

BEFORE THE NATIONAL GREEN TRIBUNAL

SITTING AT PUNE

APPLICATION NO. 115 OF 2023

Santoshkumar Tribhuandatt Pandey)...Applicant

Versus

Highland Builders and Developers & Ors.)...Respondents

AFFIDAVIT IN REPLY ON BEHALF OFRESPONDENT NO. 2

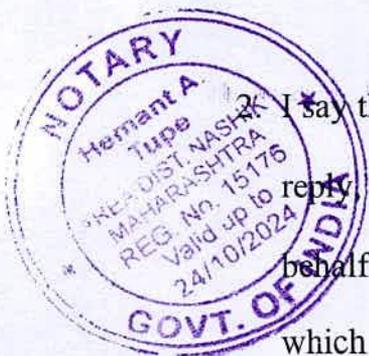
I, Sanjay Lalchand Agrawal, Age 52 Yrs., Occ. Executive Engineer, Town Planning Department, Nashik Municipal Corporation, Nashik, do hereby state and declare on solemn affirmation as under:

1. I say that I have read the application along-with its exhibits thereto and also perused the relevant records maintained in the office with reference to the subject matter of the present application and on the basis of said application and record available with our office, I am filing affidavit in reply to the application.



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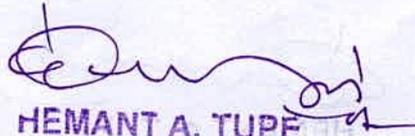
I say that the Respondent No.2 have authorized me to file reply affidavit and whatever necessary in this matter on behalf of respondent No.2. I say that, the contentions which are not specifically denied by me in this affidavit reply, should not be construed as an admission on our part. I further crave leave of this Hon'ble Tribunal to file additional affidavit, if so required and directed by this Hon'ble Tribunal.

3. I say that we are filing preliminary objections to the very maintainability of aforesaid application filed before this Hon'ble Tribunal which are without prejudice to one another and which are briefly stated thereunder and on the basis of these grounds, the application deserves to be dismissed.

A) I say that present application is not based on any genuine and bonafide cause of action in favour of applicant but merely based on wrong and erroneous belief of the applicant.

B) I say that the applicant has not come before this Hon'ble Tribunal with clean hands but has come with

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sole object and moto to raise unwarranted, unwanted extraneous and reluctant technical objections.

C) I say that the contentions of the applicant in the application are vague in nature and the applicant has not contended any specific contents with support of substantive and legal evidence.

4. I further say that the applicant has not made any application to the Tribunal in such a form, contents, such particulars and accompanied by documents as prescribed under the Act. Moreover, the applicant is not the person entitled to claim relief in the petition before the Tribunal as provided in Section 18 of the Act.

5. The averments in the application to the effect that the respondent No.1 has done land filling in the flood plain of the Godavari River and has thus damaged the flood plain of Godavari River and has carried out excavation, ground levelling and other development work at their site and that though as per the plan, the said project is situated at DP Road of 24 meters, but factually, hardly 14

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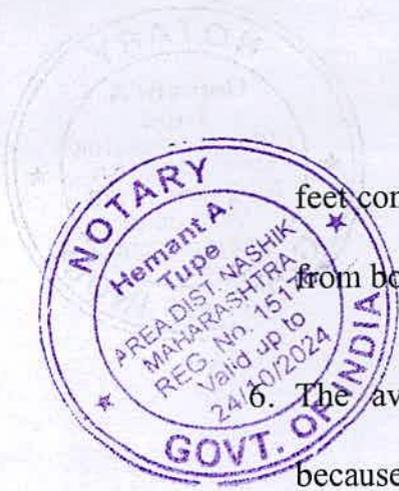
feet connecting road is there and 24 meter road is closed from both ends etc. are not admitted.

6. The averments in the application to the effect that because of land filling done by respondent No.1, the flood line area is getting adversely affected and thereby reducing the area for expansion of Godavari River during monsoons and the said reduction in the area of flood plain area would also affect the low-lying area of Nashik which invariably get flooded in every monsoon etc. are not admitted.

7. The averments to the effect that the damage of flood plain not only affect the river eco system but also cause damage in further down-stream area and during monsoon season, the low-lying area near Ramkund get flooded and the said damage to the flood plain would further aggravate the situation and respondent no.1 has committed various other irregularities and inspite of bringing the said irregularities to the notice of respondents No. 2 to 5, no action has been taken till the present date etc. are not admitted.

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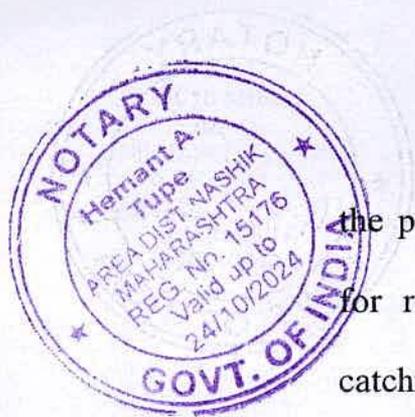


8. The averments to the effect that if respondent No.1 and other Builders carrying out building activities within the distance of 500 meters from the outer bank of Godavari River are not stopped from damaging the flood plain area by carrying out construction or by land filling, it will cause irreparable damage to the environment, climate to the resident of low lying area of Nashik City etc, are not admitted. I say that respondent has not permitted any land filling or construction as per the rules and regulations and more particularly the blue line and red line demarcated by the Irrigation Department. I further say that if any encroachment or construction is made by any person violating the rules and regulations, the same will not be permitted by the respondent and necessary action as per the law will be taken against them. The apprehension of the applicant is vague and without any proof and substance in the matter.

9. I say and submit that the Irrigation department has prepared Dam Safety Manual which deals with emergency situations on the Dams. They have decided

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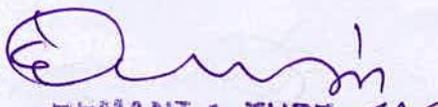

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the prohibitive zones prescribing normal river channels for regulatory flood from the reservoir and the free catchment. Clause 14.2 states that the river channel portion required for passing a 25 year return flood or a flood equivalent to 1.5 times the capacity of the established river channel whichever is higher should be classified as a prohibitive zone(“Blue line”). As per the said manual, this area may be used for the open land type of use such as playground, gardens, river side esplanades or cultivation of light crops whenever such riparian rights exists.

10. I say that the **Clause 14.3** of the said manual states, the **restrictive zone (“Red Line”)** – The area required to pass the maximum design out flow flood should be treated as a restrictive zone. The Maximum design flood may be adopted as a maximum outflow corresponding to the spill way design flood together with similar flood free catchments. In the said zone, the land use may specify the safe heights for the plinth level of the lowest flood level and the type of building method to prevent collapse of the structure during floods. The copy of the relevant

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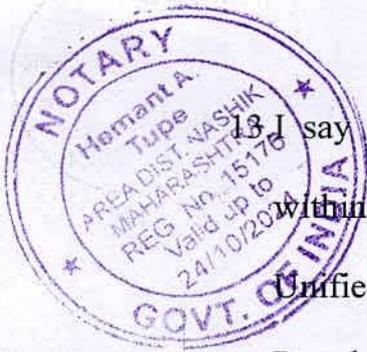


pages from Dam Safety Manual Chapter 8 is produce on record at **R – 1**. I say and submit that the Blue Line and the Red Line of the Godavari River are fixed and prepared by the Irrigation Department on the Map and also published on the Website.

11. I say and submit that Respondent No. 2 as also prepared a Detail Map showing proposed 24 Mtrs DP road from S. No. 59 of Aanandwali Shiwar to Nawasha Ganapati Shiwar through their Panel consultant of Respondent No. 2 showing location Map of DP Road, proposed site, blue and red line affected area etc. The Respondent the map is produce on record at exhibit **R- 2**. I also Produced the part plan of Sanction DP for Nashik City for land under reference **R-3**

12. I say and submit that the Blue Line and Red Line for the Godavari River is varying as per the topography of the said River. The Present site is 250 meter away from the River Godavari the level of the land at the said blue line is below 3.5 meter of the said land.


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13. I say & submit that, there is provision of construction within blue and red flood line in clause of 3.1.3 The Unified Development Control and Promotion Regulations 2020 (UDCPR) the said blue and red flood line are mark on Development plant as per the Documents received from the Irrigation Department. The use permissible within red and blue line is described in clause 3.1.3 (i) a, b, c, d. The relevant page from UDCPR is produce on record and mark exhibit **R-4**.

14. I say and submit that after inspecting the said site, as on today, no material has been stored or stacked in between the blue line and the Godavari river bank. The photographs showing the present scenario is produced on record Ex **R- 5**.

15. I say & submit that, in between river Godavari & present site there is garden reservation as per sanctioned D. P. Plan site no 250A EP-77 (Survey No. 57/1/1,57/1/2,57/3) (area as per DP report 23712 sq.mt.) which is in possession of respondent No.2 affected by blue & red line. The applicant has applied for development of the



said site as per Corporate social responsibility funds (CSR) The same is produced on record as per Exh. R-6.

16. I say and submit that as per the orders of the Hon'ble Tribunal dated 10.01.2023 by which a committee comprising of three members, namely –

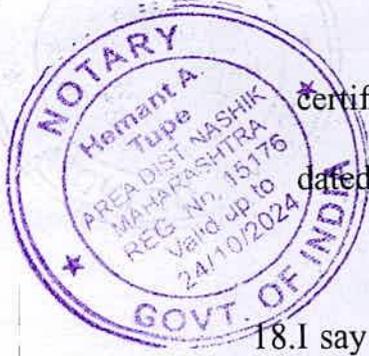
- i) The Central Pollution Control Board (CPCB).
 - ii) The Maharashtra Pollution Control Board (MPCB)
- and
- iii) The Nashik Municipal Corporation, Nashik.

is constituted,

on behalf of NMC. I was the member of the Committee. As per the directions on Hon'ble Tribunal, the Committee has visited the site and prepared factual and action taken report.

17. I say and submit that the respondent No.1 has submitted their detail proposal for sanction of building permission and commencement certificate with plan and necessary documents on 09.03.2020. After detail scrutiny and after following required procedure, respondent No.2 has sanctioned a building permission and commencement


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certificate was issued to respondent No.1 by their letter dated 25.11.2020.



18. I say that thereafter the respondent No.1 has submitted a revised building permission and plan to respondent No.2 and the same was sanctioned by the respondent No.2 on 31.03.2022 vide their O. No. LND/BP/A-1/BP/588/2022. The approved building permission plan with commencement Certificate dated 31.03.2022 is also produced on record along-with **Exh. "R-7"**.

19. I say that the applicant has filed an application with respondent No.2 on 06.06.2022 contending the violation. In pursuance of the said application, the respondent's official has visited the site immediately along-with Respondent No.1's Architect Sumit Kumat. During his visit, it was found that some excavated soil was stacked within a red-line area and therefore, respondent No.1 was verbally instructed to remove the stacked material within red-line area.



20. I say and submit that as per the order dated 10.01.2023 received from the Hon'ble Tribunal, the respondent's official again visited the suit site and during his visit, it was found that some material was stacked in a red and blue line area and therefore, issued notice to the respondent No.1 dated 12.01.2023 asking them to remove that excavated material and notice to that effect was given to the respondent No.1 and copy was also forwarded to applicant. The said notice is produced on record vide **Exh. "R-8"**.

21. I say and submit that in response to said notice, respondent No.1 has informed respondent No.2 that it was an excavated material which is stacked temporarily and will remove it on or before 15.01.2023. The said reply given by respondent No.2 is also produced on record vide **Exh. "R-9"**.

22. I say and submit that in spite of oral direction as well as notice dated 12.01.2023, the respondent No.1 has not submitted his compliance report and therefore, again


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notice dated 09.02.2023 was given to respondent No.1.

The said notice is produced on record vide **Exh. "R-10"**.

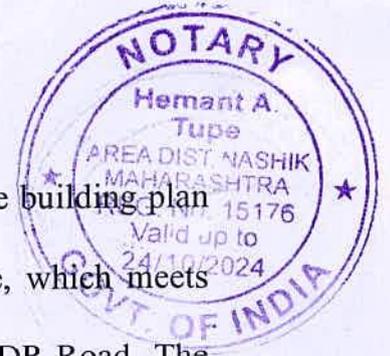


23. I further say that during visit it was found that one shri.

Shivaji sakharm Bendkule having survey no. 59/2/1 has stacked some waste material & therefore notice is also given to him the said notice is produced on record as **Exh. R-11**. At Present waste material has been removed.

24. I say and submit that the said building plan was approved by respondent No.2 on the basis of proposed 24-meter DP Road which meets 30-meter Gangapur Road. The distance between present site & Gangapur road access point is 167 meter which passes through Vrindavan lawns property.

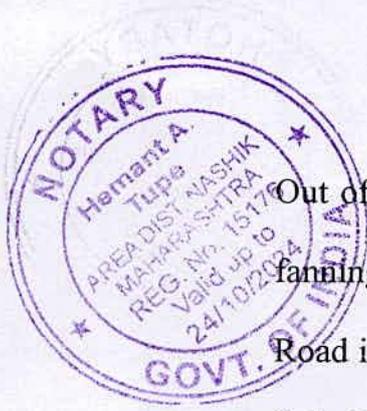
25. I further say that applicant's building was also approved on the basis of said 30 meter DP Road and point of access 6 meter adjacent to meeting point at Gangapur Road and they are using the same.



26. I say and submit that while approving the building plan of Vrindawan Lawns adjacent to suit site, which meets Gangapur Road is affected by 24 meter DP Road. The said building plan was approved on 02.05.2006 vide order No. LND/BP/WS/Satpur/B-1/78. The said plan is produced on record at Exh. **“R-12”**.

27. I further say and submit that as per the sanction building permission and plan of Vrindawan Lawns, he has executed agreement in favor of Nashik Municipal Corporation on 28.04.2006 to hand-over the same to the respondent No.2. (The area of the land is 2150 Sq. Meters). The taking over of the possession of the said land is in process. The respondent No.2 has also issued a letter to them by its letter dated 06.02.2023. The said letter is produced on record at Exh. **“R-13”**. I also produce the commencement Certificate, Building permission and approved Map etc. on record which is collectively marked as **R. 14**.

28. I say & submit that at junction of 30 mt Gangapur road & 24 mt said D P road there is Survey No. 61\A\3 of Anandwalli Shivar, which admeasuring 2300 sq. mtrs.



Out of it and area admeasuring 345.00 sq. mtrs is under fanning portion towards the west side of 24 mt. D.P. Road is purchased by the respondent No. 2 by Registered Sale Deed dated 11.11.2020 which is registered at Sr. NO. 6992 in the office of Sub Registrar Nashik I produce the copy of the sale Deed which is at exhibit **R -15**. I also produce the 7/12 extract in the name of Respondent No. 2 the said extract is at **R- 16**.

29. I say and submit that after handing over the said area under 24-meter DP from out of Vrindawan Lawns and the Land portion from out of S. No. 61/A/3 which is owned and possessed by Respondent No. 2, there will be direct access from Gangapur Road to present site and therefore, apprehension of applicant is without basis.

30. In view of the above, the Respondent respectfully submits that

- A) the above Application may be dismissed, with costs.
- B) Any other relief in favor of respondent against the applicant may please be granted.



Solemnly affirmed at Nashik Dated 22nd May 2023

Respondent No. 2

Adv. For Respondent No. 2

VERIFICATION

I Shri Sanjay Lalchand Agrawal, Age years, Executive Engineer, Town Planning Department, Nashik municipal corporation, Nashik, do hereby state on solemn affirmation that whatever stated in the foregoing paragraphs is true and correct and as per the record available in our office.

Place: Nashik.

Dated this 22nd May 2023

Respondent No. 2

Adv. Dr. Sudhir Kotwal

Adv. For Respondent No. 2

Solemnly affirmed before me
by Sanjay L. Agrawal
who is identified before me
by Adv. Dr. Sudhir Kotwal
or whom I personally know



BEFORE ME

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Advocate & Notary Govt. of India
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