redevelopment of Municipal Property known as Barracks No. T/57, T58, T/59 on plot bearing S.C. No. 6 (Pt.) of F/North Ward, Sion Division, situated at Vishramwadi, Bhaudaji Rd., Sion, Mumbai (“**said Project**”).

9. On 6th January 2023, a Joint Development Agreement was executed *inter alia* between Respondent No. 9 and Respondent No. 10 herein for the construction of the said Project wherein Respondent No. 10, in its capacity as a joint developer with Respondent No. 9, is granted irrevocable right to exploit, utilize and consume whole of the Free Sale Component along with rights (i) to develop and construct the Sale Buildings on the portion of the project land and to sell, market, alienate or otherwise dispose of the premises comprised on the Sale Buildings, and (ii) to construct Common Areas and Facilities and related and incidental activities. The scope of Respondent No. 10 as



regards the present Appeal is narrow as Respondent No. 10 is merely developing the said Project with Respondent No. 9 under and in terms of the Joint Development Agreement dated 6th January 2023.

10. Respondent No. 10 states that on reading the captioned Appeal, in its entirety, it is evident that the Appellant, on wrongful and erroneous grounds, is only challenging the Environment Clearance dated 11th April 2023 (“**Impugned EC**”) issued to Respondent No. 9 by Respondent No. 3-SEIAA in respect of the then-upcoming construction of the proposed redevelopment of Municipal Property known as Barracks No. T/57, T/58, T/59 on plot bearing C.S. No. 6 (Part) of F/North Ward, Sion Division, situated at Vishramwadi, Bhaudaji Road, Sion, Mumbai (“**Project Land**”).

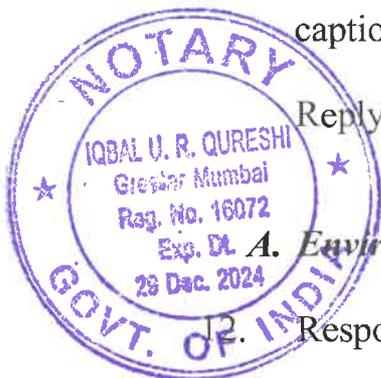
GROUND FOR REJECTION OF THE APPEAL

11. The Respondent No. 10 adopts the grounds for rejection of the captioned appeal raised by Respondent No. 9 in their Affidavit in

Reply to the captioned Appeal dated 27th September 2023:-

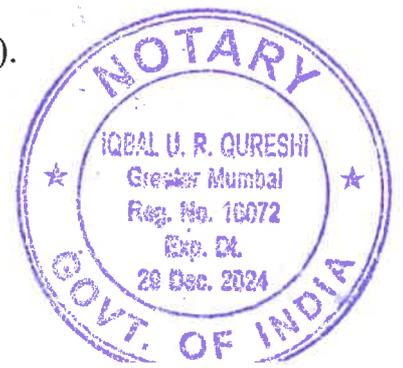
Environment Clearance obtained in accordance with law

12. Respondent No. 10 submits that that the Project Land was envisaged to be developed in or around the year 2022.-As per the applicable



rules and regulations, the Project Land fell under clause 8(b) for Category 'B2' in the Schedule of the Environment Impact Assessment Notification, 2006 ("EIA Notification"), which provided for mandatory environment clearance for construction work on the land having a total built-up area of more than 20,000 sq. mtrs. Thus, Respondent No. 9 i.e., the Project Proponent applied for the grant of environmental clearance for commencing the redevelopment work on the Project Land ("EC Application") which was considered by the State Level Expert Appraisal Committee-II ("SEAC-II") i.e., Respondent No. 4 in its 193rd Meeting held on 19th January 2023 as well as State Level Environment Impact Assessment Authority ("SEIAA") i.e., Respondent No. 3 in its 257th Meeting held on 2nd March 2023. It is pertinent to note that the minutes of the meeting of SEAC-II have categorically noted that no construction was carried out at the Project Land before obtaining the EC.

13. After due deliberation, on 11th April 2023, Respondent No. 3 – SEIAA issued the impugned EC in favour of the Respondent No. 9 for the said Project (*annexed to the Appeal at Page 64*).

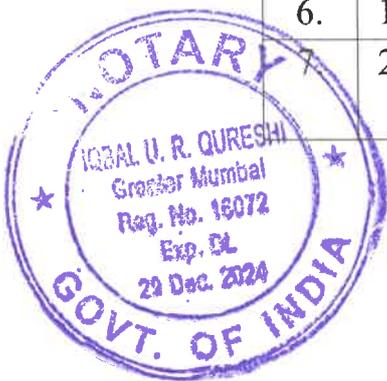


14. Respondent No. 10 submits that the procedure for grant of the Impugned EC has been properly followed by Respondent No. 9 and there have been no infirmities in obtaining the same as alleged by the present Appellant.

B. Other development permissions obtained by Respondent No. 9.

15. All permissions have been duly obtained by Respondent No. 9 as regards the said Project/Project Land which are reproduced hereinbelow:

Sr. No.	Date	Particulars
1.	07.09.2011	Rahat Plaza Co-operative Society appointed Safal Developer Private Limited, as its Developer to redevelop the plot being the Project Land.
2.	21.08.2015	LOI issued by MCGM which was later revalidated on 04.01.2023.
3.	06.11.2015	Development Permission was granted by MCGM with respect to the said Project.
4.	06.03.2017	IOD for Building No. 4 & 5 (Rehab Municipal Building No. 4 & Slum Building No. 5).
5.	08.03.2017	IOD for Building No. 1 (Rehab Doctors Quarters).
6.	10.03.2017	IOD for Sale Building No. 2 & 3.
	26.03.2019	Consent to Establish issued by MPCB for said Project valid up to 26.03.2024.



8.	29.06.2019	Tripartite Agreement was executed between MCGM, the Society and Respondent No. 10 to develop Project Land.
9.	26.02.2020	Tree Authority Permission for removing and transplanting trees affected in Project Land. This was re-issued on 26.04.2023.
10.	04.01.2023	Amended LOI issued by MCGM up to 20.08.2023.
11.	12.01.2023	Amended IOD for Building No. 1 (Rehab Doctors Quarters)
12.	12.01.2023	Amended IOD for Building No. 4 & 5 (Rehab Municipal Building No. 4 & Slum Building No. 5).
13.	13.01.2023	Approval for erecting a temporary site office on the Project Land issued by MCGM to Respondent No. 10.
14.	30.01.2023	Amended IOD for Sale Building No. 2 & 3.
15.	20.03.2023	Royalty Permission for soil issued by Collector and District Magistrate, Mumbai City.
16.	11.04.2023	Impugned EC issued by SEIAA.
17.	26.04.2023	Tree Authority Permission for removing and transplanting trees affected in the said Project.

16. The Appellant has not challenged any development permissions that have been obtained by Respondent No. 9 and the Appellant is only attempting to stall the said Project.

C. No violation of Development Control Regulations/DCR

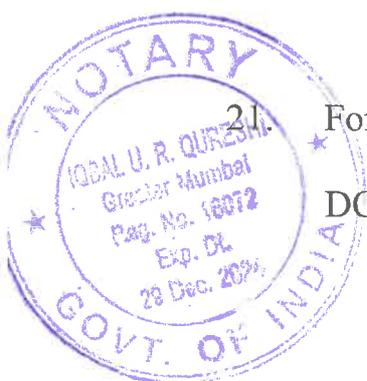


17. Respondent No. 10 submits that the present Appeal challenges the EC, however, close scrutiny of the Appeal makes it abundantly clear and evident that the Appellant is attempting to challenge the development permissions obtained by Respondent No. 9 for the said Project under DCR, and by that extension, is attempting to challenge the vires of the provisions of DCR. At this juncture, it is pertinent to mention that DCR is a delegated legislation issued under the Maharashtra Regional and Town Planning Act, 1966 (“**MRTP Act, 1966**”). In the present case, the approval for redevelopment of the Project Land under Regulation 33 (7) of DCR was granted only after due consideration and following due process by MCGM.
18. It is submitted that any alleged violation(s) under DCR does not come under the purview of this Hon’ble Tribunal. The entire project on the Project Land is being undertaken under the applicable and valid provisions of DCR. The Appellant has at no point challenged any development permissions obtained/ granted for the said Project. Respondent No. 10 submits that there has been no infirmity with either the procedure or law while granting the Impugned EC.



D. Importance of redevelopment under DCR

19. The Project Land on which the development permission has been granted was already *encumbered* and/or occupied by the members of the Society, thus, the Project Land was and could not have been used as a recreational ground. In the present case, Respondent No. 9 is providing a recreational ground of 40% for redeveloping the Project Land under Regulation 33 (7) which is not only permissible under the law, and also the need of the hour, but also more than the minimum requirement.
20. It is pertinent to note that the city of Mumbai faces challenges in terms of its ever-increasing population more particularly the necessity to provide a safe shelter to its population which is a guaranteed constitutional right. Presently, the redevelopment of the Project Land is being undertaken under Regulation 33(7) of DCR, which enables the occupants to be rehabilitated free of cost by private developers whilst ensuring the integration of green spaces in the already encumbered designated recreational grounds.



21. For the redevelopment of buildings on the recreational grounds, the DCR provides for a minimum percentage of the area to be left as a

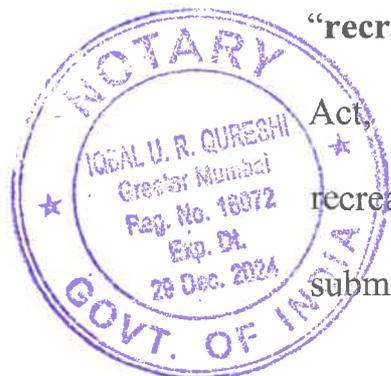
recreational ground/open space. Pertinently, Respondent No. 9 in compliance with the law is not only providing RG area but also developing the same along with Respondent No. 10 i.e., 40% of the Project Land, for the benefit of the public.

E. Reservation for a Recreation Ground (“RG”) and not Garden

22. Section 2(2) of the MRTP Act, 1966 defines “amenity” as under:

“(2) “amenity” means roads, streets, open spaces, parks, recreational grounds, playgrounds, sports complex, parade grounds, gardens, markets, parking lots, primary and secondary schools and colleges and polytechnics, clinics, dispensaries and hospitals, water supply, electricity supply, street lighting, sewerage, drainage, public works and includes other utilities, services and conveniences”.

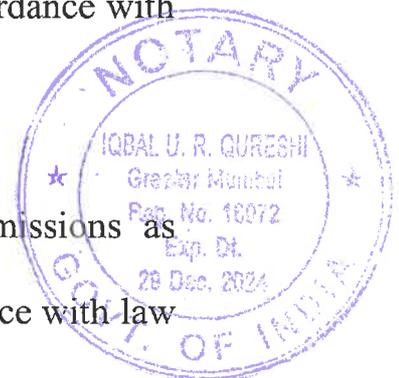
23. It is the Appellant’s contention that the said Project is being constructed on land that has been reserved for a garden. The Appellant has not produced a single document to prove the said contention and has throughout the memo of Appeal used the terms “recreation ground” and “garden” interchangeably. In the MRTP Act, the word “amenity” includes several entries including recreation ground and garden which are separately enumerated. It is submitted that a recreation ground is not the same as a garden, and



a reservation for a recreation ground is not the same as a reservation for a garden only. They are two completely different reservations and the Appellant has made the assumption that it has been reserved for a garden without any documentary evidence. It is also pertinent to note that the Appellant has also made averments stating that apparently the reservation was made for the purpose of a central park for the slum area of Dharavi. Respondent No. 10 submits that the same is totally misconceived and contrary to the record. The submissions made by the Appellant are based on conjectures and surmises of the Appellant.

24. As per the approved layout, the total plot area of the Project Land is 26,329.97 sq. mtrs. Out of the total area, 10,531.98 sq. mtrs is the area earmarked for recreation ground (“RG”) and the balance area of 15,797.99 sq. mtrs. is entitled to be constructed by Respondent No. 9 along with Respondent No. 10 in accordance with DCR and applicable laws. Respondent No. 10 submits that the development on the Project Land is being carried out strictly in accordance with DCR.

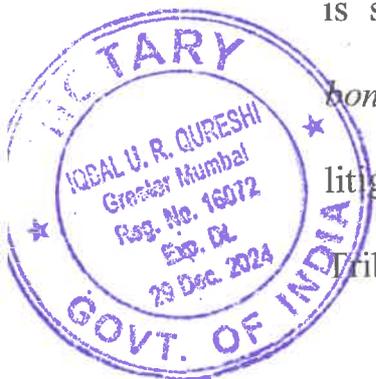
25. Respondent No. 10, therefore, submits that all permissions as regards the said Project have been obtained in accordance with law



and 10,531.98 sq. mtrs. area has been earmarked as the RG area to be provided on the Project Land as per the applicable provisions of DCR and therefore, the present Appeal ought to be dismissed.

F. Credentials of the Appellant

26. Without prejudice to the contentions raised herein, it is submitted that this Hon'ble Tribunal ought to look into the credentials of the Appellant filing any appeal proceedings before this Hon'ble Tribunal. Under Section 16 of the NGT Act, 2010, a person who is truly aggrieved only can approach the Hon'ble Tribunal invoking its appellate jurisdiction. And the Hon'ble Tribunal ought to look into and test the credentials and *bonafides* of the Appellant. The Appellant has nowhere in the memo of Appeal specified how the Appellant is specifically aggrieved by the said Project or by the issuance of the EC. In fact, the Appellant is a resident of Mumbai Central as is evident from the cause title of the present proceedings which is about 11 km from the location of the Project Land. And it is settled law that any doubt if raised on the credentials and *bonafides* especially when entertaining the grievance of such litigants is likely to adversely affect the rights of many, the Hon'ble Tribunal must ensure the *bonafides* and credentials of such litigants.



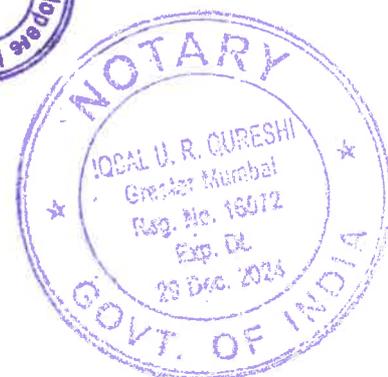
27. Respondent No. 10 submits that the present Appeal ought to be dismissed as the Appellant is devoid of any locus to file the present Appeal.
28. Respondent No. 10 submits that the Respondent will not be dealing with the Appeal in seriatim more particularly since the entire bogey of allegations and contentions raised in the Appeal have been dealt with and answered in terms of the above and for the sake of brevity, Respondent No. 10 also adopts the stand taken by Respondent No. 9 in their Reply to the captioned Appeal dated 27th Septmeber 2023. Respondent No. 10 states that the issues and grievances raised by the Appellant stand fully answered in terms of all that is stated hereinabove and thus, the captioned Appeal has failed to make out a cogent and compelling case for grant of any reliefs by this Hon'ble Tribunal.
29. In these premises, Respondent No. 10 states that the captioned Appeal deserves to be dismissed *in-toto*.

Date:

Place:


Deponent

Respondent No. 10



VERIFICATION

I, Piyush Thakkar aged 60 years, Indian Inhabitant, the Authorised Signatory of Respondent No. 10, do hereby state that I have submitted this Affidavit on solemn affirmation and oath. I have verified that the facts are true to my personal knowledge as well as from office records. I have not suppressed any material fact known to me and relevant to this matter.

Date:

Place:

Piyush

Deponent

Respondent No. 10

yash
Advocates for Respondent No. 10

BEFORE ME

[Signature]
IQBAL U. R. QURESHI
NOTARY
Government of India
Greater Mumbai Maharashtra

27 SEP 2023

NOTED & REGISTERED
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Book No. V-28 Date 27 SEP 2023

