

HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE

ORIGINAL APPLICATION NO. 204/2023 (WZ)

Sajan Nagrik Manch & Ors. Applicant

VERSUS

State of Maharashtra & Ors Respondents

**AFFIDAVIT IN REPLY
BY RESPONDENT NO. 4
"WELWORTH BLUESCAPES"
M/S TIRUPATI ESTATES
[PART - I]
TO OPPOSE THE MAINTAINABILITY
ON THE BASIS OF FACTS AND MERIT**

INDEX OF ENCLOSURES - NEXT PAGE

Date : **01/02/2024**

Place : **Pune**

Filed by :



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ABBREVIATIONS

Short	Full-form
DC	Development Control Rule
DGPS	Differential Global Positioning System
DP	Development Plan
EA	Execution Application
FSI	Floor Space Index
GoM	Government of Maharashtra
GPS	Global Positioning System
MA	Miscellaneous Application
MMC Act	Maharashtra Municipal Corporation Act, 1949
MRTP	Maharashtra Regional Town Planning Act, 1966
MSL	Mean Sea Level
NGT (WZ)	National Green Tribunal Western Zone
NGT PB	National Green Tribunal Principal Bench
NOC	No Objection Certificate
OA	Original Application
PIL	Public Interest Litigation
PMC	Pune Municipal Corporation
PMRDA	Pune Metropolitan Region Development Authority
PP	Project Proponent
RD & WCD	Rural Development and Water Conservation Department
RERA	Real Estate Regulatory Authority
RL	Red Line
SC	Supreme Court
TDS	Transferable Development Rights
WRD	Water Resources Department, Irrigation Department, Government of Maharashtra

DAIRY OF EVENTS

Date (y-m-d)	Events
1989-09-21	Irrigation Department GoM Circular regarding restriction on the constructions in Blue Line area
2008-05-17	Maharashtra State Government Resolution related to the DP plan of Pune city
2008-09-18	Aforementioned DP Approval by the Maharashtra Government
2013-04-15	Affidavit filed by Chief Engineer Water Resources Department in OA 02/2013 (WZ)
2013-07-11	Hon'ble NGT WZ daily order in OA 02/2013(WZ) no construction in Blue Line
2014-02-13	Government of Maharashtra GR on sanction of DP of Pune
2014-05-07	Survey report of flood lines for River Mutha with plans for years 2007 and 2011 forwarded by the Water Resources Department to PMC
2015-01-14	Hon'ble NGT order in MA 243/2017 and MA 52/2015 for no construction in Blue Line
2015-03-02	Maharashtra Government Circular and Notification regarding fixing Red and Blue Lines

Date (y-m-d)	Events
2015-05-02	Blue line marked and certified by Chief Engineer PCM "JALSAMPADA VIBHAG"
2016-05-09	WRD to PMC for consideration of the Red and Blue flood Lines before DP finalization
2016-11-04	Executive Engineer Irrigation Department Khadakwasla Region to City Engineer PMC regarding the purpose of fixation of Blue and Red Line
2016-11-24	Executive Engineer Irrigation Department Khadakwasla Region to City Engineer PMC reiterated the same point of fixation of Blue and Red line
2017-08-24	PMC Chief Engineer to the Superintendent Engineer Irrigation department to visit the site and mark the Red and Blue Line as per the Hon'ble NGT direction dated 05/08/2017 and 07/08/2017
2017-09-01	Mr. Chopade Superintendent Engineer WRD Pune reiterated the facts letter dated 04/08/2017
2017-11-14	Hon'ble NGT direction in EA 19/2017
2017-11-27	Affidavit of Irrigation Department based on identification and demarcation of Blue and Red Line

Date (y-m-d)	Events
2017-11-28	Hon'ble NGT daily Order considering the compliance submission made by Executive Engineer WRD on 14/11/2017 and directed to form a committee in EA 19/2017
2017-12-27	Expert committee report site visit in EA 19/2017
2018-01-10	Expert committee report submission as per Hon'ble NGT order in EA 19/2017
2019-01-08	Application of PP to PMC for certain buildings (by the earlier owner of the plot)
2019-01-03	Hon'ble NGT final Order in EA 19/2017(WZ) in OA 02/2013
2020-03-18	Deputy Engineer WRD letter regarding not to restrict PP from Constructions Construction of the project
2020-03-18	Deputy Engineer Irrigation Department replied to PMC Commissioner regarding the false complaint and map of 2016 with DGPS survey report.
2021-01-01	Plot purchased by PP
2021-03-04	RERA approval for PP's project
2021-06-02	Building plans sanctioned and Commencement Certificate issued by PMC
2021-06-15	PP's construction Work Commenced

Date (y-m-d)	Events
2021-09-03	False complaint made to Commissioner of PMC
2021-10-27	Executive Engineer Khadakwasla Irrigation Division, Govt. of Maharashtra letter
2021-10-27	Deputy Engineer Kadakwasla Irrigation Department to Executive Engineer PMC regarding Red/ Blue Line near Mutha River from NH-4 Bypass to Yerwada Bridge
2021-12-23	Plith checked
2023-04-12	Executive Engineer Kadakwasla Irrigation department to Commissioner of PMC regarding action to be taken as directed by Hon'ble High Court, Bombay in order Dated 27/03/2023 in PIL 36/2021 filed before Hon'ble High Court, Bombay
2023-11-27	Original Application No.204/2023 (WZ) filed in NGT
2024-01-09	PIL Writ petition No. 36/2021 filed by Applicant Sarang Yadwadkar in Bombay High Court
2024-01-11	Hon'ble Supreme Court Judgment in CA 5348 of 2019 "Himachal Pradesh Vs Yogendra Sengupta"

**MOST RESPECTFULLY
SUBMITTED**

1. I, Jaideep Modak, an adult, am working as the Managing Partner of the project and company named **M/s TIRUPATI ESTATES**, which is having a residential project by the name "**WELWORTH BLUESCAPES**" implemented as **Respondent No. 4** in the **NGT OA No. 204/2023 (WZ)** matter (hereafter referred as **Respondent OR Project Proponent - PP**).

2. Respondent opposes the allowing of the Application and even its admission for the following reasons:

- A. The issue is already decided once in respect of the Respondent property, by this Hon'ble Tribunal, WZ, Pune Bench. The Joint Committee was appointed by NGT. Site visit was done by Survey of India, Irrigation Dept. and PMC. Blue/Red Line has been demarcated based on geotagging, longitude and latitude and poles have been erected on site. The property falls outside Blue Line.
- B. The matters can't be taken up again and entertained by the same NGT Bench as it is prevented by **res judicata** and **constructive**

res judicata, both.

- C. The OA is *inter alia* challenge to approved DP for City of Pune dated 13/02/2014, is sanctioned in accordance with law by following complete due procedure and is a formal delegated legislature. As held on 11/01/2024 by SC CA No. 5348/2019 Himachal Pradesh Vs Yogendra Sengupta, even SC / HC in their extraordinary jurisdiction can't do so.
- D. Mere Circular by WRD can't supersede DP framed under MRTP, unless formally incorporated in DP, by following due process of law OR issued under EPA Rules.
- E. Substantial question related to environment has not arisen. The DP under MRTP is no go area for Hon'ble Tribunal as the act is not in Schedule-I. ***Precautionary principle*** can be applied in issues falling under 'Environment (Protection) Act 1986' and not otherwise.
- F. The MSL at the front of the property is at least 556.102 m (about 3.46 m above) the Blue Line which is at 552.460 m. So even on facts and merit, it is outside Blue Line, as decided by Joint Committee appointed by

Hon'ble National Green Tribunal, WZ, Pune.

3. This is submitted as part of the pleadings. The OA filed is hopelessly time-barred, as there was no challenge to the sanctioned DP plan of Pune on 13/02/2014, almost before 10 years. In the absence of such a challenge, there can't be any challenge now to the sanctions issued by PMC in accordance with the approved DP.

4. The Respondent No. 4 - Project Proponent / PP states that it is a ***Limited Liability Partnership Firm***, and is well and sufficiently entitled to certain immovable property being land bearing S. No. 13/1A/1 admeasuring about 02 H 75 R, at **Village WADGAON BUDRUK, Taluka Haveli, District Pune.**

5. The Project Proponent (PP) states that false and vexatious objections are raised to the building permissions granted by PMC, alleging that the above project location/land is within the BLUE and RED FLOOD LINES, with specific reference to the above land and project.

6. I categorically and specifically deny all averments and allegations made in the Original Application, as they are false, baseless, without any

truth, or evidence, based on false maps and devoid of any merit. Nothing contained in the OA shall be construed as accepted simply because it is not denied in this reply.

**LAW POINT: MAINTAINABILITY:
APPEAL UNDER GUISE OF
APPLICATION, IS TIME-BARRED**

7. The challenge in this OA is not to the project but basically and inter alia to the lawfully sanctioned DP of PMC.

8. The DP has been sanctioned by the State Government, after following due process of law on 13/02/2014. PMC sanctioned building plans and issued Commencement Certificates to the previous owner itself in the name of the M/s Siddharth Value Homes LLP through Mr Abhijit Shende **CC/0062/19 dated 11/04/2019, and thereafter issued further commencement certificates CC/0711/20 dated 05/10/2020. The CC/0446/21 dated 02/06/2021** was issued in the name of the Respondent. The project area of the Respondent has been falling in the residential area. Sanction of DP and zones were not challenged by the applicant in any manner at any time in the past.

9. The cause of action arose at that point in time. The subsequent sanction of the plan and construction of the building of the Respondent are subsequent events, based on the sanctioned DP.

10. The DP plans as approved by the PMC and State Government after following due process of law, have been in the public domain since 02/06/2021. They have not been challenged and hence have reached the finality.

11. The plot was earlier purchased by M/s Saarthi Group on 11/04/2019 and then by the Respondent on 01/01/2021. The building plans were submitted for sanction by following due process of law, along with all required documents on 02/06/2021. The PMC sanctioned the plans and issued CC on 02/06/2021. The plinth was constructed and plinth checking was done on 23/12/2021. This fact is suppressed and opening the same issue before Hon'ble Tribunal is forum shopping.

12. Even now, when the OA has been filed, the DP as approved by the PMC, and the various zones created in the areas adjoining the river bed have not been challenged by the applicant. There is no averment by the Applicant challenging the DP ***ab-initio*** even in this Original Application.

**LAW POINT: MAINTAINABILITY:
ISSUE NOT UNDER SCHEDULE-I**

13. There is no law, or rule governing construction in the Blue/Red Line area. This is merely a Circular from WRD. There is no Rule OR Gazette Notification by formal delegated legislature to this effect by any Government Authority OR even by Environment Department OR MoEFCC under 'Environment (Protection) Act 1986'. Land is a subject under the State Government and is specifically covered under the MRTP Act and DC Rules. The responsibility of enforcement and implementation is given to the local planning authority. The Development Plan (DP) is finalized and is already in place after following due process of law. The same is not under challenge within a period of limitation. The lawful remedy to challenge the DP under that Act is already provided. The applicant has already filed the PIL No.36/2021 on 09/01/2024, under constitutional jurisdiction, in the High Court with larger and wider implications, including the relief inter alia prayed before the Hon'ble Tribunal, and the same is still pending. Unless that PIL is withdrawn, this can't be heard by the Hon'ble Tribunal. The '**precautionary principle**' can be applied only for issues falling under Acts and Rules framed thereunder under Schedule-I. No

'**substantial question related to environment**' has arisen. The 'Environment (Protection) Act 1986' doesn't include flood or Blue/Red Line areas. The EPA categorically **precludes** the **effect of other laws** u/s.24(2) that if the issue is covered by any other Act.

(2) Where any act or omission constitutes an offence punishable under this Act and also under any other Act then the offender found guilty of such offence shall be liable to be punished under the other Act and not under this Act.

14. As such, it is to be first prima facie decided, even before admitting the Application and also, considering any interim relief, as to whether Hon'ble National Green Tribunal can enter in to this area and has the jurisdiction to entertain the present matter. [**SC CA No. 9695/2013 Asma Lateef v/s Shabbir dated 12/01/2024**]

MAINTAINABILITY: RES JUDICATA

15. The very same issue has been already dealt with and decided by this very same Bench of the Hon'ble National Green Tribunal, WZ, Pune in in **EA 19/2017(WZ) in OA 02/2013(WZ) Sarang Yadwadkar v/s Commissioner PMC**, disposed of on 11/07/2013. The Committee was appointed and a **Committee Report was filed** on 10/01/2018,

as per NGT WZ Pune Daily Order dated 28/11/2017 [Ax. C ■] in "**EA 19/2017 (WZ) in OA 02/2013 (disposed of on 11/07/2013) and MA 243/2017 in EA & Contempt Application No. 18/2017 in MA 52/2015 and OA 02/2013 (disposed of on 14/01/2015)**". The Committee Report was signed and submitted on 10/01/2018 in NGT WZ Pune by,

- i. Director, Maharashtra & Goa GDC, Survey of India,
- ii. Superintending Engineer, Pune Irrigation Circle, Pune
- iii. Superintending Engineer, Building Permission, Pune Municipal Corporation

16. Committee Report states that "*As per directions of this Hon'ble Tribunal Caused a visit and inspection along the stretch 1.35 km of River Mutha between chainage 0/400 to 1/750. The Committee went to the site on 27/12/2017. A report has been prepared in respect of identification and demarcation of Blue Line and Red Line on the site with reference to Map at Annexure B to the Affidavit of the Irrigation Dept. dated 27/11/2017*". **The actual on-site marking of Blue Line and Red Line was done.** The Cement Poles were erected on-site, with reference to longitude and latitude in

geo reference available at Google Imagery. These poles can be seen even today.

17. The issue was again raised before Hon'ble National Green Tribunal, Principal Bench, New Delhi, by "EA No.16/2018 (MA 674/2018 in MA 243/2017(WZ), earlier EA 19/2017(WZ) in OA 02/2013" and it was disposed of by final ORDER dated 03/01/2019. [**Ax. E ■**].

18. This Order dated 03/01/2019 has not been reversed, challenged and hence has reached finality. As such this issue can't be taken before OR reopened now by this Hon'ble Bench WZ Pune on the ground of res judicata and constructive res judicata, both.

**MAINTAINABILITY: UNCLEAR
HANDS: SUPPRESSION OF RELEVANT
FACT**

19. One of the applicants has taken up the same issue before the ***Hon'ble High Court of Bombay, at Bombay in PIL No. 36/2021.*** The matter is pending before the Hon'ble High Court. **The Respondent is not made the party in it,** though the order of the Hon'ble High Court would be overlapping the issue and can affect this matter also.

PLEADINGS ON MERIT

BLUE LINE

20. Blue/Red Lines are the hypothetical lines, based on the past data of 25/100 years, where the river-bed water has spread during heavy flow. These are inter alia lines connecting the isopleths OR the points of the same levels (MSL / RL), where water would spread. The purpose of this is to mainly help all stakeholder to manage the flood water. The spread of river-water-bed doesn't necessarily add to the carrying capacity of the river. **Carrying capacity is based on the (cross section area of the river m^2) x (speed of water which is dependent on the level difference m/s) = $m^3/second$.**

21. If the river water is merely spreading across alongside of the river submerging the land causing inconvenience to citizens, then the river needs to be trained with any proper flood protection measures, including walls, adopted to control the floods at the major rivers. In the absence of such flood protection measures, a large area is likely to be inundated with water, damaging the property and life. [■ **Ax. F**]. In this case Blue/Red Lines are showing the spread of river

water without their being any possibility of addition to the flow carrying capacity of the river.

22. Therefore, the red line and blue line are the indicators of water spread in case of high floods which can enable the Government / Corporation to take flood control measures and define the areas for their designated uses. These lines are primary information for on which government needs to plan the flood control measures. Blue/red Lines have very little correlation and significance as far as environmental matters are there, except where flood planes are located due to deposition of soil, the rivers from high mountains.

23. The demarcation of the Blue / Red Line is to be marked and certified by the **Chief Engineer** of the **Jalsampada Vibhag**, OR any higher authority. The same has to be conveyed to PMC and incorporated in the DP. This was finally done on 02/05/2015. Based on that PMC has processed the applications. [■ **Ax. 05, Page No. 06, Point No. 09**].

24. Before 25 years, flood lines were governed by natural flood from monsoon. Many new major/minor **Dam, Pazar Talao, Weirs and Jalyukta Shivar**, all of which hold the water locally, have come up. Now all rivers are having Dam and

the flood is due to discharge from Dam AND monsoon in the catchment area downstream of Dam and River. As such Blue Line prior to 25 OR 100 years are no more relevant. The more recent finalization by the Local Planning Authority and the demarcation in the Development Plan is more relevant and have the statutory status.

25. The flood water spread along the river sides is based on the contour levels, i.e., the ground levels of the land. **The Blue Line has been marked by the Irrigation Department at the MSL 552.460 m all along the river.** Everyone will have to measure the levels at the corner of the plots facing the river, to ascertain MSL at those points. **In the case of front facing river, these MSL are 556.160, 556.102 and 556.360 m.** This plot level is almost 3.642 m (3642 mm = 12.14 feet) above the Blue Line. As such it is squarely outside the Blue Line. There is no chance that the present project "Welworth Bluescape" can be in the Blue Line OR water would spread in the premises of the project.

26. The letter dated 27/10/2021 submitted by Dy. Engineer, Khadakwasala Irrigation Division, Pune-11 [Ax. G ■] mentions clearly that *[last para – translation from Marathi to English]*

'Committee was formed as per directions given in Hon'ble National Green Tribunal matter No. 19/2017 for conforming Blue/red Line. It (Committee) includes Maharashtra & Goa Survey Officer, Survey of India, Superintending Engineer, Pune Irrigation Division and Executive Engineer, Building Permission, Pune Municipal Corporation. This Committee conducted separate study as per NGT order; (and) report submitted as per direction of NGT was for Longitude, Latitude Chainage No. 0/400 to 1/750 m. This length is excluded from the Blue/Red Line submitted vide reference letter No.2 and 3 in 2011 and should be considered as final.'

27. This was verified physically on site even by the Joint Committee Survey in the presence of PMC and Irrigation Department officials. Accordingly, Blue Line (MSL 552.460 m) and Red Line (MSL 554.610 m) were marked on site, AND the concrete polls were painted and erected on site, which can be seen even now. The fencing sheets were erected. **The project site is beyond the Blue Line (also Red Line) and is on the landward side of the Blue Line and there after the planned "Riverside Road" which is an approved DP Road.** There were no objections to this DP and this sanctioned '**Riverside Road**' DP Road.

PROJECT LOCATION

28. The project of the Respondent is marked on the Flood Line Map prepared by the Water Resources Department, Government of Maharashtra WRD-GoM): Flood Line Maps at website link

<https://wrd.maharashtra.gov.in/Site/1315/Flood-Line-Maps>

29. These maps are prepared prior to Respondent's project which was started in the year 2019, after the plans were sanctioned. As such the neighbouring project is seen and marked but the Respondent's project is NOT marked in it.

30. Respondent has marked the location of his project on the above map of the WRD. **[■ Ax. 08, Page No. 08, Point No. 13]. The map submitted with an affidavit by the applicant is the self-prepared INCORRECT imaginary map without any field measurements. It is false, incorrect and denied.** The Blue Line marking location shown near the project "Welworth Bluescapes" is incorrect AND not as per the Committee Report filed as per the NGT WZ Pune Order AND onsite marking done by the Committee. This Report was accepted and was not challenged by the applicants in NGT or any other higher Court.

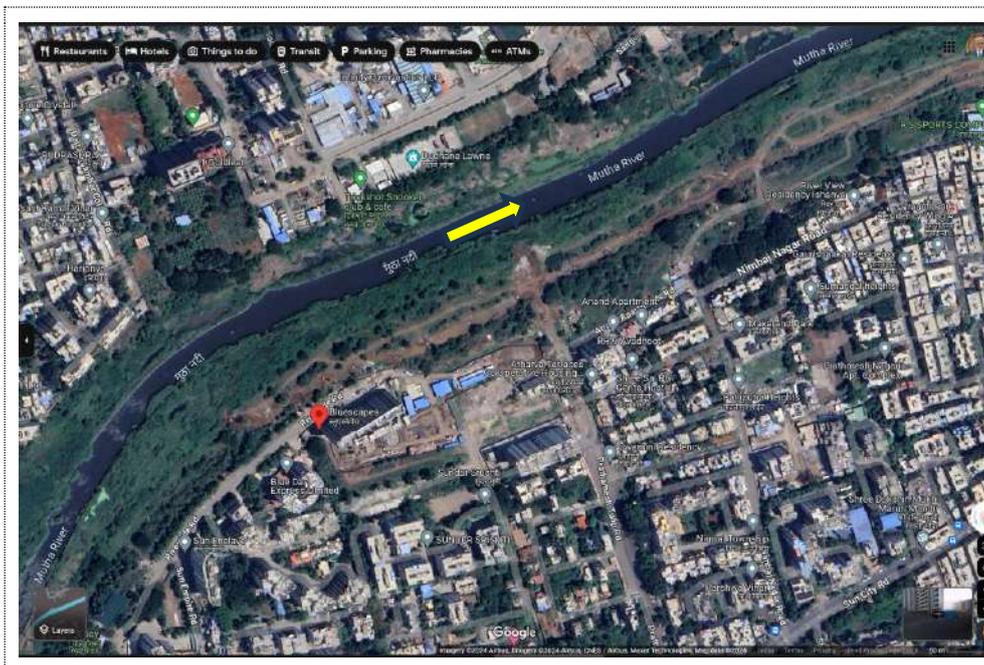
31. As these maps were already available and shared with PMC, the same were referred to and relied upon by the PMC and all stakeholders.

32. The Respondent has enclosed the Google Map also which show all the existing constructions in this area.

<https://maps.app.goo.gl/HbgqwVjF8f1YmsMQ6>

33. The next-door project M/s Atharva can be seen even on the Flood Line Map prepared by the WRD. The Blue Line marked on site as per the Joint Committee is tuning as per the contours, and going around the Respondent's project.

34. There is a formal regular DP approved "Riverside Road" in front of the Respondent's project, towards the Mutha River. (मुठा नदी).



35. The location was verified by the officials of the PMC before sanction of the building plan. The actual site measurements were done by using GPS system, vis-à-vis the Flood Line Map of WRD. The concrete poles were fixed on-site, which can be seen even today.

36. The Respondent obtained various permissions, sanctions, and NOCs from various departments, including sanctioned building plans, plinth checking certificates, land demarcation maps from the revenue department, etc.

COURT/TRIBUNAL ORDERS

37. There was no specific litigation regarding the property of the Respondent, since the purchase of the plot OR even after starting of the construction on site. There was no stay order, status quo OR pending litigation at the time of sanction of plan.

THIRD PARTY INTERESTS

38. In the Affidavit of the Applicant submitted on 22/01/2024, it is submitted that Occupancy Certificate is not given so far by PMC. **This is half-truth.**

- The third-party interests have been already

created by way of Sale Deeds with Registered Stamp Duty paid agreements.

- The Respondent has issued the NOC and all other documents to the registered buyers for availing the loan from banks and financial institutes. Substantial payments have been received from third-party bonafide buyers.
- The Respondent has already applied for the Completion Certificate to PMC. The ***soft possession*** has been given to the bonafide buyers, for interior decoration and making the furniture etc.; though no one is staying there.
- **As such proceedings can't be taken further without impleading them ALL as the party respondents and hearing them.** Society is NOT yet formed. As such all of them will have to be heard, individually.
- **However, unless it is determined as to whether the structure is within Blue / Red Line OR not;** and any further orders are considered to be issued by the Hon'ble Tribunal, adversely affecting the flat-owners, they may not be made the party to these proceedings.
- All the relevant documents for the

adjudication are to be given by the present Respondents only.

PROJECT & PROGRESS ON-SITE

39. The total plot area is 3,310.91 m². The **'total covered built-up construction area including FSI and non-FSI'** is 11,463.49 m². The project doesn't need 'Environmental Clearance' as the area <20,000 m².

40. The project has 1 No. of building with 2 wings. There are 7 flats in A wing and 5 flats in B wing on each floor, of each wing. **There are a total 144 flats in the society. There are no shops / commercial premises.** There are a total 144 covered parking and 0 open parking. The building is adjoining the existing "Riverside Road", which is DP approved tar road.

41. The river bed is about 3.6 m (11 feet) below the RL of the compound wall of the property. The maximum water spread observed this year was approximately 40 m away from the compound wall of the property.

42. After sanctioned building plans and RERA approval, the plans were opened for booking and the premises were sold. **The third-party**

interests have been created with 137 no. of registered buyers out of a total 144 nos. of flats.

43. The building construction was done as per sanctioned plans and commitment before RERA. The building is now complete in all respects. **As per the RERA commitment, the project has to be handed over to the respective buyers prior to 31/05/2025.**

44. The Project Proponent, in the year 2019, applied to the **Pune Municipal Corporation, Pune** [PMC] for permission to carry out construction of certain buildings. The said plans are duly approved by the said Planning Authority after filing necessary documents along with colour zoning demarcation. Hence, Commencement **Certificate No. CC/0062/19 DATED 11/04/2019, CC/0711/20 dated 05/10/2020, CC/0446/21 dated 02/06/2021** were issued by PMC. The Certificate of Registration of the project is issued by the **Maharashtra Real Estate Regulatory Authority [RERA]** under S. 5 of the RERA Act under project registration number P52100028477 under by name "Welworth Bluescapes".

45. The Project Proponent states that the work of **construction is commenced** on/or about **15/06/2021** and the plinth was checked and a certificate was issued by PMC under the provisions of the Development Control Rules [DC Rules].

46. The said work of the Project Proponent is commenced after obtaining all necessary prior permissions and sanctions. The relevant permissions and sanctions as issued by the PMC, the PMRDA and the Government of Maharashtra, on the basis of which construction was done. It is all on the record of the PMC, and inter alia includes the Departments of Water Supply and Sewage, Land and Estate Department, Land Acquisition Department, the Tax Department, the Garden Department, the Legal Department etc.

47. The project building is complete in all respects now as of date. The Project Proponent states that recently they were orally informed by concerned officers of the PMC, that issuance of the "Occupancy Certificate" to the Project Proponent, under the DC Rules to the ***Maharashtra Regional and Town Planning Act, 1966***, was under consideration. In the past also, a false complaint was made vide letter dated 03/09/2021, addressed to the Municipal Commissioner, PMC. Letter further

stated that the **maps of 2016 with DGPS Survey, and using Google Maps, and latitudes and longitudes to be marked on the Final DP, as per directives of the Hon. National Green Tribunal, should not be relied upon.**

48. The Project Proponent was shocked and surprised by such information since all necessary permissions and sanctions of all the concerned planning authorities are issued in their favour. PP compiled all relevant information and clarified facts to PMC.

POINTS ON MERIT

49. The Pune Municipal Corporation is a Municipal Corporation within the meaning of Article 243Q of the Constitution of India. The PMC along with the PMRDA is also the Planning Authority for the City of Pune, under the provisions of the ***Maharashtra Regional & Town Planning Act, 1966*** ('*MRTP Act*') and for the purposes of the planned development of the Pune City, has formulated and published the ***Development Plan for the City of Pune*** in accordance with the ***Development Control Regulations*** ('*DC Regulations*') for the City of Pune, and which **Development Plan is duly approved by the Government of Maharashtra**, after following due process of law. All these things are in

the public domain by various means, including the same is available on a website.

50. There is no Statute, which *inter-alia* provides for the demarcation of the '**Flood Lines**'. In Maharashtra, the **State Government vide CIRCULAR dated 21/09/1989** imposed certain restrictions on construction activities, depending upon the location of the Property vis-à-vis the Flood Lines. As per the Circular, the flood lines are to be ascertained by the Water Resources Department [WRD] after taking into consideration the maximum water discharge in 25 years and 100 years respectively. The maximum water discharge in 25 years is used to earmark the '**Blue Line**' or '**Prohibited Zone**' whereas, the maximum water discharge in 100 years is used to earmark the '**Red Line**' or '**Restrictive Zone**'. **No construction activity is permissible in the area falling within the 'Blue Line'**, whereas, construction is permissible in the area falling within the Blue and Red Line, subject to certain restrictions, as mentioned in the said Circular.

51. The duty of fixing the Red and Blue Flood Lines is now cast upon the **Water Resources Department, Government of Maharashtra** (formerly known as Irrigation Department) acting

through its **Chief Engineer**, under Government Circular and **notification of delegation dated 02/03/2015**. As per the notification of 02/03/2015, only the **Chief Engineer of the WRD** has the authority to grant approval to any plans or issue any NOC regarding the Blue and Red Lines, and no authority below such designation can issue such plans or NOCs.

52. It is pertinent to note that the PMC had requested the WRD to carry out a survey of the Flood Lines for the **River Mutha**. Pertinently, the WRD carried out a survey in 2007 and submitted its report to the PMC in the years 2007 and 2011. It is further pertinent to note that prior to this, there were no Flood Lines in existence for the Village **Wadgaon Budruk** wherein the subject property is situated. **The same plans were forwarded to the PMC by the WRD on 07/05/2014.**

53. It is to be noted that certain proceedings were initiated by **Sarang Yadwadkar & Ors.** against the Pune Municipal Corporation and others, before the **National Green Tribunal, Principal Bench, New Delhi**, raising certain issues pertaining to the Red and Blue Flood Line. The said proceedings were vehemently contested by the

Irrigation Department of the Government of Maharashtra as well as the PMC. An **Affidavit dated 15/04/2013 was filed by the Chief Engineer of the WRD, [earlier Irrigation Department] in O.A. NO. 02 OF 2013.**

54. By Daily Orders dated 11/07/2013 and 14/01/2015, the Hon'ble National Green Tribunal had directed that no construction activity can be permitted on land falling within the 'Blue Line'. Accordingly, the Project Proponent above named has been issued valid NOCs by the PMC, which *inter-alia*, means that the Properties on which construction of the Project Proponent is being carried out are within the Residential Zone of the Final DP, and are situated beyond the 'Blue Line'. Therefore, construction activity can be undertaken thereupon in accordance with law. **The Order dated 11/07/2013 and the Order dated 14/01/2015 passed by the NGT in O.A No. 02 of 2013 are matter of record.**

55. The ***Executive Engineer, Khadakwasala Irrigation Region***, by letter dated 04/11/2016 informed the ***City Engineer, PMC, Pune***, that the plans provided alongwith letter dated **22/07/2016 and 28/10/2016, were provided for the purposes of fixation of the Blue and**

Red Line on the Development Plan for the City of Pune. The same was reiterated vide letter dated 24/11/2016. The Blue and Red Line Maps were provided to the office of the **City Engineer, Pune, by the Water Resources Department,** after marking the same on the relevant maps, as per **Geo Positioning and Referencing Systems using Latitudes and Longitudes,** and after certifying the same.

56. The Project Proponent states that vide letter dated **24/08/2017, the Chief Engineer [Roads] PMC, Pune,** requested the **Superintendent Engineer, Irrigation Department Pune,** to visit and mark Red and Blue Line at site pursuant to the directions of the Hon'ble National Green Tribunal, WZ, Pune, dated 05/08/2017 and 07/08/2017. It was done using appropriate GPRS equipment and geo-positioning systems, The concerned authorized officers of the Water Resources Department had visited the site along with officers of the PMC, and the joint report of the said date is also prepared under the signatures of all concerned officers of the PMC and the WRD.

57. The Project Proponent states that vide letter dated **01/09/2017,** issued under the

signature of the **Mr. Chopade, Superintendent Engineer, WRD, Pune**, the above facts are reiterated.

58. The Project Proponent states that pursuant to certain further directions as issued by the **Hon'ble National Green Tribunal, Western Zone, at Pune**, on **14/11/2017**, in **Execution Application No. 19/2017**, the **Executive Engineer of the WRD**, has filed his compliance affidavit, and specifically **Paragraph 3** there of states, and we;

[quote] "I say and submit that the identification and demarcation of Blue Line has been done by the Respondent No. 2 [WRD]. The maps along with the booklet have been provided to the Respondent No. 1 [PMC] specifying the longitude, latitude, cross sections along with the Google Maps. I further state that the letter dated 15/11/2016 issued by the Chief Engineer, Water Resources Department to the Pune Irrigation Department is annexed herewith as Annexure-A colly. I say and submit that the detailed information along with longitude and latitude booklet has been handed over to the Respondent No. 1. I further state that our office has also demarcated the Red Line and Blue Line at site. I therefore say that the direction issued by this Hon'ble Tribunal regarding identification and demarcation of the Blue Line has been complied with by the Respondent No. 2." [unquote].

59. The said report and compliance affidavit is duly considered by the Hon'ble National Green

Tribunal, and directions are issued on **28/11/2017**, constituting an **Expert Committee** comprising of the Sr. Technical Officer, Survey of India, Superintendent Engineer, Irrigation Division, Khadakwasala, Pune, and the Superintendent Engineer, Building Permission, PMC, and to submit a report as per the said orders. The said committee report dated **27/12/2017 as per the order of Hon'ble National Green Tribunal is duly submitted on 10/01/2018**, *clearly stating the earlier maps dated 2011/ANNEXURE-B were not correct, and the maps submitted to the PMC in the year 2016 together with geo referencing, latitude and longitude with GPRS were accurate or more correct.*

60. The Project Proponents are now informed that further survey at site was thereafter carried out by the said **Irrigation Department / PMC, and concrete markers reflecting the Blue Line and the Red Line are actually erected on-site.** The Project Proponents state for the record that the said concrete markers reflect that ***the entire 80 feet road from River Chainage 0/400 to River Chainage 1/750 is beyond designated and marked the Blue Line.***

61. It is pertinent to note that the present Final Development Plan for the City of Pune is finalized only and only after the Red and Blue Flood

Lines were provided to the PMC by the Water Resources Department under letter dated **09/05/2016**, reaffirmed from time to time in numerous correspondence, and **based upon geo referencing, latitude and longitude with GPRS**. It is further pertinent to note that the said **Blue/Red Lines were marked on the plans by the WRD as per the directions of the National Green Tribunal, and based upon geo referencing, latitude and longitude with GPRS**. [Ax. D ■]

62. The Project Proponent states that in light of the above clarification given by the PMC, the WRD and the Survey of India, the Hon'ble NGT reached the conclusion that the substantial compliance is made to its satisfaction, and hence the Execution Application No. 16/2016(WZ) [earlier EA No. 19/2017(WZ) and other attendant applications were fully and finally disposed of

63. The aforementioned DP was approved by the State Government vide Resolution dated 18/09/2008, and was fully sanctioned by the State Government by resolution dated 13/02/2014. The sanctioned DP for the City of Pune, issued after following due process of law acquired the status of

delegated legislation under Article 12 of the Constitution of India. This is not challenged since then in the last 10 years by the applicants OR anyone, in respect of the project land, for Blue / Red Line demarcation OR residential zone.

64. PMC for the purposes of the construction of the Road shown in the sanctioned DP Plan, acquired a portion of the Properties admeasuring 00 H 82.27 R belonging to the Project Proponent, by taking recourse under Section 126 of the M.R.T.P Act. As compensation for the acquisition of a portion of the said Properties, the Project Proponent above named, received additional Floor Space Index ('F.S.I'), and or Transferable Development Rights [T.D.R]. Accordingly, the Project Proponent undertook construction after obtaining the necessary permissions from the PMC authorities.

65. As a result of the aforementioned acquisition, said Properties were divided into four parts, as under:

- i. Part A** – The Green Belt / River Protection Belt, situated between the River Mutha and the embankment & road having a width of 24 m;

- ii. **Part B** – The area where the embankment and road have been constructed;
- iii. **Part C** – The present Residential area of the Project Proponent, in respect of which NOCs have been issued by all the relevant departments of the PMC as well as the State Government.
- iv. **Part D** – Area under the Water Body.

66. After the acquisition as above by PMC, the Project Proponent herein made respective applications with the **Land Revenue Department** for demarcation of their respective Immovable Properties. Accordingly, the Land Revenue Department of the Government of Maharashtra has issued Demarcation Maps to the Project Proponents herein. The 7/12 extract for the subject land reflects that an area of 01 H 58.12 R is handed over to the PMC for the River Protection Belt.

67. The Project Proponents herein applied to the PMC for sanction of building plans, thereby permitting the Project Proponent herein above to undertake construction activities at the said Properties. These applications were made by the Project Proponents above named under **Section**

253 of the *Maharashtra Municipal Corporations Act, 1949 ('MMC Act')* read with **Sections 45 and 69 of the M.R.T.P Act**. Along with these applications, a copy of the construction plan, confirming to the DC Regulations, as applicable to the City of Pune, was filed by the Project Proponents above named with the PMC.

68. It is important to note that the PMC herein issued Commencement Certificate No. **CC/0446/21 dated 02/06/2021 to the Project Proponent herein**. Prior to the CC, the PMC herein also issued a Demarcation Map, which clearly shows that the said Properties are situated beyond the 'Blue Line' and therefore, do not fall within the Prohibited Zone. The said Commencement Certificate and the Zoning Demarcation is available on record and are not challenged. Project Proponent herein is in possession of all the requisite permissions, which enables the Project Proponent herein to carry on the construction activity at his properties, in accordance with law.

69. Pertinently, in the present case, the sanctioned DP Plan for the City of Pune shows the respective Properties of the Project Proponents herein as 'Residential'. **The sanctioned DP Plan**

for the City of Pune marks the Flood Lines as per the maps given by the WRD in the year 2016 under instructions of the NGT, the same maps are provided to the NGT. Hence some junior officer of the WRD, without any authority has no right or authority to direct the PMC to carry out changes in the Final DP, as per his own whims and fancies, and contrary to all Rule of Law. It is farcical to note that the same officer issuing the objection is a signatory to the report submitted before the Hon'ble NGT, as well as numerous correspondence with the PMC, and it is necessary in the interest of proper governance that he be prosecuted for the offence of Perjury and Fraud. *[We understand that the Dy. Engineer is currently suspended for his high-handed action / letter issued].*

70. Notwithstanding the above, the Project Proponents submit that the 1989 Circular or the 2015 Notification purported to be issued in exercise of the executive powers of the State Government under the Constitution of India, cannot supersede the 'Law' enacted by the State Government.

71. It is submitted that the MRTP Act is a special legislation, enacted by the State Government for the purpose of the planned development of the State of Maharashtra. Chapter-

III of the MRTP Act speaks of 'Development Plan' and is divided into three parts, viz.,

- Part (a) deals with the Preparation, Submission and Sanction of the Development Plan,
- Part (b) deals with the Procedure to be followed in Preparing and Sanctioning Development Plans and
- Part (c) deals with the Provisions for the Preparation of Interim Development Plans, Plans for Areas of Comprehensive Development Etc.

The process to be followed in Sanctioning of a Draft Development Plan under the provisions of the MRTP Act is as under.

- a. Under Section 23 of the MRTP Act, the Planning Authority is required to publish its intention to prepare a Development Plan by passing a resolution and having the same published in official gazette and newspapers. As a result of such publication, public objections/ suggestions are invited.
- b. As per Section 26, the Planning Authority is required to publish the Draft Development

Plan in the official gazette, within two years of the notice under Section 23, inviting public objections / suggestions to the same.

- c. The objections received under Section 26 of the MRTP Act are considered by the Planning Authority under Section 28 and forwarded to a Planning Committee constituted for the said purpose. After giving an opportunity of hearing to the Public, the Planning Authority is required to submit its report within a period of two months from the date of its appointment. The report forwarded by the Planning Committee is considered by the Planning Authority and accordingly, may make such changes to the Development Plan as it may consider. It is pertinent to mention herein that the modified Draft Development Plan is required to be published in the official gazette, one month prior to its submission to the State Government.
- d. Under Section 30 of the MRTP Act, the draft Development Plan prepared by the Planning Authority is required to be submitted to the State Government, within a period of one year from the date of publication of the notice under Section 26 of MRTP Act.

- e. Within one year of the submission of the Draft Development Plan by the Planning Authority, the State Government is required to consider the same under Section 31 of the MRTP Act. The State Government may approve the same with or without modifications either for the entire area under the Development Plan or a part thereof. Pertinently, upon sanction of the Development Plan, the same becomes binding on the Planning Authority.

- f. It is clear from the aforementioned process involved in the sanction of the Development Plan, that the same is a complete Code in itself, prescribing the detailed method, which is to be followed prior to receiving the final accord from the State Government. It is submitted that once sanction to draft a Development Plan is accorded by the State Government under Section 31 of the MRTP Act, the same becomes a 'Law' as understood under Article 13 of the Constitution of India and therefore, is binding upon all, unless the same is either set aside by Courts or is modified by the Planning Authority.

72. At this juncture, it is extremely important to note that the Circular dated 21/09/1989, which

purports to restrict construction within Flood Lines, is a generic Circular. Unless such a restriction is specifically prescribed under the DC Rules or the Development Plan of the City, the said **Circular cannot have an overriding effect on the Development Plan, which is a delegated legislature, issued by following due process of law.** The DP permits the Project Proponents herein to undertake construction at their respective Properties.

73. In this regard, reference is made to the decision of the Constitution Bench of the **Hon'ble Supreme Court of India in Girnar Traders III Vs. State of Maharashtra (2011) 3 SCR 1**, wherein it has been observed that MRTP is a complete code in itself. Further in **Manohar Joshi Vs. State of Maharashtra, 2012 (3) SCC 619**, the Hon'ble Supreme Court has observed that once the Development Plan has been sanctioned by the State Government, the same has to be implemented as it is. In the recent Judgement dated **11/01/2024 in SC CA 5348-2019 Himachal Pradesh Vs Yogendra Sengupta**, the Hon'ble Bench observed as follows:

“69. It can thus be seen that it is a settled position of law that neither the High Courts while exercising powers under Article 226 of the Constitution nor

this Court while exercising powers under Article 32 of the Constitution can direct the legislature or its delegatee to enact a law or subordinate legislation in a particular manner. If the High Courts and this Court, in their extra-ordinary powers under Articles 226 and 32 of the Constitution cannot do so, the answer to the question as to whether a Tribunal constituted under a statute, having a limited jurisdiction, can do so or not, would be obviously 'No'."

74. It may be noted that ***Yadwadkar and Group*** or the Water Resources Department, over a period of 10 years, has not raised a single objection to the marking of the Blue and Red Flood Lines of the Draft or the Final DP, within the prescribed period of time. ***As such, the OA filed now is time barred.***

75. In the present case, it is not is disputed that the Development Plan was sanctioned by the State Government by its resolution dated 18/09/2008. It is further undisputed that the said **Government Resolutions, sanctioning Development Plans for Pune, dated 17/05/2008 and 13/02/2014 are still in force and has not been set aside by any Court.** Being a delegated piece of legislature, issued after following due process of law, the Final Development Plan, issued under MRTTP Act, is

binding upon the PMC, which is the Planning Authority for the City of Pune.

76. Therefore, it is submitted that a mere letter dated 18/03/2020 by Deputy Executive Engineer (WRD), cannot restrict the Project Proponent from undertaking construction at their respective Properties, particularly when all the relevant permissions under the MRTP Act have been obtained by the Project Proponent above named.

77. Government Resolution authorising construction on the Properties of the Project Proponent above named is issued under Section 28 of the MRTP Act, which is a special enactment, enacted by the State Government in exercise of its powers under **Article 246 read with Entry 18, List-II** to the Seventh Schedule to the Constitution of India. Contrary to this, there is no legislation enacted by the State Government for the purposes of regulating the construction near River Bed. The 1989 Circular does not state the enactment under which the same has been issued. The Circular cannot supersede the 'law' in force under a special enactment viz., the Development Plan.



AND Respondent most respectfully submits that;

- i. the OA should not be entertained, as it is not maintainable; hopelessly barred by limitation, suppression of relevant facts and res judicata;
- ii. the OA should not be allowed;
- iii. no interim relief should be granted,
- iv. pending this OA, the statutory authorities should not be restricted from doing their lawful discharge of duties in accordance with the respective provisions of the Act, Rules and based on the facts, circumstances and merit of the matter before them; which shall be subject to final order/outcome/directions of the competent Court / Tribunal.

Jaideep Modak

×

Date : **24-01-2024**

**Jaideep Modak
Respondent No. 4**

Place : **Pune**

**Welworth Bluescapes
Tirupati Estates**



VERIFICATION AND AFFIDAVIT

I, Jaideep Modak, adult, have verified the submissions made hereinabove. They are true and correct to the best of my knowledge. I have not suppressed any relevant facts or material. I am making these submissions based on solemn affirmation and oath.

 ×

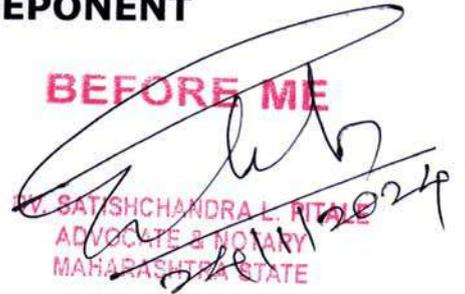
Jaideep Modak
DEPONENT

Date : **24-01-2024**

Place : **Pune**

24 JAN 2024

BEFORE ME

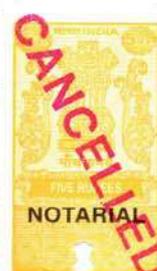
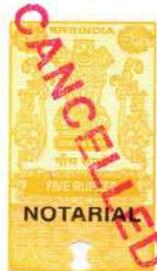
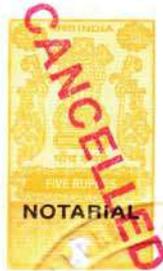

BY SATISHCHANDRA L. PITALE
ADVOCATE & NOTARY
MAHARASHTRA STATE

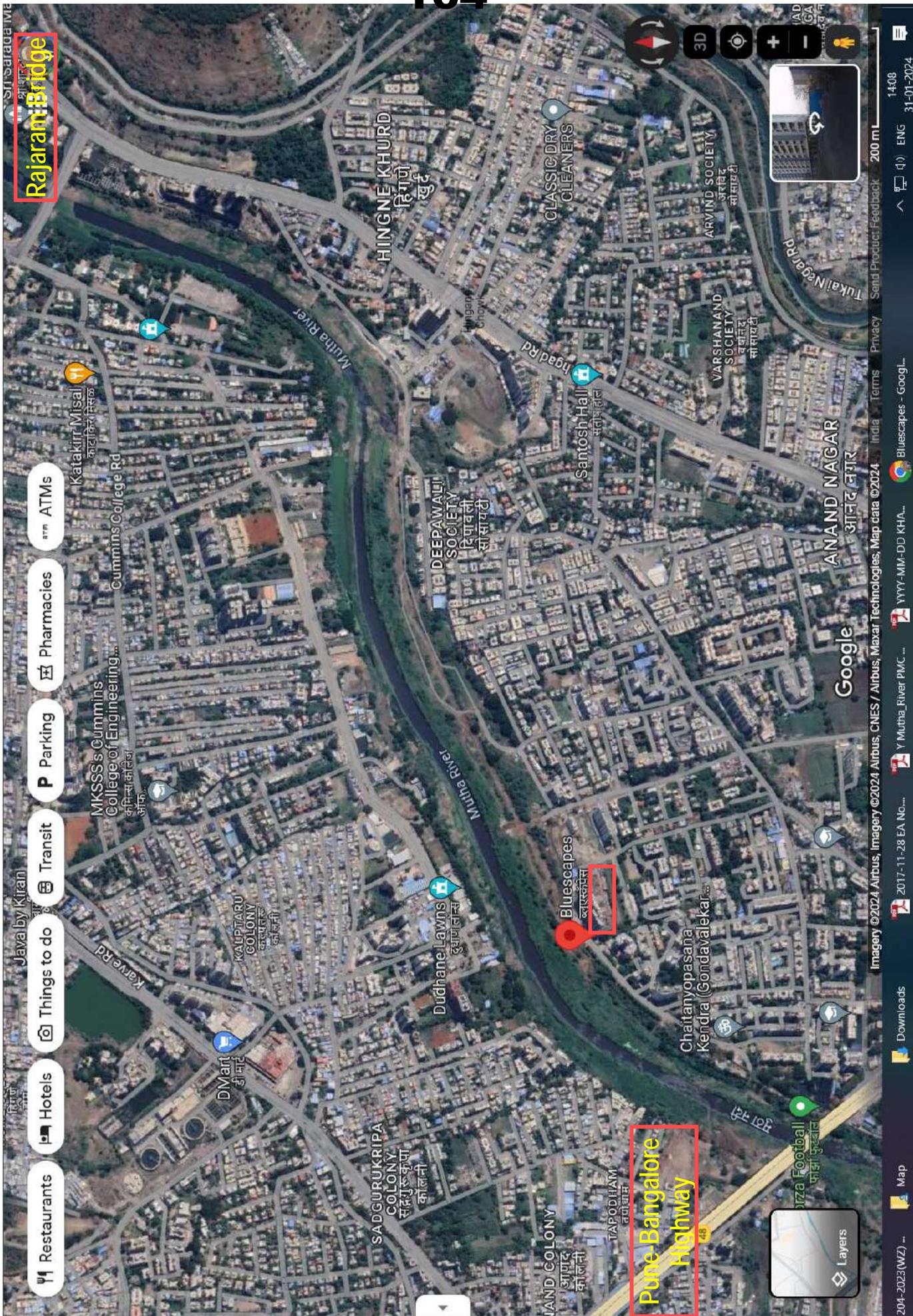


24/1/2024
NOTED AND REGISTERED
AT SERIAL NO.

IDENTIFIED BY

ADVOCATE





Rajarami Bridge

Pune-Bangalore Highway

Bluescapes

ANAND NAGAR

HINGNE KHURD

ATMs

Pharmacies

Parking

Transit

Things to do

Hotels

Restaurants

EXTRACT OF DRAWING & COMMITTEE REPORT



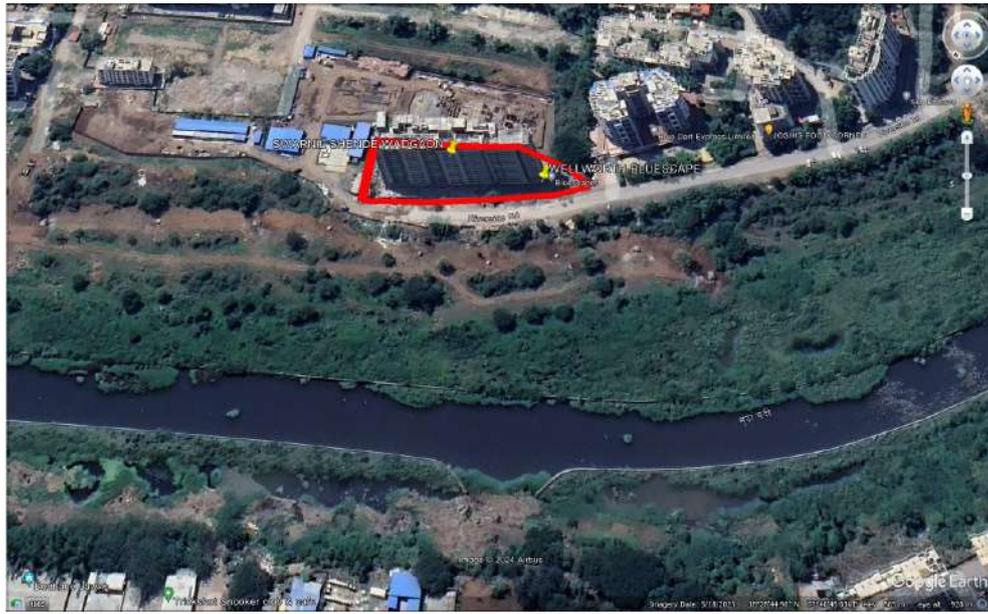
Source: "Blue Line, Red Line marked and submitted by Irrigation Dept. as per NGT (WZ) Order in Appeal 25/2014 related with Latitude and Longitude as per PMC request on 22/07/2016 by Hon. Justice Kingaonkar".

Enlarged View from Google Image titled "Time to alterations in Blue/Red Line at S.N. 13A + 13N/1 at Wadgaon Budruk Pune"

YELLOW marking added by Respondent, shows the location of the Bluescape project plot. **Blue Line as per Annexure A2 filed by the Irrigation Dept. at NGT Delhi in OA 02/2013.**

Committee Report dated **27/12/2017** filed on **16/01/2018** as per **NGT (WZ) Pune** by Hon'ble J. U D Salvi and Expert Member Dr Nagin Nanda, Daily Order dated **28/11/2017**, in "**EA 19/2017 (WZ) in OA 02/2013 (disposed of on 11/07/2013) and MA 243/2017 in EA & Contempt Application No. 18/2017 in MA 52/2015 and OA 02/2013 (disposed of on 14/01/2015)**".

PLOT SHOWN ON GOOGLE IMAGE



**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

.....

APPLICATION NO. 02 of 2013

In the matter of :

1. Sarang Yadwadkar,
A-90, Pradnyangad Apartments,
S.No.119/3, Behind Navashya Maruti,
Sinhagad Road,
Pune-411030
2. Vivek Velankar,
President, Sajag Nagrik Manch,
1200, Sadashiv Peth, Limaye Wadi,
Pune-411030
3. Parineeta Dandekar,
A-2/402, Kanchanban Apartments,
Shivtirth Nagar, Kothrud,
Pune-411038
4. Dilip Jaywantrao Mohite,
B-28, Pradnyangad Apartments,
S.No. 119/3, Behind Navashya Maruti,
Sinhagad Road, Pune-411030
5. Sanjay Babanrao Bhosale,
244, Bhawani Peth, Mahatma Phule Marg,
Pune-411042
6. Narendra Sunderlal Chugh,
15/3, PWD Quarters, Pimpri Colony,
Pune-411017.

.....Applicants

Versus

1. The Commissioner,
Pune Municipal Corporation, Shivajinagar,
Pune-411004
2. JNNURM Office,
Nirman Bhawan, Maulana Azad Road,
New Delhi

3. The Chief Engineer,
Khadakwasla Irrigation Division,
Irrigation Department,
Govt. of Maharashtra, Sinchan Bhavan,
Barne Road, Mangalwar Peth,
Pune-411011
4. Maharashtra Pollution Control Board,
Through the Regional Officer, Pune,
Jog Centre, 3rd Floor, Mumbai-Pune Road,
Wakadewadi, Pune-411003.

.....Respondents

Counsel for Appellants :

Mr. Asim Sarode, Advocate for Applicant

Counsel for Respondents :

Mr. Arvind S. Avhad & Mr. A.K. Srivastava, Advocates for Respondent No.1.
Mr. Kailash Pandey, Mr. Ranjeet Singh, and Mr. Pravesh Thakur, Advocates for Respondent No.3
Mr. Mukesh Verma & Mr. Ashi Chauhan, Advocates for Respondent No.4

ORDER/JUDGMENT

PRESENT :

Hon'ble Mr. Justice Swatanter Kumar (Chairperson)

Hon'ble Mr. Justice U.D. Salvi (Judicial Member)

Hon'ble Dr. D.K. Agrawal (Expert Member)

Hon'ble Prof. A.R. Yousuf (Expert Member)

Hon'ble Dr. R.C.Trivedi (Expert Member)

Dated : July 11, 2013

JUSTICE SWATANTER KUMAR, (CHAIRPERSON)

1. The applicant and others, social activists, challenge the construction of the road from Vitthalwadi to National Highway-4

bypass, which is being constructed under the Draft Development Plan on the ground that the Draft Development Plan has not been approved by the State Government, no permission from Irrigation Department has been taken and the road touches the Vitthalwadi Temple and its surrounding areas which are Grade I Heritage Buildings and even permission from Archaeological Department has not been taken. This construction, according to the applicants, is bound to cause massive environmental, ecological and social damage. The construction of the road is being carried out in the river bed i.e. within the "blue line". Thus, the applicants pray that the on-going construction work should be stopped immediately and the respondents; any other person or agencies should be restrained from dumping any debris or construction material; the entire debris and soil dumping should be directed to be removed and finally the boundaries of the river should be expressly defined and marked by the local government in conjunction with Irrigation Department and the Archaeological Department.

2. We may now notice the facts in brief that give rise to the institution of this application. As already stated, the applicants claim to be socially motivated persons who have studied the project of construction of the road from Vitthalwadi to National Highway-4 bypass. As a result of this study, according to the applicants, the Pune Municipal Corporation (for short 'Corporation') extended its boundary in the year 1997. In this process, for expansion, 23 villages were included in the new limits of the said Corporation. Vitthalwadi is one of such villages. The Development Plan of Pune

city was finalised and approved by the State Government in the year 1987, but these 23 villages were not part of the approved Development Plan. A fresh draft plan was prepared for the said 23 villages. The draft development plan was published under Section 28(4) of the Maharashtra Regional and Town Planning Act (for short 'MRTP Act') and was submitted to the State Government in terms of Section 30 of the MRTP Act. The location where the road is being constructed comes under the draft Development Plan. The proposed construction is that of 30 metre wide road connecting Vitthalwadi to National Highway-4 bypass exactly in Mutha river bed. At a distance of 7 km from the construction site is a dam upstream. No sanction of the Government, more particularly of Irrigation Department, had been obtained prior to starting of the construction of the said road. The construction is not even in accordance with the Draft Development Plan. In modification No.4.06 of the Draft Development Plan, it is clearly stated that "10 m. green belt and 30 m. road have been deleted and only 24 m. wide road is proposed with 36 m. river protection belt" (for short 'RPB'). It is the allegation of the applicants that in the Draft Development Plan, the width is shown as 24 m. whereas the actual width of the road being constructed is 30 m. showing clearly that the road is being constructed with 6 m. more width which is in violation of the Draft Development Plan. There is a reservation of 36 m. wide RPB between the proposed road and the perennial flow of the river. This has been shown in green colour in the Draft Development Plan but in actual situation at the site, the respondents have shifted the road to

the RPB while it was expected to be constructed beyond the RPB. Another specific averment has been made by the applicants that on both sides of the river, there is a low lying part of the basin shaped river bed on both sides which is actually a submersible land that submerges when discharge is released from Khadakwasla Dam, which is a dam that provides water to the entire city of Pune. The very purpose of RPB reservation is to accommodate the discharge from the dam and to protect the city from floods. This purpose gets completely defeated by dumping debris on the low lying portion of the river bed to elevate the level of the road. The respondents, according to the applicants, are constructing the road within the Mutha river bed itself and have elevated the level of the road by 20 ft. to 30 ft. by way of illegal dumping rubble and earth and tens of thousands of truckloads of debris and soil are dumped right in the river bed for elevating the road. As a result, there has been reduction of the width of the river Mutha by about 55% and it is bound to result in increased floods in the surrounding densely populated residential areas during rainy season. The proposed road shown in Exh.B.20, is stated to be touching Vitthalwadi Temple and the surrounding structures are a few hundred years old ancient structures built during Peshwa era and have been classified as Grade I Heritage Buildings. It was imperative for the respondents to obtain clearance from the Archaeological Department before commencing the construction but no such permission/approval was sought. Irrigation Department of the State of Maharashtra have also not granted any permission to the respondents to construct the

said road. In fact, the applicant No.1 had made an application on 20th March, 2012 under the provisions of the RTI Act and collected information from the Dy. Superintending Engineer, Pune Irrigation Circle, who informed that construction of the road along Mutha river from Vitthalwadi to National Highway No.4 was under progress and that Irrigation Department had not given any approval. This shows clear violation of law. According to the applicants, the cross sectional drawing of Mutha river bed, prepared by the Corporation, Respondent No.1, itself shows the possible damage to the river flow. According to the analysis of the cross section of Mutha river bed, there is a reduction in the width of the river from 291 m. to 131 m. i.e. by 55%, which certainly reduces the water carrying capacity of the river drastically and ultimately raises flood levels very steeply during discharge from Khadakwasla dam in rainy season. Further, it is the case of the applicants that during the rainy season in 2011, the flood water also flowed beyond the road under construction and this clearly shows that the road is not beyond the river bed but is well within the river bed i.e. on submersible land strangulating Mutha river. The applicants claim to be citizens not opposed to development of Pune city, suggested that it would have been much wiser and prudent on the part of the respondent if it had planned the road elevated on RCC pillars instead of constructing it by earth filling. This would have certainly minimised the damage that has already occurred to the river cross section, water carrying capacity of the river and riparian zone but still would have facilitated the traffic. Thus there would be the least risk of flooding

the residential area on either side of the river. The storm water that flows to Mutha river from hilly area would have flown to the river with minimal obstruction thereby reducing the risk of flooding the residential localities. It is noticed that the entire storm water from the hills, parallel to the river, flows to Mutha river from the right side through the densely populated residential areas. Thus, the construction of the road is bound to form a continuous obstruction/barrier to the natural flow of the river, thereby increasing storm water stagnation in the thickly populated residential areas. The applicants, with some emphasis, have raised two specific grounds – one that the road is being constructed by the respondents into the river bed (i.e. blue line) and secondly huge dumping of debris have caused destruction of the riparian zone along the Mutha river. Both these cause environmental, ecological and social damages, and therefore, the applicants claimed the prayed reliefs.

3. We have now to examine the response of various respondents in the pleaded case of the applicant. Respondent No. 4 the Maharashtra Pollution Control Board (for short 'MPCB'), has filed a very short reply primarily stating that most of the pleaded facts and grounds are required to be answered by other respondents and particularly by Respondent No. 1 and Respondent No. 3. However, it is stated that the board is granting consent to establish and consent to operate the project which are engaged in industrial operation, processing or establishment which are likely to discharge sewage of affluent and establish and operate an

industrial plant as defined under the provisions of Air (Prevention and Control of Pollution) Act, 1981.

4. This project of constructing a road connecting Vitthalwadi and NH-4 bypass is an activity for which consent is needed. Respondent No. 1 has not applied for grant of such a consent. The probable reason stated is non-generation of domestic and industrial effluents, emission of air pollutants from the Industrial plant and non-requirement of Environmental Clearance (for short 'EC'). It is averred that the EIA Notification, 2006 (for short 'the notification') the construction of highway including construction of National Highway and expansion of National Highway greater than 30 km with additional right of width within 20 m involving land acquisition and passing more than one State requires EC from the MoEF. Thus, such State highway construction and expansion require EC from the SEIAA. The project is not covered under the River Valley Project. The Board in any case is not an appropriate/expert body to carry out such assessment and grant such clearance.

5. It is the case of Respondent No.4 that with an intention to know the exact situation at the site, the field officer of Respondent No.4 visited the site in question on 27th January, 2013. During the visit, it was observed by him that the construction of the road was in progress and nearly 40% of the work had been completed. However, in view of the orders of the Tribunal and the fact that permission of Irrigation Department had not been obtained, the construction work of the road had been stopped. The field officer also noticed that the construction of the road was being carried out

by elevating the level by way of dumping rubble and earth. However, an attempt was made to clarify at a subsequent stage that no rubble, earth or any other polluting matter was being dumped at the river bed. Keeping in view this situation, Respondent No.4 had called for information and details of construction plan from Respondent No.1. It may also be noticed here that the Board had carried out ambient air quality monitoring tests at the spots decided by the Board for the project in question. The results of such analysis are at Annexure D to the reply filed by the Board. From these results, it appears that the ambient air quality was in excess of specified parameters.

6. While averring that the project may not require EC, it is stated that, it is for the MoEF, Government of India, to take final decision in that regard. The stand of Respondent No. 3, the Irrigation Department, Government of Maharashtra, according to its reply, is that they have not given any permission for construction of the road in Mutha River bed connecting Vitthalwadi and NH-4 bypass. It is averred that 24 m wide road has been constructed in private land but not in river bed. The proposed connecting road is constructed on the right side of the river in the low lying area. The ground level on the right side of the river is low as compared to the left of the river and flood water spreads primarily on the right side of the river. The flood discharge of Khadakwala Dam is 97980 cusecs and considering free catchment area on downstream of Khadakwala Dam, the estimated flood would be 1 lakh cusecs. As per cross section of river side provided by Pune Municipal

Corporation, the estimated peak flood will pass with high flood level of 554.90m to 554.70m. The cross section area of the river would be reduced by the said construction as there would be dumping of debris and earth.

7. The Additional City Engineer had applied for the issue of NOC regarding construction of road vide letter dated 23th September, 2010, and after getting information for these proposals, the Divisional office had recommended to the Superintendent Engineer, Pune Irrigation Department, vide letter dated 22th March, 2011 for getting the permission. But according to this affidavit dated 4th March, 2013, neither permission had been granted nor any NOC issued by Respondent No. 3 in favour of Respondent No.1 for carrying out the project.

8. Respondent No. 1 stated that permission was likely to be granted and in fact it was in the process of being granted for construction of the road by Respondent No. 3. Finally, the Chief Engineer filed an additional affidavit on 23rd April, 2013, specifically averring that both the certificates, NOC for construction of the flood protecting bund and road from Vitthalwadi to NH-4 bypass were issued in favour of Municipal Corporation, Pune, after approval from the Chief Engineer. One of the controversies raised was that a Government circular dated 2nd September, 1989, was issued by the Deputy Secretary, Government of Maharashtra, that in such matter NOC cannot be issued for construction on the blue line/river bed. Certain clarification with regard to this circular was put forward. On 15th April, 2013, Respondent No. 3 had issued NOC for the

project in favour of Respondent No. 1 which is annexed as R-1 in the affidavit dated 23rd April, 2013. This was a conditional NOC dated 15th April, 2013 issued by the Executive Engineer, Khadakwasla Irrigation Division, Pune, to the Additional City Engineer (Road), Pune Municipal Corporation, Pune, which can be reproduced at this stage.

“Your office has requested to issue "No Objection Certificate" from the Irrigation Department, for proposed road along the river Mutha from Vittalwadi to Pune-Mumbai Bypass (NH 4). This office has asked for relevant information regarding details of construction of road, formation level of road in relevance to blue and red line, effect of road on carrying capacity of river and ownership status of land on the alignment of proposed road etc.

Final compliance for the above points is submitted by your office vide letter reference No.3 to this office. As per data submitted by your office, this road through private land along the river bank.

Hence "No Objection Certificate" is issued for construction of the road from Vitthalwadi to Pune-Mumbai bypass (NH 4) along the river bank under compliance of following conditions:

1. Pune Municipal Corporation shall ensure that the debris / excavated materials from excavation of retaining wall shall be removed from the river bed and ensure that no further debris on the other bank of river is dumped in future.
2. The reduction in cross sectional area of river for 25 years flood plain zone may be compensated by providing necessary arrangements and hydraulically restored.
3. Pune Municipal Corporation shall protect other bank of the river from erosion during floods by adopting appropriate river protection measures and also provide river training measures to ensure the direction of river course shall not change for which necessary hydraulic study from Central Water & Power Station, Pune shall be done.
4. All the natural nallas and drainages behind road embankment must be properly diverted to river to avoid inundation in adjacent areas.
5. It is seen that the width of river bed and cross section of river is just sufficient to carry the flood discharge hence construction of road length between Ch. 1/1940 to 2/347 should be constructed with road on columns. For this length of road embankment and retaining wall

should not be constructed.”

9. At this stage, we may also notice that when the matter was being heard on 14th February, 2013, the counsel for the applicant had placed on record a copy of the letter dated 15th May, 2012 issued by Assistant Executive Engineer, Pune Irrigation Circle, Pune, stating that no permission from the Irrigation Department had been obtained. Even, the Chief Engineer of the Respondent No. 3, who was present before the Tribunal on that date of hearing also stated that they have not granted any permission to Respondent No. 1 to construct the road in question. Again vide order dated 9th April, 2013, we had directed the Chief Engineer of Respondent No. 3 to be present in Court to clearly put forward the stand of the Department.

10. Respondent No. 1 has filed an independent reply. It is the case of Respondent No. 1 that in the revised Development Plan for Pune Municipal Corporation, old boundaries had been sanctioned by the Urban Development Department vide letter dated 5th January, 1987. The inclusion of 38 villages has been incorporated in the Pune Municipal Corporation limits by the same department vide their resolution dated 19th September, 1997. However, the State Government of Maharashtra issued another resolution deleting 15 villages in whole and 5 villages in part from Pune Municipal Corporation boundary vide resolution dated 17th November, 2007. According to this respondent, the road from Vitthalwadi to NH-4 bypass is being constructed as per development plan approved by the Government of Maharashtra vide its resolution dated 15th May, 2008. The width of the road is 24 m

to 18 m and not 30 m as stated by the applicant. It is claimed that construction of the road had been undertaken only after taking into consideration the river ecosystem by not affecting river bed adversely. The road from Vitthalwadi to NH-4 bypass is being constructed to a width of 24 m and beyond the river protection belt as per sanctioned Development Plan. It is averred that while construction of the road, the Municipal Corporation is also constructing RCC protection wall on both sides of the proposed road to prevent flooding of the low lying area adjacent to the proposed road and there is no permanent dumping of debris in the river belt. The excavated material is proposed to be lifted from the site during the course of construction. As a result of construction of the road, there shall be no reduction in the width of river bed and the averments made by the applicant are therefore stated to be incorrect.

11. The Pune Municipal Corporation obtained NOC from the Archaeological Department vide letter dated 15th April, 2011. In that letter, it was stated that the NOC for construction of the work had been given subject to the condition that PMC would be responsible for safe relocation of the Archaeological remains and adequate care would be taken to ensure that any kind of damage would not be caused to the Vitthal Mandir. PMC also decided to connect the proposed Vitthalwadi to NH 4 to Sinhagad Road at a location before the Vitthalwadi temple complex, as per the sanctioned Development Plan as alternative route to the alignment originally planned from existing bridge to Sinhagad Road. Thus the construction of the road

would not have any effect on Vitthalwadi temple complex or area adjacent to the complex.

12. Reference is also made to the letter dated 20th March, 2012 of the Assistant Superintending Engineer, Irrigation Circle, Pune, wherein it has been stated that after study of the cross section of the river, duly prepared by Pune Municipal Corporation (for short 'PMC'), the said cross section would be capable to accommodate the discharge of flood control line. On certain assumptions, the letter also recorded that the road constructed, using the silt from the river bed, passes mostly through the private owner's land. The PMC had submitted the land acquisition proposal of the said land to the office of the Land Acquisition Officer No.1, Pune. Considering the above, it is proved that most of the land area under the said filling was outside the authoritative river bed area. Significantly, it was also noticed in this letter that till date the permission had not been given by Irrigation Department. The work of the said road was still in progress by PMC.

13. It was also averred that the spread of flood water in the low lying area cannot be termed as river bed or width of the river itself. During the rainy season, the storm water discharged from various natural streams cannot find its way to the river when the river is flowing in high discharge level, which is normally observed at several locations at the junction of two or more rivers, particularly during monsoons. It is the case of Respondent No.1 with some emphasis that construction of an elevated road on pillars and beyond the river bed would involve unnecessary and extraordinary

high expenditure to Respondent No.1, which would ultimately be a liability on public exchequer. Construction of the road would help in overcoming problem of the suburban area beyond the proposed road. Construction of the road does not give rise to the issues raised by the applicant, like environmental, ecological and that of social damage. According to Respondent No.1, the road would also significantly help in reducing traffic load on Sinhagad Road and would save time and fuel of the population located between the river and Sinhagad Road. It is expected that BRT Bridge, once implemented on Sinhagad Road shall raise public transport commuting from 8-9% to 32-35% bringing change in life style and commuting pattern of the citizens.

14. This Respondent thus has prayed that the project may be continued as delay in completion of the project will have serious financial repercussions.

15. The applicant during the course of the hearing had filed a rejoinder to the reply filed by different respondents, more particularly Respondent No. 1. In this rejoinder, it was averred that there was complete prohibition on carrying out any activity in the flood line area as it is a prohibited zone. It was also averred that by the proposed cross section of the river, the elevated road during flood is likely to cause serious damage to the interest of the people and is also likely to reduce the width of the river. The width of the river would likely be reduced at some sections by 55%. It was reiterated that the Irrigation Department did not grant permission to Respondent No. 1. In its letter dated 20th March, 2012, it has

specifically stated that work of the road from Vitthalwadi to NH-4 along the Mutha Road was being done by PMC and much of the portion of the said road covers the privately owned land and did not come inside the river bed. The said road had not been approved by Irrigation Department. To this rejoinder, the Respondent No. 1 was directed to file additional reply vide our order dated 21st March, 2013. This additional reply was filed by Respondent No. 1 on 3rd April, 2013.

16. Besides reiterating the facts already stated in its pleadings, Respondent No.1, in its reply/affidavit to the rejoinder, has emphasised that the road is being constructed on a private land and not on the river bed. Further, the low lying area will get submerged in the rainy season or during floods. The area near the river bank gets submerged due to rains in the catchment area as well as due to natural stream on the Sinhagad Road side that joins the river through the bridge already constructed on the proposed road. The cross section area of the river after construction of the proposed road on river bank is adequate to accommodate the flood discharge of 100000 cusecs (red line). According to the respondent, Irrigation Department has clearly supported this fact that the maximum flood discharge at red line can be accommodated in the cross section of the river. The drainage system is ready for flow of storm water due to removal of silt and there is increase in the depth of the river bed by 1.5 to 2.0 metres along with width relatively. Hence the river flow capacity has been increased and the averment made to the contrary by the applicant is incorrect. The respondents

also claim that they have increased the cross sectional area as well as water carrying capacity of the river. The modified cross section of the river can accommodate the water during the floods. Besides all this, the road is stated to be constructed in the larger public interest and for public convenience at a low cost. The grievance of the applicant is that Respondent No.1 has started construction of the 30-metre wide and 2.35 km. long road in the river bed connecting Vitthalwadi to NH-4 bypass and has resultantly raised the following apprehensions to the environment and ecology of the area in question: Shifting of pollution from city to river; Massive dumping of construction material will cause hindrance in flow of the river leading to deterioration of environment, loss of property and human life; Violation of development Plan; Obstruction in natural storm water flow leading to flash floods; Environment and ecological damages; and Destruction of Grade-I Heritage. Besides above, the applicant also raised the grievance that No Objection Certificate (for short the 'NOC') from Irrigation Department as well as the Archaeological Survey of India had not been taken and the project was being carried out with ulterior motive and particularly with the intention to hurt the environment under the garb of public interest. We have already noticed that these apprehensions are being refuted by the respondent who claimed that all necessary permissions were received; they were not required to take environmental clearance either from the Ministry of Environment and Forests (for short 'MoEF') or the State Environmental Impact Assessment Authority (for short 'SEIAA') of Maharashtra. The

project is intended to (i) serve a public purpose of reducing traffic congestion on Sinhgad Road, (ii) save the Dam, (iii) reduce fuel consumption, and (iv) consequently reduce vehicular pollution. In nutshell, it is going to serve a public purpose. By providing an alternative road, the traffic on the existing road shall be reduced significantly. Speed, a primary element in traffic engineering, has a wide range of environmental, economic and safety consequences. Improved safety, fuel consumption, pollution emission and associated vehicular related cost component would be major considerations for environmental and economic considerations of the road projects. The environment and ecology at large shall be benefited by construction of this road due to reduced pollution level in the city of Pune. The deficiencies, discrepancies and disadvantages of this road project have been highlighted by the applicant, while on the other its economic and environmental advantages and the continuation of the project in accordance with law is emphasised by the respondent. But even then, the expected economic and environmental benefits need to be considered against the expected environmental damage apprehended by the applicant and that is where the need for deriving a balance arises. The Tribunal is, therefore, expected to consider whether it is possible to derive a balance between the apprehended environmental and ecological damage on the one hand and the need for construction of the road with its economic advantages on the other. Answer to this question would depend on a number of factors which we shall now proceed to discuss. First and the foremost, we have to examine

whether Respondent No.1 was required to take environmental clearance from the Central Government (MoEF) or the State Government (SEIAA). It cannot be disputed if the Respondent was required to take environmental clearance from any of these authorities, then the project could not commence without grant of such clearances. Another undisputed fact is that in the present case, admittedly Respondent No.1 has not taken clearance from any of the referred authorities. Thus, if this question is answered in the affirmative, then the application of the applicant must succeed. If it is answered in the negative, then we must proceed to examine other aspects of this case. Regulation 2 of EIA Notification of 2006 makes it obligatory upon the respondent to seek environmental clearance from either the Central Government (MoEF) if the project falls under category 'A' and from the SEIAA if it falls under category 'B'. The Schedule to the said notification refers to paragraphs 2 and 7 of the notification for enlisting the projects or activities requiring prior environmental clearance. The entry 7(f) deals with the projects relating to highways. The other entry reads as under:

Project or Activity		Category with threshold limit		Conditions if any
		A	B	
		Mining, extraction of natural resources and power generation (for a specified production capacity)		
(1)	(2)	(3)	(4)	(5)
7(f)	Highways	i) New National High	i) New State High ways;	General Condition

	ways; and ii) Expansion of National High ways greater than 30 KM, involving additional right of way greater than 20m involving land acquisition and passing through more than one State.	and ii)Expansion of National/ State Highways greater than 30 km involving additional right of way greater than 20m involving land acquisition.	shall apply
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17. It is obvious that the project, being in a State, would fall under category 'B' if it relates to a State Highway. It is not averred by the applicant that the construction of this road is a part of the State Highway. It is clear from the record that the project in question relates to 2.3 km long of 24 m. wide road from Vitthalwadi to NH-4 bypass. In other words, it is just a local road connecting two points while the one end meets the bypass of the State Highway. 'Highway' under the Control of National Highways (Land and Traffic) Act, 2002 means a National Highway declared as such under Section 2 of the National Highways Act, 1956 and includes any Expressway or Express Highway vested in the Central

Government, whether surfaced or unsurfaced, and also includes (i) all lands appurtenant to the Highway, whether demarcated or not, acquired for the purpose of the Highway or transferred for such purpose by the State Government to the Central Government; (ii) all bridges, culverts, tunnels, causeways, carriageways, etc. as stated in that definition. The State Highways on that analogy would mean all the State Highways which are so declared in accordance with law. No records have been placed before us to show that this road has been declared as a State Highway in terms of any law in force. 'Road' simpliciter would mean a way or a passage.

18. From the records before the Tribunal, it is clear that the road project is not a State Highway in fact and in law. As already noticed, it is not even the case of the applicant that it is a State Highway. This being the undisputed position, the question of seeking environmental clearance from SEIAA in terms of Regulation 2 read with Entry 7(f) of the Schedule to Notification of 2006 would not arise.

19. The other objection raised by the applicant is with regard to non-grant of NOC for construction of the proposed road by the Archaeology and Museum Directorate of Maharashtra Government. According to the applicant, this permission is essential for the reason that Vitthalwadi temple and its surrounding structures are ancient and protected monuments and the grant of permission is a *sine qua non* for commencement of the project work. It is undisputed that Vitthalwadi temple was constructed during Peshwa era and is a protected monument. Further, it is not disputed that

the project in question is in a very close vicinity to this monument, and therefore, it requires clearance of the Archaeology Department. On 6th December, 2010, Respondent No.1 approached the Archaeology Department for grant of an NOC. After raising certain queries, finally, vide their letter dated 15th April, 2011, the Directorate of Archaeology and Museums, Maharashtra Government, granted conditional permission for taking up construction of the road as per the project. The condition imposed was that it should protect the old remains and care to be taken not to damage Vitthalwadi temple while widening the road, which shall be the responsibility of Respondent No.1. In the present application, there is no challenge before us to the grant of such NOC. Once there is no challenge to the permission dated 15th April, 2011, there is no need for us to go behind such grant of permission but certainly the Tribunal will have to ensure that Respondent No.1 strictly adheres to the conditions imposed by the said Department in its letter dated 15th April, 2011. Except to this extent, we need not deliberate on this issue any further. In the facts of the case, the contention raised by the applicant is without merits.

20. Now we shall deal with the next contention raised on behalf of the applicant that Irrigation Department has not granted any permission to Respondent No.1 to carry out the road project at all and in any case on the river bed or the blue line area. Further, the contention is that even if such permission has been granted at any subsequent stage to the filing of the present application, even then it has not been granted by the competent authority, as in

terms of the circular dated 21st September, 1989, issued by the State of Maharashtra, the construction below red line in the river bed is prohibited.

21. This contention of the applicant can safely be dissected into two parts. First relates to the factum of granting or otherwise of the permission by Irrigation Department of the State of Maharashtra, while the other relates to competence and correctness of such permission, if issued. As far as the first part-point of fact is concerned, there is no dispute that at the time of institution of the present application, no permission whatsoever had been granted by the Department of Irrigation to Respondent No.1. There also cannot be any dispute to the fact that the work of the project had been commenced by Respondent No.1 without having been granted any such permission. It is only when the counsel appearing before the Tribunal had stated that no such permission had been granted. However, during the pendency and hearing of the application, it was stated by the counsel appearing for Irrigation Department that the authorities concerned were considering the application of Respondent No.1 for grant of permission. We may notice that it was vide letter dated 23rd September, 2010 that an application had been moved for seeking permission of the Department. Vide letter dated 20th March, 2012, Irrigation Department had noticed that no permission had been given by them for the road project from Vitthalwadi to NH-4 bypass, which was in progress. Even thereafter, no permission had been granted and again vide letter dated 15th March, 2013, Respondent No.1 had persisted with its request for

grant of permission for the project. Finally, permission was granted by the Executive Engineer, Khadakwasla Irrigation Division, Pune, to Respondent No.1. The NOC was conditional and we have already reproduced the same above. As the matter stood at the time of final arguments, the NOC for construction of the project was issued only on 15th April, 2013. It is not understandable as to how Respondent No.1 started the work of the project without seeking such permission when admittedly, it was mandatory for Respondent No.1 to do so.

22. Be that as it may, the fact of the matter is that as of now, Irrigation Department has granted NOC to Respondent No.1. Thus the matter has to proceed further from that stage. The latter part of the submission of the counsel for the applicant relates to non-construction in the prohibited zone and who was competent to vary the said restriction and if so, to what extent? The circular dated 21st September, 1989 was issued by the Assistant Secretary, Irrigation Department, Government of Maharashtra. This circular related to issuance of necessary instructions in connection with demarcation of flood lines, the guidelines in respect of flood zone and respective flood lines and use of land in the flood zone in Chapter 8 of the Dam Safety Manual, 1984. This circular importantly noticed that the flood lines are of two types – blue line which prohibits the construction in an area due to probability of flood during any year; and red line shows water level upto which flood can occur during any year depending upon rainfall, but generally 1 in 100 years. The contour line deciding the boundary of prohibitive zone on both

banks of the river is called blue line, while the contour line deciding the boundary of restricted zone on both banks of the river is called red line. Construction of controlled nature could be done below the red line but excluding the prohibitive zone considering the flood situation in the area. The relevant part of the said circular can be referred to as follows:

“Mainly flood lines are of two types.

- 1) **Prohibitive Flood Line:** This prohibits the area from any construction due to possibility of floods any time.
- 2) **Restrictive Flood Line:** This shows the level of floods possibly once in 100 Yrs. Construction in this area should be restricted (excluding prohibited zone) considering possibilities of flood.

A) Prohibited Zone:

Main riverbed and the area on both banks required to carry the controlled discharge from dam and the flow from free catchment area below the dam should be called as “**Prohibitive Zone**”. While deciding this, maximum flood discharge in average 25 years or one and half times the discharge of the established riverbed carrying capacity, whichever is more should be considered while finalising the riverbed and the area on its both banks as Prohibitive Zone. **This zone should be left open and can be used for gardens, play grounds or light crops** (only where the easement right to take such crops is established).

B) Prohibitive Flood Line (Blue Line):

The level of water on banks during such floods shall be considered as Prohibitive Flood Line deciding the “**Prohibitive Zone**”.

23. According to the applicants, on the co-joint reading of the provisions of the Manual and the circular issued by the Government, the Chief Engineer and any other officer of Irrigation Department is not vested with the powers to vary the terms of the said circular. To counter this, Respondent No.1 and the State have relied upon Appendix 42 of Maharashtra Public Works Manual, showing administrative and financial powers in terms of which the Chief Engineer possesses full powers in regard to technical sanction

of original works classified under all major heads. The Safety Manual, according to the respondent, is prepared for Irrigation Department for preparedness for dealing with emergency situations of the Dams and as per the circular dated 8th October, 2007 issued by Irrigation Department, Government of Maharashtra, regarding issuance of NOC for establishment of townships, it is the requirement to assess the hazardous potentiality of floods to nearby habitations in the vicinity of the river and the Chief Engineer is competent to issue NOC, who is also the Canal Officer under the Maharashtra Irrigation Act, 1976.

24. From the bare reading of the above circular dated 21st September, 1989, it is clear that the main river bed and the area on both the banks of the river required to carry the controlled discharge from the Dam and the catchment area below the Dam, which is the prohibited zone. The line deciding the boundary of this prohibited zone on both banks of the river is called the blue line. The prohibited zone requires that no construction can be raised in that area. The blue line thus is the end of that river bed upon which no construction can be permitted. This circular had been issued by the competent authority in the State Government and it admits of no delegation. Two aspects are very clear – one that the circular has been issued by the Assistant Secretary concerned on behalf of the Government without any power of delegation and secondly, the circular does not admit of any exceptions. In these circumstances, the only way to get over the restriction of the circular is that the competent authority in the Government had to withdraw or modify

the circular. The Chief Engineer of Irrigation Department admits the above position. However, he claims to have the authority to issue the NOC for construction of the road including the blue line on the strength of the Maharashtra Public Works Manual (Appendix 42). Vesting of financial and administrative powers for the works stated under the Maharashtra Public Works Manual is one thing and cannot be stretched to the extent of empowering the said Chief Engineer to overrule or render ineffective a circular issued by the competent authority in the State in exercise of his executive powers. The Chief Engineer is not vested with the power to vary the terms of the circular, and that too to the extent of violation. The powers stated to be vested in the Chief Engineer relate to the execution of the works that are awarded by the Department. These administrative and financial powers are, therefore, primarily intended to regulate the affairs of Irrigation Department including execution of the works awarded. We are unable to contribute to the views advanced on behalf of Irrigation Department that it had the power to render the circular dated 21st September, 1989 otiose.

25. Another facet of this aspect is that the circular had been issued by way of guidelines in respect of flood zone, respective flood line and use of land in the flood zone. It was read in conjunction with the Dam Safety Manual. It was issued with the intention to prevent heavy damage that may occur along the river due to heavy rain and flood water during monsoon. It was also to prevent undue interference with the flow of the river and the ecology of the area in question. The floods result from heavy rains or from release of water

from the Dam; it is stated to be so close to the site where the road was being constructed. It is to prevent damage to persons and property on the one hand and protect environment on the other. Both these purposes are being interfered with by issuance of NOC by the Chief Engineer, which apparently was not within his competence. In our considered view, it would have been appropriate for the Chief Engineer to refer the case to the Secretary concerned including the Secretary (Environment) before making his recommendations and requesting them to modify the circular accordingly. Thus, it should have been left in the wisdom and to the decision of the authorities concerned and there was no justification for the Chief Engineer to exceed his power, particularly in the manner in which it had been done in the facts of the present case. This aspect has to be examined in the light of the fact that Respondent No.1 had applied for obtaining the NOC from Irrigation Department on 23rd September, 2010. This permission was not granted until 15th April, 2013. For all this long period, Irrigation Department had taken a stand that they would not grant permission for the project in question. In fact, vide their letter dated 20th March, 2012, they had even written that no NOC had been issued by Irrigation Department and the work of the project was in progress, which obviously meant that the construction of the project was being carried out in an unauthorised and illegal manner. It is not clear why this sudden change of mind took place when the matter was pending before the Tribunal and was being vehemently argued by the parties by raising their respective

contentions. The cumulative effect of the above circular and the correspondence referred to above is that until 15th April, 2013, no permission had been granted by the authorities of Irrigation Department for commencement of the work of the project and the construction work being carried out by Respondent No.1 of the project in question was not in accordance with law.

Ecology and Sustainable Development with reference to the facts and circumstances of the present case:

26. Despite the fact that the Chief Engineer of the Irrigation Department was not competent to negate the circular dated 21st September, 1989 issued by the State Government of Maharashtra, and had any competence to issue NOC permitting construction even on the blue line and also keeping in mind that more than 40% of the work of the project had been completed without even any permission from the Department of Irrigation and other competent authorities, still we have to examine as to whether this development (i.e. the completion of the project) should be permitted in the larger interest of development or not. If the answer to the above be in affirmative, then subject to what conditions further work of the project should be permitted. From the above facts and the records before us, it is clear that Respondent No.1 had not obtained either the SEIAA clearance or clearance from Archaeological Department. It had also not obtained NOC from Irrigation Department before it commenced the work of the project. Clearance by Archaeological Department was granted on 15th April, 2011 and NOC by Irrigation Department was given on 15th April, 2013. It is not in dispute before

us that more than 40% work of the project has been completed on which large public funds have been spent. The Tribunal has either to direct demolition of the road already constructed with a further direction that the project be abandoned and no further construction be carried out or to permit completion of the project subject to certain specific conditions while protecting the environmental interest to the extent possible with reference to the facts and circumstance of the present case. This is where the judicial discretion of the Tribunal is to be exercised while striking a balance between development on the one hand and environmental protection on the other. Developmental and environmental needs have to be seen in complement to each other and not in antagonistic terms. We must keep in mind that development can take place only when there is earth left for the purpose. Inclusive development would not be possible without emphasis on environmental protection. The Tribunal cannot overlook the fact that the world is facing the harmful consequences of global warming and depletion of resources. Environmental conservation has become a topic of global significance. Such matters are of paramount relevance in a developing economy like ours as environmental degradation drastically offsets improvements achieved for economic prosperity, apart from having serious implications of distributive justice. One school of thought states that it is not about environment versus economy, not a trade-off between unemployment and pollution and certainly not about picking up one over the other. We need both the environment and

the economy and such conditions must be created that development takes place without affecting and causing irretrievable damage to the environment. Both must thrive.

27. In *Susetha v. State of Tamil Nadu* AIR 2006 SC 2893, the Supreme Court observed that the doctrine of sustainable development is not an empty slogan. It is required to be implemented taking the pragmatic view and not on *ipse dixit* of the Court. Following the same principle, it cannot more so be applied on an administrative authority or a Corporation vested with the statutory obligation of providing environmental protection to the residents under its jurisdiction. Sustainable development means that the richness of the earth's bio-diversity would be conserved for future generations by greatly slowing or if possible halting extinctions, habitat and ecosystem destruction, and also by not risking significant alterations of the global environment that might – by an increase in sea level or changing rainfall and vegetation patterns or increasing ultraviolet radiation – alter the opportunities available for future generations. Sustainable development has been defined in many ways but the most frequently quoted definition is from the Brundtland Report which states as follows:

“Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It contains within it two key concepts:

- *The concept of **needs**, in particular the essential needs of the world's poor, to which overriding priority should be given; and*
- *The idea of **limitations** imposed by the state of technology and social organisation on the environment's ability to meet present and future needs.”*

28. The concept of sustainable development is rooted in this sort of systematic thinking. It helps us to understand ourselves and our world. The problems we face are complex and serious – and we can't address them in the same way we created them.

29. While applying the concept of sustainable development, one has to keep in mind the “principle of proportionality based on the concept of balance. It is an exercise in which courts or tribunals have to balance the priorities of development on the one hand and environmental protection on the other. So sustainable development should also mean the type or extent of development that can take place and which can be sustained by nature/ecology with or without mitigation. In these matters, the required standard now is that the risk of harm to the environment or to human health is to be decided in public interest, according to a ‘reasonable person’s test. (Refer *Research Foundation for Science and Technology and Natural Resource Policy v. Union of India* (2007) 9 SCR 906; *Narmada Bachao Andolan v. Union of India* (2000) 10 SCC 664; *Chairman Barton: The Status of the Precautionary Principle in Australia* (Vol.22) (1998) (*Harv. Envtt. Law Review*, p. 509 at p.549-A) as in *A.P. Pollution Control Board v. Prof. M.V. Nayuder* (1999) 2 SCC 718; and *M.C. Mehta v. Union of India*, AIR 2004 SC 4016. At this stage, we may usefully refer to a very recent judgment of the Supreme Court in the case of *G. Sundarrjan v. Union of India & Ors.* Civil Appeal No. 4440 of 2013 (Arising out of S.L.P. (C) No. 27335 of 2012), Civil Appeal No. 4441 of 2013 (Arising out of S.L.P. (C) No. 27813 of 2012), Civil Appeal No. 4442 of 2013 (Arising out of S.L.P.

(C) No. 29121 of 2012) and Civil Appeal No. 4443 of 2003 (Arising out of S.L.P. (C) No. 32013 of 2012) decided on 6th May, 2013 The Court, while referring to the principles of balance inbuilt in the concept of sustainable development, elaborated the principles as follows:

“228. I have referred to the aforesaid pronouncements only to highlight that this Court has emphasized on striking a balance between the ecology and environment on one hand and the projects of public utility on the other. The trend of authorities is that a delicate balance has to be struck between the ecological impact and development. The other principle that has been ingrained is that if a project is beneficial for the larger public, inconvenience to smaller number of people is to be accepted. It has to be respectfully accepted as a proposition of law that individual interest or, for that matter, smaller public interest must yield to the larger public interest. Inconvenience of some should be bypassed for a larger interest or cause of the society. But, a pregnant one, the present case really does not fall within the four corners of that principle. It is not a case of the land oustees. It is not a case of "some inconvenience". It is not comparable to the loss caused to property. I have already emphasized upon the concept of living with the borrowed time of the future generation which essentially means not to ignore the inter-generational interests. Needless to emphasize, the dire need of the present society has to be treated with urgency, but, the said urgency cannot be conferred with absolute supremacy over life. Ouster from land or deprivation of some benefit of different nature relatively would come within the compartment of smaller public interest or certain inconveniences. But when it touches the very atom of life, which is the dearest and noblest possession of every person, it becomes the obligation of the constitutional courts to see how the delicate balance has been struck and can remain in a continuum in a sustained position. To elaborate, unless adequate care, caution and monitoring at every stage is done and there is constant vigil, life of "some" can be in danger. That will be totally shattering of the constitutional guarantee enshrined under Article 21 of the Constitution.”

30. The above stated principles illustratively demonstrate that judicial balance of both these concepts would not permit undue significance being attached to either of them at the cost of the other. The concept of sustainable development in essence admits to balance the scale between the quantity of development and the quality of environment. The earlier school of thought was that development and ecology are opposed to each other but with the passage of time and development of law, this concept has undergone a tremendous change and is no longer acceptable and now prevails the doctrine of 'sustainable development'. The principle of sustainable development takes within its ambit the application of the 'principle of proportionality' and the 'precautionary principle'. In other words, one must, while permitting development, not only ensure that no substantial damage is caused to the environment but also take such preventive measures which would ensure no irretrievable damage to the environment even in future on the premise on intergenerational equity. All these principles have to be examined and applied on the touch stone of "reasonable person's test". As already indicated, we are a developing country, and therefore, have to take somewhat liberal approach towards development but certainly not by compromising the environmental interest. The precautionary principle can be explained to say that it contemplates that an activity which poses danger and threat to environment is to be prevented. Prevention is better than cure. It means that the State Governments and the local authorities are supposed to anticipate

and then prevent the causes of environmental degradation. The likelihood of danger to the environment has to be based upon scientific information, data available and analysis of risks. Ecological impact should be given paramount consideration and it is more so when resources are non-renewable or where the end result would be irreversible. The principle of precaution involves anticipation of environmental harm and taking measures to avoid it or to choose the least environmentally harmful activity. Again it is based on scientific uncertainty.

31. The Supreme Court had the occasion to explain the principle of precaution and the burden of proof in environmental cases. In some elaboration, in the case of *A.P. Pollution Control Board v. Prof. M.V. Nayudu* (1999) 2 SCC 718, after discussing various judgments, the Supreme Court concluded that:

“35. We shall next elaborate the new concept of burden of proof referred to in the Vellore case *AIR 1996 SC 2715*. In that case, Kuldip Singh, J. stated as follows:
The 'onus of proof is on the actor or the developer/industrialist to show that his action is environmentally benign.

36. It is to be noticed that while the inadequacies of science have led to the 'precautionary principle', the said 'precautionary principle' in its turn, has led to the special principle of burden of proof in environmental cases where burden as to the absence of injurious effect of the actions proposed, is placed on those who want to change the status quo (Wynne, *Uncertainty and Environmental Learning*, 2 *Global Env'tl. Change* 111 (1992) at p. 123). This is often termed as a reversal of the burden of proof, because otherwise in environmental cases, those opposing the changes would be compelled to shoulder the evidentiary burden, a procedure which is not fair. Therefore, it is necessary that the party attempting to preserve the status quo by maintaining a less-polluted state should not carry the burden of proof and the party who wants to alter it, must bear this burden. (See James M. Olson, *Shifting the Burden*

of Proof, 20 Env'tl. Law p.891 at 898 (1990). (Quoted in Vol. 22 (1998) Harv. Env. Law Review p. 509 at 519, 550).

37. The precautionary principle suggests that where there is an identifiable risk of serious or irreversible harm, including, for example, extinction of species, widespread toxic pollution in major threats to essential ecological processes, it may be appropriate to place the burden of proof on the person or entity proposing the activity that is potentially harmful to the environment. (See Report of Dr. Sreenivasa Rao Pemmaraju, Special Rapporteur, International Law Commission, dated 3.4,1998, para 61).

38. It is also explained that if the environmental risks being run by regulatory inaction are in some way "ascertain but non-negligible", then regulatory action is justified.. This will lead to the question as to what is the non-negligible risk'. In such a situation, the burden of proof is to be placed on those attempting to alter the status quo. They are to discharge this burden by showing the absence of a 'reasonable ecological or medical concern. That is the required standard of proof. The result would be that if insufficient evidence is presented by them to alleviate concern about the level of uncertainty, then the presumption should operate in favour of environmental protection. Such a presumption has been applied in *Ashburton Acclimatisation Society v. Federated Fanners of New Zealand* [1988] 1 NZLR 78. The required standard now is that the risk of harm to the environment or to human health is to be decided in public interest, according to a 'reasonable persons' test. (See *Precautionary Principle in Australia* by Charmian Barton) (Vol. 22) (1988) Harv. Env. L. Rev. 509 at 549).

Brief Survey of Judicial and technical inputs in environmental appellate authorities/tribunals:

39. We propose to briefly examine the deficiencies in the Judicial and technical inputs in the appellate system under some of our existing environmental laws.”

32. There can be scientific inadequacies in determining with exactitude the consequences of the environmental damage. In some cases, it may also be applicable to anticipate damage to environment while taking the aid of precautionary or preventive principles. Environmental protection and right to clean environment has found due recognition in terms of Article 51A and Article 21 of the Constitution of India. This places greater

obligation upon the Tribunal to examine the sustainable and planned development with a greater caution and with special protection to the environment. A Bench of this Tribunal, in case of *Suresh Bhai Keshav Bhai Wagankar v. State of Gujarat*, in application No.65 of 2012 decided on 9th May, 2013, while referring to the principles stated by the Supreme Court in the case of *Research Foundation for Science and Technology and Natural Resource Policy v. Union of India & Anr.* (2005) 10 SCC 510, explained the precautionary principle in the context of different facts and circumstances and held that the precautionary principle of sustainable development provides for taking protection against specific environmental hazards by avoiding or reducing environmental risks before specific harms are experienced.

33. Another doctrine that needs to be noticed at this stage is the doctrine of public trust. This doctrine is more an affirmation of State power to creation of public property for public purpose. It is an affirmation of the duty of the state to protect the people's common heritage of streams, lakes, marshlands and tidelands, surrendering that right of protection only in rare cases when the abandonment of that right is consistent with the purposes of the trust.

34. Now let us revert to the facts of the present case. 2.35 km long road is sought to be constructed with the width of 24 metres, connecting Vitthalwadi to NH-4 bypass. This road is being constructed certainly at some portion in the river bed i.e. the

prohibited zone (blue line). So far as the construction of the bridge touching or beyond the red line is concerned, there cannot be any serious objection to its construction. However, when it touches the blue line or falls in the prohibitory zone i.e. the river bed, even inside the blue line, serious objections have been raised by the applicant in this regard. Annexure 2/1 filed by Respondent No.3 is the corrected map placed on record. It shows the flow of the river, river bed, blue line and the red line. Between the blue line and the red line, there are structures in existence like Atharva Terrace Apartments, River View Residency Apartments on the one hand while Puja Park, Nimraj Nagar, Gayatri, Radhakrishna, Kudale Patil, Anand Park, Jal Tarang, Shrm Saffale, Jal Vihar, Jal Pungan, Sham Sundar Apartments on the other, which are structures on or even inside the blue line. Major part of the high rise road is being constructed inside the blue line and to a large extent in the river bed. During the course of hearing, we were informed that the Sham Sundar Apartments/structure has been issued notice by Respondent No.1 for demolition on certain grounds.

35. The red line, as reflected in this Annexure is the highest flood level 1 in 25 years. Between the red and the blue lines, various structures belonging to different societies have been raised. Alignment of the high rise road apparently appears to be in violation of the circular and is an apparent infringement of environment and ecology. Construction of the high rise road without elevated pillars in the river bed is bound to cause drastic degradation of the environment as well as obstruct the natural

flow of the river, particularly during monsoons. The alignment of the existing road has been shown in yellow colour which ends at Slab Drain on the one side and near the boundary wall at point 0+400. The high rise road from 0+450 point to 1+750 point is totally aligned in the river bed and much inside the blue line. Of course, the width of the road is 25 metres, as reflected in Annexure 2/1, filed by Respondent No.3. If the high rise road on the river bed is constructed entirely or even on a major part thereof by concrete and not on elevated pillars, it is bound to result in serious environmental disadvantages like :

- (a) Narrow river passage/flood plain which would obviously result in adversely affecting the civilisation during floods in the river.
- (b) Obstruction in flow of storm water/rainy water from drains/nullahs and the flow shall enter the other side of the proposed elevated road, thereby cause flooding in the area.
- (c) Insufficiency of cross drainage at appropriate locations.
- (d) Dredging of even two km. in the river will not protect floods and damage to the ecology as it would become a pool of water unless or until a proper gradient in downstream is provided.

36. Besides this, it is very important to avoid environmental damage and in the interest of ecology, flood plains are maintained properly. As the flood plains provide important ecological services like ensuring flow in streams for most of the year through modulation of the river-discharge by conserving huge flow of water

derived from peak flow and storm run off during the rainy season and releasing it gradually; recharge the ground water and improve its quality, besides flood plain produce resources like fodder, fuel and timber. Also these provide breeding and feeding ground for fish, reptiles, amphibians, birds and other living creatures in addition to improving water quality through retention and transformation of nutrients and other chemicals. These services or benefits would be adversely affected by any encroachment of the flood plains. In the present case, the total flood plain proposed to be encroached is 2.35 km.

37. These, amongst others, are a few disadvantages of the project in question besides there being logistic deficiencies like lack of permission or grant of improper permission. The need for the project is sought to be justified on the ground of larger public interest i.e. providing an alternative route to the commuters as well as to reduce vehicular pollution. It is expected to solve public transportation problem of about 5 lakh citizens who rely on the Sinhagad Road, as their main connectivity by the arterial road to the city. It is likely to reduce travel time as well as pollution level. On the contrary, the applicant's main contention is that besides causing degradation of the environment, the intention of Respondent No.1 is to help the property grabbers unauthorisedly by reclaiming the land, falling even within the red/blue line and to give them undue advantage. In fact, the real intention of the respondent is to construct the road by compacting and earth filling and to facilitate selected private land owners to reclaim the

river bed up to the road by converting no development zone inside the flood plain into residential zone. Of course, this allegation has been refuted by Respondent No.1. It is also argued on behalf of Respondent No.1 that raising construction on elevated pillars would prove much more expensive than its construction by compacting and earth filling. This argument does not impress us. If the Corporation-authorities have taken a decision to take up the project in public interest, then it must also bear its cost and higher cost, if necessary and also unavoidable in the larger environmental interest. The authorities cannot be permitted to cause irreversible damage to the environment and ecology of the area and even expose the inhabitants of the vicinity to undue flood risks on the ground that the project is being taken up in public interest merely for providing an alternative road and for reducing the vehicular pollution. Firstly, Respondent No.1 has not placed any scientific data or analysis on record before us in support of its contention, even for the sake of arguments, that there would be reduction in environmental pollution and great convenience will accrue to the public by reduction in the travel time. Applying the principle of proportionality, even if an alternative route is provided, still the balance would tilt in favour of environment and we would still require Respondent No.1 to carry out the project subject to such conditions which would strive equitable balance between the development on the one hand and the environment on the other. If Respondent No.1 is of the firm view, and particularly in view of the NOC dated 15th April, 2013 having been issued by

Irrigation Department, to carry out the project, then it has to be subject to such stringent conditions as would protect the environment and ecology as well as greater public interest by preventing floods etc. Keeping in view the above rival contentions and the facts of the present case, normally, we would have accepted the petition and prohibited carrying out the project any further with the specific demolition of the part of the road. The road can be raised by elevated pillars in the area that will fall within the blue line or inside the blue line. The construction of elevated pillars at that stage would neither obstruct the flow of the river nor narrow the flood plain. Furthermore, it will also help the storm or drain water to freely join the river during larger part of the area.

38. However, keeping in mind the public interest, that by imposition of certain conditions, environmental and ecological interests can be safeguarded, we would permit Respondent No.1 to complete the project. Accordingly, we impose the following conditions subject to which the project could continue:

- (a) The interim order dated 4th January, 2013 and subsequent interim orders shall stand vacated and Respondent No.1 would be permitted to carry out and complete the project of building only 24 metre wide road from Vitthalwadi to NH-4 bypass as shown in Annexure R-2/1 strictly and subject to the conditions stated hereinafter.

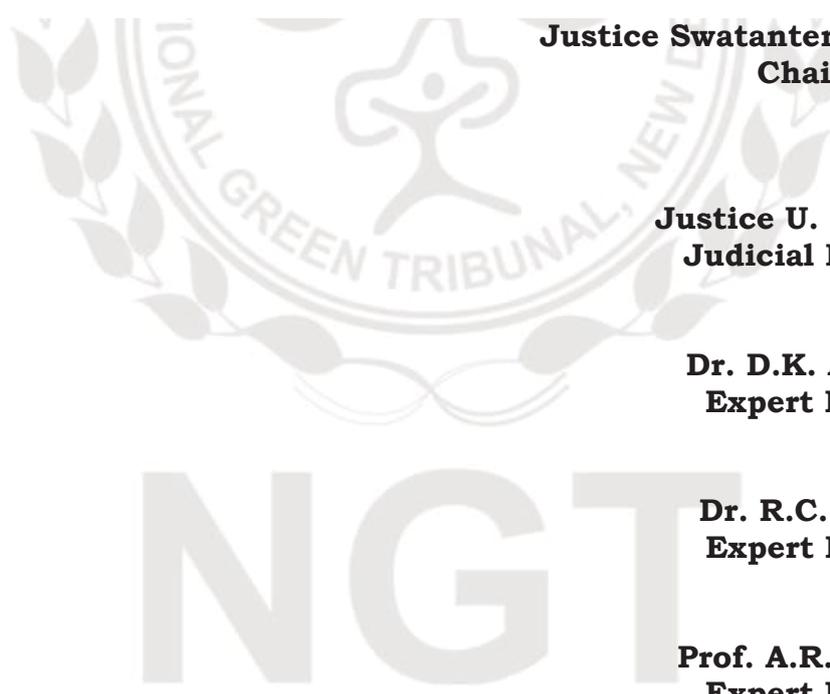
- (b) Respondent No.1 shall make every effort to realign the road to bring it as far as possible closer to and beyond the blue line, right from chainage of 0+400 to 1+750 of Exh. Annexure 2/1. It shall ensure to extend the least part of the project in the river bed/blue line.
- (c) The road/project shall be constructed on elevated pillars alone in the area that falls within the blue line.
- (d) We direct Respondent No.1 to remove the debris dumped at the present site and shift the same to the red line by following 1 in 25 years rule.
- (e) A massive plantation should be undertaken on both sides of the river, also in the no-development zone by Respondent No.1 as well as the State Government of Maharashtra. Adequate protective measures should be undertaken to prevent flooding and submerging of the residential area along the proposed road.
- (f) The conditions imposed by the Chief Engineer, Irrigation Department, vide his NOC dated 15th April, 2013 shall *mutatis mutandis* be part of the present directions. The same shall be read in aid and not in derogation to the conditions stated in this order.
- (g) As already noticed and highlighted during the course of the hearing, a large number of structures have come up at and even inside the blue line of the river Mutha. Respondent No.1 itself has issued notice to some of such structures for demolition. Thus, in the peculiar facts and circumstances of

the case, we further direct that Respondents No.1, 3 and 4 shall take appropriate steps against unauthorised constructions, if any, raised on and inside the blue line and pass order of demolition or such other order as is permissible in accordance with law. We also direct the said authorities to ensure that no encroachment is permitted and no construction in future is permitted on and inside the blue line of the river Mutha.

39. The imposition of the above conditions is necessary in the interest of environment and ecology. It is better to take precautions at this stage, even at the cost of additional expenses rather than to face floods, disaster, loss of person and property and irreversible damages to ecology and environment. The precautionary principle, which is a part of the law of the land now and is a Constitutional mandate in terms of Articles 21, 48A and 51A(g) of the Constitution of India, that require the State to safeguard and protect the environment and wild life of the country. It is expected of Respondents No.1 and 3 to anticipate and then prevent the causes of environmental degradation. Furthermore, no public interest would suffer by imposition of the above conditions. If the conditions imposed under this order are found to be onerous by the State, particularly Respondent No.1, then they can even give up the project on river Mutha as an alternative road on the other side of the river has already been constructed to provide the connectivity. In the event the Department decides to give up the road project, it shall be

incumbent on it to remove all debris from within the blue line that has been used to create the high rise road segment. It is stated to be a 100 ft. wide road on the left bank of the river Mutha giving connectivity with the same bypass. Thus, in the present case, Respondent No.1 has options and alternatives available to it while ensuring that both the public interest and the environment do not suffer.

40. The application is partly allowed to the above extent and with the directions aforesaid while leaving the parties to bear their own costs.



Justice Swatanter Kumar
Chairperson

Justice U. D. Salvi
Judicial Member

Dr. D.K. Agrawal
Expert Member

Dr. R.C. Trivedi
Expert Member

Prof. A.R. Yousuf
Expert Member

New Delhi
July 11, 2013

2015 SCC OnLine NGT 2

Before The National Green Tribunal Principal Bench at New Delhi, New Delhi
(BEFORE SWATANTER KUMAR, CHAIRPERSON, U.D. SALVI, J.M., DR. D.K. AGRAWAL, E.M., A.R. YOUSUF, E.M. AND DR. R.C. TRIVEDI, E.M. (NOW DECEASED))

In the matter of:

1. Sarang Yadwakar R/at: A-9, Pradnyangad Apartments, S. No. 119/3, Sinhagad Road, Pune 411030
2. Vivek Velankar Presiden; Sajag Nagrik Manch, (NGO Welankar Reg. No. E 5620), O/at: 1200 Sadashiv Peth, Limaye Wadi, Pune 411030
3. Parineeta Dandekar, R/at: A2/405, Kanchanban Apartments, Shivtirth Nagar, Kothrud, Pune 411038
4. Dilip Jaywantrao Mohite, R/at: B-28, Pradnyangad Apartments, S. No. 119/3, Sinhagad Road, Pune 411030
5. Sanjay Babanrao Bhosale, R/at: 244, Bhawani Peth, Mahatma Phule Marg, Pune 411042
6. Narendra Sunderlal Chug, R/at: 15/3, PWD Quarters, Pimpri Colony, Pune 411017 ... Applicants.

Versus

1. The Commissioner Pune Municipal Corporation. Shivajinagar, Pune 411004
2. Chief Engineer, Khadakwasla Irrigation Division, Irrigation Department Gov. of Maharashtra, Sinchan Bhavan, Barne Road, Mangalwar Peth, Pune.
3. Maharashtra Pollution Control Baord, Through the Regional Officer Pune Jog Centre, 3rd floor, Mumbai-Pune Road, Wakadewadi, Pune 411003 ... Respondents.

M.A. No. 52 of 2014 in Original Application No. 2 of 2013

Decided on January 14, 2015

Counsel for applicant:

Mr. Asim Sarode, Advocate

Counsel for Respondents:

Mr. Rahul Jaun & Mr. Varun Mudgal, Adv for respondent no. 1

Mr. Arvind Avhad, Adv for respondent no. 2

Mr. Ranjeet Singh, Mr. Prashant & Mr. Kailash Pandey Advocates for respondent no. 3

Mr. Mukesh Verma & Mr. A.D. Mohejarm R.O. Pune, Advocates for respondent no. 4

ORDER

U.D. SALVI J., J.M.:— Variety of directions to the Respondents upon invoking the provisions under Section 25 and 26 r.w. Section 28 of the NGT Act, 2010 are solicited in the present application; mainly the applicants are seeking implementation/execution of the order/directions issued by us along with penal action against all those involved in failure to comply with the said order/directions. Incidentally, the applicant is also seeking directions for cancellation of construction of all roads falling in flood plains of all rivers and shown in the Development Plan of Pune; and further for recovery of wasteful cost incurred on the construction of the road

T.C

and to be incurred for removal of debris from all concerned persons and officers working for the Respondent, Pune Municipal Corporation.

2. The principal reason for seeking these directions, according to the applicant, is the acts of commission and omissions committed by the Respondents and concerned officials in disregard and breach of the directions passed by this Tribunal in Judgment delivered on 11th August, 2013 in Application No. 2/2013. The Respondent No. 1- Pune Municipal Corporation undertook a project of construction of the road from Vitthalwadi to National Highway No. 4 Bypass and the appellant objected to this project inter-alia on the grounds that:

- a) The construction of the road falls in the river bed i.e. within the blue line thereby causing massive environmental, ecological and social damage.
- b) Construction undertaken under the garb of development plan as a draft development plan is banned as not been approved by the State Government.
- c) No permission to carry out such construction has been issued by irrigation Department.
- d) The construction requires permission from Archaeological Department it being the construction touching the Vitthalwadi Temple and its surrounding areas which are declared as grade-1 heritage building and such permission has not been obtained.

3. After hearing the parties and upon considering the record of the case this Tribunal passed the following order vide the Judgment dated 11th July, 2013

"38. However, keeping in mind the public interest, that by imposition of certain conditions, environmental and ecological interests can be safeguarded, we would permit Respondent No. 1 to complete the project. Accordingly, we impose the following conditions subject to which the project could continue:

- (a) *The interim order dated 4th January, 2013 and subsequent interim orders shall stand vacated and Respondent No. 1 would be permitted to carry out and complete the project of building only 24 metre wide road from Vitthalwadi to NH-4 bypass as shown in Annexure R-2/1 strictly and subject to the conditions stated hereinafter.*
- (b) *Respondent No. 1 shall make every effort to realign the road to bring it as far as possible closer to and beyond the blue line, right from chainage of 0+400 to 1+750 of Exh. Annexure 2/1. It shall ensure to extend the least part of the project in the river bed/blue line.*
- (c) *The road/project shall be constructed on elevated pillars alone in the area that falls within the blue line.*
- (d) *We direct Respondent No. 1 to remove the debris dumped at the present site and shift the same to the red line by following 1 in 25 years rule.*
- (e) *A massive plantation should be undertaken on both sides of the river, also in the no-development zone by Respondent No. 1 as well as the State Government of Maharashtra. Adequate protective measures should be undertaken to prevent flooding and submerging of the residential area along the proposed road.*
- (f) *The conditions imposed by the Chief Engineer, Irrigation Department, vide his NOC dated 15th April, 2013 shall mutatis mutandis be part of the present directions. The same shall be read in aid and not in derogation to the conditions stated in this order.*
- (g) *As already noticed and highlighted during the course of the hearing, a large number of structures have come up at and even inside the blue line of the river Mutha. Respondent No. 1 itself has issued notice to some of such structures for demolition. Thus, in the peculiar facts and circumstances of the*

case, we further direct that Respondent No. 1, 3 and 4 shall take appropriate steps against unauthorised constructions, if any, raised on and inside the blue line and pass order of demolition or such other order as is permissible in accordance with law. We also direct the said authorities to ensure that no encroachment is permitted and no construction in future is permitted on and inside the blue line of the river Mutha.

39. The imposition of the above conditions is necessary in the interest of environment and ecology. It is better to take precautions at this stage, even at the cost of additional expenses rather than to face floods, disaster, loss of person and property and irreversible damages to ecology and environment. The precautionary principle, which is a part of the law of the land of and is a Constitutional mandate in terms of Article 21, 48A and 51A(g) of the Constitution of India, that require the State to safeguard and protect the environment and wild life of the Country. It is expected of Respondent No. 1 and 3 to anticipate and then prevent the causes for environmental degradation. Furthermore, no public interest would suffer by imposition of the above conditions. If the conditions imposed under this order are found to be onerous by the State, particularly, Respondent No. 1 then they can even give up the project on river Mutha as an alternative road on the other side of the river has already been constructed to provide the connectivity. In the event that Department decides to give up the road project, it shall be incumbent on it to remove all debris from within the blue line that has been used to create the high rise road segment. It is stated to be a 100 ft. wide road on the left bank of the river Mutha giving connectivity with the same bypass. Thus, in the present case, Respondent No. 1 has options and alternatives available to it while ensuring that both the public interest and the environment do not suffer.

40. The application is partly allowed to the above extent and with the directions aforesaid while leaving the parties to bear their own costs.

4. Quoting excerpts from paras 34 to 39 of the Judgment the applicant highlighted its basic command line that in order to allow unrestricted flow of river water all throughout every season the embargo on encroachment/construction on the flood plain of river Mutha within blue line as shown on the plan is necessary.

5. According to the applicant, the Judgment dated 11th July, 2013 has become final and binding on the respondents for the reason of it not being challenged before the Hon'ble Apex Court nor any review of the said Judgment being sought before this Tribunal by any one of the parties thereafter. The Applicants further contend that not only the Respondents are in knowledge of the Judgment dated 11th July, 2013 passed in the present case but were also reminded of the actions expected from them in compliance of the directions passed in the said Judgment vide communications dated 7th August, 2013 and 17th July, 2013 addressed to the Respondent Nos. 1 & 3; and yet none of the Respondents took any steps/action in performance of their obligations under the said Judgment but in fact had/have started construction of a connecting road giving approach to the road ordered to be re-aligned vide Judgment dated 11th July, 2013 and have thus exhibited their contumacious attitude.

6. Adverting to the Judgment dated 11th July, 2013, the applicant enumerated major instances of its disregard and breach as under:

1. No efforts made to re-align the road falling in the river bed within chainage 0+400 to 1+750 beyond blue line vide Exhibit Annexure 2/1.
2. Failure to remove the debris dumped within blue line and shift the same to the Red line.
3. Failure to undertake a massive afforestation/plantation programme.
4. Failure to implement the conditions imposed by the Chief Engineer, Irrigation Department i.e. reservation of additional area beyond flood plain and

modification of the current development plan, removal of the Silt from the river bed and afforestation programme to be undertaken by the PMC in the Green Belt to prevent further erosion and siltation.

To sum up, according to the applicants, there has been failure to comply with the directions at para 38(b)(d)(e) and (f) of the Judgment.

7. The Respondents were duly served with the present application and they were granted time to file their responses. The record reveals that the Respondent No. 1 in response to the present Application filed affidavits of Mr. Vivek Madhukar Kharwadkar, Additional City Engineer, Pune Municipal Corporation dated 6th March, 2014, 14th May, 2014 and 16th August, 2014 along with documents in support of the affidavits. The Respondent No. 2 responded through the Affidavit of Mr. Avinash Surve, Chief Engineer, Water Resources Department, Government of Maharashtra, dated 8th March, 2014. The Respondent No. 3 responded to the Application with an affidavit dated 4th March, 2014 of Mr. Mohekar its Regional Officer. Rejoinders dated 22/03/2014 and 27/08/2014 to the replies were filed by the applicants.

8. We have heard the parties at length and gone through the pleadings as well as the documents tendered on the record by the respective parties.

9. Evidently it is the Respondent No. 1 who is actively engaged in the project of construction of the road in question. The Respondent No. 2 has distanced itself from the activity undertaken at the site in question by making a statement in its reply that the Water Resources Department had already laid the conditions for issuance of NOC for construction of river side road from Vitthalwadi to National Highway No. 4 bypass to the Pune Municipal Corporation; and now it is the responsibility of Pune Municipal Corporation, Respondent No. 1 to obey the orders issued by the Tribunal.

10. The Respondent No. 3 acknowledged that there were directions to the Respondents to take appropriate steps against the unauthorised construction, if any, constructed on and inside the blue line and to pass orders of demolition or such orders as permissible in accordance with law vide Judgment dated 11th July, 2013. The Respondent No. 3 also acknowledged the facts of directions to the Respondents to ensure that no encroachment/construction in future was to be permitted on or inside the blue line of river Mutha. In this context the Respondent No. 3 averred that mandate under the law to Respondent Board was limited to the implementation of the provisions of the Environment (Protection) Act, 1986 and for the prevention and control of air and water pollution; and as such was dealing with matters concerning the grant of consent to establish and/or consent to operate the projects/industry, operations or processes and as such the activity complained of has not been within the business of the Board. However, the Respondent No. 3 further added that on the inspection of the site on 28-02-2014, with maximum road was found completed and there was no construction activity found in bed of river Mutha during the visit except the minor civil work in progress. Besides the copy of the visit report dated 28-02-2013 the Respondent No. 3 placed on record a copy of the letter dated 28-02-2014 addressed to the Commissioner Pune Municipal Corporation, Pune by its Regional Officer. It appears to be a reminder to the Pune Municipal Corporation to comply with the directions of the NGT-vide Judgment dated 11th July, 2013 and for taking action against unauthorised construction raised inside the blue line by issuing orders of demolition.

11. Learned Counsel for the Applicant submitted that the approach of this Tribunal while passing the Judgment dated 11th July, 2013 was to allow the free flow of the water in the river bed, particularly, in the area falling within the blue line, and for that purpose the Tribunal ordered the re-alignment of the road as far as possible closer and beyond the blue line right from chainage 0+400 to 1+750 as shown in Exhibit Annexure 2/1 and further directed the construction to be on elevated pillars alone in

the area falling within blue line. Instead of doing this Learned Counsel for the Applicant submitted, the Respondent No. 1 is bent upon keeping the road lying within the blue line as it is with inconsequential changes as suggested therein and this is clearly contumacious. He argued that it is now not open to any of the parties to tinker with the Judgment, which has reached finality and is binding on the parties, as it is out of the purview of the present Application dealing only with the contempt/disobedience of Judgment of this Tribunal. The Applicants questioned the propriety as well as efficacy of options offered with the reply dated 16th August, 2013 vide rejoinder dated 27th August, 2014. The Applicants pointed out that all these options were depicted without giving detailed calculations of the storm water collected in particular basin at the particular point at peak rainfall and they completely defy the basic laws of nature and merely project a picture convenient to Respondent No. 1; and are bound to result in narrowing the river passage thereby causing flooding in the area.

12. Learned Counsel appearing on behalf of Respondent No. 1 Pune Municipal Corporation submitted that 92 per cent of the work involving construction of retaining wall between chainage 0+450 to 1+750 was completed, and back filling and development of crust for the road was in progress till the time Stay on the work of construction of the road was imposed by the Tribunal and Rs. 15.34cr were spent on the said works before January, 2013; and it is not physically possible to realign the road beyond the earlier marked blue line and the total expenses made on the construction would go waste. He further submitted, quoting the extracts from para 37 of the Judgment dated 11-07-2013, that the NGT has not ordered any demolition of the already constructed part of the road and as such it would be prudent to allow the completion of the balance part of the work i.e. back filling and road crust development in the said stretch and finishing of the road with works like footpath, electrical work etc., so as to facilitate its opening for its intended use.

13. Learned Counsel appearing for the Respondent No. 1 submitted that as per the discharge calculation for blue and red line, the cross section area of the river in the given stretch is sufficient to accommodate the flood discharge; and due to construction of concrete retaining walls the river flow is channelized with its smooth surfaces increasing the discharge velocity of the water. Three options purportedly for managing the storm water vis. a vis. river flow as well as for the prevention of the possibility of locality getting inundated were also placed before us.

14. Patently, the effort of the Respondent No. 1 is to persuade us to have re-look at the directions passed vide Judgment dated 11th July, 2013 on the ground of feasibility in light of the options furnished now and likely waste of public funds on execution of the said directions. Significantly, the Respondent No. 1 or for that purpose any of the Respondents have not challenged the Judgment dated 11th July, 2013 nor any Review of the said Judgment is sought before us. The Judgment has thus attained the finality and is binding on all parties. Needless to mention that what we are dealing with is an application for coercive action compelling the Respondents to execute the directions in the said Judgment and for penalising the Respondents for their contumacious behaviour. Keeping this in mind we are obliged to examine the Judgment dated 11th July, 2013 and to ascertain obligations of the parties thereunder.

15. Pertinently, there is clear mention of the stage at which the construction in question was at the time it was halted due to stay in the parent application. At para No. 5 of the Judgment, we have noticed that it was the case of the Respondent No. 4 Maharashtra Pollution Control Board in O.A. 2/2013 that its field officer had visited the site in question on 27th January, 2013 and had observed that the construction of the road was in progress and nearly 40 percent of the work had been completed, but in view of the orders and the fact that permission of Irrigation Department had not been obtained, the construction work had been stopped. We had also noticed that neither

permission has been granted nor any NoC issued by the Chief Engineer Irrigation Department, Government of Maharashtra in favour of the Respondent No. 1 Corporation for carrying out the project. We had also noticed in course of hearing of the said application on 14th February, 2013 that the applicant had placed on record letter dated 15th May, 2012 issued by the Assistant Executive Engineer, Pune Irrigation Circle, Pune stating that no permission from the Irrigation Department for the said project had been obtained, and the Chief Engineer, Irrigation Department who was present before us on that date, confirmed the said fact. The record reveals that on 4th January, 2013 we had injuncted the respondents in Application No. 2/2013 from putting any debris in or raising construction on the river bed of river Mutha. The Respondents were duly served with the Notice of the application as well as the interim order passed. There has been no change in the interim order till the final order vide Judgment dated 11th July, 2013 was passed.

16. The Respondent No. 1 in clear terms revealed in his reply dated 11th February, 2013 that the Respondent No. 2 JNNURM was not funding the said project and the project was being operated through Pune Municipal Corporation through its own funding. This exhaustive reply invited the attention of Tribunal to various pros and cons of the project and ended with a prayer to allow the work of construction in question as delay in the work was resulting in huge loss to public account. According to the Respondent No. 1, in deference to the interim orders the work of construction of the said project was halted. It therefore does not lie in the mouth of Respondent No. 1 now to say that 92 per cent of the work had/has been completed. If that is the case it is clear admission of the fact by necessary implication that there has been violation of the orders of this Tribunal and the Respondent No. 1 the Pune Municipal Corporation and its officials executing the work are responsible for it.

17. As regards the encroachments on the river bed, the consequent impediment to the flow of the water during normal times and during floods has its contribution to the inundation in the area. All the pros and cons of the construction in question were gone through by this Tribunal and the Judgment was delivered.

18. Para 37 of the Judgment is reproduced herein below in order to reveal how this Tribunal had arrived at the conclusion to direct the construction of road in question on elevated pillars and for what purpose.

"37. These, amongst others, are a few disadvantages of the project in question besides there being logistic deficiencies like lack of permission or grant of improper permission. The need for the project is sought to be justified on the ground of larger public interest i.e. providing an alternative route to the commuters as well as to reduce vehicular pollution. It is expected to solve public transportation problem of about 5 lakh citizens who rely on the Sinhagad Road, as their main connectivity by the arterial road to the city. It is likely to reduce travel time as well as pollution level. On the contrary, the applicant's main contention is that besides causing degradation of the environment, the intention of Respondent No. 1 is to help the property grabbers unauthorisedly by reclaiming the land, falling even within the red/blue line and to give them undue advantage. In fact, the real intention of the respondent is to construct the road by compacting and earth filling and to facilitate selected private land owners to reclaim the river bed up to the road by converting no development zone inside the flood plain into residential zone. Of course, this allegation has been refuted by Respondent No. 1. It is also argued on behalf of Respondent No. 1 that raising construction on elevated pillars would prove much more expensive than its construction by compacting and earth filling. This argument does not impress us. If the Corporation-authorities have taken a decision to take up the project in public interest, then it must also bear its cost and higher cost, if necessary and also unavoidable in the larger environmental interest. The

authorities cannot be permitted to cause irreversible damage to the environment and ecology of the area and even expose the inhabitants of the vicinity to undue flood risks on the ground that the project is being taken up in public interest merely for providing an alternative road and for reducing the vehicular pollution. Firstly, Respondent No. 1 has not placed any scientific data or analysis on record before us in support of its contention, even for the sake of arguments, that there would be reduction in environmental pollution and great convenience will accrue to the public by reduction in the travel time. Applying the principle of proportionality, even if an alternative route is provided, still the balance would tilt in favour of environment and we would still require Respondent No. 1 to carry out the project subject to such conditions which would strive equitable balance between the development on the one hand and the environment on the other. If Respondent No. 1 is of the firm view, and particularly in view of the NOC dated 15th April, 2013 having been issued by Irrigation Department, to carry out the project, then it has to be subject to such stringent conditions as would protect the environment and ecology as well as greater public interest by preventing floods etc. Keeping in view the above rival contentions and the facts of the present case, normally, we would have accepted the petition and prohibited carrying out the project any further with the specific demolition of the part of the road. The road can be raised by elevated pillars in the area that will fall within the blue line or inside the blue line. The construction of elevated pillars at that stage would neither obstruct the flow of the river nor narrow the flood plain. Furthermore, it will also help the storm or drain water to freely join the river during larger part of the area."

The Learned Counsel appearing for the applicant had chosen to refer to only few lines gone into making of such thinking without referring to its entire material contents.

19. The Respondent No. 1 Pune Municipal Corporation was permitted to complete the project on conditions-which were or have been designed to provide safeguards to environmental and ecological interest. Learned Counsel appearing on behalf of the Respondent No. 1 Pune Municipal Corporation has harped on the absence of direction to demolish the existing structure falling within blue line. This is merely intellectual acrobatics to run away from the very meaning of the directions given in the said Judgment and try to avoid obligations thereunder. Though, we have been conservative in use of the word but the directions at para 38(b) convey complete sense of how things ordered were to take shape. This direction requires the Respondent No. 1 to make every effort to re-align the road to bring as far as possible closer to and beyond the blue line road from chainage 0+400 to 1+750 at Exhibit Annexure- 2/1 so as to ensure the extension of the least part of the project in the riverbed-Mutha or blue line. Word "Realign" used in the direction is pregnant with meaning. If one refers to the *Oxford Dictionary of English* (3rd Edition, 2010) published by Oxford University one can find its meaning as "to change or restore to a different position or state". Thus the realignment of the road would necessarily involve demolition of certain things and construction of new thing. Its meaning is made more pronounce with directions c and d of para 38. These directions enjoin the Respondent No. 1 to construct the road/project falling within the blue line on elevated pillars and to remove the debris from the present site to the red line. Word "Debris" means pieces of rubbish or remains which are produce of break down. In the instant case, the demolition that would take place as a result of re-alignment of the road is bound to generate debris, which need to be shifted from the site within blue line to the red line.

20. We had also directed the Respondent No. 1 to undertake the demolition of the structures which have come up at and inside the blue line of river Mutha vide direction (g) at para 38. It was also noticed that the Respondent No. 1 had issued notice to some of the structures lying within the blue line of river Mutha for demolition. We, therefore, cannot have two standards one for the common man and other for the

Respondent No. 1 Pune Municipal Corporation. Anything, particularly the one which impedes the free flow of river water and is an invitation to a natural disaster, that falls within the blue line of river Mutha must go; and that was the intention of our Judgment.

21. The Applicant has invoked the Provisions of the Section 25 of the NGT Act, 2010. Section 25 of the NGT Act, 2010 speaks about the execution of the award or order or decision of the Tribunal in following words:

25 Execution of award or order or decision of Tribunal— (1) *An award or order or decision of the Tribunal under this Act shall be executable by the Tribunal as a decree of a civil court, and of r this purpose, the Tribunal shall have all the powers of a civil court.*

(2) *Notwithstanding anything contained in sub-section(1), the Tribunal may transmit any order or award made by it to a civil court having local jurisdiction and such civil court shall execute the order or award as if it were a decree made by that court.*

(3) *Where the person responsible, for death of, or injury to any person or damage to any property and environment, against whom the award or order is made by the Tribunal, fails to make the payment or deposit the amount as directed by the Tribunal within the period so specified in the award or order, such amount, without prejudice to the filing of complaint for prosecution for an offence under this Act or any other law for the time being in force, shall be recoverable from the aforesaid person as arrears of land revenue or of public demand.*

Thus, the Tribunal either can exercise the powers of the civil court for procuring the execution of its orders as can be done for execution of the decree of a civil court or can transmit its order to a civil court having local jurisdiction for its execution as if it were a decree made by that court. In peculiar nature of the order/Judgment passed by us, it would be prudent to procure the execution of the said Judgment or order at our end by exercising the powers of a civil court in conjunction with the Provisions of NGT Act, 2010.

22. Perusal of the directions the compliance of which is to be procured would reveal that they are of the nature of mandatory injunction the enforcement of which can be procured by resorting to the provisions of Order XXI Rule 32 of the Code of Civil Procedure 1908. Order XXI Rule 32 lays down that where the party against whom decree for the injunction has been passed, has had opportunity of obeying the decree and has wilfully failed to obey it, the decree may be enforced by his detention in the civil prison or by the attachment, of his property, or by both. In case of the Corporation it permits enforcement of the decree by attachment of the property of the Corporation or with the leave of the court, by the detention of the Director or other Principal Officer thereof-in the instant case the Commissioner-or by both attachment and detention. There is also other mode of execution prescribed under Order XXI Rule 32(5) in lieu of or in addition to any of the processes mention therein, to procure the execution of the mandatory injunction. It enables the executing Court to appoint some other person to do the act required to be done at the cost of the Judgment-debtor-the respondent no. 1- Corporation herein.

23. It is correct that while exercising the powers of the Civil Court for procuring the execution of our Orders we cannot go behind the directions passed in the Judgment and question its merits but we are obliged to pass orders on application of the Principles of sustainable development, the precautionary principle and the polluter pays principle as enunciated in Section 20 of the NGT Act, 2010. On one hand there is fact situation that 92% of the work of construction of the road at the cost of Rs. 15.34 crores drawn from public exchequer has been completed within blue line and on the

other hand there is grave risk of impediment to the free flow of the river water which is an open invitation to natural calamities occasioned by un-precedented rainfall like those occurred in the States of Uttarakhand and Jammu & Kashmir of late. To our mind a balanced resolution of the problem of execution of our order can be achieved by giving such directions as may be necessary or expedient to give effect to our order and essentially to secure the ends of justice keeping in mind the said principles as per Rule 24 of the National Green Tribunal (Practices and Procedure) Rules, 2011. Needless to state that the discretion in matter of such kind remains un-fettered in view of the Provisions of Section 19 of the NGT Act, 2010, which frees the Tribunal from the shackles of Code of Civil Procedures and allows it to regulate its own procedure.

24. On this backdrop we are obliged to consider the options which in the opinion of the Respondent No. 1 are supposed to provide solution to safe discharge of peak flood in the locality i.e. stretch under consideration **between chainage 0+400 to 1+750** beyond blue line vide Exhibit Annexure 2/1 without causing additional submergence. It would be pertinent to note that applicants examined the options suggested by the Respondent No. 1 and have not only offered reply to these options but have also graphically illustrated the same; for the sake of clarity we reproduce the options together with applicants contention on technical viability of each one.

“OPTION No. 1

This option proposes construction of 2×2×1.5 M drain along the riverbed road on right bank. This said drain is expected to carry the storm water from right bank into the river.

CONCLUSIONS:

- I. Steep rise in flood levels due to 25.89% reduction in carrying capacity.
- II. Inundation on right bank due to obstruction of the road to natural flow of storm water and flood water entering on the right bank flood plains.

OPTION No. 2

This option proposes 2 box type culverts with gates openable only on one side i.e. towards flowing river to allow flow of storm water from right bank into the river. IN case of flood in the river, gates are expected to close under the pressure of flood water.

CONCLUSIONS:

- I. Steep rise in flood levels due to 25.89% reduction in carrying capacity.
- II. Inundation on right bank due to obstruction of the road to the natural flow of storm water. The storm water shall not flow into the river because the gates shall be closed due to the pressure of flood water.

OPTION No. 3

This option suggests installing 1000 mm dia. pipes at two locations at 45° to the flow of river. Respondent No. 1 imagines that suction force shall be generated at the riverside end of the pipes which will suck the storm water from right bank. This is the most childish, ridiculous and bizarre proposal filed by Respondent No. 1. No calculations with respect to flood water velocity required to generate the suction are given. It is practically impossible to create suction in 1000 mm dia. pipe just with the flow of flood water. In fact hydraulic pressure shall be generated in the pipes pushing the storm water back. No calculations with respect to the quantity of storm water collected per minute have been worked out. No calculation with respect to the quantity of water required to be sucked with the so called suction have been worked out.

CONCLUSION OF ALL 3 OPTIONS:

- I. Steep rise in flood levels due to 25.89% reduction in carrying capacity

II. Inundation on right bank due to obstruction of the road to natural flow of storm water and/or one way gates closed due to pressure of flood water. And flood water from river entering on the right bank flood plains."

25. We at this stage like to remind the Municipal Corporation that an option was made available to give up the project on river Mutha, if for any reason the conditions imposed thereunder were found to be onerous, and also of the fact that the exceptions taken to the options by the applicants were not replied except raising a cry about the involvement of the public money and absence of explicit directions to demolish the work already completed. We are not impressed with the cry raised by the Municipal Corporation. However, on considering the involvement of public money and the powers we are vested with to pass such directions as are necessary or expedient to secure ends of justice, particularly, keeping in view the principles of sustainable development and precautionary principle, we made attempts to search for a solution which would offer:

- a. Road stretch between the chainage 0+400 to 1+750 beyond blue line vide Exhibit Annexure 2/1 with **sufficient number of box culvert openings** all along such road so as to provide the reduction in original cross sectional area to the extent of around 26 percent as compared to the cross sectional area after the construction of road which would provide maximum free flow of river water without posing any danger of flooding.
- b. The strength of the road on embankment with such box culverts is not compromised and is capable of bearing the peak traffic load envisaged.

For this purpose we withheld the final verdict and gave opportunity to the Respondent No. 1- Pune Municipal Corporation to place before us its sworn word offering such technically viable solution, particularly, with reference to sufficient number of box culvert openings with automatic gate flaps permitting storm water to flow freely into the river without any obstruction and at the same time achieve the maximum free flow of river water without posing any danger of flooding.

26. Ultimately, an additional supplementary affidavit dated 3rd November, 2014 was filed by the Respondent No. 1 Corporation before us on 11th November, 2014. The respondent no. 1 undertook not to permit in future any building construction activities within the blue line and to initiate forthwith the process of minor modifications DC Regulations under Section 37(1) of MRTP Act, 1966 to prohibit any such further building construction. The respondent No. 1 further stated that the construction of the minor bridge and retaining wall along the embankment has prevented flooding and erosion due to flood water in low lying residential area vide photograph at Exhibit No. 2. According to the respondent No. 1 the combination of retaining wall and proposed culverts shall ensure to the inhabitants in the area a protection from inundation both resulting from release of flood water and run off of storm water. As regards the proposed culverts, the supplementary affidavit merely talks about discussion with the experts and the movement of proposals from Executive Engineer, Irrigation Department Khadakwasla, Pune to Superintendent Engineer, CDO Irrigation Department, Nasik and onward to the Superintending Engineer, Koyana Design Circle, Pune and nothing more.

27. A fact, therefore, remains that there is hardly any technical merit in the proposal of constructing box culverts to achieve dual purpose of preventing inundation in the residential area and at the same time allow maximum free flow of river Mutha. Hollowness of the assertions made by the Respondent No. 1 Corporation is also evident from the photograph taken by the applicant in 2011 and referred to in the reply dated 17th November, 2014 filed by the applicant no. 1 Sarang Yadwakhari. More over a fact cannot be over-looked that the river bed road which is obstructing the flow of river is situated only 7 km downstream of group of 4 dams having storage of 31

TMC and discharge capacity of 1,28,899 Cu. Sec. It would, therefore, be a grave folly to compromise public safety and environmental protection for public funds which have been mis-utilised contrary to the mandate of law for construction within blue line on the river bed.

28. We are therefore left with no alternative but to pass following directions in execution of our directions vide Judgment dated 11th July, 2013.

1. The Respondent No. 1 Pune Municipal Corporation shall remove all the debris dumped including embankments constructed at the present site particularly, within blue line right from chainage from 0+400 to 1+750 of Exhibit Annexure 2/1 and shift the same to red line by following 1 in 25 year Rule, within three months beginning of the work being made for such removal within 15 days from the date of this order.
2. The Chief Engineer, PWD of the state of Maharashtra is appointed to do the work of removal of debris dumped including embankment constructed as referred to in clause 1 above on failure of the Respondent No. 1, Pune Municipal Corporation to do so as directed in execution of the directions passed in Judgment dated 11th July, 2013, and such work shall be carried out by the PWD under the direct supervision of its Chief Engineer, who shall be held personally liable for conduct of said execution.
3. On failure of the Respondent No. 1- Corporation to act the Public Works Department of the State of Maharashtra shall carry out the said work of removal referred to herein above in execution of the directions passed in Judgement dated 11th July, 2013 under the direct supervision of Chief Engineer of the Department, who shall be held personally responsible for conduct of the said execution.
4. Cost and expenses incurred shall be recovered from the respondent no. 1- Pune Municipal Corporation and shall be defrayed from their account accordingly.
5. We hope and trust that these directions shall be carried out in letter and spirit in the interest of both the environment and public at large. We, therefore, do not see any reason to dwell on the issue of contempt. However we may like to warn all concerned that the penal consequences under NGT Act, 2010 shall follow in the event of the failure to comply with the directions of this Tribunal, and the applicant, for that matter anyone, can initiate proceedings as per section 30 of the NGT Act, 2010.
6. M.A. No. 52 of 2014 is disposed of accordingly.

We may note with profound grief that one of the Hon'ble Member of this Bench Hon'ble Dr. R.C. Trivedi who heard this Application along with us, parted company for heavenly abode leaving us to pen this Judgment and accordingly, we have done so.

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BEFORE THE NATIONAL GREEN TRIBUNAL, WESTERN ZONE
BENCH, PUNE

Execution Application No.19/2017(WZ)

In

Application No.02/2013

[Disposed of on 11-07-2013]

And

M.A. No.243/2017

In

Execution & Contempt Application 18/2017

In

M.A. No.52/15 & O.A 02/13

[Disposed of on 14-01-2015]

In the matter of:-

Sarang Yadwadkar & Ors. V/s The Commissioner & Ors.

And

Sun Planet Welfare Association & Ors V/s Sarang Yadwadkar & Ors

CORAM: HON'BLE MR. JUSTICE U. D. SALVI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

Execution Application No.19/2017

Present: Applicant
Respondent PMC

: Mr. Asim Sarode, Adv.
: Mr. S.K. Jain, Adv. a/w
Mr. R.N. Umarani, Adv.
Mr. R. Mehta, Adv.
Ms. Nisha Chavan, Law Officer.

Respondent No.2

: Ms. Supriya Dangare, Adv.
Mr. P.B. Shelar, Executive Engineer
Khadakwasla Irrigation Division, Pune.

M.A. No.243/2017

Applicant

: Mr. S.K. Mishra, Sr. Adv. i/b
Mr. Chinmay Vaidya, Adv.

Date and Remarks	Orders of the Tribunal
<p>Item Nos.2 & 12 28th November, 2017 Order No.8</p>	<p>In the present execution proceeding, which emanates from the Order passed in Original Application No.2/2013 [Sarang Yadwadkar & Ors. V/s. The Commissioner & Ors.] more particularly Order dated 11th July, 2013 and Order dated 14th January, 2015 passed in M.A. No.52/2015 directing PMC to remove debris lying within Blue Line over 1.35 kms of River Mutha between Vitthalwadi and N.H No.14 (Chainage 0+400 to Chainage 1+750), the PMC and the Irrigation Department had jointly undertaken the exercise to read the location of the Red and Blue Line at site along the stretch of River Mutha from the Map placed before the Principal Bench by the Irrigation Department on the basis of which the directions under execution were issued.</p>

Item Nos.2 & 12
28th November,
2017
Order No.8

Today Mr. P.B. Shelar, Executive Engineer, Khadakwasla Irrigation Department, Pune has placed before us Affidavit dated 27th November, 2017 along with the copy of the said Map Annexure A-2/1 in M.A. No.52/2014 before the Principal Bench and marked as Annexure-B and Google Map Annexure-C.

Learned Counsel appearing on behalf of the Irrigation Department on instructions from Mr. P.B. Shelar submits that the Map at Annexure-B was used as reference map for locating the Red and Blue Line on the site with the help of geo-referencing available at google imagery. She submits that the team of officers engaged in the said exercise of the locating the Red and Blue Line had taken into consideration latitude, longitude and cross-section and, therefore, the constructions/road which are seen falling within the Blue Line in Google Maps are required to be removed and this being execution proceeding, the sanctity of the exercise undertaken by the authorities in identifying the ground location of the Blue Line and Red Line cannot be questioned.

Learned Counsel appearing on behalf of the Applicant, however, questions the outcome of the exercise undertaken by the authorities **to identify Blue Line and Red Line between Chainage 0+400 to Chainage1+750 on account of patent incongruencies.** He invites our attention to the three buildings shown in the Map at Annexure-B between Chainage 1+700 -1+600 and to the Map prepared from the Google Imagery at Annexure-C/3. He points therefrom the shifting of the Blue Line far beyond the said three buildings and bringing within its compass several buildings which were earlier not shown to be falling within the Blue Line as depicted on the Map Annexure-B. He submits that such discrepancy is one such incidence from which one can read that the exercise undertaken by the authorities is riddled with flaws.

Prima facie, we are led to believe that the outcome of this exercise is not free from unexplained incongruencies. We, therefore, pass the following directions **to enable us to dispose off this application in just manner:**

- (i) We constitute a Committee of **1) Sr. Technical Officer, Survey of India, 2) Superintendent Engineer, Irrigation Division, Khadakwasla Pune, and 3) Superintendent Engineer, Building Permission, PMC**

item Nos.2 & 12
28th November,
2017
Order No.8

to visit the site along the stretch of 1.35 Kms of River Mutha between Chainage 0.400 to 1+750, identify and demarcate the location of Blue Line and Red Line on the site with reference to the Map Annexure-B to the Affidavit of the Irrigation Department dated 27th November, 2017 and submit their report before us. Liberty granted to the Applicant to attend the said proceeding of demarcation at site.

- (ii) Learned Counsel appearing on behalf of the PMC seeks time to remove debris falling within Blue Line. Time extended till next date.

Registry to communicate this Order to Survey of India, Pune.
List the case on 16th January, 2018.

....., JM
(Justice U. D. Salvi)

....., EM
(Dr. Nagin Nanda)

**BEFORE THE NATIONAL GREEN TRIBUNAL, WESTERN ZONE
BENCH, PUNE**

Execution Application No.19/2017(WZ)

In

Application No.02/2013

[Disposed of on 11-07-2013]

In the matter of:-

Sarang Yadwadkar & Ors. V/s The Commissioner & Ors.

CORAM: HON'BLE MR. JUSTICE U. D. SALVI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

Present:	Applicant	: Mr. Asim Sarode, Adv. a/w Mr. Sarang Yadwadkar
	Respondent No.1	: Mr. S.K. Jain, Sr. Adv. a/w Ms. S.P. Kinkar, Adv. Ms. Nisha Chavan, Law Officer, PMC Mr. R.N. Umarani, Adv.
	Respondent No.2	: Ms. Supriya Dangare, Adv.
	Respondent No.4	: Ms. Beena Pardesi, Adv.

Date and Remarks	Orders of the Tribunal
<p>Item No.4 14th November, 2017 Order No.6</p>	<p>The Applicant confirms that the direction 38(e) passed in the Judgment/Order dated 11th July, 2013 disposing off Original Application No.2/2013 regarding the plantation on the both the sides of the river has been complied to the extent as revealed in the compliance report dated 14th November, 2017 filed by PMC. The report reveals that 160 trees of different species described therein have been planted along one side of river Mutha in stretch between 800 mts to 1750 mts. As regards the other side of the river Mutha, the learned Counsel appearing on behalf of the PMC on instructions from Ms. Nisha Chavan, Law Officer PMC explains that the stretch along the river is rocky terrain and some portion of it are of private ownership. It is further explained that the PMC will examine the possibility of similar plantation on the other side of the river and would revert back with its report before this Tribunal on the next date.</p> <p>As regards the removal of the debris, learned Counsel appearing on behalf of PMC on instructions submits that 90% of the debris have been removed in the stretch along river Mutha from Chainage 800 mts to 1750 mts except a pole and few trees and 2-3 drainage chambers. He submits that the electric pole if</p>

Item No.4
14th November,
2017
Order No.6

not needed for any purpose will be removed after taking due care of the trees. The Applicant confirms this fact.

As regards the removal of the debris and unauthorised construction falling inside the 'Blue Line', the learned Counsel appearing on behalf of PMC on instructions submits that the stretch along the river Mutha is occupied by the road and the demarcation of the Blue Line at the site has been questioned by the Applicant. According to him, the Irrigation Department pointed out the falling of the Blue Line along the River Mutha at that stretch and the same according to the survey excludes the road from Chainage 400 to 700. Learned Counsel appearing on behalf of the Irrigation Department confirms this fact. In this regard, learned Counsel appearing on behalf of the Applicants in **M.A. No.243/2017 (Sun Planet Welfare Association & Ors Vs Sarang Yadwadkar & Ors)** submits that the stretch excluding the road extends from Chainage 400 to 800 and not 700 as contended by the PMC and the Irrigation Department. The Applicant in person however disagrees with this contention and submits that the road is not excluded from the Blue Line between Chainage 400 to 800.

Learned Counsel appearing on behalf of the Applicant on instructions from the Applicant in person placed before us a map/plan prepared by the Irrigation Department, which was annexed at 2/1 to the affidavit filed before the National Green Tribunal in O.A. No.2/2013.

He submits that the order disposing of the said Application was passed in reference to this particular map/plan and the Irrigation Department as well as PMC is under obligation to read therefrom the location of the Blue Line at the site. Learned Counsel appearing on behalf of PMC submits on instructions from the Mr. Pawaskar, Superintending Engineer, Road Department, PMC that Geo reference mapping was done with reference to the map furnished by the Irrigation Department and exercise of demarcation of Blue Line at the site was done with reference to said Geo reference map/plan so prepared.

Learned counsel appearing on behalf of Irrigation Department seeks time to take instructions as regards the copy of map/plan produced by the Applicant before us and to make

Item No.4
14th November,
2017
Order No.6

submissions in that regard.

List the case on 23rd November, 2017

....., JM
(Justice U. D. Salvi)

....., EM
(Dr. Nagin Nanda)

mk



BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH PUNE

E.A.19/2017 in

O.A. 2/2013

Sarang yadwadkar and othersApplicant

Vs.

Pune Municipal Corporation and others Respondents

MEMO FOR FILING REPORT

As per the order dated 28/11/2017 the Committee Report dated 27/12/2017 has been filed herewith.

Hence this memo.

Date:



He Saram

- 1) Officer Surveyor,
Office of The Director,
Maharashtra & Goa GDC,
Survey of India, Pune-411006.



Ghopade

- 2) Superintendent Engineer,
Pune Irrigation Circle, Pune.



Zenile

- Superintendent Engineer,
Building Permission, PMC.

(Committee members, committee constituted as per order dated 28.11.2017

T.C

[Signature]

NATIONAL GREEN TRIBUNAL
PUNE
FILED
Date 16-1-18

COMMITTEE REPORT

As per the directions of this Hon'ble Tribunal in the Order dated 28/11/2017 a committee comprising of 1) Officer Surveyor, Office of The Director, Maharashtra & Goa GDC, Survey of India, Pune 2) Superintendent Engineer, Pune Irrigation Circle, Pune, 3) Superintendent Engineer, Building Permission, PMC has caused a visit and inspection along the stretch 1.35 kms. of river Mutha between chainage 0/400 to 1/750. The committee has gone to the site on 27/12/2017. A report has been prepared in respect of identification and demarcation of Blue Line and Red line on the site with reference to the Map at Annexure B to the Affidavit of the Irrigation Dept dated 27/11/2017.

As per the liberty granted to the Applicant the Applicant remained present but caused interference in the work of the committee.

1. The Irrigation Department has shown a Map at Annexure B showing the Blue Line and Red Line from chainage 0.400 to 1 + 750 to the Affidavit of the Irrigation Department dated 27/11/2017. Then Irrigation Department has also put up before us the booklet showing the longitude, latitude, cross-sections and geo-referencing available at Google Imagery.

2. The committee with the help of GPS (North Survey and Positioning system) and total station were used for verifying the longitude latitude, cross-sections etc.

3. On behalf of Water Resources Department observations are as below;

It seems that while preparing blue line and red line maps in 2011, only main Mutha river is considered, Nalas, streams and their adjoining low laying areas near confluence with Mutha river at this point are not considered.

After comparing the Map at Annexure B and verifying it with the longitude, latitude, cross-sections and geo-referencing available at Google Imagery so also after taking into consideration the streams, nalas and their adjoining low laying areas at this point of Mutha river, the longitude and latitude specifically provided in the flood line map prepared in May 2017 along with the precise reduced level.

The identification and demarcation of Blue Line and Red Line done at the site has been done in accordance with the precise reduced levels (RL) of blue line & red line shown in Annexure B map of 2011 and the same are considered to be correctly identified and demarcated. Streams and nalas joining the river has been taken into consideration while preparing flood line map without changing blue line and red line reduced levels (RL) in the year 2017 while taking reference and help of geo-referencing available at Google Imagery, the variation can be seen in the Map prepared in 2011 and demarcation of Blue Line and Red Line on the Google Map.

4. On behalf of Pune Municipal Corporation and Survey of India following observation are made after site visit.

It is observed that blue and red line which was shown by Irrigation Department in annexure B between ch.0.400 to 1+750 and what was observed during site visit the position of blue line and red line with reference to latitude and longitude map between Ch.400m to 525m and 1300m to 1750 m is differ. The difference of same may be observed by these two maps i.e. Annexute B map 2011 by Irrigation Department and latest google imaginary map with latitude and longitude prepared by Irrigation Department. The reasoning behind these difference are stated by Irrigation Department in their statement in Sr.No.3 of this affidavit.

5. We committee members submit that,

With reference to longitude, latitude in geo reference drawing is found correct onsite by instrumentation survey. Instead of earlier maps as per with annexure B, the geo references map is more correct according to site survey.

Both copy's annexure B and Google imagery drawing maps attached here with separately.

Hence this report.

Date:



The Surveyor
1) Officer Surveyor,
Office of The Director,
Maharashtra & Goa GDC,
Survey of India, Pune-411006.



Chopade
Superintendent Engineer,
Pune Irrigation Circle, Pune.

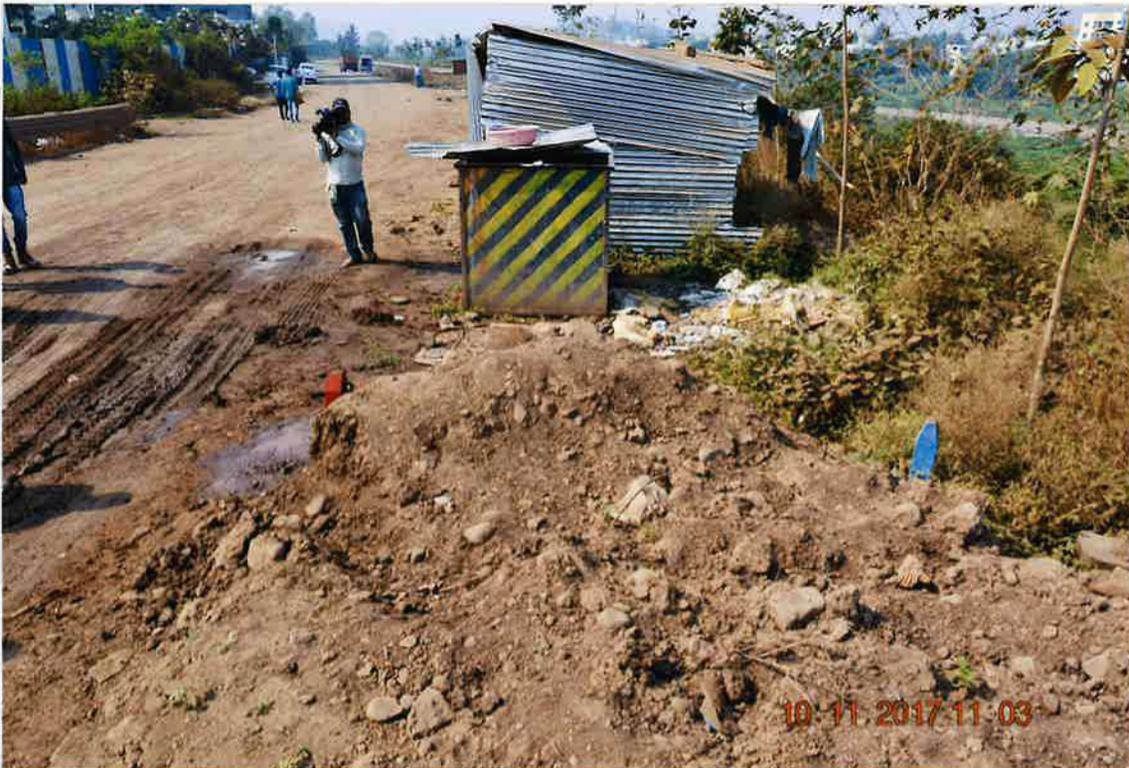


Sehgal
Superintendent Engineer,
Building Permission, PMC.

(Committee members, committee constituted as per order dated 28.11.2017)



Erroneous flood line marking at site at chainage 750M.
Note - Red Flood line and Blue Flood line shown at the same level.



This entire road needs to be demolished and shifted away from the river bed (chainage 400M to 750M)

6



Executive Engineer
 Khadakwasla Irrigation Division, Pune-11.

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
(NGT) ZONAL BENCH AT PUNE

^{EA}
Ori. Application 16/2018

Sarang yadwadar and others

- Applicants

vs.

The State (Government of Maharashtra)
And others

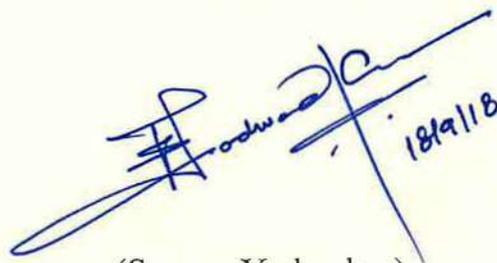
-Respondents

Application for production of some important documents (Maps)

The applicant are filing some important maps regarding original flood lines defined by irrigation department and some maps showing flood lines identified as per Lat-long technique.

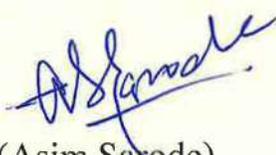
The applicants have served copies of maps to all respondents for the ready reference of NGT, hard copies of said maps along with scanned soft copies are being submitted along with these application.

Pune
Date: 18/09/2018



(Sarang Yadwakar)
Applicant No.1.

5841/RG/DAX
26/9/18

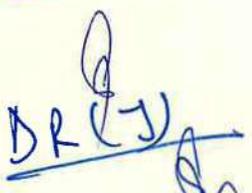


(Asim Sarode)
Advocate for the applicant

Ld. RG

64/DAX/RG
27.9.18

Pl put up into the
27/9/18



27.9.18
Consentant (S)



27/9/18

ok

8

To,
The Commissioner
The Pune Municipal Corporation
Maps (5 nos.) filed by Applicants before NGT in Case No. EA 16/2018.
Encl- As above



To,
Chief Engineer,
Khadakwasla Irrigation Division,
Maps (5 nos.) filed by Applicants before NGT in Case No. EA 16/2018.
Encl- As above

RA 9010019L
आवक लिपीक
खडकवासला पाटबंधारे विभाग
सिंचन भवन, पुणे. ११

To,
The Regional Officer
Maharashtra Pollution Control Board,
Maps (5 nos.) filed by Applicants before NGT in Case No. EA 16/2018.
Encl- As above

Received
SB
10/9/18
Clerk
Regional Office
M.P.C.B. Pune

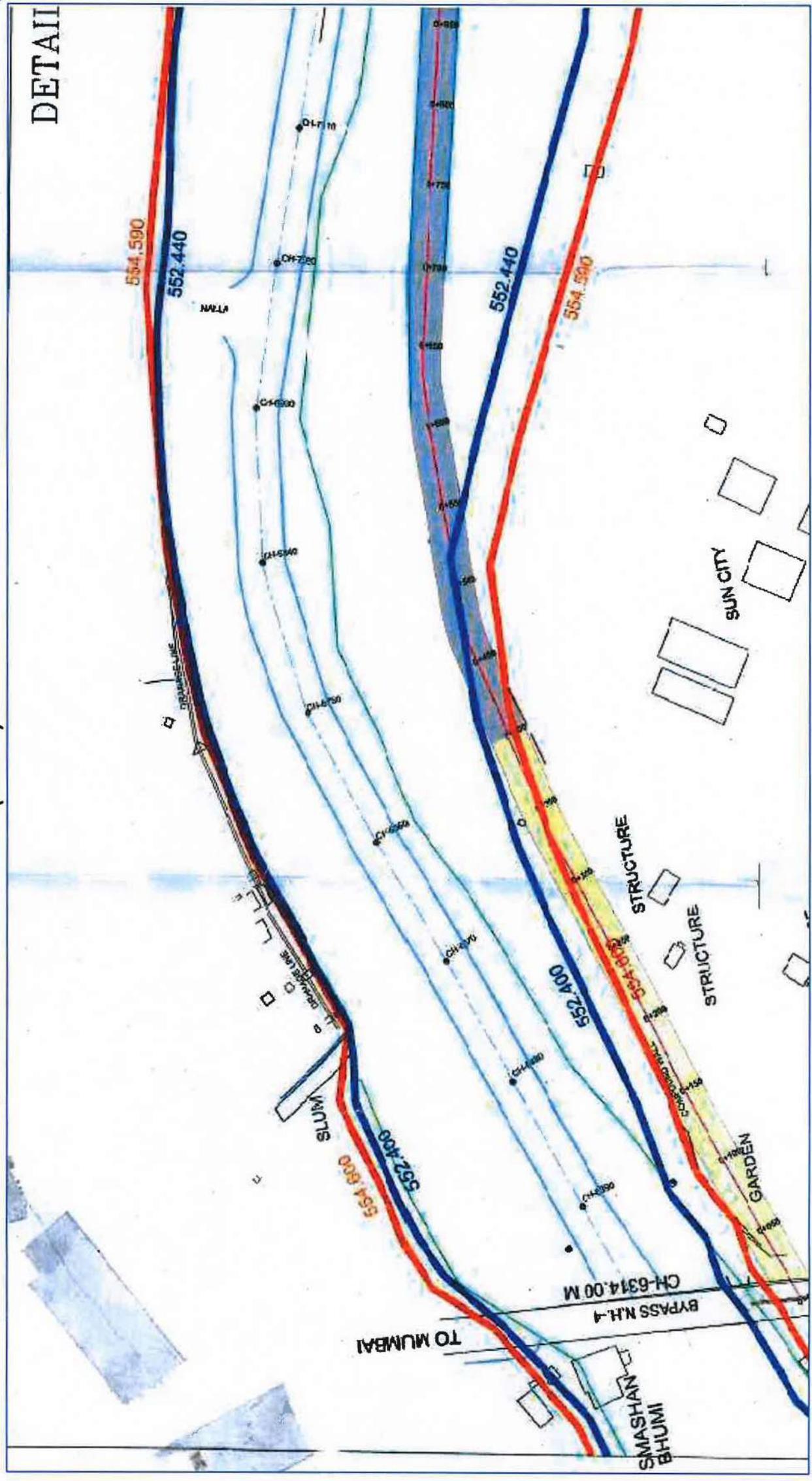
To,
Chief Engineer,
Public Works Department(PWD)
Maps (5 nos.) filed by Applicants before NGT in Case No. EA 16/2018.
Encl- As above

9010171
आवक लिपीक
पुणे महानगरपालिका,
पुणे-४११००५

1

BEFORE THE NATIONAL GREEN TRIBUNAL (DELHI) IN OA 132/2018 AND EA 16/2018

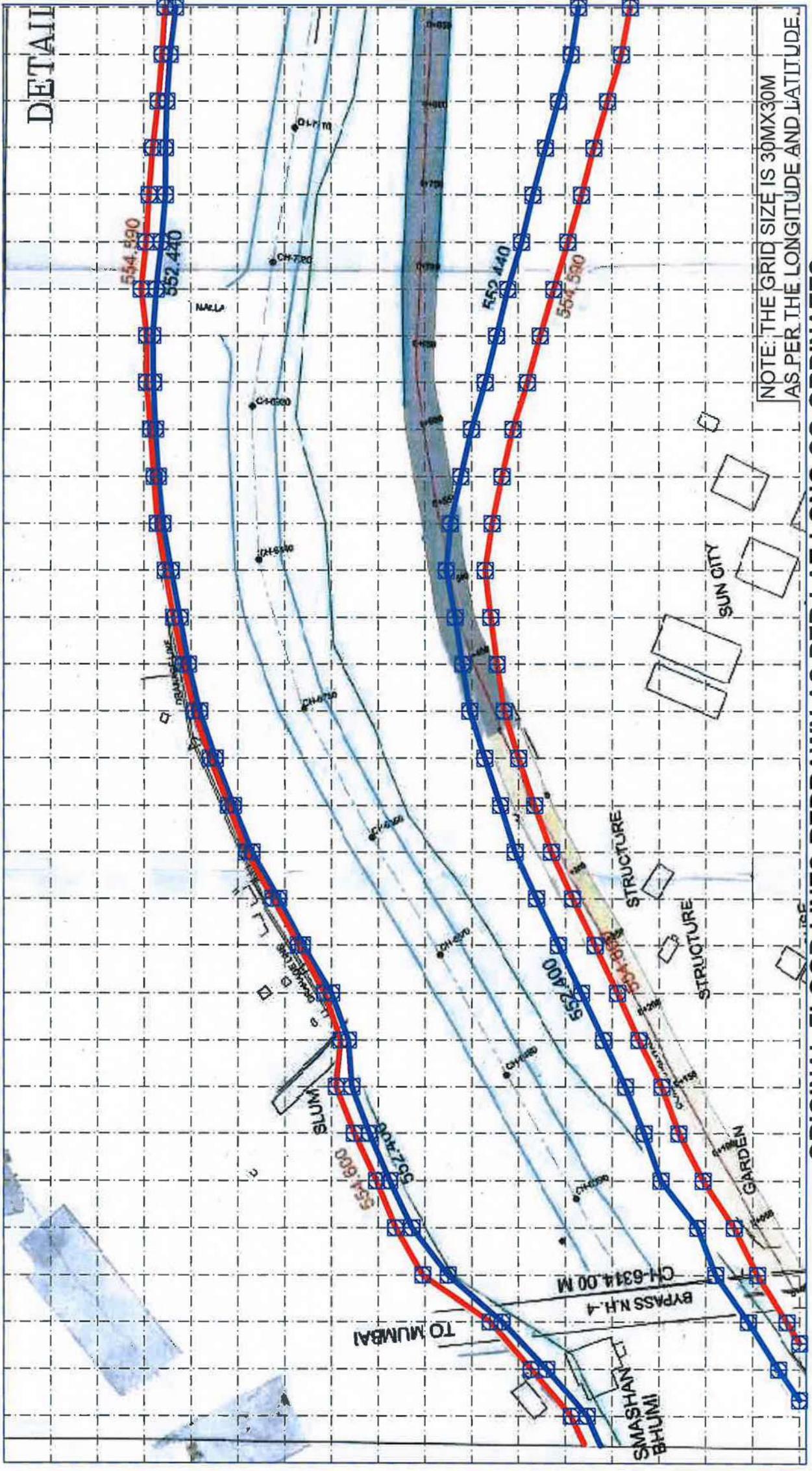
DETAIL



ORIGINAL FLOOD LINES AS DEFINED BY IRRIGATION DEPARTMENT IN 2011

4

BEFORE THE NATIONAL GREEN TRIBUNAL (DELHI) IN OA 132/2018 AND EA 16/2018

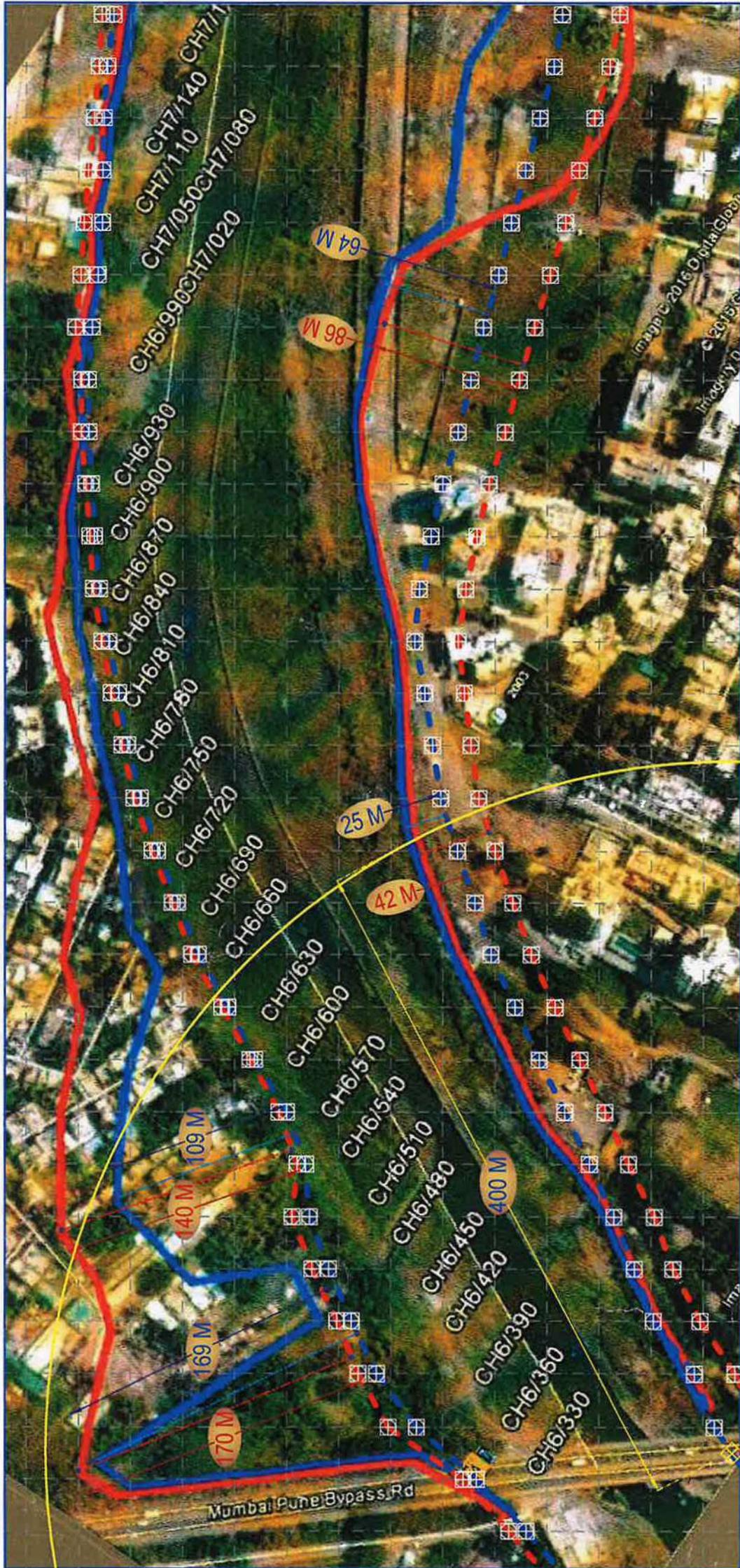


DETAIL

ORIGINAL FLOOD LINES REDRAWN AS PER LAT-LONG CO-ORDINATES

5

BEFORE THE NATIONAL GREEN TRIBUNAL (DELHI) IN OA 132/2018 AND EA 16/2018



ORIGINAL FLOOD LINES AS PER LAT-LONG AND FLOOD LINES SHOWN ON DEVP. PLAN MAPS.

CENTER OF THE CIRCLE

NOTE: THE GRID SIZE IS 30MX30M AS PER THE LONGITUDE AND LATITUDE.

13

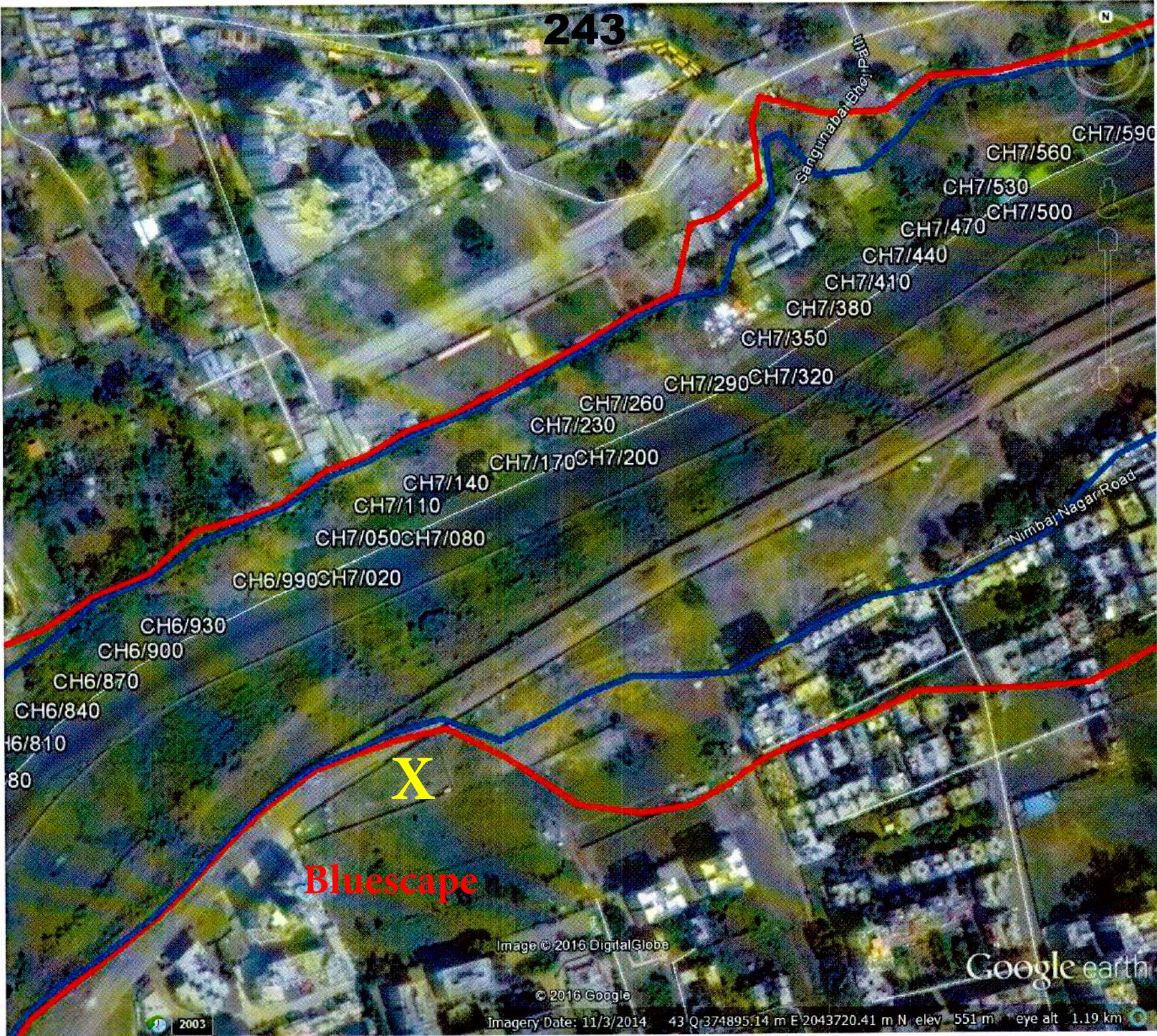
Available on website also
**STUDY DONE AS PER NGT WZ
PUNE ORDER**
by Survey of India, Irrigation
Dept. Pune and Pune Municipal
Corporation

242




Executive Engineer
Khadakwasla Irrigation Division, Pune-11.

243



Bluescape

X

Executive Engineer
Khadakwasla Irrigation Division, Pune-11.

Image © 2016 DigitalGlobe

© 2016 Google

Google earth

2003

Imagery Date: 11/3/2014 43 Q 374895.14 m E 2043720.41 m N elev 551 m eye alt 1.19 km

Chainage continued NOT relevant to BLUESCAPE project

244



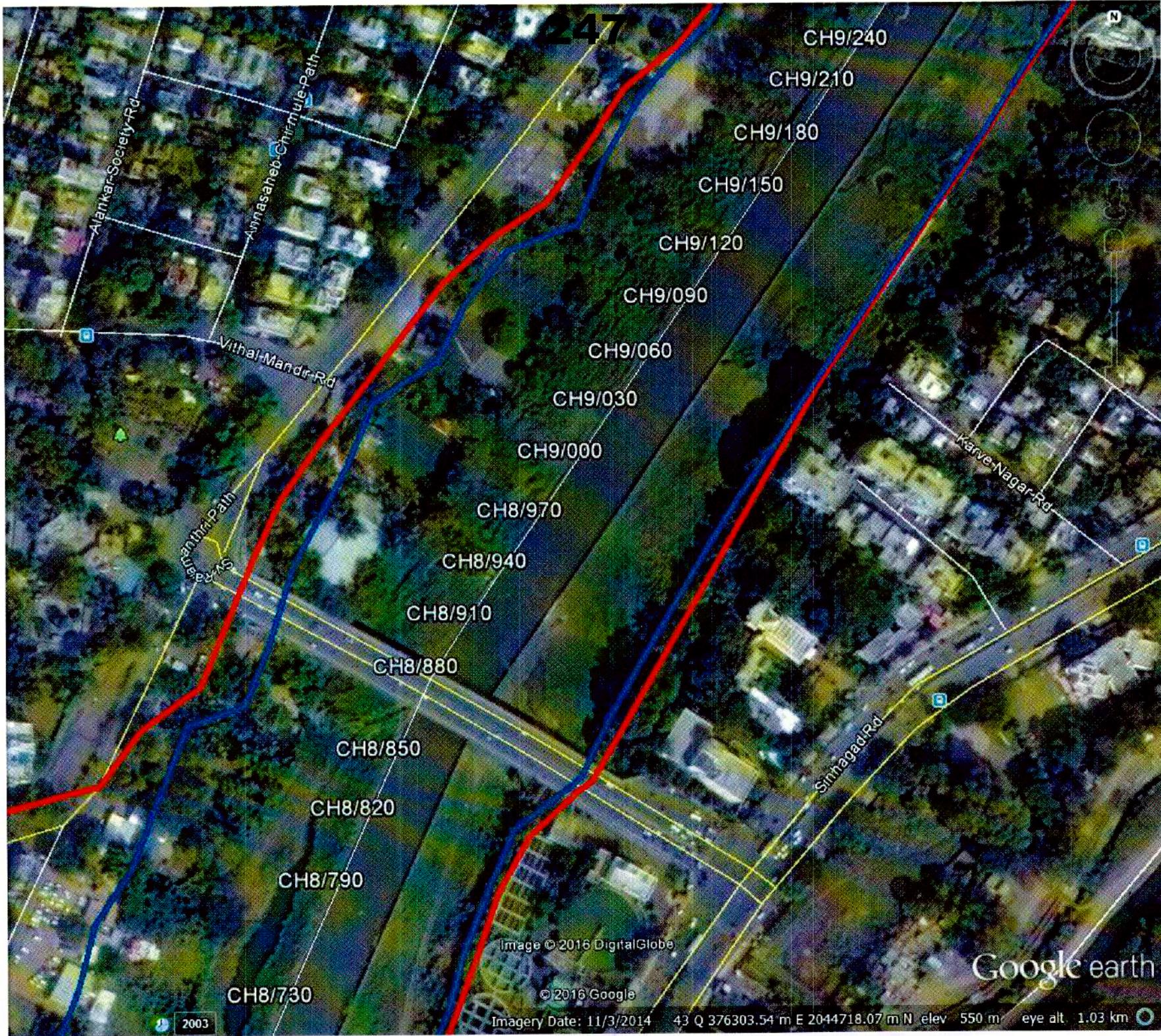
Executive Engineer
Khadakwasla Irrigation Division, Pune-11.



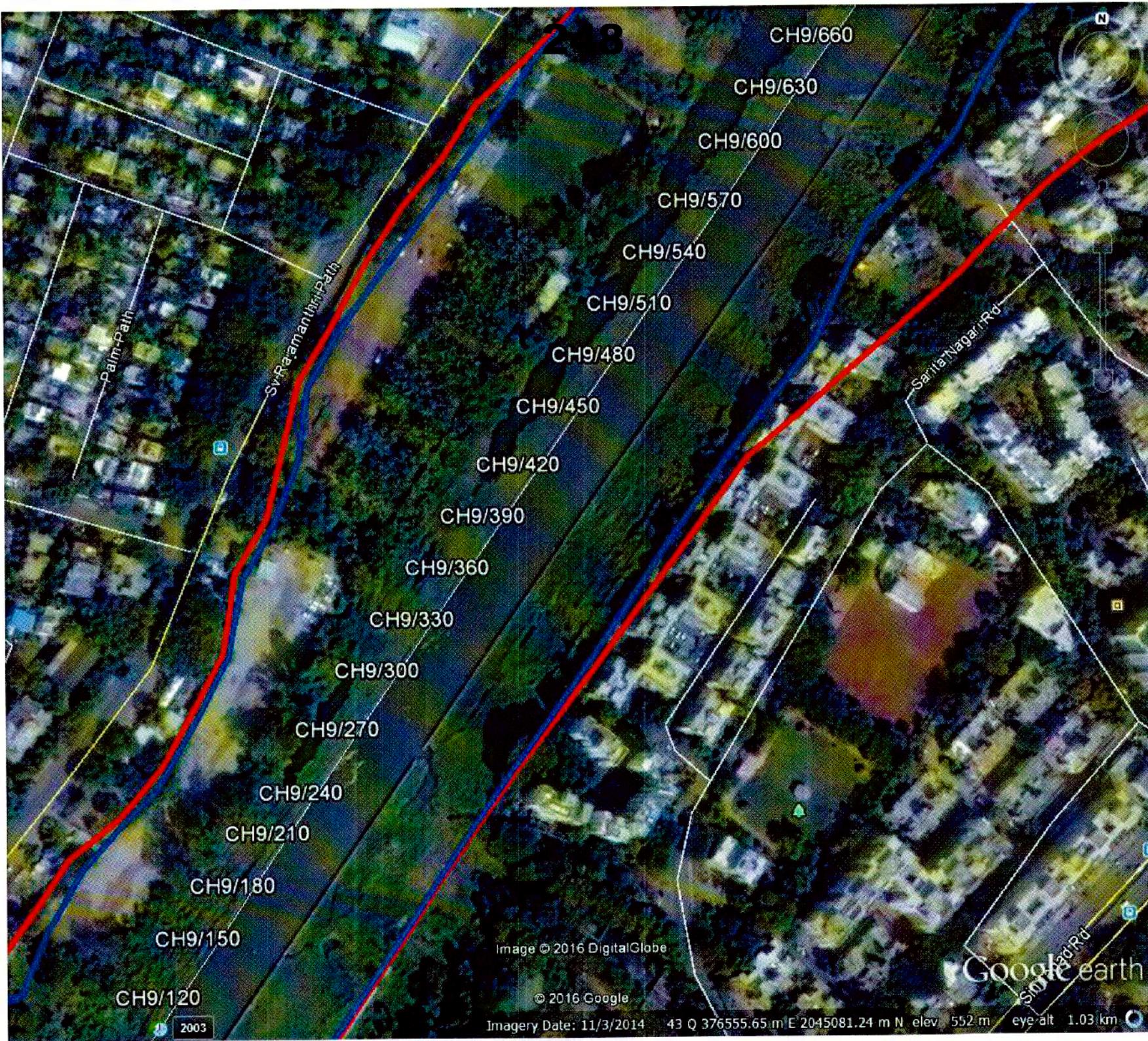
[Signature]
Executive Engineer
Khadakwasla Irrigation Division, Pune-11.



108
 Executive Engineer
 Khadakwasla Irrigation Division, Pune-11.



Executive Engineer
Khadakwasla Irrigation Division, Pune-11.




Executive Engineer
Khadakwasla Irrigation Division, Pune-11.

249

Sri Rajmanthra Path

Kanhan-Peth



© 2016 Google
Image © 2016 DigitalGlobe

Google earth

2003

Imagery Date: 11/3/2014 43 Q 376803.47 m E 2045408.87 m N elev 550 m eye alt 941 m


Executive Engineer
Khadakwasla Irrigation Division, Pune-11.



10/27
Executive Engineer
Khadakwasla Irrigation Division, Pune-11.

**Detour of Lines
which will NOT
help river flow.
Rather GoM /
PMC will have
to take flood
control
measures by
training the
river sides
based on these
Lines**

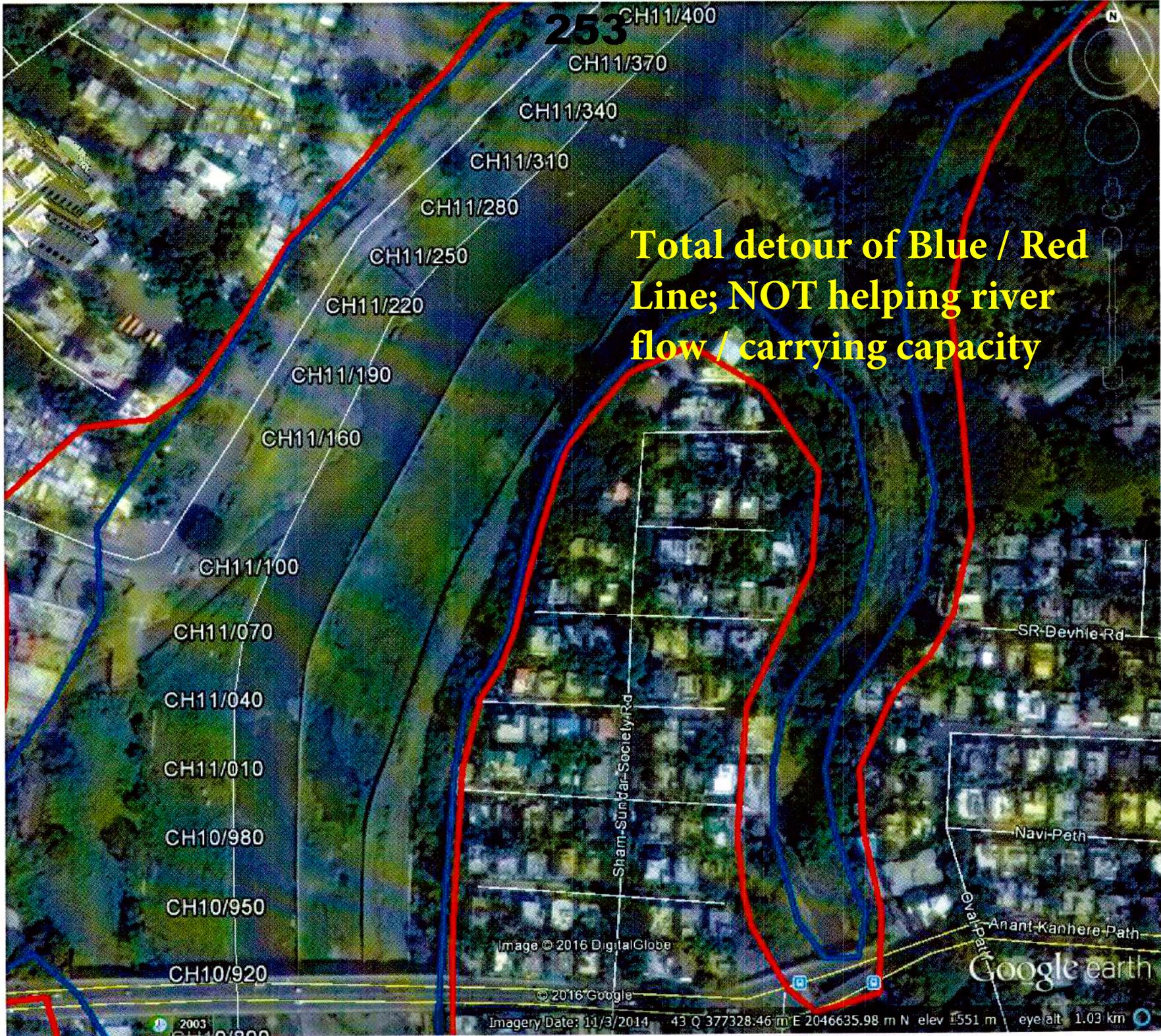


887
Executive Engineer
Khadakwasla Irrigation Division, Pune-11.

**Detour of Lines
which will NOT
help river flow**



Executive Engineer
Khadakwasia Irrigation Division, Pune-11.

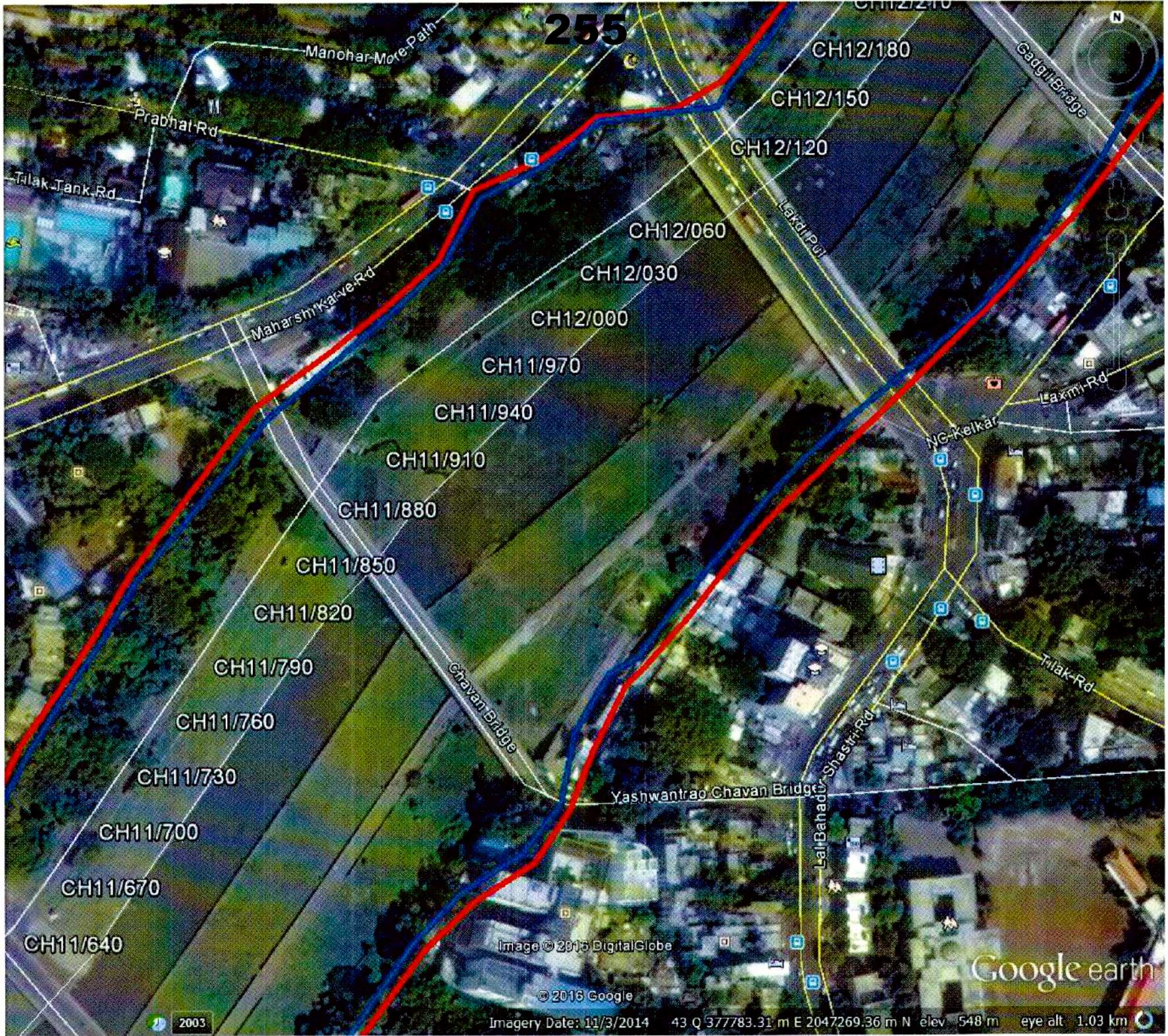


Total detour of Blue / Red Line; NOT helping river flow / carrying capacity

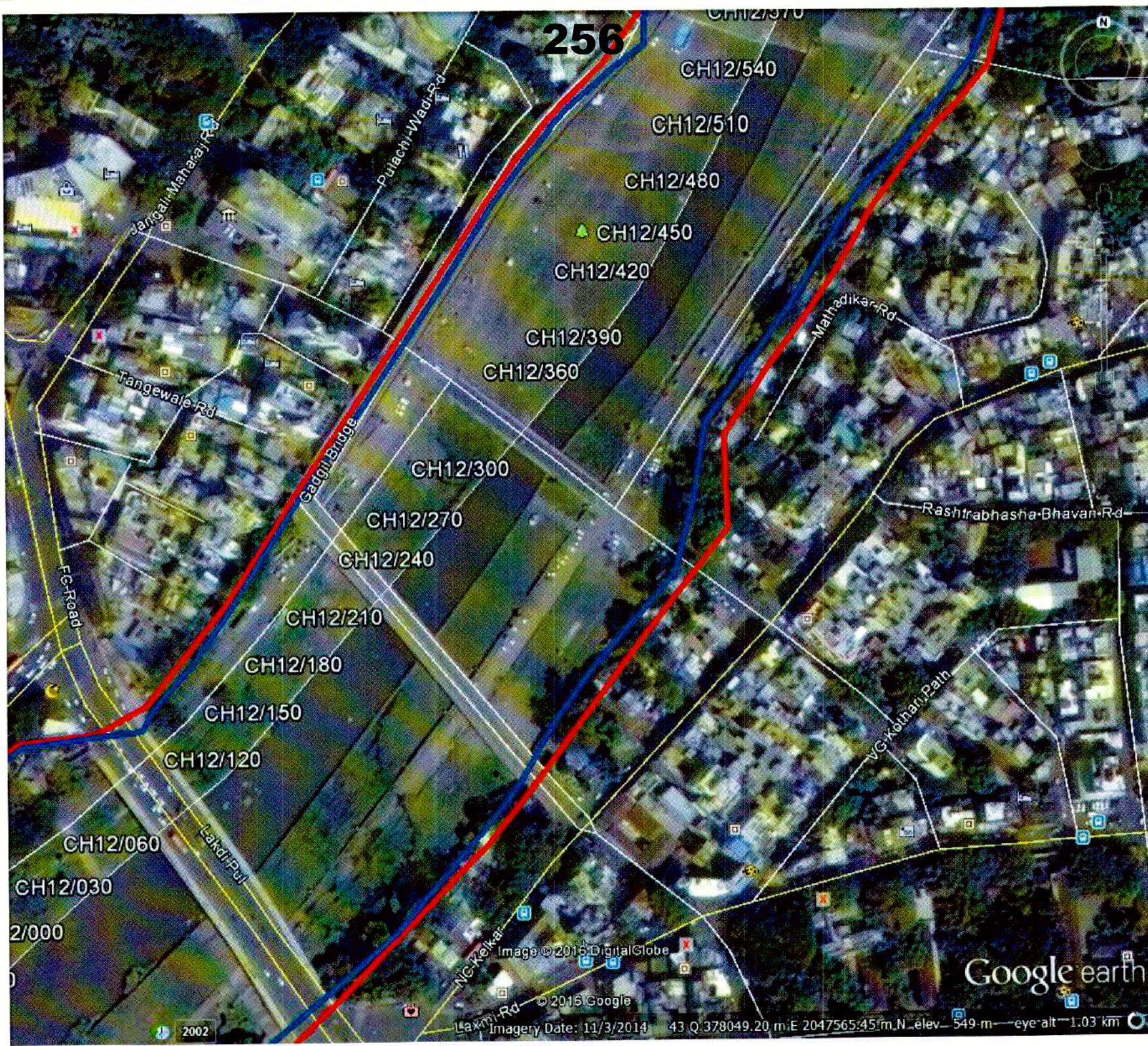
Executive Engineer
Khadakwasla Irrigation Division, Pune-11.



Executive Engineer
Khadakwasla Irrigation Division, Pune-11.



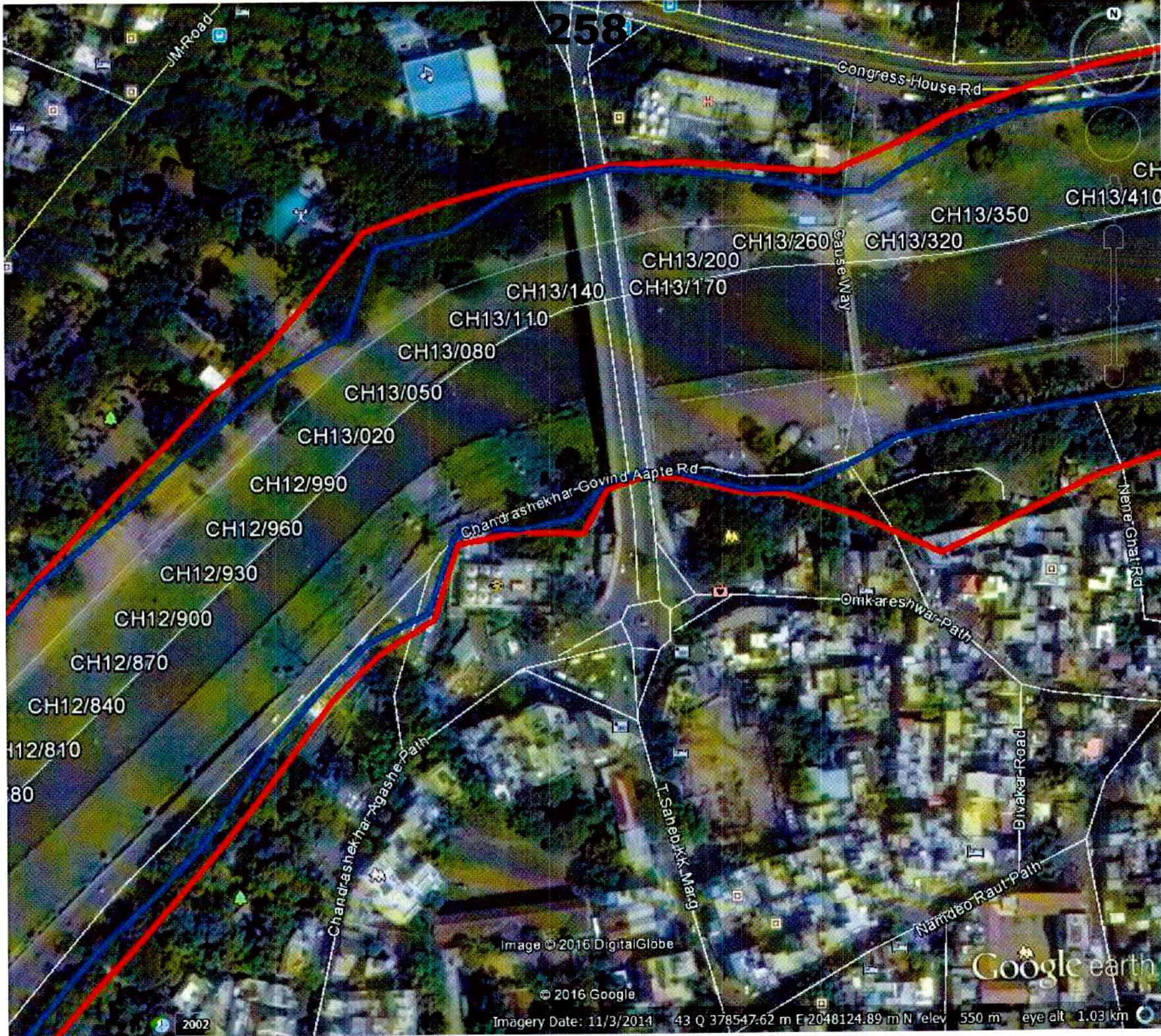
Executive Engineer
Khadakwasla Irrigation Division, Pune-11.



Executive Engineer
 Khadakwasla Irrigation Division, Pune-11.



Executive Engineer
 Khadakwasla Irrigation Division, Pune-11.




 Executive Engineer
 Khadakwasle Irrigation Division, Pune-41.

259

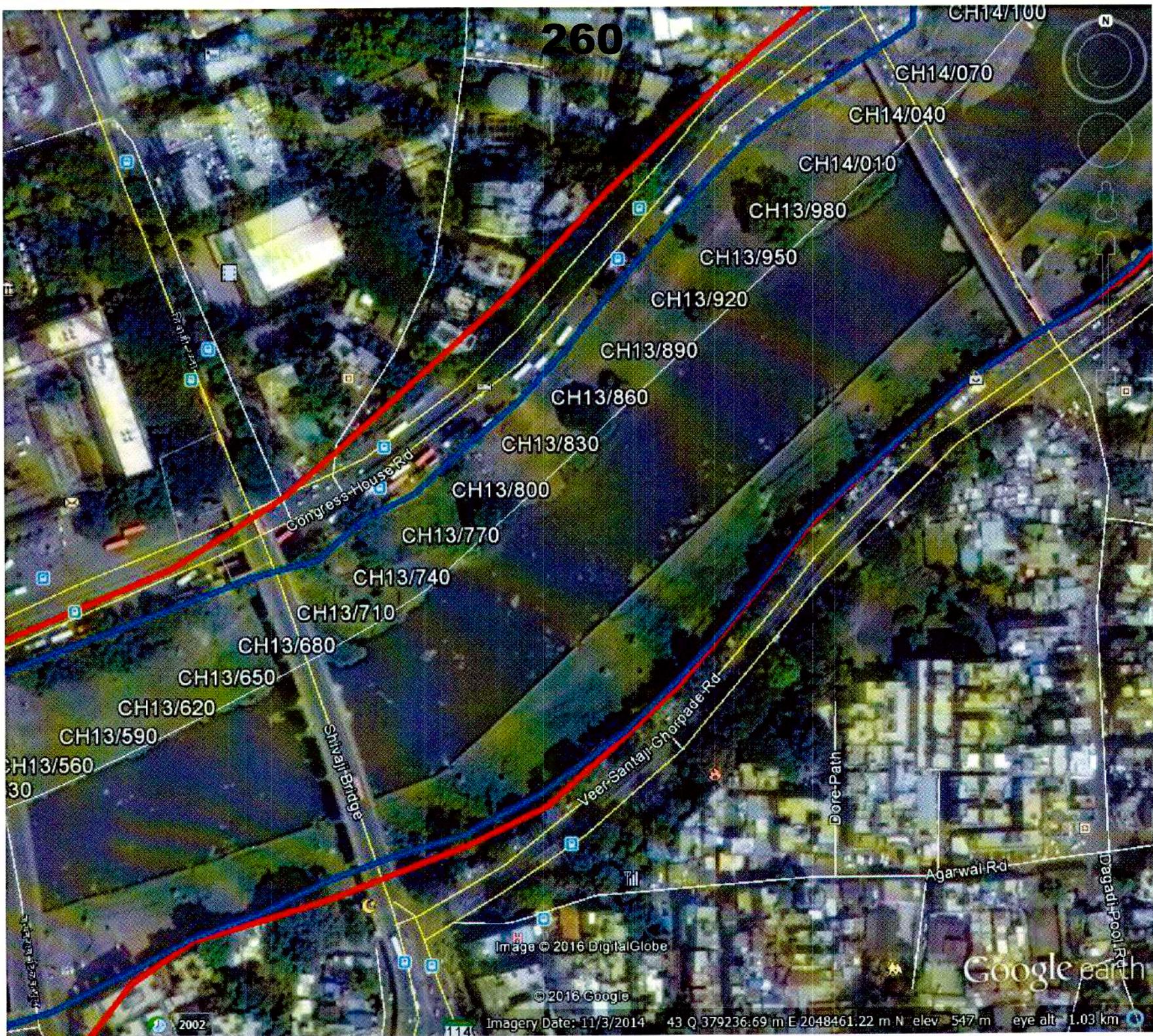


Executive Engineer
 Khadakwasla Irrigation Division, Pune-11,

Google earth

Image © 2016 DigitalGlobe - Path
 © 2016 Google
 Imagery Date: 11/3/2014 43 Q 378815.75 m E 2048238.94 m N elev 545 m eye alt 1.03 km

2002




Executive Engineer
Khadakwasla Irrigation Division, Pune-11.



261

Nyaymurti-Ranade Path

CH14/490

CH14/460

CH14/430

CH14/400

CH14/370

CH14/340

CH14/310

CH14/280

CH14/250

CH14/220

CH14/190

CH14/160

CH14/130

CH14/100

CH14/070

CH14/040

CH14/010

CH13/980

CH13/950

3/920

Veer Santaji Chorpade Rd

Image © 2016 DigitalGlobe

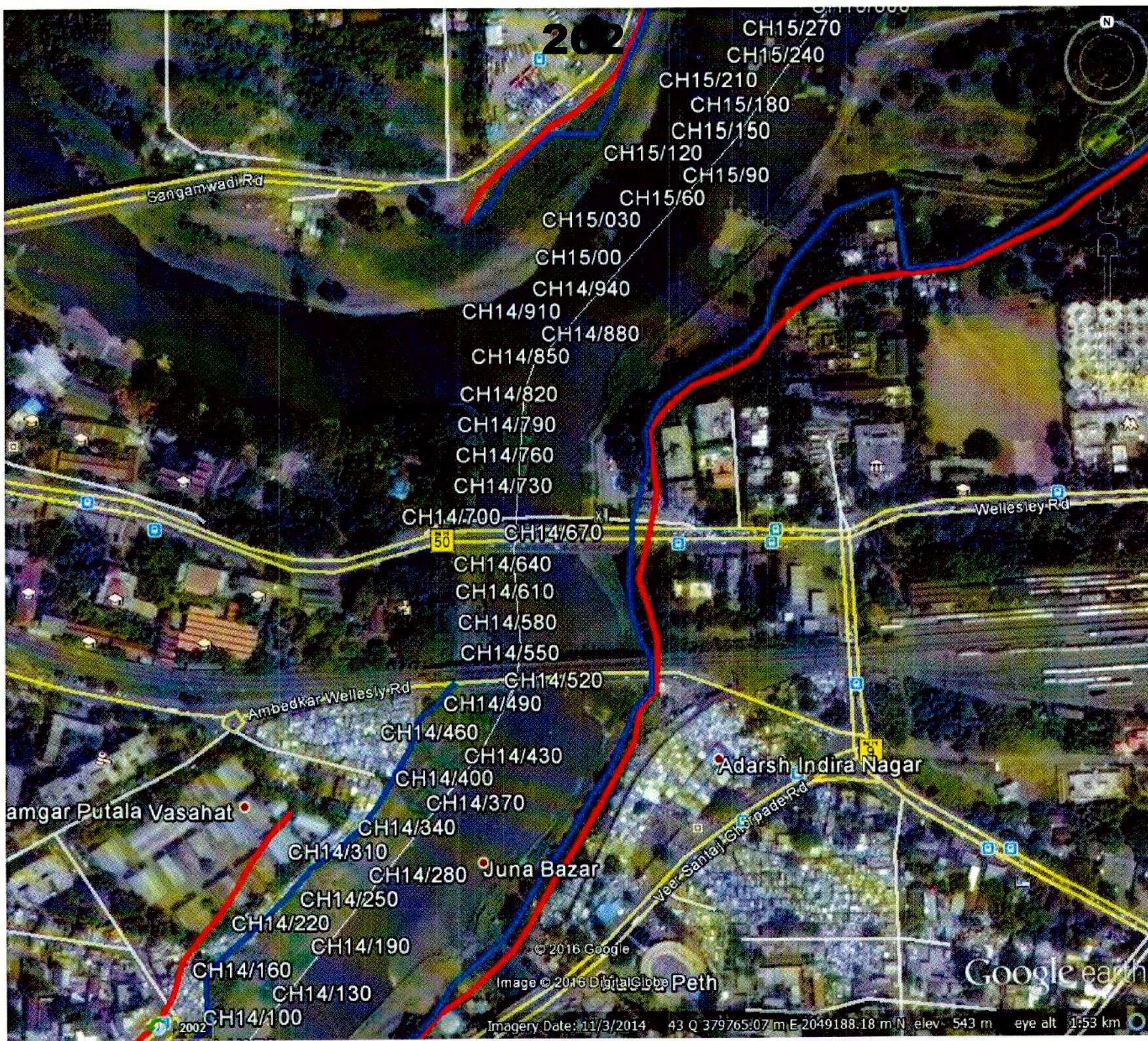
© 2016 Google

Imagery Date: 11/3/2014

43 Q 379564.36 m E 2048769.92 m N elev 542 m eye alt 1.03 km

Google earth

Executive Engineer
Khadakwasla Irrigation Division, Pune-11.



Executive Engineer
Khadkwashe Irrigation Division, Pune-II.



263

CH15/570

CH15/540

CH15/510

CH15/480

CH15/450

CH15/420

CH15/390

CH15/360

CH15/330

CH15/300

CH15/270

CH15/240

CH15/210

CH15/180

CH15/150

CH15/120

CH15/90

CH15/60

CH15/030

CH15/00

CH14/970

CH14/940

CH14/910

CH14/880

CH14/850

CH14/820

CH14/790

Sangamwadi Rd



87

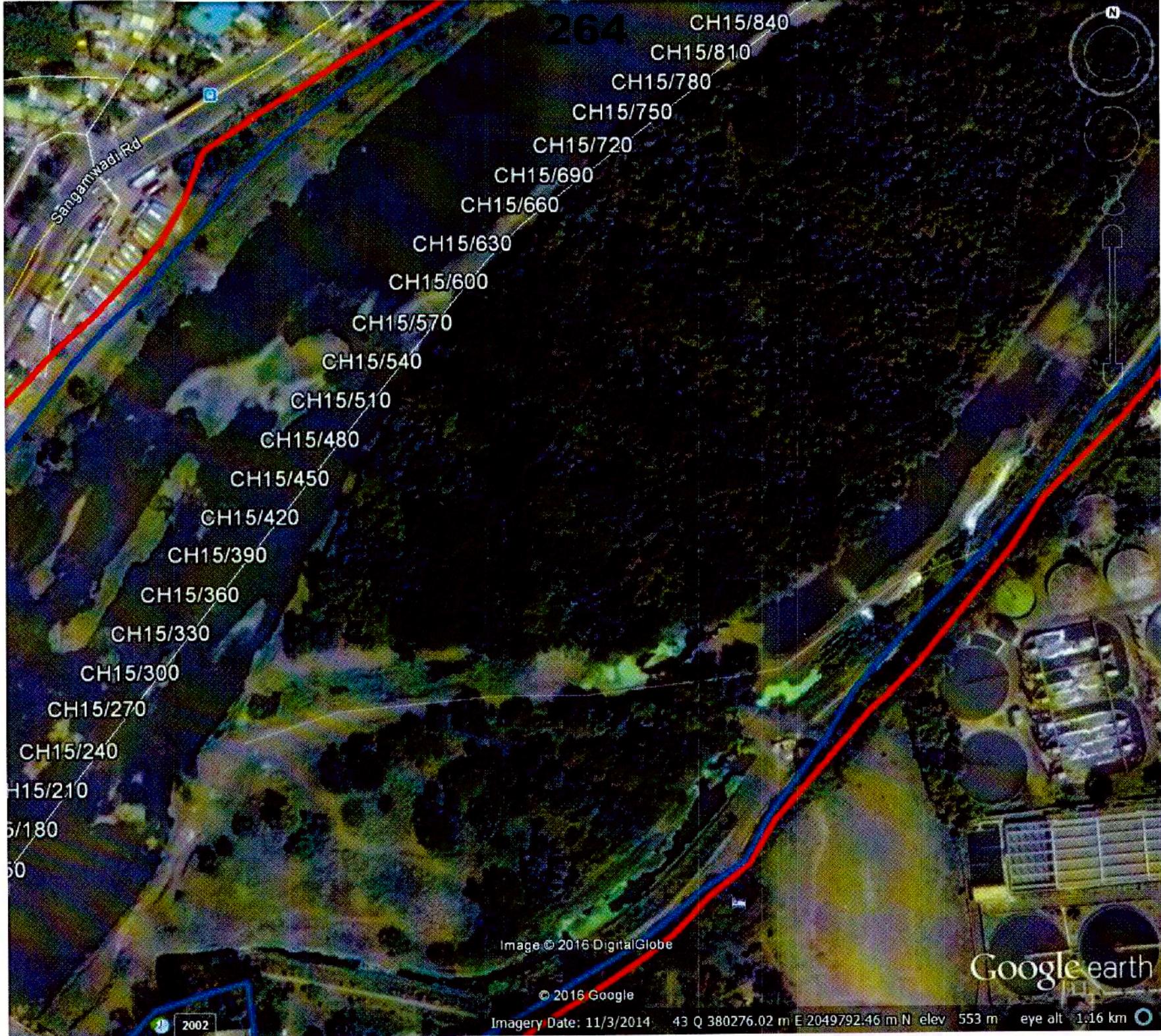
Executive Engineer
Khadakwasla Irrigation Division, Pune-11.

Image © 2016 DigitalGlobe

© 2016 Google

Imagery Date: 11/3/2014 43 Q 379985.07 m E 2049603.97 m N elev 542 m eye alt 1.16 km

Google earth



264
CH15/840
CH15/810
CH15/780
CH15/750
CH15/720
CH15/690
CH15/660
CH15/630
CH15/600
CH15/570
CH15/540
CH15/510
CH15/480
CH15/450
CH15/420
CH15/390
CH15/360
CH15/330
CH15/300
CH15/270
CH15/240
CH15/210
CH15/180
CH15/150

Sangamwadi Rd



807
Executive Engineer
Khadakwasia Irrigation Division, Pune-11.

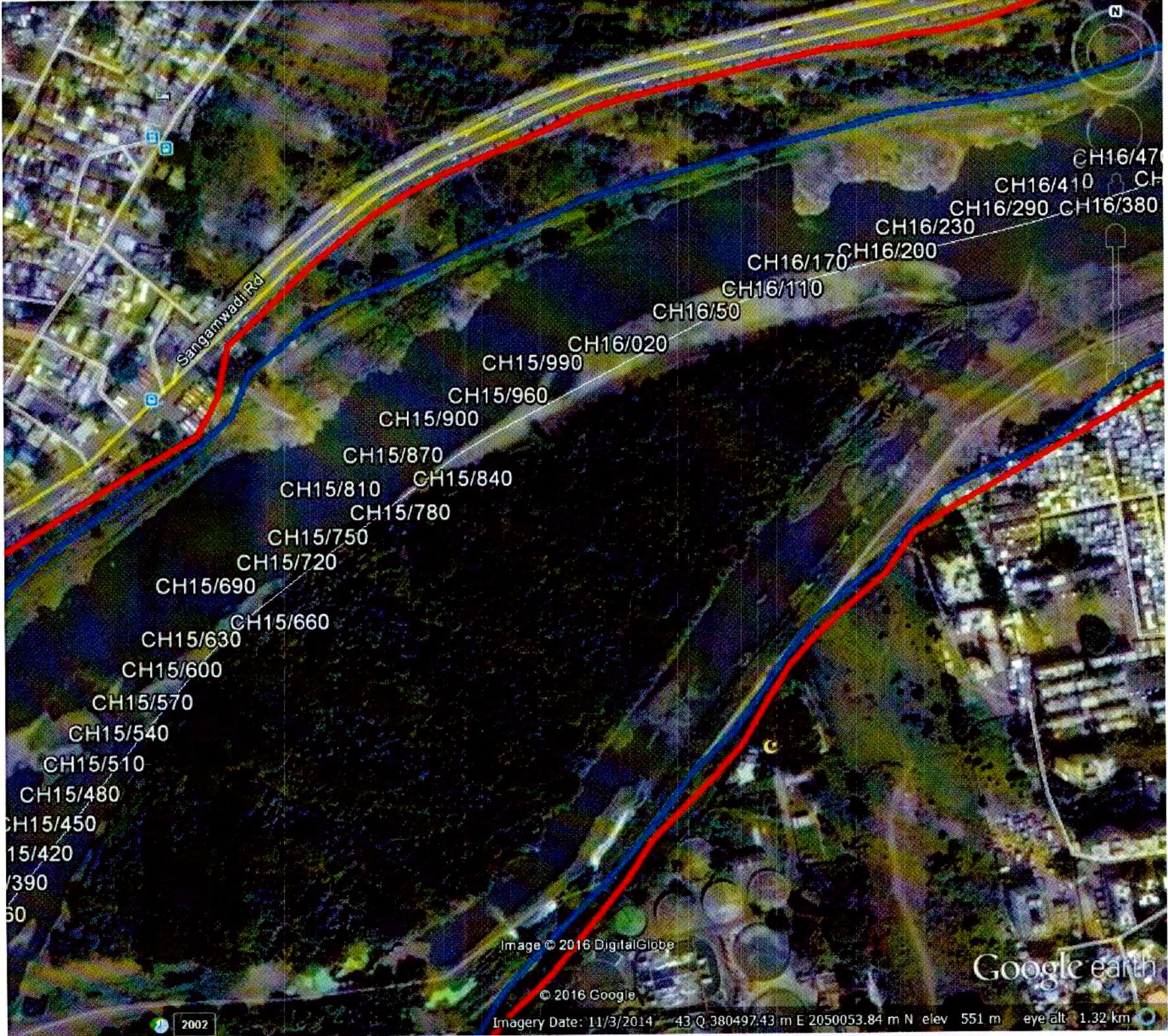
Image © 2016 DigitalGlobe

© 2016 Google

Google earth

Imagery Date: 11/3/2014 43 Q 380276.02 m E 2049792.46 m N elev 553 m eye alt 1.16 km

2002




Executive Engineer
Khadakwasia Irrigation Division, Pune-11.



Executive Engineer
Khadkarni Pradhikaran, Pune-11.

8/2

267



267
 17/190
 17/310
 17/340
 17/370
 17/430
 17/460
 17/490
 17/520
 17/580
 17/610
 17/700

T.C



2002

Imagery Date: 11/3/2014 43 Q 381793.46 m E 2050619.80 m N elev 547 m eye alt 1.32 km

2019 SCC OnLine NGT 47

In the National Green Tribunal[†]

(BEFORE RAGHUVENDRA S. RATHORE, MEMBER (JUDICIAL) AND SATYAWAN SINGH GARBYAL,
EXPERT MEMBER)

Sarang Yadwadkar and Others ... Applicant(s);

Versus

Commissioner, Pune Municipal Corporation and Others ...
Respondent(s).

Execution Application No. 16 of 2018 (M.A. No. 674 of 2018, M.A. No. 243 of 2017
(WZ)), Earlier E.A. No. 19 of 2017 (WZ) and O.A. No. 02 of 2013

Decided on January 3, 2019

Advocates who appeared in this case:

Mr. Asim Sarode, Advocate, Mr. Sangram Singh R. Bhonsle and Ms. Samridhi S. Jain, Advocates in M.A., for the Applicant(s);

Mr. Mukesh Verma, Advocate for MPPCB, Mr. S.K. Jain, Mr. N. Charan and Ms. Sunita Kinkar, Advocates for R-1 and Ms. Supriya Dangare, Advocate for R-3, for the Respondent(s).

ORDER

1. Heard the Learned Counsels on the Execution Application.

2. This Execution Application has been filed in respect of order dated 11th July, 2013. After considering the Execution Application and the replies filed by the respondents, we are of the considered opinion that substantial compliance has been made.

3. Consequently, we dispose of this Execution Application No. 16 of 2018.

M.A. No. 674 of 2018 in M.A. No. 243 of 2017

4. These Applications do not survive for consideration as the main application itself stands disposed of.

5. Thus, M.A. No. 674 of 2018 in M.A. no. 243 of 2017 stand disposed of accordingly.

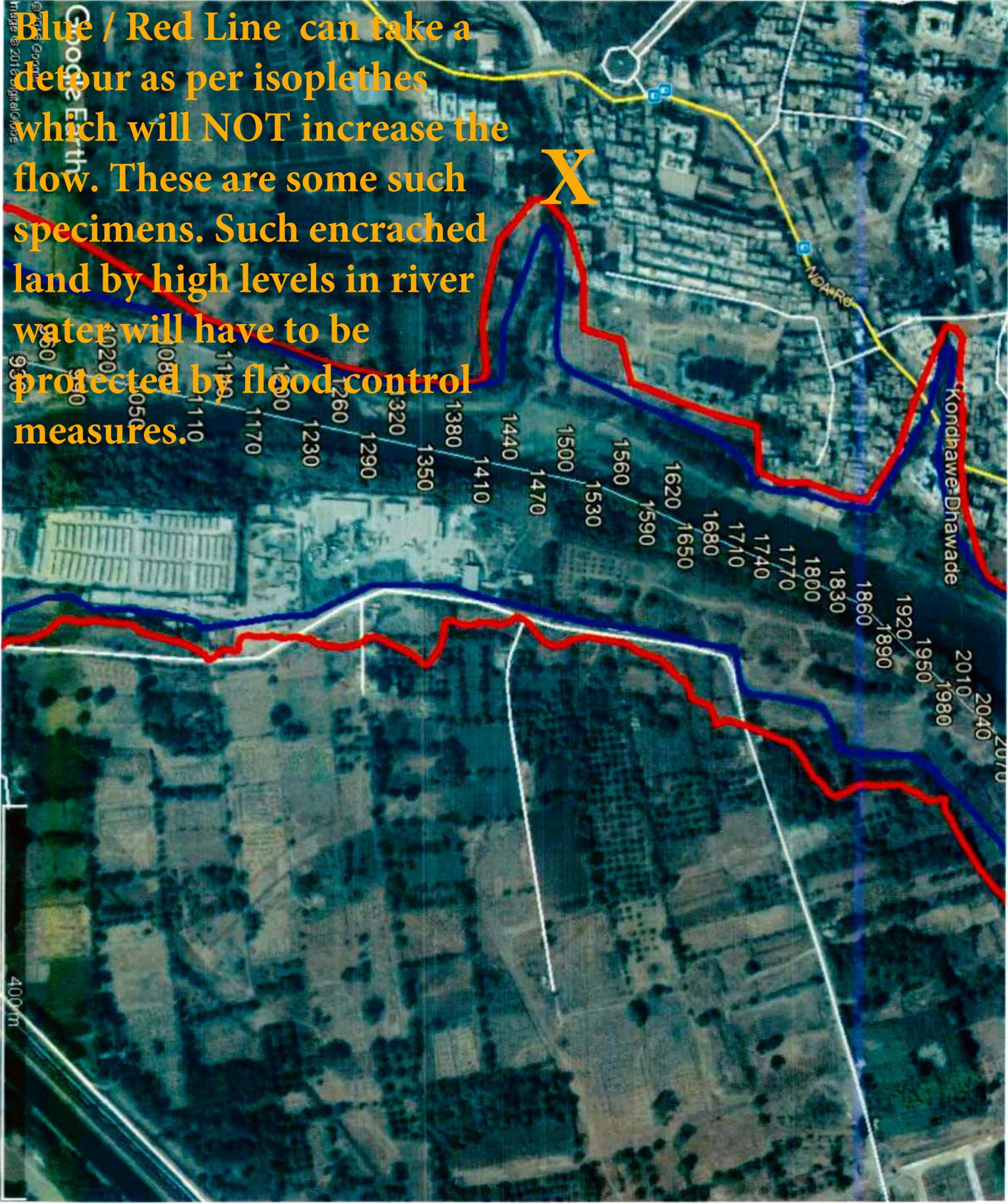
[†] Principal Bench at New Delhi



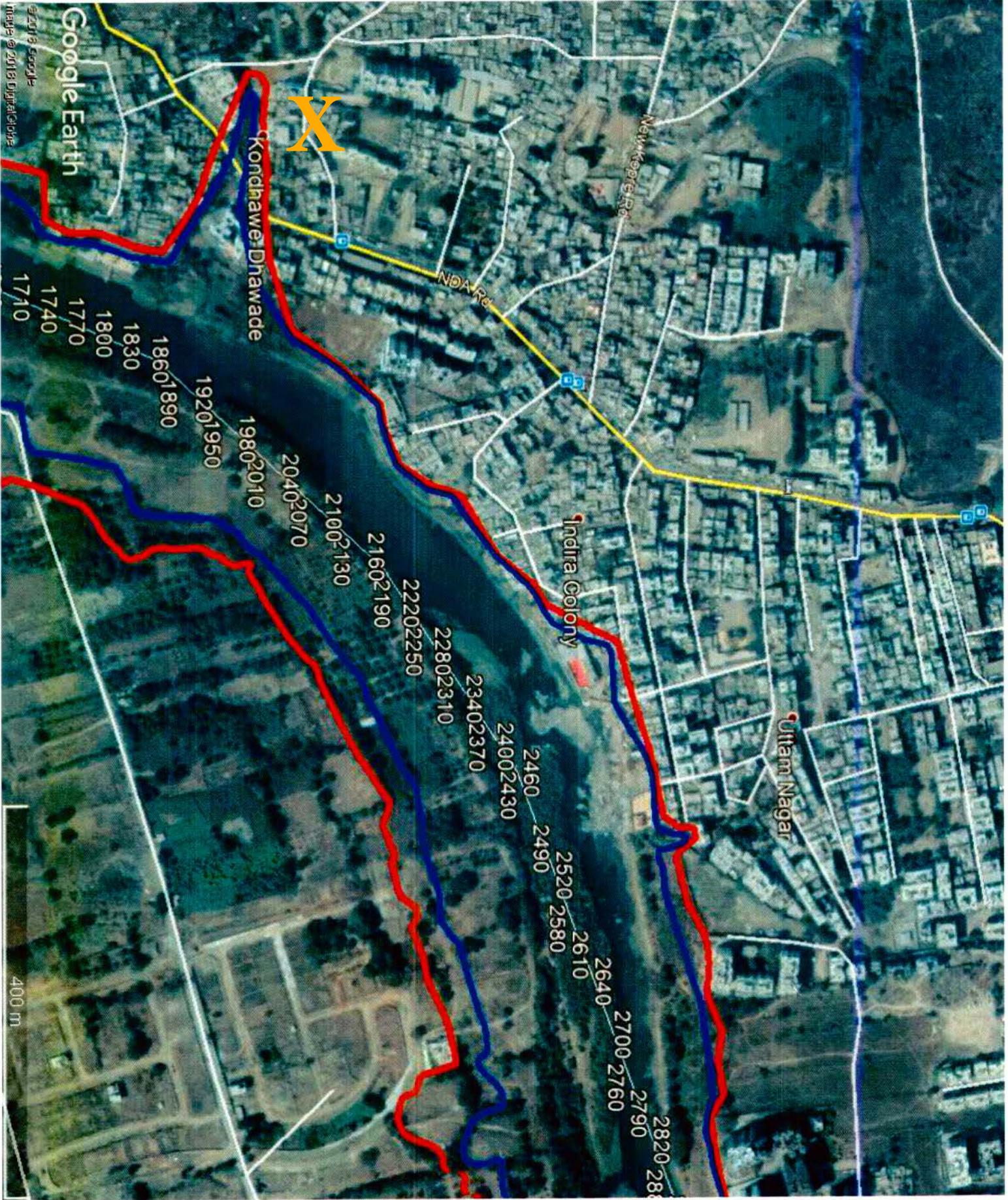
[Signature]
 Executive Engineer
 Khadakwasla Irrigation Division, Pune-11.

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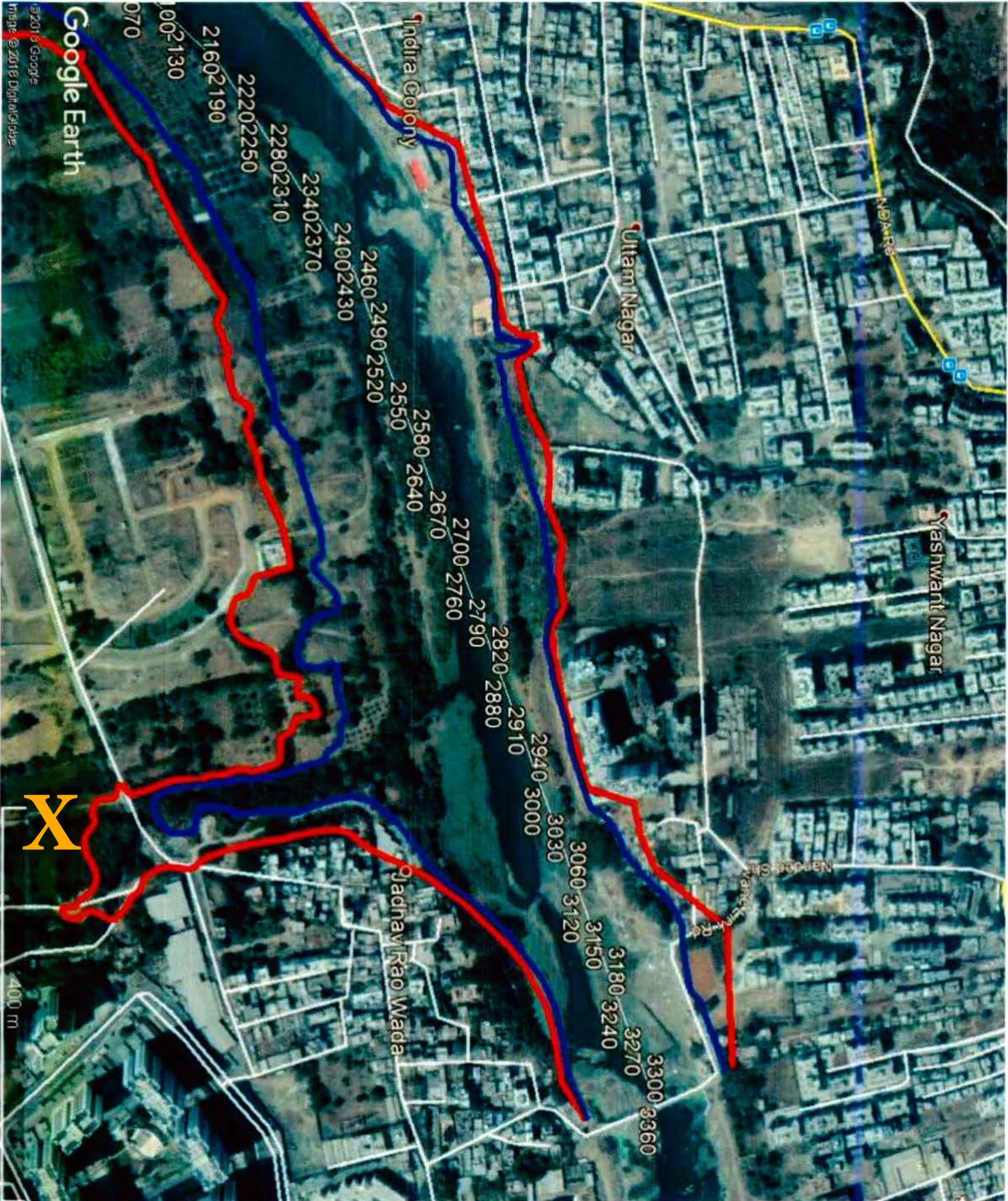
Blue / Red Line can take a detour as per isoplethes which will NOT increase the flow. These are some such specimens. Such encrached land by high levels in river water will have to be protected by flood control measures.



Executive Engineer
Khadakwasla Irrigation Division, Pune-11.




Executive Engineer
Khadakwasla Irrigation Division, Pune-11.




Executive Engineer
Khadakwasla Irrigation Division, Pune-11.

MARKING OF HFL LINE OF MUTHA RIVER FROM KHADAKWASLA DAM -NANDED BRIDGE**(CH. 0/000 TO 3/360)****Statement of Levels (R.L.), Lat-Long co-ordinates of Blue & Red Line
for Right side of Mutha River.
(Universal Traverse Mercator) - 43 Q**

Chainage	Blue Line			Red Line			Remarks
	R.L.	East	North	R.L.	East	North	
0	580.930	369488.644	2039621.672	582.130	369496.942	2039617.496	
30	572.020	369493.892	2039632.674	572.560	369502.471	2039623.950	
60	572.300	369501.212	2039648.018	573.010	369510.875	2039633.759	
90	572.590	369523.060	2039669.255	573.460	369530.715	2039657.959	
120	571.455	369548.097	2039685.786	573.910	369549.847	2039683.204	
150	572.790	369569.916	2039707.066	573.803	369571.917	2039704.112	
180	572.700	369595.281	2039723.113	573.700	369598.158	2039718.868	
210	572.620	369622.097	2039737.019	573.590	369694.531	2039630.138	
240	571.230	369703.730	2039669.956	572.210	369743.979	2039610.649	
270	569.840	369775.835	2039617.118	570.840	369792.334	2039592.773	
300	568.450	369815.916	2039599.834	569.460	369832.979	2039582.299	
330	567.060	369825.114	2039597.879	568.080	369835.794	2039582.120	
360	566.420	369863.389	2039589.093	566.620	369867.511	2039581.429	
390	565.770	369904.864	2039575.314	566.620	369905.569	2039574.003	
420	565.020	369944.823	2039564.354	565.820	369946.152	2039561.882	
450	564.270	369987.534	2039548.276	565.020	369992.363	2039539.297	
480	563.520	370038.268	2039517.282	564.220	370041.895	2039510.539	
510	562.730	370084.090	2039495.420	563.490	370087.851	2039488.428	
540	561.950	370140.235	2039465.252	562.760	370142.178	2039461.718	
570	561.160	370215.132	2039427.532	562.030	370219.413	2039420.228	
600	561.090	370264.535	2039466.538	561.695	370269.512	2039459.522	
630	561.010	370323.895	2039527.408	562.420	370326.644	2039525.230	

MARKING OF HFL LINE OF MUTHA RIVER FROM KHADAKWASLA DAM -NANDED BRIDGE**(CH. 0/000 TO 3/360)****Statement of Levels (R.L.), Lat-Long co-ordinates of Blue & Red Line
for Right side of Mutha River.
(Universal Traverse Mercator) - 43 Q**

Chainage	Blue Line			Red Line			Remarks
	R.L.	East	North	R.L.	East	North	
660	560.940	370272.962	2039766.710	562.610	370290.814	2039751.765	
690	560.930	370297.911	2039871.675	562.610	370306.638	2039866.875	
720	560.930	370293.740	2039949.063	562.600	370305.607	2039944.784	
750	560.920	370306.619	2040010.096	562.600	370319.795	2040007.282	
780	560.910	370313.960	2040039.205	562.580	370333.100	2040035.117	
810	560.890	370320.290	2040068.529	562.570	370340.733	2040064.163	
840	560.880	370315.771	2040100.171	562.550	370348.598	2040093.160	
870	560.850	370315.575	2040130.890	562.520	370347.103	2040124.156	
900	560.820	370320.316	2040160.634	562.480	370354.015	2040153.356	
930	560.790	370322.322	2040190.802	562.450	370357.293	2040183.333	
960	560.780	370357.443	2040213.977	562.430	370368.061	2040211.709	
990	560.760	370336.341	2040249.234	562.420	370372.658	2040241.404	
1020	560.740	370325.495	2040282.154	562.410	370364.321	2040273.862	
1050	560.730	370325.841	2040312.757	562.390	370347.188	2040308.197	
1080	560.710	370337.224	2040341.002	562.380	370349.103	2040338.465	
1110	560.690	370337.885	2040371.538	562.360	370352.808	2040368.351	
1140	560.680	370341.762	2040401.386	562.340	370366.058	2040396.197	
1170	560.660	370349.381	2040430.436	562.320	370374.486	2040425.074	
1200	560.640	370354.661	2040459.985	562.300	370386.746	2040453.132	
1230	560.580	370350.256	2040491.602	562.230	370365.243	2040488.401	
1260	560.520	370346.003	2040523.187	562.150	370367.373	2040518.623	
1290	560.460	370342.287	2040554.658	562.080	370369.355	2040548.876	

MARKING OF HFL LINE OF MUTHA RIVER FROM KHADAKWASLA DAM - NANNED BRIDGE**(CH. 0/000 TO 3/360.)****Statement of Levels (R.L.), Lat-Long co-ordinates of Blue & Red Line
for Right side of Mutha River.
(Universal Traverse Mercator) - 43 Q**

Chainage	Blue Line			Red Line			Remarks
	R.L.	East	North	R.L.	East	North	
1320	560.450	370325.590	2040588.900	562.080	370377.821	2040577.745	
1350	560.440	370313.783	2040622.099	562.080	370367.754	2040610.572	
1380	560.430	370314.509	2040652.620	562.080	370378.653	2040638.920	
1410	560.390	370315.235	2040683.142	562.020	370395.978	2040665.896	
1440	560.340	370322.305	2040712.309	561.960	370355.574	2040705.203	
1470	560.300	370330.613	2040741.211	561.900	370353.845	2040736.249	
1500	560.290	370337.551	2040770.406	561.910	370349.030	2040767.954	
1530	560.280	370344.805	2040799.533	561.920	370374.550	2040793.180	
1560	560.270	370348.200	2040812.360	561.930	370378.241	2040802.145	
1590	560.250	370352.974	2040830.394	561.910	370373.833	2040819.052	
1620	560.230	370357.403	2040860.345	561.900	370372.215	2040852.669	
1650	560.210	370361.823	2040890.229	561.880	370379.088	2040882.470	
1680	560.170	370368.673	2040920.041	561.810	370391.824	2040909.637	
1710	560.130	370375.263	2040949.969	561.740	370412.293	2040933.328	
1740	560.130	370381.677	2040979.977	557.980	370438.568	2040954.411	
1770	560.090	370411.008	2040999.686	561.670	370463.292	2040976.190	
1800	560.060	370432.967	2041022.708	561.640	370465.342	2041008.159	
1830	560.030	370435.784	2041042.532	561.620	370471.108	2041022.909	
1860	560.000	370443.232	2041076.810	561.590	370484.912	2041055.310	
1890	559.940	370447.147	2041090.252	561.500	370489.425	2041060.437	
1920	559.880	370464.376	2041099.687	561.410	370500.159	2041068.340	
1950	559.820	370490.745	2041109.984	561.320	370521.367	2041081.536	

MARKING OF HFL LINE OF MUTHA RIVER FROM KHADAKWASLA DAM - NANNED BRIDGE**(CH. 0/000 TO 3/360.)**

**Statement of Levels (R.L.), Lat-Long co-ordinates of Blue & Red Line
for Right side of Mutha River.
(Universal Traverse Mercator) - 43 Q**

Chainage	Blue Line			Red Line			Remarks
	R.L.	East	North	R.L.	East	North	
1980	559.820	370497.338	2041145.379	561.350	370540.900	2041104.350	
2010	559.820	370499.664	2041184.400	561.390	370531.029	2041154.859	
2040	559.820	370514.547	2041211.593	561.420	370537.665	2041189.820	
2070	559.79	370536.233	2041232.380	561.38	370546.324	2041222.876	
2100	559.77	370558.529	2041252.592	561.36	370577.213	2041234.994	
2130	559.77	370580.986	2041272.652	561.3	370604.075	2041250.905	
2160	559.58	370604.807	2041291.427	561.24	370622.301	2041262.041	
2190	559.49	370612.267	2041296.220	561.18	370630.067	2041268.517	
2220	559.45	370637.294	2041312.767	561.08	370652.555	2041289.016	
2250	559.42	370660.638	2041331.933	560.98	370680.962	2041300.302	
2280	559.38	370688.622	2041343.879	560.88	370708.318	2041313.223	
2310	559.33	370715.441	2041357.636	560.87	370735.147	2041326.966	
2340	559.29	370742.930	2041370.352	560.87	370760.867	2041342.435	
2370	559.24	370769.593	2041384.352	560.86	370786.218	2041358.477	
2400	559.14	370798.187	2041395.347	560.76	370821.680	2041358.783	
2430	559.05	370832.084	2041398.090	560.76	370845.870	2041368.140	
2460	558.95	370835.117	2041398.247	560.55	370850.406	2041369.574	
2490	558.9	370864.129	2041406.210	560.52	370876.658	2041371.130	
2520	558.86	370892.489	2041415.914	560.48	370902.984	2041386.612	
2550	558.81	370923.417	2041418.598	560.45	370933.813	2041389.487	
2580	558.79	370948.611	2041437.251	560.41	370962.221	2041399.143	
2610	558.76	370977.794	2041444.735	560.38	370991.185	2041407.240	

MARKING OF HFL LINE OF MUTHA RIVER FROM KHADAKWASLA DAM - NANEDED BRIDGE

(CH. 0/000 TO 3/360)

**Statement of Levels (R.L.), Lat-Long co-ordinates of Blue & Red Line
for Right side of Mutha River.
(Universal Traverse Mercator) - 43 Q**

Chainage	Blue Line			Red Line			Remarks
	R.L.	East	North	R.L.	East	North	
2640	558.74	371006.615	2041453.233	560.34	371018.605	2041419.659	
2670	558.73	371035.010	2041462.923	560.36	371047.523	2041427.884	
2700	555.985	371069.596	2041455.277	560.37	371092.353	2041391.558	
2730	558.71	371094.716	2041474.137	560.39	371131.247	2041371.849	
2760	558.67	371136.472	2041446.416	560.36	371152.810	2041400.669	
2790	558.64	371170.028	2041441.657	560.33	371178.374	2041418.286	
2820	558.6	371188.202	2041479.967	560.3	371202.876	2041438.877	
2850	558.54	371218.108	2041485.426	560.23	371236.422	2041434.147	
2880	558.49	371251.100	2041482.244	560.16	371274.570	2041416.527	
2910	558.43	371322.088	2041293.670	560.09	371337.613	2041227.439	
2940	558.38	371310.192	2041495.181	560.08	371378.151	2041304.893	
2970	558.34	371329.437	2041530.490	560.06	371345.891	2041484.419	
3000	558.29	371353.360	2041552.702	560.05	371366.412	2041516.156	
3030	558.25	371378.921	2041570.327	559.97	371385.205	2041552.733	
3060	558.21	371402.939	2041592.274	559.9	371405.395	2041585.398	
3090	558.17	371424.596	2041620.831	559.82	371427.301	2041613.257	
3120	558.13	371447.492	2041645.918	559.76	371450.648	2041637.082	
3150	558.1	371471.829	2041666.973	559.7	371474.530	2041659.410	
3180	558.06	371497.121	2041685.352	559.64	371499.985	2041677.330	
3210	558.04	371523.925	2041699.497	559.63	371526.698	2041691.731	
3240	558.04	371552.655	2041708.248	559.62	371555.261	2041700.953	
3270	558.03	371582.380	2041714.214	559.61	371585.172	2041706.397	

MARKING OF HFL LINE OF MUTHA RIVER FROM KHADAKWASLA DAM - NANCED BRIDGE

(CH. 0/000 TO 3/360.)

**Statement of Levels (R.L.), Lat-Long co-ordinates of Blue & Red Line
for Right side of Mutha River.
(Universal Traverse Mercator) - 43 Q**

Chainage	Blue Line			Red Line			Remarks
	R.L.	East	North	R.L.	East	North	
3300	557.93	371612.034	2041720.379	559.49	371615.006	2041712.058	
3330	557.83	371639.690	2041732.139	559.36	371640.998	2041728.478	
3360	557.730	371652.692	2041737.667	559.240	371652.916	2041736.008	

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[Signature]

Executive Engineer
Khadakwasla Irrigation Division, Pune-11

MARKING OF HFL LINE OF MUTHA RIVER FROM KHADAKWASLA DAM -NANDED BRIDGE**(CH. 0/000 TO 3/360)**

**Statement of Levels (R.L.), Lat-Long co-ordinates of Blue & Red Line
for Left side of Mutha River.
(Universal Traverse Mercator) - 43 Q**

Chainage	Blue Line			Red Line			Remarks
	R.L.	East	North	R.L.	East	North	
0	580.930	369341.440	2039710.413	582.130	369327.067	2039702.980	
30	572.020	369314.502	2039743.352	572.560	369297.704	2039754.940	
60	572.300	369310.144	2039819.529	573.010	369286.519	2039843.553	
90	572.590	369349.073	2039872.508	573.460	369340.708	2039890.365	
120	571.455	369372.122	2039891.973	573.910	369357.752	2039913.178	
150	572.790	369395.581	2039910.832	573.803	369381.176	2039932.088	
180	572.700	369419.752	2039928.641	573.700	369404.601	2039950.998	
210	572.620	369445.601	2039943.975	573.590	369427.483	2039970.709	
240	571.230	369506.680	2039960.798	572.210	369482.635	2039996.279	
270	569.840	369539.748	2039965.480	570.840	369516.618	2039999.608	
300	568.450	369574.421	2039967.792	569.460	369550.602	2040002.938	
330	567.060	369627.239	2039964.826	568.080	369614.817	2039987.921	
360	566.420	369660.510	2039966.300	566.620	369649.925	2039985.981	
390	565.770	369690.489	2039973.895	566.620	369679.539	2039994.255	
420	565.020	369720.373	2039981.666	565.820	369708.915	2040002.969	
450	564.270	369749.942	2039990.023	565.020	369739.030	2040010.312	
480	563.520	369776.100	2040004.722	564.220	369768.427	2040018.989	
510	562.730	369801.219	2040021.353	563.490	369783.190	2040054.875	
540	561.950	369828.925	2040031.580	562.760	369750.954	2040173.423	
570	561.160	369855.398	2040041.192	562.030	369768.818	2040188.886	
600	561.090	369881.064	2040049.088	561.695	369784.103	2040196.289	
630	561.010	369903.117	2040058.372	562.420	369790.330	2040200.606	

MARKING OF HFL LINE OF MUTHA RIVER FROM KHADAKWASLA DAM -NANDED BRIDGE

(CH. 0/000 TO 3/360)

**Statement of Levels (R.L.), Lat-Long co-ordinates of Blue & Red Line
for Left side of Mutha River.
(Universal Traverse Mercator) - 43 Q**

Chainage	Blue Line			Red Line			Remarks
	R.L.	East	North	R.L.	East	North	
660	560.940	369913.083	2040067.308	562.610	369767.715	2040188.731	
690	560.930	369917.683	2040074.612	562.610	369746.854	2040165.788	
720	560.930	369920.624	2040082.610	562.600	369737.733	2040148.115	
750	560.920	369923.761	2040091.869	562.600	369740.804	2040130.946	
780	560.910	369933.287	2040120.511	562.580	369743.543	2040161.037	
810	560.890	369947.653	2040148.119	562.570	369765.013	2040187.128	
840	560.880	369956.502	2040176.906	562.550	369805.391	2040209.181	
870	560.850	369964.614	2040205.850	562.520	369898.902	2040219.885	
900	560.820	369977.995	2040233.668	562.480	369928.965	2040244.141	
930	560.790	369991.703	2040261.417	562.450	369939.328	2040272.604	
960	560.780	370003.241	2040289.630	562.430	369952.702	2040300.424	
990	560.760	370012.630	2040318.301	562.420	369967.728	2040327.891	
1020	560.740	370020.810	2040347.230	562.410	369983.882	2040355.118	
1050	560.730	370028.423	2040376.281	562.390	370000.036	2040382.344	
1080	560.710	370036.037	2040405.331	562.380	370017.542	2040409.282	
1110	560.690	370043.651	2040434.382	562.360	370035.166	2040436.194	
1140	560.680	370052.056	2040463.263	562.340	370048.041	2040464.121	
1170	560.660	370061.157	2040491.996	562.320	370057.750	2040492.724	
1200	560.640	370070.501	2040520.677	562.300	370067.799	2040521.254	
1230	560.580	370081.200	2040549.069	562.230	370077.963	2040549.760	
1260	560.520	370091.364	2040577.574	562.150	370088.008	2040578.291	
1290	560.460	370097.448	2040606.896	562.080	370093.448	2040607.806	

MARKING OF HFL LINE OF MUTHA RIVER FROM KHADAKWASLA DAM -NANDED BRIDGE

(CH. 0/000 TO 3/360)

**Statement of Levels (R.L.), Lat-Long co-ordinates of Blue & Red Line
for Left side of Mutha River.
(Universal Traverse Mercator) - 43 Q**

Chainage	Blue Line		Red Line		Remarks	
	R.L.	East	North	East		North
1320	560.450	370103.725	2040636.287	370101.276	2040636.811	
1350	560.440	370106.985	2040667.489	370102.323	2040667.264	
1380	560.430	370109.553	2040696.396	370106.904	2040696.962	
1410	560.390	370104.929	2040728.060	370098.075	2040729.524	
1440	560.340	369940.620	2040793.831	369912.025	2040789.545	
1470	560.300	370006.111	2040810.520	369949.568	2040822.597	
1500	560.290	370091.478	2040822.963	370034.929	2040835.041	
1530	560.280	370103.713	2040851.027	370054.205	2040861.212	
1560	560.270	370122.550	2040889.095	370105.472	2040894.902	
1590	560.250	370137.303	2040925.345	370120.114	2040933.069	
1620	560.230	370148.679	2040953.122	370130.482	2040961.300	
1650	560.210	370163.167	2040979.502	370139.292	2040990.231	
1680	560.170	370182.548	2041003.682	370146.850	2041019.724	
1710	560.130	370210.604	2041023.964	370198.960	2041029.197	
1740	560.130	370217.171	2041053.998	370206.891	2041058.523	
1770	560.090	370223.370	2041084.007	370212.349	2041088.960	
1800	560.060	370232.313	2041112.878	370222.431	2041117.319	
1830	560.030	370094.620	2041232.052	370042.182	2041238.258	
1860	560.000	370171.553	2041217.894	370119.821	2041243.632	
1890	559.940	370248.452	2041230.374	370225.905	2041246.274	
1920	559.880	370288.951	2041253.367	370279.983	2041261.223	
1950	559.820	370317.344	2041273.696	370312.409	2041278.344	

MARKING OF HFL LINE OF MUTHA RIVER FROM KHADAKWASLA DAM - NANEDED BRIDGE

(CH. 0/000 TO 3/360)

**Statement of Levels (R.L.), Lat-Long co-ordinates of Blue & Red Line
for Left side of Mutha River.
(Universal Traverse Mercator) - 43 Q**

Chainage	Blue Line			Red Line			Remarks
	R.L.	East	North	R.L.	East	North	
1980	559.820	370333.410	2041299.775	561.350	370330.992	2041302.052	
2010	559.820	370351.718	2041323.743	561.390	370350.453	2041324.935	
2040	559.820	370372.286	2041345.582	561.420	370370.483	2041347.280	
2070	559.79	370400.515	2041359.992	561.38	370398.634	2041361.978	
2100	559.77	370432.956	2041370.862	561.36	370430.752	2041372.939	
2130	559.77	370456.772	2041389.643	561.3	370454.063	2041392.194	
2160	559.58	370472.853	2041415.708	561.24	370468.970	2041419.365	
2190	559.49	370510.603	2041455.400	561.18	370506.857	2041460.278	
2220	559.45	370534.061	2041473.437	561.08	370532.765	2041475.455	
2250	559.42	370555.880	2041495.076	560.98	370554.326	2041497.396	
2280	559.38	370577.768	2041516.409	560.88	370574.991	2041520.731	
2310	559.33	370604.247	2041531.760	560.87	370597.703	2041540.882	
2340	559.29	370621.742	2041558.966	560.87	370613.816	2041571.303	
2370	559.24	370635.307	2041593.352	560.86	370629.929	2041601.723	
2400	559.14	370666.067	2041600.976	560.76	370658.177	2041613.257	
2430	559.05	370699.730	2041604.083	560.76	370688.559	2041621.469	
2460	558.95	370750.981	2041633.830	560.55	370748.821	2041639.878	
2490	558.9	370779.691	2041642.641	560.52	370778.438	2041646.149	
2520	558.86	370810.349	2041644.208	560.48	370808.226	2041651.937	
2550	558.81	370836.461	2041662.075	560.45	370830.774	2041678.001	
2580	558.79	370871.7061	2041652.586	560.41	370866.085	2041668.325	
2610	558.76	370902.6164	2041655.233	560.38	370895.437	2041675.337	

MARKING OF HFL LINE OF MUTHA RIVER FROM KHADAKWASLA DAM -NANDED BRIDGE

(CH. 0/000 TO 3/360)

**Statement of Levels (R.L.), Lat-Long co-ordinates of Blue & Red Line
for Left side of Mutha River.
(Universal Traverse Mercator) - 43 Q**

Chainage	Blue Line			Red Line			Remarks
	R.L.	East	North	R.L.	East	North	
2640	558.74	370931.1992	2041664.398	560.34	370923.613	2041685.640	
2670	558.73	370959.5491	2041674.215	560.36	370950.987	2041698.189	
2700	555.985	370988.6273	2041681.992	560.37	370981.860	2041700.941	
2730	558.71	371017.0313	2041691.657	560.39	371013.722	2041700.924	
2760	558.67	371047.358	2041695.781	560.36	371041.581	2041712.114	
2790	558.64	71077.647	41700.809	560.33	371073.988	2041710.571	
2820	558.6	371108.575	2041702.923	560.3	371104.625	2041713.984	
2850	558.54	371142.395	2041697.371	560.23	371140.712	2041702.138	
2880	558.49	371172.944	2041701.082	560.16	371171.327	2041705.610	
2910	558.43	371202.586	2041707.282	560.09	371201.156	2041711.285	
2940	558.38	371231.453	2041715.650	560.08	371230.301	2041718.876	
2970	558.34	371261.121	2041722.989	560.06	371259.408	2041726.572	
3000	558.29	371289.941	2041730.277	560.05	371288.497	2041734.321	
3030	558.25	371318.339	2041739.961	559.97	371312.053	2041757.560	
3060	558.21	371342.019	2041762.852	559.9	371332.148	2041790.491	
3090	558.17	371368.913	2041776.745	559.82	371361.427	2041797.706	
3120	558.13	371394.465	2041794.398	559.76	371388.966	2041809.794	
3150	558.1	371417.927	2041817.900	559.7	371411.899	2041834.778	
3180	558.06	371443.531	2041835.406	559.64	371434.360	2041861.084	
3210	558.04	371473.568	2041840.498	559.63	371456.821	2041887.390	
3240	558.04	371503.892	2041844.785	559.62	371488.160	2041888.836	
3270	558.03	371531.658	2041856.239	559.61	371519.638	2041889.893	

MARKING OF HFL LINE OF MUTHA RIVER FROM KHADAKWASLA DAM -NANDED BRIDGE

(CH. 0/000 TO 3/360)

**Statement of Levels (R.L.), Lat-Long co-ordinates of Blue & Red Line
for Left side of Mutha River.
(Universal Traverse Mercator) - 43 Q**

Chainage	Blue Line			Red Line			Remarks
	R.L.	East	North	R.L.	East	North	
3300	557.93	371559.297	2041868.044	559.49	371551.116	2041890.951	
3330	557.83	371587.551	2041878.129	559.36	371582.595	2041892.008	
3360	557.730	371630.802	2041891.399	559.240	371631.101	2041900.664	

[Signature]
S.O.

[Signature]

Executive Engineer
Khadakwasla Irrigation Division, Pune-11.



महाराष्ट्र शासन
कार्यकारी अभियंता, खडकवासला पाटबंधारे विभाग

सिंचन भवन, मंगळवार पेठ, बारणे रोड, पुणे-४११०११
दूरध्वनी क्र.020-26127309 फॅक्स 020-26126307
ई-मेल : eekidpune@gmail.com

27 OCT 2021

जा.क्र. खपावि / प्रशा-१/ ६६३ / सन २०२१

दिनांक : / / २०२१

प्रति,

कार्यकारी अभियंता,
बांधकाम विकास विभाग,
झोन क्र.२, पुणे महानगरपालिका,
पुणे.

170020200307 77

विषय :- मुठा नदीलगतच्या एन. एच-४ बायपास ते येरवडा पूल या लांबीतील लाल/निळी पूररेषेबाबत.

- संदर्भ :- १. आपले पत्र जा.क्र. झोन-२/३०६७, दि. २२/९/२०२१
२. या विभागाचे पत्र क्र. खपावि/प्रशा-१/१९२०, दि. १८/३/२०२०
३. या विभागाचे पत्र क्र. खपावि/प्रशा-१/५६२५, दि. ९/९/२०२१

सन २०११ साली जलसंपदा विभागाने मुठा नदीचे सर्वेक्षण करून काटछेद (तळातील रुंदीसह) आपले विभागास सादर करणेत आले आहेत ते अंतिम आहेत.

तद्नंतर पुणे महानपालिकेने केलेल्या मागणीनुसार या विभागाचे पत्र क्र. प्रशा-१/७६०५, दि. ४/११/२०१६ अन्वये अक्षांश, रेखांश व गुगल इमेज दर्शक नकाशे सॉप-टकॉपीसह शहर अभियंता, पुणे महानगरपालिका यांना सादर केले होते.

मा. हरित न्यायालयातील दावा क्र. १९/२०१७ मध्ये दिलेल्या आदेशानुसार निळी/लाल पूररेषा स्थान निश्चित करणेकामी समितीगठीत केली होती. त्यामध्ये महाराष्ट्र व गोवा सर्व्हे ऑफिसर, सर्व्हे ऑफ इंडिया, अधीक्षक अभियंता, पुणे पाटबंधारे मंडळ, पुणे व अधीक्षक अभियंता, बांधकाम परवाना, पुणे महानगरपालिका यांचा समावेश होता. सादर समितीने केलेला स्वतंत्र अभ्यास असून मे. हरित न्यायालयाचे आदेशानुसार सादर केलेल्या अहवालामध्ये अक्षांश, रेखांशानुसार सा.क्र. ०/४०० ते १/७५० मी नदिपात्रातील रस्त्याच्या लांबीसाठीची मर्यादा होती. या समितीच्या अहवालातील लांबी वगळता या विभागाने वरील संदर्भिय पत्र क्र. २ व ३ अन्वये सन २०११ साली सादर केलेली निळी/लाल पूररेषेचे काटछेद कायम असून ते अंतिम समजणेत यावे.

स्थळ प्रत मा. का. अ. यांना मान्य असे.

उपकार्यकारी अभियंता
खडकवासला पाटबंधारे विभाग,
पुणे-११ T.C

ENGLISH TRANSLATION

The letter dated 27/10/2021 submitted by Dy. Engineer, Khadakwasala Irrigation Division, Pune-11

'Committee was formed as per directions given in Hon'ble National Green Tribunal matter No. 19/2017 for conforming Blue/red Line. It (Committee) includes Maharashtra & Goa Survey Officer, Survey of India, Superintending Engineer, Pune Irrigation Division and Executive Engineer, Building Permission, Pune Municipal Corporation. This Committee conducted separate study as per NGT order; (and) report submitted as per direction of NGT was for Longitude, Latitude Chainage No. 0/400 to 1/750 m. This length is excluded from the Blue/Red Line submitted vide reference letter No.2 and 3 in 2011 and should be considered as final.'

T.C



 <p>सत्यमेव जयते</p>	<p>महाराष्ट्र शासन</p> <p>कार्यकारी अभियंता, खडकवासला पाटबंधारे विभाग</p> <p>सिंचन भवन, मंगळवार पेठ, बारणे रोड, पुणे-४११०११</p> <p>दूरध्वनी क्र.020-26127309 फॅक्स 020-26126307</p> <p>ई-मेल : eekidpune@gmail.com</p>
	<p>जा.क्र. खपावि / प्रशा-१/१९४८ / सन २०२३</p> <p>दिनांक : १२/०४/२०२३</p>

प्रति,

मा. आयुक्त,
पुणे महानगर पालिका.

विषय:- मे. उच्च न्यायालय, मुंबई येथील जनहित याचिका दावा क्र. ३६/२०२१ मधील मे. उच्च न्यायालयाच्या दिनांक २७/०३/२०२३ रोजीच्या निर्देशाच्या अनुषंगाने कार्यवाही करणे बाबत.

संदर्भ:- मे. उच्च न्यायालय, मुंबई यांचे दिनांक २७/०३/२०२३ चे न्यायालयीन आदेश

वरील विषयांकित प्रकरणी मे. उच्च न्यायालय, मुंबई येथील जनहित याचिका दावा क्र. 36/2021 बाबत दिनांक २७/०३/२०२३ रोजी सुनावणी झालेली आहे. सदर सुनावणी वेळी मे.न्यायालयाने खालील प्रमाणे आदेश दिलेले आहेत(सुलभ संदर्भासाठी आदेशाची प्रत सोबत सादर).

महानगरपालिकेमार्फत तयार करण्यात आलेल्या विकास आराखड्यामध्ये पूररेषे आखणी बाबत मतभेद आहेत. त्यास्तव महानगरपालिकेने विकास आराखडा जलसंपदा विभागाकडे तपासणीसाठी सादर करावा. व त्यानंतर जलसंपदा विभागाने त्यांनी निर्धारित केलेल्याच पूररेषा विकास आराखड्यामध्ये दाखविल्या आहेत याची खातरजमा करून अहवाल सादर करावा.

यास्तव, पूररेषा दर्शविलेल्या विकास आराखड्याची प्रत सॉफ्ट कॉपी(Autocad) व हार्ड कॉपी मध्ये तपासणीसाठी या कार्यलयास पाठविण्यात यावी हि विनंती.

हे आपले माहितीसाठी व पुढील कार्यवाहीसाठी सादर.

सोबत- वरीलप्रमाणे आदेशाची प्रत.

कार्यकारी अभियंता
खडकवासला पाटबंधारे विभाग,
पुणे-११

प्रत- मा. अधीक्षक अभियंता, पुणे पाटबंधारे मंडळ, पुणे यांना माहितीसाठी सविनय सादर.

प्रत- सारंग यादवाडकर यांना माहितीसाठी रवाना.

आज्ञेवरून

२१/४/२०२३

महानगरपालिका

पुणे महानगरपालिका

का शब्द कार्यकारी
का मुख्य विधी अधिकारी

O.W.N.O.

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२१/४/२०२३

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