

14-2-2025 Draft Reply to the Amendment Application



BEFORE THE NATIONAL GREEN TRIBUNAL SITTING AT PUNE

INTERLOCUTORY APPLICATION NO. \_\_\_\_ OF 2025

IN

APPLICATION NO. 100 OF 2024

Vanashakti and Anr. ..Applicants

**IN THE MATTER BETWEEN :**

Vanashakti and Anr. ..Applicants

Versus

State of Maharashtra & Ors. ..Respondents

**AFFIDAVIT IN REPLY ON BEHALF OF RESPONDENT NO. 11**

I, **Sanjay S. Shenolikar**, aged 58 years, Occupation: Service the authorised representative of Respondent No. 11 abovenamed, having my office address at Construction House "B", 2<sup>nd</sup> floor, 623, Linking Road, Opp. Khar Telephone Exchange, Khar (West), Mumbai – 400 052, do hereby state on solemn affirmation as under:

1. I am the authorised representative of Ferani Hotels Pvt. Ltd., Respondent No. 11 abovenamed. I have read a copy of the Application filed by the Applicants for interim reliefs for amendment of prayers and in reply thereto I have to state as under.

2. At the outset, I repeat, reiterate and confirm what is stated in my earlier Affidavit in reply dated dated 1/8/24 and 23/09/2024. I deny each and every allegation, contention and averment which is contrary to and/or inconsistent with what is stated in my earlier Affidavits and herein nothing should be deemed to be admitted be non-traverse.
3. I say that the present amendment sought by the present Application results in changing the cause of action and expanding the scope of the original Application which is not permitted under law.
4. I say and submit that the recommendations of the Joint Committee are beyond the provisions of ESZ Notification dated 5<sup>th</sup> December, 2016 sanctioned by MoEF. It is submitted that the Joint Committee is neither entitled nor empowered to make recommendations which will result in the modification to the sanctioned ESZ Notification issued on 5<sup>th</sup> December, 2016. It is submitted that the present provisions of ESZ Notification dated 5<sup>th</sup> December, 2016, provisions of sanctioned DCPR, 2034, provisions of Maharashtra Regional Town and Planning Act, 1966 and the provisions of Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975 are sufficient enough to address the environmental issues raised by these Applicants.
5. During the last hearing this Hon'ble Tribunal had recommended that the parties to summarize the actual grievances and had in particular directed the Applicants to summarize its exact

grievance in order to assist the Tribunal to take decision. I deny that during the course of the last hearing the Hon'ble Tribunal directed the Applicant that the present original Application be amended to include the prayers for the implementation of the recommendations of the Joint Committee as alleged or otherwise. I say that under the garb of summarizing the grievance this Applicant has misconceived the directions to expand the scope of its original Application thereby changing the original cause of action which is not permitted in law.

6. **Recommendation regarding hill cutting:**

- (a) The Joint Committee in its first Report has clearly stated that "land leveling work is currently underway for the 18.30 mtrs. wide D.P.Road, which runs parallel to Sanjay Gandhi National Park (SGNP) the northern boundary of the plot". It was further recorded by the Joint Committee that "During the Joint Committee's field visit, it was observed that hill cutting and soil excavation activities have been conducted a few spots to facilitate the construction of the D.P.Road on the northern side of the land parcel. Such excavation can lead to increased soil erosion and instability potentially affecting the surrounding environment". In light of the hill cutting observed by the Joint Committee, the Committee has strongly recommended a complete prohibition on hill cutting within this region.
- (b) I say that BMC, Respondent No. 1 herein, has vide its Affidavit in reply to the main Application dated 29<sup>th</sup>



January, 2025 set out the following facts in this regard. In paragraph 4A(b) it has stated that:

*“These Respondents state that; the adjoining plot bearing CTS No. 827A/4A/2 of Village Malad (East) is in the Residential Zone and is reserved for **“Police Housing”**. The same is situated between SGNP and the plot being developed by Respondent No 10. The 18.3 m D.P. Road providing access to the police housing plot is in Brihanmumbai Municipal Corporation possession and development of the road is in process by BMC through the contractor.”*

(c) paragraph 4A(c) it has stated that:

*“The plot comprises of number of large platues, Theses respondents submit that the excavation, leveling, filling required for the development of the buildings on the plot including the infrastructure, roads, accesses, compound walls, retaining walls etc is permitted under the MRTP Act and the same cannot be construed as Hill Cutting.”*

(d) paragraph 4A(f) it has stated that:

*“The Respondent submits that; as regards to allegation of hill cutting is concerned, the Development Plan department of the MCGM has informed that, the site was inspected on 07.06.2024 by the staff of this DP Department and it is observed that, The land is open barren land with grass and shrubs which is partially developed. No proposed construction work is observed within 100 m strip of ESZ affecting the plot on its North side and on its east side. No hill cutting/flattening is observed on site. The cutting and*

*leveling for the purpose of development of buildings, roads and infrastructure is permissible The Joint Committee in their additional report also addressed this allegation at point no. 9. Hereto annexed and marked as EXHIBIT 'A' is the copy of DP Department remarks Dated 13.06.2024.”*

7. **Recommendation regarding investigation into fires:**

- (a) In the recent past on 28/12/2024 fire took place on adjoining plot bearing C.T.S No. 827A/4A/2 of village Malad (East) which is in the possession of Respondent No.12. Respondent No. 10 & 11 are not concerned with the said incident.
- (b) Subsequently, on 13/01/2025 fire took place on common boundary of the Police Housing Plot bearing CTS No. 827A/4A/2 and the plot bearing C.T.S No. 827A/4A/1 of village Malad (East). In this regard we are annexing hereto the copy of English translation of the Panchnama dtd. 14/1/2025. It can be seen from the said Panchnama that the HDPE and FRGP pipes lying on the plot have been damaged in large proportion in the said fire. Also Gabion Net, cabin and water tank on the said plot has also been damaged. It may be noted that there is neither cutting / burning / destruction / felling of trees nor there is any deliberate and/or intentional clearing of natural foliage / vegetation etc. as alleged or otherwise. The said plot is a barren land without any plants / tree etc. On the contrary, this Respondent has suffered great monetary loss in lakhs



of Rupees due to damage caused to expensive construction material lying on site in the said fire incident.

- (c) In this context please refer to the Panchnama dtd. 13/12/2022 carried out Forest Dept. annexed as "Exhibit E" to the Application No.166/2024, wherein it is stated that no cutting was observed on the plot under reference by the Panch.
- (d) These Respondents are very particular about the plantation of trees during the development. The said fact is borne out by Para 4Bf of the Affidavit filed by the Respondent BMC, which is reproduced herein.

*"The respondent states that the tree NOCs dated 29/03/2013, 22/04/2013, 07/05/2013 have been issued by Supdt. of Gardens & Tree officer and subsequent letter for plantation was issued from Deputy Supdt. of Garden department of these respondent certifying new tree plantation of 1003 trees done by the respondent M/s Ferani. The tree NOC dated 29/03/2013 issued by Supdt. of Gardens & Tree officer, states that there were no existing trees on the plot. Thereafter, the respondent Ferani has newly planted about 1003 trees as certified by Deputy Supdt. of Garden department of these respondents vide its letter dated 28/05/2024. The Panchnama carried out on 13/12/2022 after due site inspection also states that no trees cutting are observed".*

- (e) The Police Dept. have already taken appropriate steps and submitted their report to the Court in respect of FIRs filed

by Respondent BMC without any delay in the past. There is no question of issuing further Orders to the Police Authority in present circumstances.

- (f) Since there is no cutting / burning of trees in the ESZ area, there is no violation of ESZ Notification. This Respondent cannot be held liable for the said fire.
- (g) This Respondent has been granted the permission for cutting dry bushes and grass twice a year. This Respondent has been complying with the said permission. It is submitted that the said cutting of dry bushes and grass cannot be considered as violation of Environment Act and Tree Act.
- (h) I deny the allegation, contention and averment that this 11 have been brazenly clearing the vegetation on the slopes of Dindoshi Hills by spraying chemicals on the vegetation that has began to re-grow on the Hills subsequent to them being burnt down inorder to ensure that no new sapling grow and hasten the death of existing sapling. In this regard this Respondent has already clarified to the Authority that anti termite treatment was being given to the soil.

8. **Previous instance of police investigation:**

- (a) The Garden Dept. of BMC filed FIR ( 942/19) against this Respondent that Dindoshi Police Station for illegal tree



felling. The case was investigated by Police Authority and 'A' Summary Report was submitted by the Investigating Officer to the Competent Authority.

- (b) The Garden Dept. of BMC filed FIR (1100/2022) against this Respondent that Dindoshi Police Station for illegal tree felling. This FIR was not filed for fire reason. The case was investigated by Police Authority and 'C' Summary Report was submitted by the Investigating Officer to the Competent Authority.
- (c) In both these matters the Police Authority have investigated the matter thoroughly and diligently and thereafter submitted their report to Competent Authority without any delay.

## **9. Recommendation regarding zonal master plan:**

- (a) The Joint Committee in its report has not recommended any prohibition on construction and development of the ESZ area in absence of Zonal Master Plan. However, the said committee recommended that the Hon'ble Tribunal direct the Monetary Committee established under Notification dd. 5/12/2016 to expedite preparation of Zonal Master Plan.



- (b) The construction and development activity are regulated activities and are not prohibited activities as per ESZ Notification dated. 5/12/2016. The development in Mumbai is governed by provision of sanctioned D.P.-2034 and Development Control & Promotion Regulations-2034 amended from time to time.
- (c) As regards the Order dated 14/1/2025 passed by the Hon'ble Bombay High Court in PIL No. 48 of 2023 along with Contempt Petition (L) No. 9237 of 2023 in Writ Petition No. 305 of 1995 the same is applicable only to the parties therein to the peculiar facts and circumstances set out therein. The said Order is not applicable to the facts and circumstances of the present case. This Respondent reserves its right to make appropriate submissions as regards the said Order at the time of hearing of the matter.
- (d) Irrespective of the facts stated above, this Respondent states that the ESZ NOC has been issued by Monitoring Committee on 01/11/2018 in respect of development of land affected by ESZ to this Respondent. The ESZ NOC is attached with the Joint Committee Report as annexure G. Since, in the case of this Respondent specific NOC has been obtained from ESZ Monitoring Committee, the Orders issued in another cases are not applicable to present case.
- (e) In the circumstances mentioned above, the construction and development work is being carried out legitimately by this



Respondent of the lands falling under the ESZ of SGNP as per ESZ NOC and as per approvals granted by Planning Authority in consonance with the provisions of Development Control Regulations and the same cannot be stopped as submitted by applicant.

**10. Recommendation regarding demarcated NDZ:**

- (a) The Joint Committee has recommended that the Hon'ble Tribunal impose a key condition in the Zonal Master Plan stipulating that no areas currently designated as No Development Zone (NDZ) within the Eco-Sensitive Zone (ESZ) of the Sanjay Gandhi National Park shall be converted into Development Zone in the future.
- (b) The ESZ Notification issued on 5/12/2016 by Ministry of Environment, Forest and Climate Change (MoEF) after completing the process of inviting objections and suggestions from public. The recommendation of Joint Committee is beyond the provisions of ESZ Notification sanctioned by MoEF. The Joint Committee is not entitled and empowered to make such recommendations which needs modifications to sanctioned ESZ Notification.
- (c) The Zonal Master Plan for the ESZ will have to be as per the said sanctioned Notification as well as should be in consonance with the provisions of Sanctioned Development Plan.



- (d) It is submitted that the Applicants request to direct Respondent No. 3 to ensure that conditions in the Zonal Master Plan stipulating that no area currently designated as No Development Zone (NDZ) within the eco sensitive zone of the Sanjay Gandhi National Park shall be converted into development zone in future cannot be accepted, as such conversion is permissible under the provisions of the MRTP Act.

**11. Recommendation regarding buffer zone:**

- (a) The Joint Committee has proposed the establishment of a 50 meter buffer zone within the Eco-sensitive Zone (ESZ) adjacent to Sanjay Gandhi National Park. The buffer zone, which would have a minimum width of 50 meters inside the ESZ, is to be densely planted with native vegetation to serve as a natural barrier. The plantation of trees is governed by Tree Conservation Act. Moreover, there is a specific provision in the Sanctioned Development Control and Promotion Regulations -2034 for plantation of trees. The Sanctioned ESZ Notification does not contain such clause of dense plantation within ESZ. It is not possible to have mandatory 50 meter buffer zone with dense plantation all around the SGNP in the City like Mumbai which is thickly populated and having already developed areas around SGNP. However, the plantation shall be strictly carried out on the plot as required under the provision of DCPR-2034.



(b) The present provisions of ESZ Notification dtd. 5/12/2016, provisions of sanctioned DCPR-2034, provisions of MRTP Act and the provisions of Tree Conservation Act are sufficient enough to take care of environmental issues raised by the applicant.

12. In the facts and circumstances stated hereinabove, it is clear that Dindoshi Police Station, Malad (East) through the Senior Inspector is neither a necessary nor a proper party to the present Application. Further allowing the same will amount to enlargement of the cause of action in the present case. The Applicants have failed to make out a case showing the necessity to implead the Dindoshi Police Station, Malad (East) through its Senior Inspector.

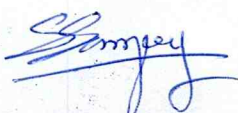
13. In the facts and circumstances stated hereinabove the Application be dismissed with costs.

Place: Mumbai

Date: \_\_\_\_ February, 2025

For Ferani Hotels Pvt. Ltd.

  
Advocate for Respondent No. 11

  
Authorised Signatory  
(Respondent No.11)

BEFORE THE NATIONAL GREEN  
TRIBUNAL SITTING AT PUNE  
INTERLOCUTORY APPLICATION NO.

\_\_\_\_\_ OF 2025

IN

APPLICATION NO. 100 OF 2024

Vanashakti and Anr. ..Applicants  
**IN THE MATTER BETWEEN:**

Vanashakti and Anr. ..Applicants  
V/s.

State of Maharashtra & Ors. ..Defendants

**AFFIDAVIT IN REPLY ON BEHALF OF  
RESPONDENT NO. 11**

Dated this \_\_\_\_\_ day of February 2025.



VERIFICATION

I, **Sanjay S. Shenolikar**, Indian Inhabitant, the Authorised Representative of Respondent No. 11 abovenamed, having my office at Construction House "B", 2<sup>nd</sup> Floor, 623, Linking Road. Opp. Khar Telephone Exchange, Khar (West), Mumbai 400 052, do hereby on solemn affirmation state that what is stated in foregoing paragraphs are true and correct to the best of my knowledge and belief and I believe the same to be true.

Solemnly affirmed at Pune )  
this 15<sup>th</sup> day of February, 2025 )

*Sanjay S. Shenolikar*  
Affiant.

Before me,

*[Signature]*  
Advocate for Respondent No. 11

IDENTIFIED BY

ADVOCATE



NOTED AND REGISTERED AT  
SERIAL NUMBER 347/25

BEFORE ME

*[Signature]*  
**M. B. SONAWANE**  
NOTARY GOVT. OF INDIA  
PUNE

15 FEB 2025



Brihanmumbai Municipal Corporation :No. 100/2024 / D.P. / 3967 / 105 / 100 Date 13 JUN 2024

**Sub:** Original application has been filed by applicant no. 1 which is public trust working in the field of forest, mangroves and wetland protection and applicant no.2, who is project director of applicant no.1 is an environmentalist raising issue of conservation and protection of the hills located at Dindoshi region of Mumbai particularly the land bearing CTS No. 827A/4A/1 in Malad (East), which also bears S.No.239 and is possession of respondent no. 10, K. Raheja Realty and respondent no. 11 - Ferani Hotels Pvt.Ltd who are evidently burning the nature tree coverage in the region, systematically flattening the hills in the region and obstructing the Oshiwara (Walbut) river with an intention to destroy the natural course of river in such a manner so that the said land may be used for commercial development.

**Ref:** Note from legal department u.no. LO/LCT/003203/ALO/DRT dated 30/05/2024.

Vanashakti and Anr. Versus Municipal Commissioner and Ors.

Reference is requested to the application under no. 100 of 2024 in National Green Tribunal and the direction of the Hon'ble NGT issued on - 10.05.2024 wherein the Joint Committee is constituted by Hon'ble NGT. The present application No 100 of 2024 comprises of the averments mainly illegal Hill Cutting, and illegal Cutting of trees and Obstruction of river on plot under reference for which the remarks are sought by Hon'ble NGT.

The site has been inspected on 07.06.2024 by the staff of this office and the remarks/observations of this office from D.P point of view is detailed here under:-

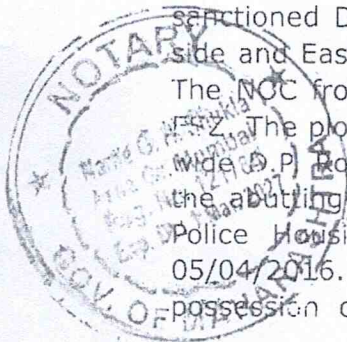
**Description of plot:** Plot bearing CTS NO 827A/4A/1 of village Malad (E).

**General:**

The plot u/r is situated in developed locality at Malad East, off A.K.Vaidya Road, near MHADA colony, Nagari Niwara Parishad etc and is accessible by 18.30m wide municipal road. The existing/under construction residential buildings/ complexes are situated on West side. SGNP is abutting on the North side. The reservation of Police Housing on plot bearing CTS NO 827A/4A/2 and SGNP are abutting on East side. MHADA colony is situated on South-West side. The site is touching the boundary of Aarey village on its South side.

**D.P. Provision:**

The plot u/r is situated in MDZ and is affected by D.P. Roads as per sanctioned D.P.2034. The major portion of the plot is outside ESZ. Only North side and East side portion of 100 m strip along SGNP boundary falls under ESZ. The NOC from ESZ monitoring committee is necessary for the development in ESZ. The plot is affected by nalla. As per sanctioned D.P. 2034, there is 18.30 m wide D.P. Road along the boundary of SGNP on North side providing access to the abutting plot bearing CTS No. 827A/4A/2 of village Malad (E) reserved for Police Housing as per the notification issued by state government dated 05/04/2016. The copy of Govt. notification is annexed hereto. The advance possession of this 18.30 m road is taken over by BMC on 20.07.2019 for



providing access to the said Police Housing plot. The copy of possession receipt in respect of said land under 18.30 m wide road is submitted herewith.

**Site Inspection observations :**

The land is open barren land with grass and shrubs which is partially developed. No proposed construction work is observed within 100 m strip of ESZ affecting the plot on its North side and on its east side. No hill cutting/flattening is observed on site. The cutting and leveling for the purpose of development of buildings, roads and infrastructure is permissible.

During site inspection, it is observed that leveling work of the land under 18.30m D.P. Road running parallel abutting the SGNP along Northern boundary of the plot is under process. Plot is generally having large platues at different locations. There are five IT/ITE buildings existing on site. Plinths of some of the buildings found existing on site. The leveling for infrastructure work is in progress. The internal roads have been found constructed for providing accesses to existing as well as proposed development. The land u/r is affected by a Nalla which carries storm water which is now in dry state. The sides of access roads are provided with green lawns/grass and are seen provided with storm water drains and Sewers along with chambers and are connected to Municipal drains and municipal sewer. All the services i.e water supply, electricity, SWD, SEWER, internet etc are available on site. The photographs showing aforesaid development are attached herewith. The development is permissible as per provisions of amended DCPR 2034. As per the ESZ notification, construction shall be permitted within the ESZ as per the provisions of the approved Development Plan and other applicable rules and regulations under the M.R.&T.P Act. The compliance of ESZ NOC if obtained by the respondent shall be observed by the planning authority.

**Walbut Nalla:**

The plot u/r is affected by nalla. As per policy note No. 26 of Govt. Notification dated 08.05.2018, the existing features shown on Development Plan are indicative and stands modified on Development Plan as per actual position. In light of the note printed on D.P. Sheet, the alignment of Nalla shown on plan shall be considered as per remarks given by SWD. Hence remarks may be obtained from SWD department separately in respect of said Wallbut nalla.

As regards other averments in the application, the remarks may be obtained separately from concerned departments.

Submitted please.



*[Signature]*  
Asst. Engineer (Development plan) P/N

**Asst. Law officer (DRT)**

LOLCCT/16183/DYLODRT 2/07/2024  
8/7/24

*Prakash Shefal ALO*

*for n/a. discuss*

*[Signature]*  
DYLO DRT 2/7/24

