

**BEFORE THE NATIONAL GREEN TRIBUNAL AT PUNE  
SITTING AT PUNE**

**MEMORANDUM OF APPLICATION**

**(Under Section 14 & 15 read with Section 18 of The  
National Green Tribunal Act, 2010)**

**APPLICATION NO. 49 OF 2024**

**Pratap Lal Teli**

**...Applicant**

**Vs.**

**Secretary Environment Department**

**Ors.**

**...Respondents**

**AFFIDAVIT IN REPLY ON BEHALF OF**

**RESPONDENT NO. 2- MMRDA**

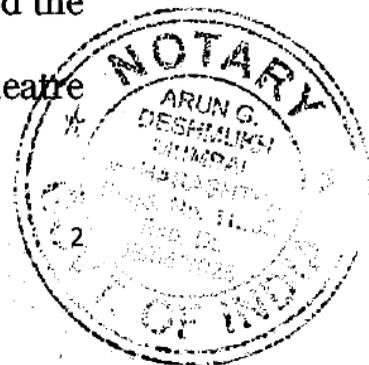


Ankit Das, Age-40 yrs, working as Planner, T & CP Division of Mumbai Metropolitan Region Development Authority, i.e. Respondent No. 2 in the above matter, having my office at Bandra Kurla Complex, Bandra (East), Mumbai - 400051 solemnly affirms, and state as follows:

1. I am working as Planner with the Respondent Nos. 2 above named. By virtue of my employment, I am well acquainted with the facts and circumstances of the present case. I have gone through a copy of the Application filed by the Applicant above named. I deny each and every

statement, allegation, averment and contention in the said Application filed by the Applicant which is contrary to and inconsistent with what has been stated herein. I state that nothing contained in the said Application filed by the Applicant should be deemed to be admitted by this Respondent by virtue of it not having been specifically denied herein and unless expressly admitted by this Respondent.

2. It is submitted that the Applicant has filed the above Application and sought the reliefs of demolition of the impugned construction as well as the penal action by fine and environmental cost against the project proponent.
3. It is submitted that as per sanctioned DP of MCGM 1967, the plot under reference is shown for "Drive In Theatre Purpose". Mumbai Municipal Corporation has granted Building Occupation Certificate dated 23.12.1977. The State Government has appointed this Respondent as Special Planning Authority for Bandra- Kurla Complex Notified area under Section 40 of the MR&TP Act, 1966. This Respondent being planning authority has granted the permission for redevelopment for the Drive In Theatre



and approved land uses and FSI. On 05.12.2001 (based on the clarification received from UDD on 20/09/2001), this Respondent has issued its initial approval for the layout & commencement certificate and also issued its approval for 5 commercial office buildings in the year 2002.

4. Thereafter in the year 2004, the Developer has submitted the amended building proposal which was rejected by this Respondent on 14 & 16.12.2004 and informed said rejection to the Developer. The rejection of his proposal for building permission from MMRDA was on the following grounds:-

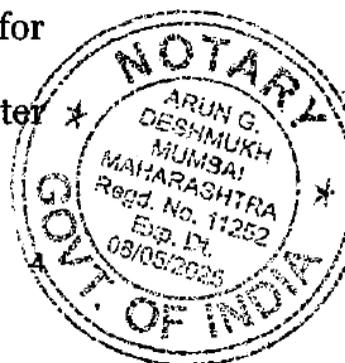
(a) **Road Setback Area**: As per conditions of the C.C. dated 5.12.01 and 25.11.02 the FSI in lieu of road set back area admeasuring 7769.50 sq.m. shall be available after necessary correction in the ownership documents (P.R.Cards) as well as the evidence about the transfer of the said land to MMRDA. As the road set back area was not transferred to MMRDA in the P.R.Card, the permissible built up area is restricted to 1,15,651.85 sq.m. as against the earlier 1,31,190.85 sq.m. Accordingly, the area statement will reflect 1,15,651.85 sq.m. as the



permissible built up area. Accordingly, the layout showing proposed building/structures for permissible built up area of 1,15,651.85 sq.m. needed to be submitted.

(b) **R.G.:** The justification of fragmentation of R. G. approved in earlier amendments was not acceptable as such smaller pieces of R.G. would not serve the purpose of keeping larger pockets of R.G. under the provisions of DCR No. 23. The Developer was also required to arrange 15% compulsory R.G. stretch on the north boundary of plot suitably amalgamating it with the rest of 15% R.G. pocket. Fire escape staircases in the R.G. were not permissible under DCR No. 23. The basement projecting in the R.G. area was also not permissible.

(c) **Building Projection:** The proposed projected building line, on first floor upwards, touched the internal road and R.G. The building line is required to be kept at a minimum distance of 3.0 m. from the road and R.G. As the Developer had proposed to utilise the projected portion for FSI purposes the building line will be treated at the outer

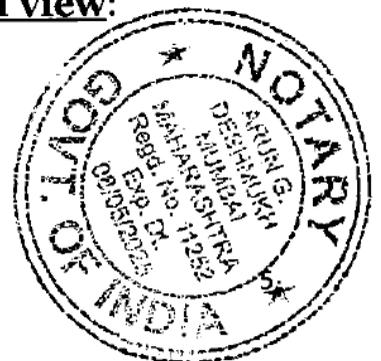


most edge of the projection. Therefore, the Developer was required to delete these projections from floor upwards and provide a clear open space of 3.0 m. between the building line and layout road/R.G.

(d) **CRZ:** As per MOEF's letter dated 16.4.2002, the development is Phase-II will be within the 150 mt. CRZ-II. Therefore, the Developer was required to obtain MOEF's clearance as the cost of the project exceeds Rs. 5.00 crores under the Regulation No. 3(2)(iv) of the CRZ Notification.

(e) **EIA Clearance:** The developer was required to obtain in respect of his revised layout proposal permissions under the provisions of other applicable statutes, wherever necessary, including the Environment Impact Assessment clearance under the Provisions of Notification No. S.O.-801(E), dated 7th July, 2004 issued by the Ministry of Environment of Forests, Government of India.

(f) Following aspects were required to be incorporated in the proposed layout from **traffic point of view:**



i) No U-Turn facilities will be demanded by you at Family Court junction on 45.00 m.

ii) 2-Way traffic movement on both the internal roads within your scheme is required.

Provide a pedestrian subway across the BKLR opposite the proposed gates of DIT.

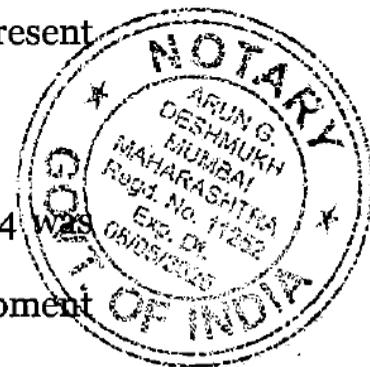
iv) It will be desirable to adopt mechanical car parking suitably in the proposed development.

v) Provision for atleast two auto stands of capacity of 10 autos each and one Taxi stand of 6 taxis within the layout premises.

vi) The 6 no. of gates each of 6 m. width opening on the 45 m. wide road are not permissible.

5. From the above mentioned points, points (d) & (e) are same grounds which are the subject matter at the present application before this Hon'ble Forum.

6. However, our rejection order dated 14 & 16.12.2004 was challenged in appeal before the Urban Development Department, Government of Maharashtra. The said statutory appeal under Section 47 was allowed and accordingly it was directed by Urban Development Department to grant development vide Order dated 15.01.2007. A copy of Rejection Order dated 14 &



16.12.2004 is hereto annexed and marked as "Exhibit- A". A copy of Order by Urban Development Department dated 15.01.2007 is hereto annexed and marked as "Exhibit B".

7. The Respondent begs to crave leave to file an Additional Affidavit dealing with the Memo of Application as and when necessitated.

8. Accordingly, the present respondent has obeyed the statutory provisions under MRTP Act, 1966.

9. In view of the facts and circumstances this Respondent submits that present Application may be disposed of on its merits.

Solemnly affirmed at Mumbai )

On this 19<sup>th</sup> day of July, 2024 )

*[Handwritten Signature]*  
Deponent

I identify,  
*[Handwritten Signature]*

Advocate for Respondent No. 2

BEFORE ME  
before me,

ARUN G. DESHMUKH  
REGD. No. 11252 B.Com., LL.B.,  
ADVOCATE HIGH COURT  
NOTARY GOVT. OF INDIA  
C/11, Laxmi Xerox, Malarema Bldg.,  
Basement Near Family Court, S.K.C. Bandra-51



NOTAR. REGISTER ENTRY  
Sr No. 2587 Page No. 08  
Date 19/07/2024



154 *Ex-A*  
MUMBAI METROPOLITAN REGION DEVELOPMENT AUTHORITY

मुंबई महानगर प्रदेश विकास प्राधिकरण

Annexure - 23

No.TCP(P-2)/BKC-27(CC)(B)/DRINT/II/604/04.

Date: 14.12.2004.  
76

43



To  
Shri Rajendra Pagnis,  
M/s. Pagnis & Pagnis,  
Architects, Designers & Planning Consultants,  
4, Anand, 1<sup>st</sup> floor,  
D.L.Vaidya Road, Dadar,  
MUMBAI 400 028.

SUB : Approval to Revised layout proposal in respect of  
Redevelopment of Drive-in-Theatre on land bearing Survey  
No. 341 (Pt.) CTS No. 629(Pt.) of village Parighkhar in  
Bandra-Kurla Complex.

REF : 1) Your letter No.S/382/26, dated 6.2.04 and 15.3.04  
2) Discussion held with applicant (IFC) dated 22.6.04 and 28.6.04

Sir,

With reference to your above referred letters on the subject mentioned above, this is to inform you that your revised layout proposal is scrutinised with respect to DCRs and following deficiencies are observed in the proposal under reference, and hence is not approved.

- (a) Road Setback Area : As per conditions of the C.C. dated 5.12.01 and 25.11.02 the FSI in lieu of road set back area admeasuring 7769.50 sq.m. shall be available after necessary correction in the ownership documents (P.R.Cards) as well as the evidence about the transfer of the said land to MMRDA. As the road set back area is not yet transferred to MMRDA in the P.R.Card, the permissible built up area is restricted to 1,15,651.85 sq.m. as against the earlier 1,31,190.85 sq.m. Accordingly, the area statement will reflect 1,15,651.85 sq.m. as the permissible built up area. Accordingly, the layout showing proposed building/structures for permissible built up area of 1,15,651.85 sq.m. should be submitted.
- (b) R.G. : The justification of fragmentation of R.G. approved in earlier amendments is not acceptable as such smaller pieces of R.G. would not serve the purpose of keeping larger pockets of R.G. under the provisions of DCR No. 23. You are also required to arrange 15% compulsory R.G. stretch on the north boundary of plot suitably amalgamating it with the rest of 15% R.G. pocket. Fire escape staircases in the R.G. is not permissible under DCR No. 23. The basement projecting in the R.G. area is not permissible.
- (c) Building Projection : The proposed projected building line, on first floor upwards, touches the internal road and R.G. The building line is required to be kept at a minimum distance of 3.0 m. from the road and R.G. As you have proposed to utilise the projected portion for FSI purposes the building line will be treated at the outer most edge of the projection. Therefore, you are required to delete these projections from floor upwards and provide a clear open space of 3.0 m. between the building line and layout road/R.G.
- (d) CRZ : As per MOEF's letter dated 16.4.2002, the development is Phase-II will be within the 150 mt. CRZ-II. Therefore, you are required to obtain MOEF's clearance as the cost of the project exceeds Rs. 5.00 crores under the Regulation No. 3(2)(iv) of the CRZ Notification.
- (e) EIA Clearance : You are required to obtain in respect of your revised layout proposal permissions under the provisions of other applicable statutes, wherever necessary, including the Environment Impact Assessment clearance under the Provisions of

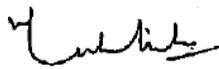
Notification No. S.O.-801(E), dated 7<sup>th</sup> July, 2004 issued by the Ministry of Environment of Forests, Government of India.

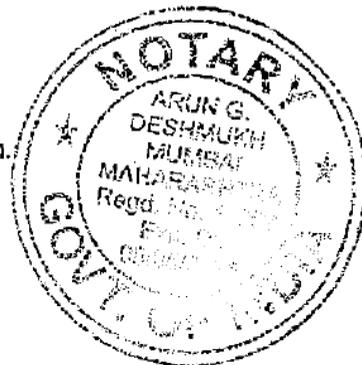
- (f) It is required to incorporate in the proposed layout the following aspects from traffic point of view :
- i) No U-Turn facilities will be demanded by you at Family Court junction on 45.00 m. BKLR .
  - ii) 2-Way traffic movement on both the internal roads within your scheme is required.
  - iii) Provide a pedestrian subway across the BKLR opposite the proposed gates of DIT.
  - iv) It will be desirable to adopt mechanical car parking suitably in the proposed development.
  - v) Provision for atleast two auto stands of capacity of 10 autos each and one Taxi stand of 6 taxis within the layout premises.
  - vi) The 6 no. of gates each of 6 m. width opening on the 45 m. wide road are not permissible.

- (g) Apart from the (f) above it is contemplated that due to proposed eleven no. of multiplex theatres, a very large volume of vehicular as well as pedestrian traffic would be attracted to this area throughout the day. Therefore, you are requested to examine the possibility of having connection/access to the Drive-in-theatre development directly from the existing Bandra-Dharavi Link Road. Traffic coming to DIT from the Bandra side can have direct entry to the plot from Bandra-Dharavi Link Road and same traffic then need not come to the Bandra Kurla Link Road and internal road of 'E' Block. This would reduce congestion on these roads and the junction of 'E' Block of internal road with 45.00 m. road. You are also requested to submit accordingly such a proposal for Chief, T&C Division, MMRDA's examination and concurrence to it from traffic and transportation point of view.

Your revised layout proposal will be further processed for approval on rectification of the above mentioned deficiencies.

Yours faithfully,

  
(U.V.Luktuke)  
Chief, T&CP Divn.



Copy to :

- 1) The Director,  
The Indian Film Combine Pvt. Ltd.,  
Maker Tower, 'F', 1<sup>st</sup> floor,  
Cuffe Parade, Mumbai-400 005.
- 2) The Executive Engineer  
(Building Proposal - W.S.),  
MCGM Office, H&K Wards,  
Dr. R.K.Patkar Marg, Bandra (W),  
Mumbai-400050.

156-  
Ch-B



GOVERNMENT OF MAHARASHTRA

No. TPB-4305/207/C NO.78/05/UD-11  
Urban Development Department,  
Manatralaya, Mumbai 400 032

Dated 17<sup>th</sup> January, 2007

To,

- 1) Metropolitan Commissioner,  
MMRDA,  
Bandra-Kurla Complex, Mumbai 400 051
- 2) Commissioner,  
BMC, Mumbai
- 3) Chief Engineer (Development & Planning)  
BMC, Mahanagarpalika Marg, Mumbai
- 4) Dy. Director, Town Planning,  
Ensa Hutment, Azad Maidan, Mumbai 400 001
- 5) The Indian Film Combine Pvt. Ltd  
Maker Tower 'F', First Floor,  
85, Cuffe parade, Mumbai 400 005



**Sub: Appeal under Sec. 47 of the Maharashtra Regional & Town  
Planning Act, 1966.**

S. No. 341 (pt.) CTS No. 629 (pt.) of Bandra  
S. No. 4 (pt.) CTS No. 8 (pt.) of Parighkhar, Badra-Kurla Complex

Sirs,

A hearing was conducted before Hon. Chief Minister on 14.06.2005 regarding the said matter. Accordingly, we are enclosing herewith a true copy of the order passed by Hon. Chief Minister, for necessary action.

Yours,

Sd/-

(Abhiraj Girkar)

Under Secretary, Government of Maharashtra

88

157  
महाराष्ट्र शासन



355/19

मुंबई महानगर प्रदेश विकास  
प्राधिकरण, मुंबई.  
बाबक क्र. ७७१२०७  
दिनांक २१/१०

क्रमांक: टिपीबी-४३०५/२०७/प्र.क्र.७८/०५/  
नवि-११  
नगर विकास विभाग,  
मंत्रालय, मुंबई ४०० ०३२.  
दिनांक: ०७ जानेवारी, २००७

प्रति,

- १) महानगर आयुक्त,  
मुंबई महानगर प्रदेश विकास प्राधिकरण,  
बांद्रा-कुर्ला संकुल, मुंबई ४०० ०५१
- २) आयुक्त,  
बृहन्मुंबई महानगरपालिका, मुंबई.
- ३) प्रमुख अभियंता (वि.नि.),  
बृहन्मुंबई महानगरपालिका,  
महानगरपालिका मार्ग, फोर्ट, मुंबई-१.
- ४) उप संचालक, नगर रचना,  
इन्साहटमेंट, आज्ञाद मैदान,  
मुंबई ४०० ००१.
- ५) मे.इंडियन फिल्म कंबाईन प्रा.लिमिटेड,  
मेकर टॉवर, "एफ", पहिला मजला,  
८५, कफ परेड, मुंबई ४०० ००५.



विषय: महाराष्ट्र प्रादेशिक व नगर रचना अधिनियम, १९६६ चे  
कलम ४७ अन्वये अपील.

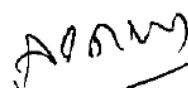
स.नं.३४१ (पै), सि.टी.एस.क्र.६२९ (पै), मौ.बांद्रा

स.नं.४(पै), सि.टी.एस.८(पै) मौ.परिघखार, बांद्रा-कुर्ला संकुल.

महोदय,

प्रस्तुत प्रकरणी मा.मुख्यमंत्री यांचेकडे दिनांक १४.६.२००५ रोजी सुनावणी आयोजित केलेली होती. या अनुषंगाने मा.मुख्यमंत्री यांनी पारीत केलेल्या आदेशाची सत्यप्रत योग्य त्या कार्यवाहीसाठी सोबत जोडली आहे.

आपला,

  
(अभिषेक गिरकर)

अवर सचिव, महाराष्ट्र शासन.

158

**BEFORE THE HON. CHIEF MINISTER,  
GOVERNMENT OF MAHARASHTRA  
MANTRALAYA, MUMBAI 400 032.**



25/1/05

In the matter of Appeal under section 47 of the Maharashtra Regional and Town Planning Act, 1966 (hereinafter referred to as "the said Act") filed by The Indian Film Combine Pvt. Ltd., against the Mumbai Metropolitan Region Development Authority.

**APPEAL NO. TPB 4305/207/CR-78/05/UD-11:**

THE INDIAN FILM COMBINE PVT. LTD.,  
Maker Tower, "F", 1st floor,  
85, Cuffe Parade,  
Mumbai 400 005.

... Appellant.

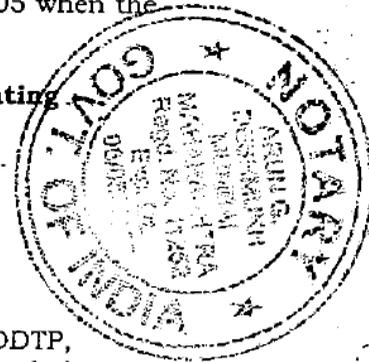
Versus

MUMBAI METROPOLITAN REGION  
DEVELOPMENT AUTHORITY (MMRDA)  
AND OTHERS.

... Respondents.

(Hearing to the concerned parties was granted on 14<sup>th</sup> June, 2005 when the following were present :

Sr.No.	Name/Designation	Representing
1.	Dr. R.A. Maker For The Indian Film Combine Pvt. Ltd.	Appellant.
2.	Mr. S.V. Joshi, Commissioner	MMRDA
3.	Mr. Kurve, Dy. Director of Town Planning	Office of DDTP, Brihanmumbai.



02. The Indian Film Combine Pvt. Ltd., has filed this appeal under section 47 of the said Act against the order bearing No.TCP(P-2)/BKC-27 (CC) (E)/DRINT II/604/04 dated 14/16<sup>th</sup> December, 2004, passed by the Chief, T & CP Division of MMRDA thereby refusing to grant approval to the Appellant's amended layout plan for redevelopment of the property on the land bearing Survey No.341 (Pt.), C.T.S.No.629 (Part) of Village Bandra and S.No.4 (Pt), C.T.S.No.8 (Pt) of Village Parighkar (hereinafter referred to as "the said lands") in the Bandra-Kurla Complex (BKC). The respondents have refused to grant approval stating some deficiencies relating to provisions like Road set back area, provision of Recreational Ground (RG), Building Projection, CRZ stipulations, ELA clearance, Traffic / Transportation requirements to meet vehicular traffic. Being aggrieved by the refusal and claiming that the said refusal is bad in law, the instant appeal has been filed.

03. The matter pertains to redevelopment of existing Drive-in-Theatre situated on the said land within the planning jurisdiction of the Respondents in the capacity of Special Planning Authority for which area the Development Control Regulations for Greater Mumbai 1991 (hereinafter referred to as the



*Adams*

159  
"said regulations") as amended from time to time, are applicable. Provisions of regulation 52(8)(i) of the said regulations permit redevelopment of Drive-in theatre along with commercial users subject to certain conditions. It is revealed from the available papers that initially the respondent have granted redevelopment permission to the appellant by issuing Commencement Certificate No. TCP(P-2)/BKC-27/CC/E/DRINT/427/200 dated 5/12/2001, however subsequent revision to this approved plan was refused by the respondents stating some grounds. Hereunder are the admitted facts in a nutshell.

- (i) Pursuant to the Appellant's application for the redevelopment of the said property, the Respondents granted development permission under section 45 of the said Act, by the issue of the Commencement Certificate dated 5<sup>th</sup> December, 2001, bearing No. TCP(P-2)/BKC-27/(CC)/E/DRINT/472/2001.
- (ii) Subsequently, responding to the application of the Appellant, the Respondents permitted an amendment to the said lay-out plan by the issue of the Commencement Certificate dated 25<sup>th</sup> November, 2002 bearing No. TCP(P-2)/BKC-27/(CC)/E/DRINT/II/452/2002.
- (iii) On 6<sup>th</sup> February, 2004, the appellant applied for certain amendments to the approved lay-out plan, in response to which; the Respondents raised some queries in the lay-out plan. In compliance therewith, the appellants re-submitted the amended lay-out plan under his letter dated 15<sup>th</sup> March, 2004, after complying all the queries of the Respondents and requested for the approval of the amendment to the lay-out plan which was refused by the Respondents by its letter dated 14<sup>th</sup>/16<sup>th</sup> December, 2004, for the reasons stated below:-

**(a) ROAD SET BACK AREA :**

FSI equivalent to 7769.50 sq.mtr. in lieu of road set back, would not be available unless necessary correction in ownership document (PR Card) is carried out and the transfer of the said land to the respondent is established.

**(b) PROVISION OF RG :**

Proposed fragmentation of RG, though approved earlier is not admissible in the light of spirit of regulation 23 and similarly fire escape staircases and basement projection in RG is not permissible.

**(c) BUILDING PROJECTION**

There should be minimum distance of 3.0 mtr. between the projected building line on the upper floors and internal roads/RG.

**(d) CRZ STIPULATIONS**

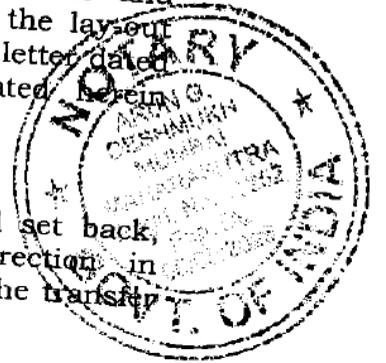
In view of instructions from MOEF received on 16<sup>th</sup> April, 2002, fresh clearance from MOEF is required for development within 150 mtr.

**(e) EIA CLEARANCE**

In the light of provisions contained in MOEF's notification No. SO-801(E) dated 7<sup>th</sup> July, 2004, Environment Impact Assessment Clearance for revised layout proposal is necessary.

**(f) TRAFFIC VIEW POINT**

The revised layout appears deficient in as much as following Traffic related factors : U turn facility at Family Court Junction, provision of 2 way traffic movement on layout road,



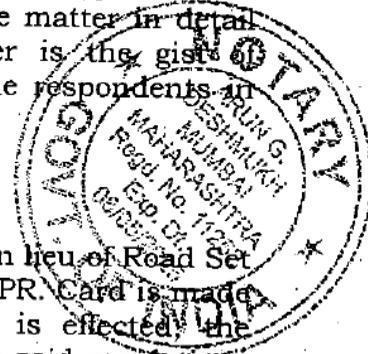
ADAM  
सर्वर सचिव  
सर्वर विकास विभाग  
संभारक

provision of **160** ft. sub-way across BKLR, provision of mechanical car park, parking spaces for autos/taxis within layout, opening of gates on 45mtr. wide road.

Provision of multiplex theatres would generate large volume of vehicular/ pedestrian traffic, which needs to be taken into account and as such this will have to be studied by the T & C Division of MMRDA.

04. During the course of hearing the appellant strongly objected to all the aforesaid reasoning put forth by the respondents while refusing approval to the revised layout. In addition to this, in his appeal memo, the appellant has also claimed deemed permission by virtue of a lapse of period of more than 60 days in communicating the decision by the respondent, however during the arguments the appellant has withdrawn this claim and therefore all the arguments primarily focussed on the six items referred to in clauses (a) to (f) of Para 03 above.

05. Against the contents of the appeal memo, the respondents have also submitted a written statement of defence vide letter No.TCP/(P-2) BKC-27 (CC)/E/ DRINI/II-A/267/2005 dated 3<sup>rd</sup> May, 2005, while the appellant has not submitted any such written statement but argued the matter in detail and handed over his written submission. Hereunder is the gist of the arguments put forth by the appellant, stand taken by the respondents in defence.



**6.1 A) Regarding Road Set back Area :**

In regard to the Respondent's contention that F.S.I. in lieu of Road Set Back would not be available unless corresponding entry in PR. Card is made and actual transfer of subject area to the respondent is effected, the appellants stated that provisions of regulation 33(1) of the said regulations to the effect that transfer of the subject land in City Survey Records is required to take place only after grant of FSI. This provision do not permit the respondents to withhold FSI, for set back area. As regards the contention of the respondent in relation to "evidence of transfer", the appellant contended that the respondents have already sanctioned the FSI for set back area and in support of his claim the appellant also produced photographs of the 45 mtr. Bandra Kurla Link Road, showing that the subject land was, in fact, already in use and possession of Respondent partly for road widening and partly for garden abutting the road. On the other hand, the Respondents argued that the appellant has failed to tender document in proof of surrender of road set back area. Upon consideration of contentions of the both parties, I find that FSI in lieu of the road set back area would be available to the appellant only after the submission of documentary proof of surrender of road set back area, to the respondent. However in the present case it is seen that respondents have already sanctioned FSI for road set back area and the said area is being used partly for road and partly for garden as seen in the photographs produced by the appellant. The appellants are directed to complete the formality of mutation entry regarding the set-back area and complete the process of giving formal possession of the subject land for being used for the designated purpose and the respondents shall execute such papers and formalities as may be required in this regard.



*AAAW*  
बंदर सचिव  
नगर विकास विभाग  
बंद्रा कुर्या

## 6.2 B) Regarding Provision of RG. 161

With regard to the provision of RG, the Respondents stated that the earlier plan provided a large portion of RG in a central location, whilst the amended layout plan proposes 20 locations as against the earlier 15 locations. This RG fragmentation, even though fulfills the criteria of dimensions and areas required in DCR 23, defeats the purpose of such RG. The Respondents also stated that it is desirable to arrange these pockets with the remaining 15% RG at the North boundary of the plot and that the number of fire escapes opening in RG has increased from 4 to 9, which is not desirable, since it will reduce the usable RG area. Whilst conceding that there was no prohibition in DCR 23 against fire escapes opening in the RG, the Respondents submitted that the regulation did not expressly permit such fire escapes. Respondents also stated that the basement below 15% RG as compared with the basement line in the earlier approved layout plan satisfies only the mathematical calculations but defeats the spirit behind the regulations.

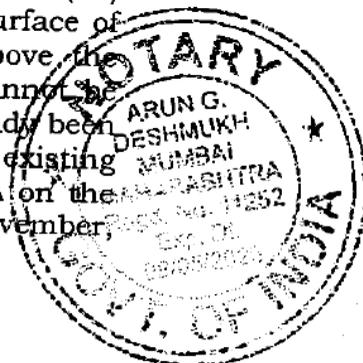
6.2.1 In this context the appellant argued that the dimensions and extent of parcels of land provided for RG in the amended layout is perfectly matching with what has been prescribed in regulation 23 of the said regulations, further the regulation also permits fragmentation of RG. It would therefore be not permissible on the part of the Planning Authority to specifically direct for provision of RG to be located at North end of plot. As regards provision of fire escape, it was stated by the appellant that the same has been provided as per express requirements of the CFO as per his certification on plan dated 21<sup>st</sup> January, 2004 and regulations 23 does not ban providing Fire Exists opening in RG areas. Similarly, said regulations does not prohibit basement under RG. It was also argued by the Appellant that there is no provision in said regulations to provide basement below RG and that in the earlier layout, too, the Respondents have approved similar basement under 10% RG.

6.2.2 Contentions of both parties heard vis-a-vis the relevant provisions of said regulation and what has been sanctioned by the Respondent in past. It is, therefore, not permissible for the Respondents to impose any such conditions outside the scope of the said regulations. Respondents objections in this connections therefore overruled.

## 6.3 C) Reg. Building Projection

The respondents argued that as the projected portion of building on upper floors is in FSI, building line will be treated as outer most edge of projection, which should be deleted to provide clear open space of 3 mt. between building line and layout road/RG.

The Appellants submitted that DCR 2(12) clearly defines "Building Line" as the line upto which the plinth of a building adjoining a street or extension of a street or future street may lawfully extend. Regulation 2(71) clearly defines "Plinth" as the portion of a structure between the surface of the surrounding ground and surface of the floor immediately above the ground. Thus the outer most edge at first floor level and above cannot be artificially treated as the "Building Line". The Building Line has already been restricted to 3 mt. from internal roads and RG areas, and the existing sanctioned layout plan has already been duly approved by MMRDA on the same basis by both the CCs dated 5<sup>th</sup> December, 2001 and 25<sup>th</sup> November, 2002.



It is seen that under the DCRs, the building line is the line of the plinth of a building, from which requisite distance of 3 mt. from the RG has been provided by the Appellant. Further, it has been confirmed by the Municipal Corporation of Gr. Mumbai that such projections on the upper floors are permissible in accordance with the DCRs and have been sanctioned in other cases based on these norms. Since the plans have already been approved by MMRDA earlier there is no substance to raise the objection now, which is hereby a rejected and the MMRDA is directed to follow MCGM norms and practices in sanctioning plans.

#### 6.4 D) Reg. Coastal Regulation Zone (CRZ)

The Respondents urged that as development in Phase II will be within 150mtr, and as cost of the project exceeds Rs.5.00 Cr. under 3(2) (iv) of CRZ notification, clearance is required from Ministry of Environment & Forests (MOEF) as per letter dated 16.04.2002. Although respondents have granted earlier approval on basis of CRZ clearance dated 6<sup>th</sup> August, 1999, UDD's letter dated 03.05.2002 stated that vide MOEF letter dated 16.04.2002, width of Mithi River was likely to be more than 350 mtr. and hence CRZ II in this area should have a width of 150 mtr. from the High Tide Line. Since the Appellant's plot is within 150m distance, thus clearance from MOEF under amended Para 3(2)(iv) of CRZ notification will be required.

6.4.1 The Appellants submitted that the project has already been granted necessary CRZ clearance by Govt. order dated 06.08.1999, thereby permitting development of the whole project comprising interalia of construction of all the buildings. On the basis of this CRZ clearance, vide CC for layout issued by MMRDA dated 5.12.2001, issued after the CRZ clearance referred to above, the project has already been approved by the Respondents by grant of the development permissions in the form the CCs dated 5/12/2001 already issued. The CRZ clearance and the said CC dtd. 5/12/01 were granted prior to MOEF's letter dated 16.4.2002 and the question of obtaining fresh CRZ clearance does not arise. Even after letter dated 16.4.2002 from MOEF, cited by the Respondents as the basis for requiring fresh CRZ clearance, MMRDA has sanctioned amended layout plans vide CC dated 25.11.2002. In any event, Appellants have obtained and provided clarification dated 17.10.2003 from the Government, which after considering the said letter dated 16.04.2002, clarified that there is no objection to development of buildings subject to the conditions stated in the letter dated 6.8.1999 issued by the Government. Thus, the requirement of fresh CRZ clearance from MOEF is neither necessary nor justified. Further, this CRZ clearance and clarification have both been issued for the project as a whole and not for a part of "Phase" of the redevelopment. Therefore, it is not necessary to obtain fresh or separate "No Objection Certificate" for any further development, or in respect of any building which constitutes part of the whole project.

6.4.2 Having carefully considered the submissions of the Respondents and the Appellants and on verification of the facts of the matter from the Urban Development Department, I am of the opinion that the Respondents have erred in requiring the Appellant to obtain de novo permission from the Ministry of Environment and Forest (MOEF), Government of India. Their reliance on the letter dated 16.4.2002 of MOEF is misplaced. In the instant case, permission was granted as far back as 6<sup>th</sup> August 1999 by the State Government under delegated



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powers of the Central Government under the Environment Protection Act 1986, for the said Project consisting of the total redevelopment including all the buildings comprising the project. The Respondents have failed to appreciate that this CRZ NOC and clarification has been issued for the whole project and not for a part or phase of the redevelopment. Therefore, it is not necessary to obtain fresh or separate "No Objection Certificate" for any part of the project. Accordingly the objection of the respondent in this regard is hereby rejected.

#### 6.5 E) Reg. Environmental Impact Assessment ( EIA) Clearance

The Respondents have taken a stand that the appellant is required to obtain the EIA Clearance under the provisions of Notification No. S.O. No.801 (E), dated 7<sup>th</sup> July, 2004 issued by MOEF, GOI.

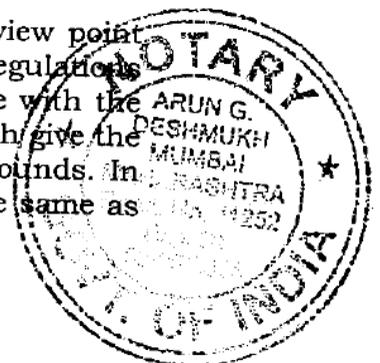
6.5.1 With regards to respondents objection, the Appellant stated that the said Notification No. 801(E) dated 7<sup>th</sup> July, 2004 is, in fact, amended version of earlier Notification No. SO 60(E) dated 27<sup>th</sup> January, 1994, consequent to which paragraph 3 thereof clearly spells out exception in respect of certain projects to which this Notification does not apply. This exceptions clearly include projects covered by CRZ Notification No.SO 114 (E) dated 20.02.1991, more over the respondents themselves have stated that any redevelopment affected by CRZ will not require EIA clearance. It was therefore emphasized by the Appellant that Respondent's requirement with regard to EIA is unwarranted as the instant project falls within scope of CRZ Notification and EIA Notification does not apply here as CRZ clearance pertains to whole project and not part of it.

6.5.2 On consideration of the submissions of the parties, I am of the view that this contention of the Respondents is misplaced. The Appellant's entire project has been approved under CRZ provisions and is accordingly excluded from the scope of Notification No.SO-60(E) dated 27.1.1994 as amended by Notification No.S.O.801(E) dated 7.7.2004. Accordingly, the objection of the respondent in this regard is rejected.

#### 6.6 F) Reg. Objections from the Traffic Point of View.

The main thrust of the Respondents in this connection was that, the present project forms part and parcel of Bandra-Kurla Complex (BKC) & as it is necessary to carry out study regarding impact of traffic that would be generated by this project vis-a-vis the over all transportation system of BKC area. As a result of this, the Appellants have been asked to comply with the traffic and transportation conditions such as U-turn facilities at the Family Court Junction, two way traffic movement, provision of a sub-way across the BKLR, provision of mechanical car parks, auto and taxi stands; elimination of fire gates from the compound wall and a connection access from Bandra Dharavi link Road.

6.6.1 The Appellants stated that the objections from the traffic view point are not based on any requirement in law, under the said regulations or otherwise. Plans can be rejected only for non-compliance with the said regulations and other relevant regulations, none of which give the Respondents the power to reject this proposal on these grounds. In addition, the built-up area of the layout for approval are the same as



those of the previously approved layout, and the traffic likely to be generated by the project is no more than that of the layout already approved by MMRDA on 25.11.2002. The Respondents cannot direct the Appellant to undertake work in the nature of a public utility, which the Respondents themselves ought to carry out if required. MMRDA has collected development charges from lessees in the Bandra-Kurla Complex, including from the Appellant. Section 124J of the MRTP Act states that the development fund, consisting of such development charges so collected, must be applied for providing public amenities for the area under the jurisdiction of MMRDA. The Respondents cannot seek to cast this responsibility upon the Appellant. Further, the 6m fire gates on the compound facing 45m road are the requirement of the CFO in the interest of safety, and have been provided as per requirements and approvals of the CFO. Also, a request to examine a direct access from Bandra-Dharavi Link Road cannot constitute a deficiency, and thus cannot be a ground for rejection of plans.

6.6.2 On Considering the submissions of the parties, although I appreciate the concerns of the Respondents in regard to the potential traffic congestion, it is seen that the Respondents have insisted that the Appellant comply with requirements not set forth by the law. There is no authority in the MR&TP Act, or any related law permitting the Respondents to make approval of the said plans contingent on such conditions. Any demand without authority of law is invalid and unenforceable. However, it would be appropriate that the Appellant works with the traffic department of the Respondents to find possible solutions, to the extent possible, to mitigate the potential traffic congestion.



6.7 The Appellant submitted that there has been an inordinate delay of 16 months in consideration and approval of the amended layout of the appellants from the date of their application made as far back as 15<sup>th</sup> March, 2004. In view of such delay to the project by the Respondents themselves, condition 11 of the existing CC for the project to the effect that the Drive-In Theatre has to be redeveloped prior to obtaining Occupation Certificate for the office blocks/commercial development has become impossible to perform. Accordingly, the appellants submitted that this condition needs to be deleted. On considering the matter I direct that the aforesaid condition 11 of the existing CC dated 25/11/2002 be amended to the effect that the Drive-In-Theatre has to be redeveloped prior to obtaining Occupation Certificate for the Hotel Blocks & commercial development.



6.8 In connection with the instant appeal, I further find it extremely essential to take cognizance of the flooding phenomenon of the Mithi River, as a consequence of the high flooding occurred in Mumbai in July 2005. In this context government has appointed a Fact Finding Committee & other study groups. The reports of this committee/group together with views of the MMRDA thereupon have been looked into.

Accordingly, the Chief, T&CPO, MMRDA's report dated 5/9/2006 has been received. The most concerned fact as is revealed from the report is that as per the report by the Project Director & Member Secretary, Mithi River Development & Protection Authority and the demarcation line of river course and the buffer zone as suggested by the IIT, the proposed development is outside the demarcated river course including the buffer zone.

*Arjun*

In view of this fact and circumstance, I find no hesitation in clearing up the matter. However, the Mumbai Metropolitan Regional Development Authority (MMRDA) has opined that a 15.0 mt. wide road along the southern boundary of Appellant's plot, within the holding of the appellant is essential in order to facilitate the periodical maintenance work like dredging, desilting and removing sludge etc. of the Mithi River water course. As such the Appellant shall realign an internal layout road on the lines of the suggested alignment indicated by the MMRDA on the map attached at Annexure "A" hereto. Therefore, I pass the following order.

**ORDER**

- (i) The impugned order dated 14/16<sup>th</sup> December, 2004 of the Respondents is hereby quashed and set aside.
- (ii) The appeal of the Appellant is hereby allowed and permission is hereby granted to the Appellant to carry out the redevelopment of his land in terms of the amended plan submitted by the appellant under the cover of his letter dated 15<sup>th</sup> March, 2004.
- (iii) Condition 11 of the existing Commencement Certificate to the effect that the Drive-In-Theatre has to be redeveloped prior to obtaining Occupation Certificate for the office blocks/commercial development stands amended to the effect that the Drive-In-Theatre has to be redeveloped prior to obtaining Occupation Certificate for the Hotel Blocks & commercial development.
- (iv) The appellant shall realign an internal 15.0 mt. wide layout road so as to run along the Southern boundary of the plot and within the plot. This internal layout road shall be planned in such a way that it shall become aligned to the existing peripheral road of "E" block and get suitably connected to the Sion-Dharavi Road near its existing junction with the 45 mt. wide Bandra-Kurla Link Road, to enable easy access for the service vehicles for their maintenance works of the Mithi River water course, on the lines of the suggested alignment on the map by MMRDA attached at Annexure "A" hereto.

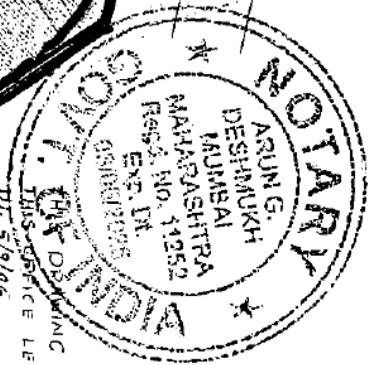
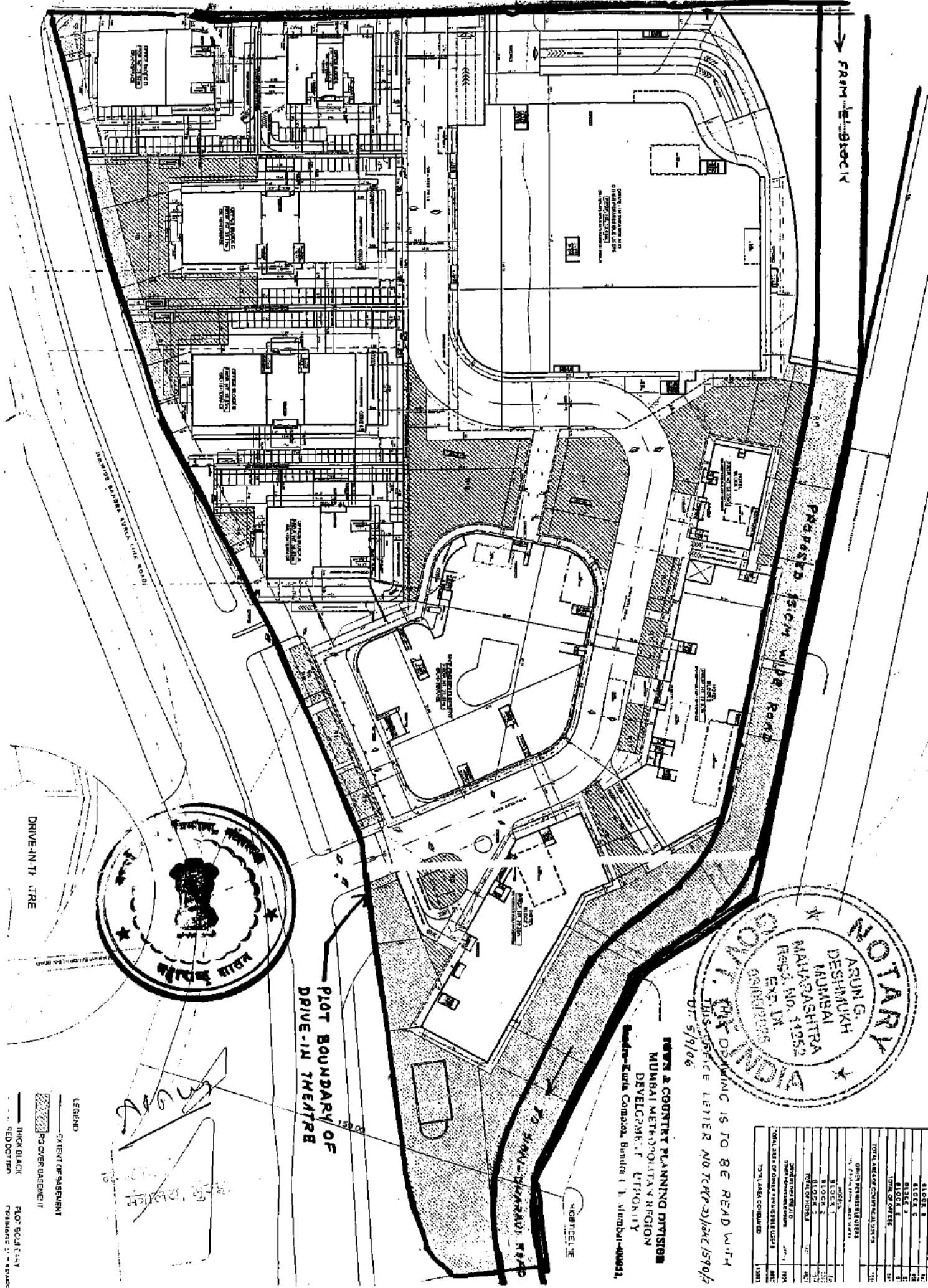
Place : Mumbai.

Dated : 15/1/2007.

Sd/-  
(VILASRAO DESHMUKH)  
Chief Minister



*Arjun*  
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मुंबई



THIS DRAWING IS TO BE READ WITH THIS OFFICE LETTER NO TCRP-23/34/1590/3 DT: 5/9/06

URBAN & COUNTRY PLANNING DIVISION  
MUMBAI METROPOLITAN REGION  
DEVELOPMENT UPPUNITY  
Kandivli-Kandivli Condoa Bandar (1) Mumbai-400021.

TOTAL AREA OF COMMERCIAL ZONES	
NO.	AREA
1	10000
2	10000
3	10000
4	10000
5	10000
6	10000
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LEGEND

- EXISTENT OF BASEMENT
- RO OVER BASEMENT
- THICK BLACK PLOT BOUNDARY
- RED DOTTED PLOT BOUNDARY

*Handwritten notes in Hindi:*  
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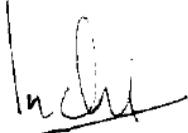


Date : 18/07/2024

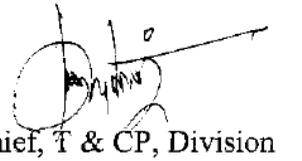
**TO WHOM SO EVER IT MAY CONCERN**

This is to certify that Shri. Ankit Das aged 40 years, working as Planner, T & CP Division, Mumbai Metropolitan Region Development Authority is hereby appointed and authorized to sign the Affidavit on behalf of Mumbai Metropolitan Region Development Authority in the matter THE NATIONAL GREEN TRIBUNAL WESTERN ZONE BENCH, PUNE ORIGINAL APPLICATION NO. 49/2024 WZ V/s MMRDA and others.

The specimen signature of Shri. Ankit Das is given herein below.



Shri. Ankit Das.

  
Chief, T & CP, Division

मुंबई महानगर प्रदेश विकास प्राधिकरण

वांद्रे-कुर्ला संकुल, वांद्रे (पूर्व), मुंबई ४०००५९.

इंपीअरबीएक्स - २९ २२ २६५९ ०००९ / ४०००

<https://mmrda.maharashtra.gov.in>

**BEFORE THE NATIONAL GREEN TRIBUNAL  
AT PUNE**

**SITTING AT PUNE**

**MEMORANDUM OF APPLICATION**

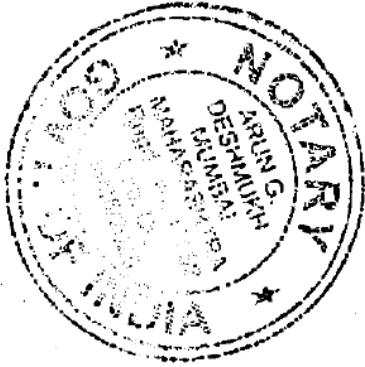
**(Under Section 14 & 15 read with Section 18 of The  
National Green Tribunal Act, 2010)**

**APPLICATION NO. 49 OF 2024**

**Pratap Lal Teli ..Applicant**

**Vs.**

**Secretary Environment Department  
& Ors. ...Respondents**



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**AFFIDAVIT IN REPLY ON BEHALF OF  
RESPONDENT NO. 2- MMRDA**

\*\*\*\*\*

**Dated 19<sup>th</sup> July, 2024**

**Shri. Ajay Khaire,**

**Advocate for Respondent No.2  
3<sup>rd</sup> Floor, 14 Rajabhadur Mansion,**

**Ambalal Doshi Marg, Fort,**

**Mumbai – 400 021**

**MAH. 1131/2003  
Mob. : 9920238950**