

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
SITTING AT PUNE
APPLICATION NO. 28 OF 2023

Santosh Daundkar

...Applicant

Versus

State Level Environment Impact
Assessment Authority & Ors.

...Respondents

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APPLICATION NO. 28 OF 2023

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...Applicant

Versus

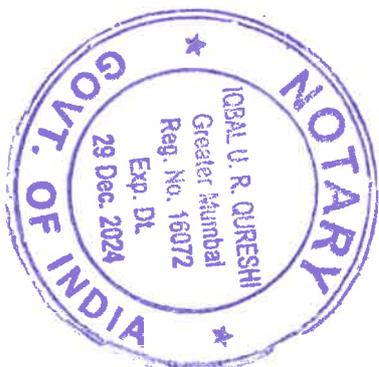
State-Level Environment Impact
Assessment Authority & Ors.

...Respondents

AFFIDAVIT-IN-REPLY ON BEHALF OF RESPONDENT NO. 7:

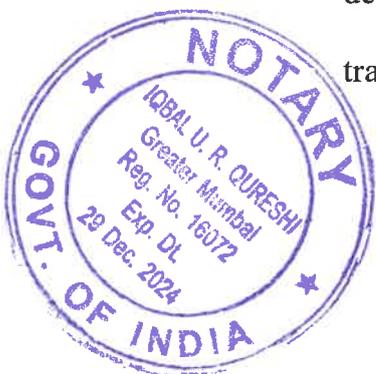
I, Uday Mota, aged 50 years, Indian Inhabitant, the Authorised Signatory of Respondent No.7, having my office address at Godrej Coliseum A-Wing 1301, 13th Floor, Behind Everard Nagar, Off Eastern Express Highway, Sion East Mumbai, Maharashtra- 400022, do solemnly state on oath and affirm as under:-

1. I am the Authorised Signatory of Respondent No. 7 having my address as mentioned above. I have gone through the captioned Original Application and the documents filed along with the captioned Original Application by the Applicant. I am familiar with the facts of the case from office records available with



Respondent No. 7 (“**this Respondent**”) and am competent to depose to the facts in this Affidavit-in-Reply (the “**Reply**”).

2. I am filing the Reply only for the limited purpose of placing on record the factual position with respect to the current development of plot bearing CS No. 1913 of Byculla Division in E Ward, Mumbai, (“**Concerned Plot**”) undertaken by this Respondent, challenging the maintainability of the captioned Original Application by way of Preliminary Objections, and opposing the grant of any relief(s) as prayed for by the Applicant against this Respondent. I crave leave of this Hon’ble Tribunal to file a further affidavit(s) if circumstances so warrant.
3. At the outset, I deny each and every statement, allegation, contention, insinuation, submission, and claim made in the Original Application against this Respondent, that is contrary to and/ or inconsistent with what is stated in the Reply. Nothing contained in the Original Application is admitted or should be deemed to be admitted by this Respondent for want of specific traverse or otherwise. Further, each ground, contention,



avertment, and/or pleading that is being taken by this Respondent in the Reply is without prejudice to each other and is to be read independently of each other.

4. At the further outset, I say that this Respondent is a company incorporated under the Companies Act, 1956, and is engaged in the real estate business. I say that this Respondent is the owner of the Concerned Plot admeasuring 28,437.29 square meters. Further, this Respondent along with Macrotech Developers Limited is presently engaged in the joint development of the Concerned Plot.
5. I say that the Applicant herein has erroneously arrayed "*Money Magnum Nest Private Limited through Managing Director & CEO- Macrotech Developers Ltd.*" as Respondent No. 7 in the captioned Original Application. The Applicant has further incorrectly provided the office address of Macrotech Developers Limited as the address of this Respondent.
6. I say that during the hearing on 9th January 2024 of the captioned Original Application, the Advocate for Respondent No. 7 pointed out that the Applicant had incorrectly arrayed this



Respondent through Macrotech Developers Limited, as a party to the captioned Original Application. This Hon'ble Tribunal was pleased to pass the Order dated 9th January 2024, wherein the Applicant was directed to correct the address of Respondent No. 7 within a week's time. However, the Applicant has not yet carried out the said correction/amendment.

7. I say that the Applicant had sought to array this Respondent as a party in the Original Application on the pretext that the Recreational Ground provided on the Concerned Plot ("RG") is on podium. The Applicant has alleged that this Respondent has partly provided the RG on the podium which is violative of the Order dated 13th September 2022 passed in Appeal No. 22 of 2016 passed by this Hon'ble Tribunal.

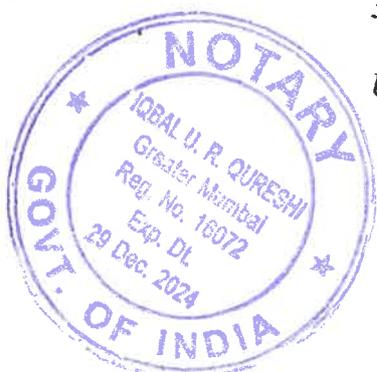
I. Preliminary Objections on Maintainability:

8. I say that, in addition to the above, the present Original Application ought to be rejected at the threshold based on the following Preliminary Objections:



(a) *The present issue regarding Recreation Ground is sub-judice before the Hon'ble Supreme Court:*

- i. The main prayer in the captioned Original Application is that the principle derived by this Hon'ble Tribunal in Appeal No. 22 of 2016 (WZ) vide Order dated 13th September 2022, be applied to all projects in Mumbai wherein construction took place after the cut-off date of 17th December 2013 and the recreational ground has been shown above podium or basement. This Hon'ble Tribunal's Order dated 13th September 2022 in Appeal No. 22 of 2016 (WZ) *inter alia* held that in accordance with the judgment of the Hon'ble Supreme Court of India in *Municipal Corporation of Greater Mumbai and Ors. vs. Kohinoor CTNL Infrastructure Company Private Limited and another*, (2014) 4 SCC 538, that recreational ground has to be provided on the ground to enable plantation, and the State Environment Impact Assessment Authority ("SEIAA"), Maharashtra, has to ensure availability of space as per norms. Thereafter, the said Order dated 13th September 2022 was assailed before the Hon'ble High Court of Judicature at Bombay in *Writ Petition (L) No. 35671 of 2022 titled "NAREDCO West Foundation & Anr. v. Union of India & Ors."*, wherein vide Final Judgment and



Order dated 27th January 2023, it was *inter alia* held that the Order dated 13th September 2022 passed in above-mentioned Appeal No. 22 of 2016 would not impede the SEIAA to decide various proposals submitted for grant of environmental clearances on its own merits. Subsequently, a Special Leave Petition being SLP (C) Diary No. 11843/2023 (“SLP”) was filed against the Final Judgment and Order dated 27th January 2023 passed in WP (L) No. 35671 of 2022. On 8th May 2023, the Final Judgment and Order dated 27th January 2023 was stayed by the Hon’ble Supreme Court of India, and the said SLP is currently pending adjudication before the Hon’ble Supreme Court of India. Hereto annexed and marked as “Exhibit-A” is a copy of the Order dated 13th September 2022 passed in Appeal No. 22 of 2016, “Exhibit-B” is a copy of the Final Judgment and Order dated 27th January 2023, and “Exhibit-C” is a copy of the Order dated 8th May 2023.

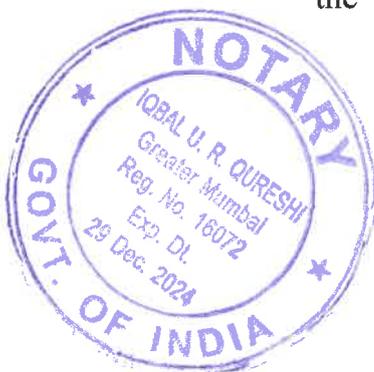
- ii. The issues raised in the captioned Original Application regarding the recreational grounds are pending before the Hon’ble Supreme Court of India. Therefore, the judicial discipline requires that since the Hon’ble Supreme Court is



seized of an identical matter, this Hon'ble Tribunal should not entertain the present original application as it would lead to the passing of conflicting orders and therefore, the judicial discipline would mandate that the present proceedings be not entertained. Therefore, on this ground alone, the captioned Original Application ought not to be proceeded with.

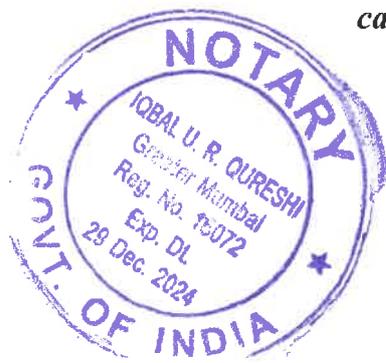
(b) **Original Application under Section 14 and Section 15 of NGT Act is not maintainable:**

- i. Without prejudice to the aforesaid submissions, I say that the captioned Original Application is barred by limitation. The Applicant has filed the captioned Original Application under Sections 14, and 15 read with Section 18 of the National Green Tribunal Act, 2010 ("NGT Act"). However, Section 14(3) of the NGT Act specifically prohibits the entertainment of any application filed under Section 14 of the NGT Act, which is filed beyond a period of six months.
- ii. There cannot be an adjudication under Section 15 of the NGT Act unless it is ascertained that a substantial question relating to the environment (including enforcement of any legal right



relating to the environment) is involved under Section 14 of the NGT Act.

- iii. Under the NGT Act, two different regimes and periods of limitation are provided for invoking the jurisdiction of this Hon'ble Tribunal. Under Section 14, this Hon'ble Tribunal has jurisdiction to resolve all civil cases where a substantial question relating to the environment is involved. The limitation period for section 14 is six months from the date when the cause of action for such dispute '*first arose*', which is extendable by a period of 60 days on sufficient cause being shown. Further, under Section 15, this Hon'ble Tribunal has jurisdiction to provide relief and compensation to the victims of pollution, restitution of property of victims, and restitution of the environment. The limitation period for Section 15 is 5 years from the date when the cause of action for such dispute '*first arose*', which is extendable by a period of 60 days on sufficient cause being shown.
- iv. The use of the words '*first arose*' as distinct from '*continuous cause of action*'; or '*recurring cause of action*' or '*successive*



cause of action’ in Section 14 as well as Section 15 of the NGT Act are not only indicators of unambiguous legislative intent and scheme expressed in plain words, but also statutorily and mandatorily fix the starting point of period of limitation. These words no doubt relate to the earliest point of time of inception of the cause of action. The interpretation is further reinforced by the use of the words ‘*from the date*’ which again would apply that there is a definite occurrence of cause of action. This has been followed in several judgments of the Hon’ble Supreme Court as well as this Hon’ble Tribunal and Respondent No. 7 craves leave to cite and produce the same at the time of hearing.

- v. In the present case, the Applicant has based the entire original application on the Order of this Hon’ble Tribunal dated 13th September 2022 which can never be a cause of action *qua* the Concerned Plot since the NGT Act requires a specific violation of a particular enactment. No such details are provided by the Applicant, the present application is vague and lacks factual narration. Therefore, on this ground, the present original application ought to be dismissed.

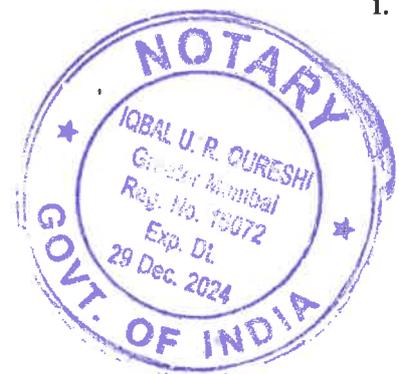


(c) Applicant is not a 'Person Aggrieved':

- i. The Applicant in the present case is not a person aggrieved by the development of the Concerned Plot and has no locus-standi to invoke the jurisdiction of this Hon'ble Tribunal.
- ii. It is a well-settled principle of law that a stranger cannot be permitted to interfere in any proceedings unless he satisfies the Court/ Tribunal that he is an affected and/ or aggrieved party. The applicant has in the application merely averred that he is a resident of Mumbai and has failed to make any averments in the application to substantiate that he is an aggrieved person in the present case. It is submitted that the present Applicant has no causal connection with the said Project and this application is nothing but a roving and phishing inquiry at the instance of a party who has nothing to do with the Concerned Plot and on this ground alone, the captioned Original Application ought to be dismissed at the threshold.

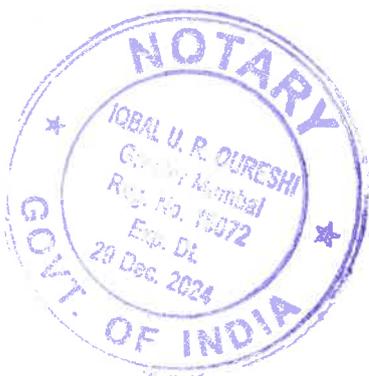
(d) Allegations qua violations of DCR do not come under the purview of NGT:

- i. Without prejudice to the aforesaid, Respondent No. 7 submits that the captioned Original Application has been



filed seeking general directions for compliance with respect to recreational grounds in development projects which have been provided under Development Control Regulations (“DCR”) and this Hon’ble Tribunal ought not to entertain them as it does not fall within the ambit of this Hon’ble Tribunal.

- ii. It is well settled principle of law that this Hon’ble Tribunal being a creation of the NGT Act, is bound by the parent Act. The NGT Act, more particularly, Schedule-I of the NGT Act, lists the acts with respect to which the National Green Tribunal has jurisdiction. It is pertinent to note that the allegations of contravention of the DCR does not fall within the ambit of Schedule I of the NGT Act. Therefore, this Hon’ble Tribunal ought not to entertain the captioned Original Application as the Original Applicant ought to have approached an appropriate forum for dealing with the alleged issues as raised in the captioned Original Application. On this ground alone, the captioned Original Application ought to be dismissed.



II. Development of Concerned Plot/ Factual Background:

9. I say that vide Joint Development Agreement dated 5th July 2022, this Respondent and Macrotech Developers Limited, agreed to carry out the joint development of the Concerned Plot.
10. I say that the development of the Concerned Plot is being undertaken under Regulation 35 of the Development Control and Promotion Regulations for Greater Mumbai, 2034 (“DCPR 2034”). I say as per the approved layout plan dated 9th February 2024, the RG is provided on the ground. Further, the RG has been calculated on the net plot area as per Regulation 27 of DCPR 2034 which provides that for areas above 10,000 sq. mtrs.- recreational ground of 25% shall be provided. The area of the RG, therefore, comes out to be 6,214.74 sq. mtrs. of the Concerned Plot, and this Respondent has accordingly provided for RG admeasuring 6215.02 sq. mtrs. on the ground.
11. I say that for the development of the Concerned Plot, all necessary permissions and approvals have been granted by the concerned authorities, and the Respondent undertakes to take all necessary permissions as prescribed under law from time to



time. Hereto annexed and marked as "Exhibit-D" is a copy of the approved layout plan of the Concerned Plot.

12. I say that the allegation of the Applicant concerning the RG is, therefore, wholly untenable as far as this Respondent is concerned and no reliefs whatsoever ought to be granted against this Respondent by this Hon'ble Tribunal.
13. I say that Respondent No. 7 is not dealing with the Original Application *in seriatim* more particularly since the allegations and contentions raised in the captioned Original Application as against this Respondent have been dealt with and answered in terms of the above. This Respondent, however, expressly craves leave to file an additional Affidavit dealing with the Memo of Application in a paragraph-wise manner, if the circumstances so warrant.
14. I say that the captioned Original Applicant has failed to make out a cogent and compelling case for the grant of any reliefs by this Hon'ble Tribunal as against this Respondent.
15. In these facts and circumstances, it is submitted that Respondent No. 7 ought to be deleted from the array of parties



and the present Original Application ought to be dismissed as against Respondent No.7.

Date: 19/03/2024

Place: MUMBAI



For Money Magnum Nest Pvt. Ltd

Uday Mota
Director

Deponent

Respondent No. 7

Ravi

Advocates for Respondent No. 7



VERIFICATION

I, Uday Mota, aged 50 years, Indian Inhabitant, the Authorised Signatory of Respondent No. 7, having my office address at Godrej Coliseum A-Wing 1301, 13th Floor, Behind Everard Nagar, Off Eastern Express Highway, Sion East Mumbai, Maharashtra- 400022, do hereby state that I have submitted this Affidavit on solemn affirmation and oath. I have verified that the facts are true to my personal knowledge. I have not suppressed any material fact known to me and relevant to this matter.

Date: 19 MAR 2024

Place: MUMBAI



For Money Magnum Nest Pvt. Ltd

Uday Mota
Director

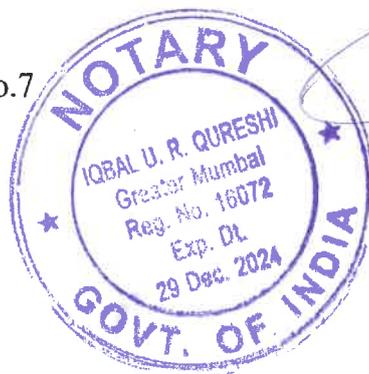
Deponent

Respondent No. 7

BEFORE ME

Ravi

Advocates for Respondent No.7



Iqbal U. R. Qureshi
IQBAL U. R. QURESHI
NOTARY
Government of India
Greater Mumbai Maharashtra
19 MAR 2024



NOTED & REGISTERED
No. 201 Page No. 94
Book No. 4 Date 19 MAR 2024

MONEY MAGNUM NEST PRIVATE LIMITED

(CIN: U65923MH1996PTC100417)

Regi. Office: Godrej Coliseum, A-Wing 1301, 13th Floor, behind Everard Nagar,
Off Eastern Express Highway, Sion (East), Mumbai 400 022. Tel: +91(22) 62704900
Web: www.terraformrealty.com E-mail: secretarial@terraformrealty.com

CERTIFIED TRUE COPY OF THE RESOLUTION PASSED AT THE MEETING OF THE BOARD OF DIRECTORS OF MONEY MAGNUM NEST PRIVATE LIMITED HELD ON 03 FEBRUARY, 2024 ON SATURDAY AT THE REGISTERED OFFICE OF THE COMPANY SITUATED AT GODREJ COLISEUM, A WING, 1301, 13TH FLOOR, BEHIND EVERARD NAGAR, OFF. EASTERN EXPRESS HIGHWAY, SION (EAST), MUMBAI- 400022 AT 2:00 P.M.

AUTHORISATION FOR LEGAL MATTERS:

"RESOLVED THAT Mr. Nainesh K. Shah/ Mr. Uday Mota, Directors, be and are hereby authorized for and on behalf of the Company, to do execute or perform all or any of the following acts, deeds, matters and things in the Debt Recovery Tribunal, National Company Law Tribunal, Court of Small Causes, City Civil Court, Hon'ble Bombay High Court/ Hon'ble Supreme Court of India or any other Court, i.e. -

1. To appoint and instruct Advocates and Attorneys for the purpose of instituting and defending legal suits and further to sign caveat, vakalatnamas, complaints, petitions, written statements, affidavits, etc;
2. To institute, prosecute, defend, oppose, appear, prefer an appeal, file civil any application, abandon, submit to the judgment, proceed to judgment, file application for execution of the decree in any legal proceedings, demands pertaining to or relating to any criminal/civil proceedings;
3. To institute, defend, withdraw, enter into settlement terms, compromise any legal suits (civil/criminal), proceedings by or against the Company;
4. And to do all such acts, deeds and things as may be incidental to give effect to this resolution.

"RESOLVED FURTHER THAT any of the Directors of the Company be and is hereby authorized to furnish a certified true copy of this Resolution to the concerned authorities, if required from time to time".

//Certified True Copy//

For MONEY MAGNUM NEST PRIVATE LIMITED


Arvind Sharma
Director
(DIN: 07096076)

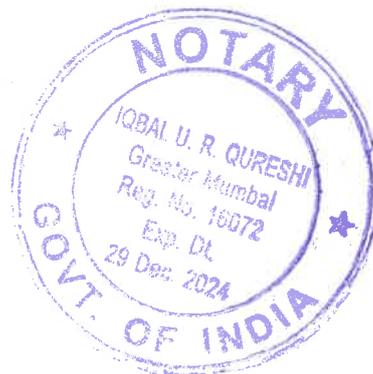


EXHIBIT - A

Item Nos. 03 & 04

Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
SPECIAL BENCH**

(By Video Conferencing)

Appeal No. 22/2016(WZ)
M.A. No. 198/2016(WZ) & M.A. No. 199/2016(WZ)

Anil Tharthare

Appellant

Versus

The Secretary, Environment Dept.
State of Maharashtra & Ors.

Respondent(s)

WITHAppeal No. 23/2016(WZ)
M.A. No. 196/2016 & M.A. No. 197/2016

Vasundhara Sanwardhan Trust

Appellant

Versus

Secretary, Env't. Dept., State of Maharashtra & Ors.

Respondent(s)

Date of hearing: 13.09.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER
HON'BLE DR. AFROZ AHMAD, EXPERT MEMBER**

Appellant: Mr. Aditya Pratap, Advocate in Appeal 22/2016(WZ)

Respondent(s): Mr. Saket Mone, Advocate for R-4
Mr. Manoj Wad, Advocate for R-5
Mr. T.N. Subramaniam, Advocate for R-6
Mr. Suneet Tyagi, Advocate for R-7
Mr. R.R. Mahabal, Advocate
Mr. Girish Utangale, Advocate for R-4 in Appeal 23/2016(WZ)

ORDER**The issue - validity of EC for housing project at Bandra, Mumbai**

1. This order will deal with Appeal Nos. 22 and 23 of 2016(WZ) as both the appeals relate to the same project i.e. validity of the Environmental Clearance (EC) granted by SEIAA, Maharashtra on 22.03.2016 for proposed residential building on plot CTS No. 629(Pt), of Bandra, Mumbai by M/s Kalpataru Properties Pvt. Ltd. Details of the project mentioned in the impugned EC are :

- . Estimated cost of the project is Rs. 299 crores.
- . FSI, non-FSI and built up areas are:

FSI Area (Sq. mt)	Non-FSI Area (Sq. mt.)	Total BUA Area (Sq. mt.)
47,265.822	32,799.83	80,065.652

- . Number of buildings and its configuration and number of tenants and shops:

xxx	xxx	xxx									
The above ground structures will comprise of:											
16	Number of Buildings & its configuration	<table border="1"> <thead> <tr> <th>Building</th> <th>No. of Wings</th> <th>configuration</th> </tr> </thead> <tbody> <tr> <td>1 building</td> <td>Wing A & B</td> <td>3 Basements + Stilt + 30 upper floors</td> </tr> <tr> <td></td> <td>Wing C</td> <td>3 Basements + Stilt + 22 upper floors</td> </tr> </tbody> </table>	Building	No. of Wings	configuration	1 building	Wing A & B	3 Basements + Stilt + 30 upper floors		Wing C	3 Basements + Stilt + 22 upper floors
Building	No. of Wings	configuration									
1 building	Wing A & B	3 Basements + Stilt + 30 upper floors									
	Wing C	3 Basements + Stilt + 22 upper floors									
17	Number of tenants and shops	511 flats									

2. The EC also mentions environmental management plan and budgetary allocation for the same. There is also mention of traffic management plan. General conditions for pre-construction and construction phase are also specified.

Case of the Appellants

3. Main grounds for challenging the impugned EC are that Recreation Ground (RG) has not been provided at ground level but on slab above the basement where plantation is not possible, in violation of judgement of the Hon'ble Supreme Court in *Municipal Corporation of Greater Mumbai and Ors. vs. Kohinoor CTNL Infrastructure Company Private Limited and another*, (2014) 4 SCC 538 (Kohinoor case). Fire safety norms have been ignored. Setback for light and open spaces has not been provided as per Development Control Regulations (DCR). In the meeting of SEAC dated 25th to 27th June, 2014, recommendation was made to leave margin of 6m from boundary of the plot but the said condition has not been incorporated in the EC. The area exceeds 1.5 lakh sq. m. and thus, the project is 'B-1' category project but has been wrongly appraised as 'B-2' category project. Project wrongly provides for two rehabilitation tenements to each person instead of one.

4. The appeal came up for hearing on 05.05.2016 and notice was issued to the Project Proponent (PP), SEIAA Maharashtra, MHADA and the Group Housing Society. The contesting respondents have filed their respective replies.

Stand of the PP

5. Stand of the PP is that the judgment of the Hon'ble Supreme Court in Kohinoor case, supra, only deprecates practice of providing RG on

podium as per DCR 38 (34) and thus is not applicable as in the present case, podium has not been provided. Requirement of 6 meter open space is not binding as the Municipal Corporation has modified DCR 43 to the effect that open space of 6 meter will not be insisted if the building abuts road with width of 6 meters or more. In the present case, the plot under redevelopment abuts 3 roads having width more than 6 meters. Thus, as per relaxation in DCR 33(10), read with the Notification dated 6th December, 2008, provision for additional 6 meters open space is not binding. Out of 128 members, 104 members have already vacated their respective flats to enable the redevelopment. The appellant is a minority member who is creating hurdles in the redevelopment process.

Order of the Tribunal dated 4.7.2017

6. The matter came up for hearing on 04.07.2017 to consider the interim prayer to stop the ongoing project. The Tribunal rejected M.A. No. 75/2017 as follows:

“xxxxxx.....xxx

Undoubtedly, the recreation ground area referred to at entry No.31 in the EC dated 22nd March 2016 is at the ground level. Informed decision apparently was taken by the SEIAA on the basis of lay out plan describing the recreational ground area, particularly it being on the basement and the specified the number of trees, shrubs and bushes would have in the recreational ground area. There is nothing before us to suggest at this stage that recreational ground area on the basement at the ground level with the trees, shrubs and bushes grown thereon will any way have any adverse impact on the environment. The recreational ground area i.e. the open area at the ground level will obviously be available to the occupants of the developed project.

Considering the balance of convenience, we are not inclined to grant stay to the ongoing construction. M.A. No. 75/2017 therefore, is dismissed.”

The Tribunal recorded the statement of the PP as follows:

“xxxxxx.....xxx

... the Respondent No.6-Project Proponent shall ensure that R.G. ground admeasuring 2672.50 sq.mtr. area shall be left open to the sky in the project and shall further ensure that the plan (trees, shrubs and bushes) as described in entry No.31 of the EC. dated 22nd March 2016 shall be successfully planted, nursed and grown in the R.G. area, and they shall take every care to see that the plantation grows wherever planted in the R.G. area.”

Consideration of the issue by the Tribunal

7. We find that only issue for consideration is the compliance of the condition of RG in terms of law laid down by the Hon’ble Supreme Court in Kohinoor case, supra. In the said case, the Hon’ble Supreme Court dealt with the issue of mandatory minimum RG to be provided in Mumbai in a housing project to give effect to the sustainable development principle of environmental law. Questions framed and answers given are as follows:

Questions

- “17.1. (i) What should be the correlation between DCR 23 and DCR 38(34) regarding the recreational area? Is it permissible to reduce the minimum recreational area provided under DCR 23 on any ground?
- 17.2. (ii) Whether the exemption from DCR 31(1) under DCRs 33(7), 33(8), and 33(9) is justified, valid and legal particularly in the island city of Greater Mumbai? If so, to what extent and in which context?
- 17.3. (iii) What is the impact of the addition of FSI in the island city on the traffic situation? How can it be controlled?
- 17.4. (iv) Whether the present mechanism for protection against the fire hazards is adequate and is being implemented effectively? If not, what should be the mechanism for enforcement with respect to the provisions concerning the fire safety?”

Answers

71.2.1. Issue (i) — The minimum recreational space as laid down under Development Control Regulation (DCR) 23, cannot be reduced on the basis of DCR 38(34). The recreational space, if any, provided on the podium as per DCR 38(34)(iv), shall be in addition to that provided as per DCR 23.

71.2.2. Issues (ii) and (iii) — The Government of Maharashtra, the Development Plan Drafting Committee, and the appellant Municipal Corporation shall consider the

suggestions as contained in paras 60 and 61 above, while framing the Development Plan for Greater Mumbai.

71.2.3. Issue (iv) — The second proviso to DCR 43(1)(A), concerning fire protection requirements, is held to be bad in law. We hold that even for the reconstruction proposals of plots up to the size of 600 sq m under DCR 33(7), open space of the width of 6 m at least on one side at ground level within the plot, accessible from the roadside will have to be maintained for the manoeuvrability of a fire engine, **unless the building abuts two roads of 6 m or more on two sides, or another access of 6 m to the building is available, apart from the road abutting the building.**

71.3. The decision as contained in paras 71.2.1 and 71.2.3 above, will apply to those constructions where plans are still not approved, or where the commencement certificate (CC) has not yet been issued. All authorities concerned are directed to ensure strict compliance accordingly.

71.4. The Government of Maharashtra shall issue the necessary notification within four weeks of this order, reconstituting the “Technical Committee for the High-Rise Buildings”, as directed in paras 64 to 66, including the additional terms of reference, as mentioned in para 67 above. The appellant is directed to render assistance and provide the required honorarium, as mentioned in para 68 above.

8. In the light of above, we hold that RG has to be provided on ground to enable plantation. SEIAA, Maharashtra has thus to ensure availability of space as per above norms. The area has not only to be open to sky but must also enable plantation of trees. If the PP fails to provide RG as per norms, the project may not be allowed to proceed and till compliance, no third-party rights may be created. SEIAA, Maharashtra may verify facts on the ground and take its decision within one month from today.

The appeals are disposed of.

All pending MAs will stand disposed of.

A copy of this order be forwarded to SEIAA, Maharashtra by mail for compliance.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Dinesh Kumar Singh, JM

Prof. A. Senthil Vel, EM

Dr. Vijay Kulkarni, EM

Dr. Afroz Ahmad, EM

September 13, 2022
Appeal No. 22/2016(WZ)
M.A. No. 198/2016(WZ) &
M.A. No. 199/2016(WZ)
Appeal No. 23/2016(WZ)
M.A. No. 196/2016 &
M.A. No. 197/2016
DV



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.35671 OF 2022

1. NAREDCO WEST FOUNDATION
- 2 VIRESH PANDEY
Director and Secretariat of Petitioner No.1 ...Petitioners
 V/S
- 1 UNION OF INDIA
Ministry of Environment,
Forest and Climate Change,
- 2 STATE ENVIRONMENT IMPACT
ASSESSMENT AUTHORITY
- 3 SLUM REHABILITATION AUTHORITY
- 4 MUNICIPAL CORPORATION OF GREATER MUMBAI
- 5 STATE OF MAHARASHTRA
- 6 NATIONAL GREEN TRIBUNAL,
WESTERN BENCH AT PUNE ...Respondents

...

Mr. Pravin Samdani, Senior Advocate, Mr. Karl Tamboly, Mr. Samit Shukla, Mr. Viraj Parikh, Ms. Saloni Shah, Ms. Shivani Khanwilkar, Mr. Abhishek Kothari i/b M/s. DSK Legal for the Petitioners.

Mr. Amogh Singh a/w Mr. Pranav Thackur for Respondent No.1-UOI.

Mr. Milind V. More, Additioal GP for Respondent Nos.2 and 5-State.

Mr. Vijay Patil for Respondent No.3-SRA.

Mrs. Rupali Adhate for Respondent No.4-MCGM.

Ms. Seema Sarnaik i/b Ms. Sangeeta Salvi a/w Ms. Kavita Yadav for the Applicant/Intervenor in IAL 730 of 2023.

...

**CORAM: S.V. GANGAPURWALA, ACJ &
SANDEEP V. MARNE, J.**

JUDGMENT RESERVED ON : 17 JANUARY 2023.

JUDGMENT PRONOUNCED ON: 27 JANUARY 2023.

JUDGMENT (per Sandeep V. Marne, J.):

- 1 Rule. Rule made returnable forthwith. By consent of parties, Petition is heard finally.

2 The Petitioner No.1 is the Maharashtra chapter of the National Real Estate Development Council (NAREDCO) and claims to have more than 400 real estate developers as its members. Petitioner No.1-NAREDCO is aggrieved by the inaction of Respondent No.2-State Environment Impact Assessment Authority (SEIAA) in repeatedly deferring the proposals of members of Petitioner No.1-Association for environmental clearance on the ground of receipt of email dated 23 September 2022 from Registrar of National Green Tribunal (for short 'the NGT') inviting attention of SEIAA to the judgment and order dated 13 September 2022 passed by the NGT in Appeal Nos.22 of 2016. By that judgment, NGT has held that recreational ground has to be provided at the ground level which should not only be open to sky, but must also enable plantation of trees. The NGT has further directed that if any project proponent fails to provide recreational ground as per norms, the project may not be allowed to proceed.

3 Thus, on account of the judgment and order dated 13 September 2022 passed by the NGT, SEIAA has deferred various proposals for environmental clearance. By way of illustration it would be profitable to refer to the minutes of SEIAA held on 28 September 2022 in respect of proposal for environmental clearance for proposed redevelopment of residential cum commercial project 'Sagar Co-operative Housing Society Limited' at Condominium No.8, Sector 10, Koparkhairane, Navi Mumbai by M/s.

Maithili Builders Pvt. Ltd. in which SEIAA has deliberated and decided as under:

“Deliberation in SEIAA-

Proposal is a new construction project. Proposal is recommended by SEAC-2 in its 184th meeting for grant of Environmental Clearance for total plot area of 8797.830 Sq.Mtrs., Total construction area of 67313.572 Sq. Mtrs. and FSI area of 42399.518 Sq. Mtrs.

SEIAA is in receipt of Hon’ble NGT Judgment in NGT appeal no.22/2016 communicated vide NGT registrar email dated 23.09.2022. SEIAA has perused the said judgment and more specifically para 8 of the said judgment and is of the opinion that, SEIAA needs to seek clarification whether the said judgment is applicable only to the specific case of NGT appeal no.22/2016 or to MCGM or to all other local bodies wherein UDCPR is applicable. SEIAA after deliberation decided to defer the proposal for clarification required in the aforesaid NGT matter.

SEIAA Decision-

SEIAA after deliberation decided to defer the proposal.”

4 From the above deliberation and decision of SEIAA, it appears that no final decision rejecting proposal for environmental clearance is taken by SEIAA, but the proposal is merely deferred. According to the Petitioners the order of the NGT is not only *inter partes* but applicable only to projects which are governed by Development Control Regulations, 1991 (for short ‘DCR 1991’) and is not applicable to the projects which are governed by the Development Control and Promotion Regulations 2034 (for short ‘DCPR 2034’) and Unified Development Control & Promotion Regulation (for short ‘UDCPR’). However, since there is no clarity on the issue, It appears that SEIAA has been deferring the proposals rather than taking any final

decision on the same. The Petitioners are aggrieved by such an inaction on the part of the SEIAA.

5 Mr. Samdani, the learned Senior Advocate appearing for the Petitioner would invite our attention to the judgment and order dated 13 September 2022 passed by NGT in support of his contention that the said order merely follows the judgment of the Apex Court in ***Municipal Corporation of Greater Mumbai and others vs. Kohinoor CTNL Infrastructure Co. (Pvt) Ltd. (2014) 4 SCC 538***. Mr. Samdani would further submit that the judgment in ***Kohinoor*** (supra) is rendered by the Apex Court by interpreting the provisions of DCR 1991 and has no application to the projects which are governed by DCPR 2034 and UDCPR. He would further submit that DCR 1991 made it mandatory to provide recreational/amenity space at the ground level whereas DCPR 2034 and UDCPR specifically permit provision of some portion of recreational open spaces on podium area as well. Mr. Samdani would take us through a comparative chart between the provisions of DCR 1991, DCPR 2034 and UDCPR. He would submit that the judgment of the Apex Court in ***Kohinoor*** (supra) would have no application to the projects governed by DCPR 2034 and UDCPR as the Apex Court did not have an occasion to interpret the provisions of DCPR 2034 or UDCPR. He would further submit that even before NGT, the project in question was governed by DCR 1991 and not by

DCPR 2034/UDCPR and therefore the order of NGT would not have any application to the projects governed by DCPR 2034/UDCPR.

6 Mr. Samdani would further submit that the judgment of NGT is otherwise in *personam* and not in *rem*. He would submit that the said judgment would only govern the parties before the NGT and the same cannot be construed as a general direction to SEIAA not to sanction any proposal for environmental clearance unless recreational ground is provided at the ground level.

7 Mr. Samdani would further submit that it is settled law that if the basis on which the judgment of a Court is altered by subsequent provisions of law, the judgment would not have application to the changed circumstances. In support of his contention Mr. Samdani would rely upon the judgments of the Apex Court in ***Shri Prithvi Cotton Mills Ltd. vs. Broach Borough Municipality***, 1969 (2) SCC 283 and ***Welfare Association ARP Maharashtra & Anr. vs. Ranjit P. Gohil & Ors.*** (2003) 9 SCC 358.

8 Mr. Samdani would further contend that the Development Control Regulations are legislative in nature and is a piece of delegated legislation which is statutory in nature and binding on authorities dealing with. In support of his contention, he would rely upon judgment of this Court in ***Janhit Manch & Anr. vs. State of Maharashtra & Ors.***, 2006 SCC OnLine

Bom 1145 and Janhita Manch & Anr. vs. State of Maharashtra & Ors, (2019) 2 SCC 505.

9 Lastly, Mr. Samdani would contend that on account of the inaction of SEIAA in taking a final decision on proposals submitted by various projects for environmental clearance, several projects in the City of Mumbai and its vicinity have been held up, thereby resulting in enormous increase in the costs of construction.

10 Mr. More, the learned AGP appearing for the State Government would submit that SEIAA is felt bound by the directions of NGT which appears to be in *rem*. He would submit that there is no clarity on the issue as to whether the order of NGT is applicable only to the projects governed by DCR 1991 or whether the same would also apply to the projects governed by DCPR 2034/UDCPR and therefore, SEIAA has rightly deferred various proposals till a clarity is achieved. Mr. More, however, fairly leaves it to this Court to clarify the issue so that SEIAA can proceed accordingly.

11 Mr. Amogh Singh, the learned Counsel appearing for the Union of India would oppose the Petition submitting that though Union of India does not have any particular stand with regard to the merits of the issue involved in the Petition, the Petitioners would have an alternate remedy before the NGT in respect of their grievance and that therefore, this Court would be loath in entertaining the present Petition.

12 Ms. Sarnaik, learned Advocate appearing for the Intervenor has opposed the Petition. She would submit that the Writ Petition is filed by the Petitioner No.1-Association of Developers and M/s. Kalpataru Properties Pvt. Ltd., in whose case the NGT has passed the judgment and order dated 13 September 2022, is a member of the Petitioner No.1-Association. She would submit that M/s. Kalpataru Properties has already challenged the judgment and order dated 13 September 2022 of NGT in separate proceedings which are being defended by the Intervenor. She would express an apprehension that the present Petition is filed to indirectly seeks stay of the judgment and order dated 13 September 2022 passed by NGT in *M/s. Kalpataru Properties* case. Inviting our attention to the prayers made in the present Petition, Ms. Sarnaik, would contend that this Court ought not issue directives to SIEAA to process proposals of members of Petitioner No.1-Association by ignoring/not applying NGT's judgment and order as well as the judgment of the Apex Court in ***Kohinoor*** (supra)

13 The objection of Mr. Amogh Singh about alternate remedy is countered by Mr. Samdani submitting that an alternate remedy under National Green Tribunal Act, 2016 cannot be a bar to exercise writ jurisdiction of this Court. He would rely on judgments of the Apex Court in ***Madhya Pradesh High Court Advocates Bar Association & Anr. vs. Union of India & Anr., 2022 SC OnLine SC 639, Whirlpool Corporation***

vs. Registrar of Trade Marks & Anr, (1998) 8 SCC 1 and Magadh Sugar & Energy Ltd. vs. State of Bihar & Ors. 2021 SCC OnLine SC 801. So far as submissions made by Ms. Sarnaik are concerned, Mr. Samdani would clarify that M/s. Kalpataru Properties is not a member of Petitioner No.1-Association. He would further submit that the Petitioners are not seeking stay of the judgment and order dated 13 September 2022 of NGT in any manner. He would submit that the correctness of NGT's judgment and order would be determined in independent proceedings filed by M/s. Kalpataru Properties and that this Petition does not involve that issue. He would submit that the present Petition is confined to inaction on the part of SIEAA in taking decision on the proposals submitted before it by project proponents by applying provisions of the DCPR 2034 or UDCPR.

14 Rival contentions of the parties now fall for our consideration.

15 Since the issue involved in the present Petition relates to the deferment by SIEAA of the proposals submitted by the members of Petitioner No.1-Association relying upon the judgment and order dated 13 September 2022 passed by the NGT, it would be apposite to refer to the relevant portions of said judgment. In paragraphs 3 to 5 of its judgment, NGT has captured the submissions of the parties as under:

"3. Main grounds for challenging the impugned EC are that Recreation Ground (RG) has not been provided at ground level but on slab above the basement where plantation is not possible, in

violation of judgement of the Hon'ble Supreme Court in **Municipal Corporation of Greater Mumbai and Ors. vs. Kohinoor CTNL Infrastructure Company Private Limited and another**, (2014) 4 SCC 538 (Kohinoor case). Fire safety norms have been ignored. Setback for light and open spaces has not been provided as per Development Control Regulations (DCR). In the meeting of SEAC dated 25th to 27th June, 2014, recommendation was made to leave margin of 6 m from boundary of the plot but the said condition has not been incorporated in the EC. The area exceeds 1.5 lakh sq. m. and thus, the project is 'B-1' category project but has been wrongly appraised as 'B-2' category project. Project wrongly provides for two rehabilitation tenements to each person instead of one.

4. The appeal came up for hearing on 05.05.2016 and notice was issued to the Project Proponent (PP), SEIAA Maharashtra, MHADA and the Group Housing Society. The contesting respondents have filed their respective replies.

Stand of the PP

5. Stand of the PP is that the judgment of the Hon'ble Supreme Court in Kohinoor case, supra, only deprecates practice of providing RG on podium as per DCR 38 (34) and thus is not applicable as in the present case, podium has not been provided. Requirement of 6 meter open space is not binding as the Municipal Corporation has modified DCR 43 to the effect that open space of 6 meter will not be insisted if the building abuts road with width of 6 meters or more. In the present case, the plot under redevelopment abuts 3 roads having width more than 6 meters. Thus, as per relaxation in DCR 33(10), read with the Notification dated 6th December, 2008, provisions for additional 6 meters open space is not binding. Out of 128 members, 104 members have already vacated their respective flats to enable the redevelopment. The appellant is a minority member who is creating hurdles in the redevelopment process."

16 The NGT thereafter proceeded to decide the issue by rendering following findings:-

"7. We find that only issue for consideration is the compliance of the condition of RG in terms of law laid down by the Hon'ble Supreme Court in Kohinoor case, supra. In the said case, the Hon'ble Supreme Court dealt with the issue of mandatory minimum RG to be provided

in Mumbai in a housing project to give effect to the sustainable development principle of environmental law. Questions framed and answers given are as follows:

Questions

“17.1.(i) What should be the correlation between DCR 23 and DCR 38(34) regarding the recreational area? Is it permissible to reduce the minimum recreational area provided under DCR 23 on any ground?

17.2.(ii) Whether the exemption from DCR 31(1) under DCRs 33(7), 33(8), and 33(9) is justified, valid and legal particularly in the island city of Greater Mumbai? If so, to what extent and in which context?

17.3.(iii) What is the impact of the addition of FSI in the island city on the traffic situation? How can it be controlled?

17.4. (iv) Whether the present mechanism for protection against the fire hazards is adequate and is being implemented effectively? If not, what should be the mechanism for enforcement with respect to the provisions concerning the fire safety?

Answers

71.2.1. Issue (i) – The minimum recreational space as laid down under Development Control Regulation (DCR) 23, cannot be reduced on the basis of DCR 38(34). The recreational space, if any, provided on the podium as per DCR 38(34)(iv), shall be in addition to that provided as per DCR 23.

71.2.2. Issues (ii) and (iii) – The Government of Maharashtra, the Development Plan Drafting Committee, and the appellant Municipal Corporation shall consider the suggestions as contained in paras 60 and 61 above, while framing the Development Plan for Greater Mumbai.

71.2.3. Issue (iv) – The second proviso to DCR 43(1)(A), concerning fire protection requirements, is held to be bad in law. We hold that even for the reconstruction proposals of plots up to the size of 600 sq m under DCR 33(7), open space of the width of 6 m at least on one side at ground level within the plot, accessible from the roadside will have to be maintained for the manoeuvrability of a fire engine, unless the building abuts two roads of 6 m or more on two sides, or another access of 6 m to the building is available, apart from the road abutting the building.

71.3. The decision as contained in paras 71.2.1 and 71.2.3 above, will apply to those constructions where plans are still not approved, or where the commencement certificate (CC) has not

yet been issued. All authorities concerned are directed to ensure strict compliance accordingly.

71.4. The Government of Maharashtra shall issue the necessary notification within four weeks of this order, reconstituting the “Technical Committee for the High-Rise Buildings”, as directed in paras 64 go 66, including the additional terms of reference, as mentioned in para 67 above. The appellant is directed to render assistance and provide the required honorarium, as mentioned in para 68 above.

8. In the light of above, we hold that RG has to be provided on ground to enable plantation. SEIAA, Maharashtra has thus to ensure availability of space as per above norms. The area has not only to be open to sky but must also enable plantation of trees. If the PP fails to provide RG as per norms, the project may not be allowed to proceed and till compliance, no third-party rights may be created. SEIAA, Maharashtra may verify facts on the ground and take its decision within one month from today.

The appeals are disposed of.

All pending MAs will stand disposed of.

A copy of this order be forwarded to SEIAA, Maharashtra by mail for compliance.”

17 Perusal of the order of NGT would indicate that the same has squarely followed the judgment of the Apex Court in **Kohinoor** (supra), in which the Apex Court has held in paragraph 32 of the judgment as under:

“32. Therefore, after reflecting upon the legal position, we are clearly of the opinion that having 15%, 20% or 25% of the area (depending upon the size of the layout) as the recreational/amenity area at the ground level is a minimum requirement, and it will have to be read as such. We therefore, answer Issue (i) by holding that it is not permissible to reduce the minimum recreational area provided under DCR 23 by relying upon DCR 38(34). However, if the developers wish to provide recreational area on the podium, over and above the minimum area mandated by DCR 23 at the ground level, they can certainly provide such additional recreational area.”

18 We have gone through the judgment of the Apex Court in ***Kohinoor*** (supra), in which the Apex Court was essentially concerned with interpretation of provisions of DCR 1991. After interpreting the provisions of DCR 23 dealing with recreational/amenity open spaces, the Apex Court held that the recreational/amenity area is required to be provided at the ground level. It appears that DCR 23 did not contain any specific provision for providing recreational/amenity open spaces at podium level and on the contrary it provided that the recreational space shall be kept permanently open to sky and trees shall be grown as per the requirements specified therein. It is on account of such provisions of the DCR 1991, that the Apex Court held that the recreational/amenity area is required to be provided at ground level.

19 The provisions of DCR 1991 came to be superseded/replaced by the provisions of the DCPR 2034 for areas within Greater Mumbai and the some of the principles enunciated in Regulation 23 of DCR 1991 *prima facie* appear to have been deviated in some of the provisions in Regulation 27 of DCPR 2034. While we do not propose to interpret the provisions of Regulation 27 of DCPR 2034, it would be apposite to reproduce Note 2 appended to Regulation 27 which reads thus:

"2. The minimum 60% of the required LOS shall be provided exclusively on the ground and at least 50% of this shall be provided on mother earth to facilitate the percolation of water and balance 40%

of required LOS may be provided on podium area extending beyond the building line. The LOS on mother earth shall not be paved and all LOS shall be accessible to all the occupants of the plot/layout. Rest of the compound pavement other than stated above shall be paved with perforated paving having adequate strength, in order to facilitate percolation of rain water into the ground.”

20 Coming to the areas falling outside the limits of Municipal Corporation for Greater Mumbai, the provisions of Unified Development Control and Promotion Regulations also contain a provision in the form of Regulation 3.4.1 which apparently permits recreational open space being provided on terrace of podium in certain cases. Sub clause 3 of Regulation 3.4.1 of UDCPR provides as under:

“3. Not more than 50% of such recreational open space may be provided on the terrace of a podium in congested/non congested area subject to Regulation No.9.13.”

21 Thus, both under the DCPR 2034 as well as in UDCPR there appears to be change in the provision relating to provision of recreational open spaces.

22 Thus there appears to be a deviation in the provisions of the Development Control Regulations applicable at the time of delivery of the judgment by the Apex Court in **Kohinoor** and the one which are prevalent now. This aspect is required to be considered by the concerned authorities.

23 Mr. Samdani has submitted that the proposals for development permission have already been sanctioned by respective planning authorities

and that the proposal for environmental clearance are required to be submitted only after grant of development permissions. He would submit that the proposals for development permission submitted by members of Petitioner No.1-Association fully conform to the provisions of DCPR 2034 and UDCPR. This aspect would be considered by SIEAA while taking final decision on the proposals. Suffice it to say at this juncture that there appears to be some change in the provisions relating to the manner in which recreational open spaces are to be provided in the earlier Development Control Regulations as considered by Apex Court in case of **Kohinoor** (supra) and the one which are prevalent now. Mr. Samdani has relied upon the judgment of the Apex Court in **Shri Prithvi Cotton Mills Ltd.** (supra), in which the Apex Court has held in para 4 of the said judgment as under:

“4. A court’s decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. Ordinarily, a court holds a tax to be invalidly imposed because the power to tax is wanting or the statute or the rules or both are invalid or do not sufficiently create the jurisdiction.”

24 Again in **Welfare Association ARP Maharashtra** (supra) the Apex Court, referring to the judgment in **Shri Prithvi Cotton Mills Ltd.** (supra), has held in paragraph 46 as under:

“46. Thus, it is permissible for the legislature, subject to its legislative competence otherwise, to enact a law which will withdraw or fundamentally alter the very basis on which a judicial pronouncement has proceeded and create a situation which if it had existed earlier, the Court would not have made the pronouncement.”

25 From perusal of comparative chart of the provisions of DCR 1991 and DCPR 2034 as well as UDCPR, *prima facie* there appears to be deviation in the exact location at which open recreational spaces is to be provided. Therefore, SEIAA is required to take into consideration the provisions of DCPR 2034 or UDCPR as applicable, in order to determine permissibility of provision of open recreational spaces on podium level in a particular project. The judgment and order dated 13 September 2022 of NGT in case of *Anil Tharthare vs. The Secretary, Environment Dept. State of Maharashtra & Ors.* cannot be construed to mean a blanket prohibition to consider the proposals of the projects governed by DCPR 2034 or UDCPR.

26 The objections raised by the Intervenor about the Petitioners indirectly seeking stay of NGT's judgment and order is totally misplaced. Firstly, the Petitioners have not questioned correctness of NGT's judgment and order in the present Petition in any manner, nor we had gone into the same. Secondly, the Petition is confined only to the issue of failure on the part of SEIAA to decide the proposals for environmental clearances. We have repeatedly clarified in the present judgment that we are not expressing any final opinion as to whether recreational spaces in a particular project can be provided at podium level or not. This is something which SEIAA will determine applying provisions of DCPR 2034 or UDCPR. All that we are directing the SEIAA is to decide the proposals for environmental clearances

in accordance with the provisions of DCPR 2034 or UDCPR. Therefore, the objections raised and apprehension expressed by the Intervenor are totally misconceived.

27 We have, therefore, no hesitation in holding that SIEAA could not have deferred decision of proposals for grant of environmental clearances merely on the basis of the judgment and order dated 13 September 2022 of NGT. The said decision is rendered by NGT relating to inter-party *lis* involved in Appeal No.20 of 2016. The same would not govern each and every proposal submitted before the SIEAA based upon DCPR 2034 or UDCPR.

28 So far as the objection about entertainability of the present Writ Petition in the light of availability of alternate remedy under the National Green Tribunal Act, 2016 is concerned, we have not gone into the merits of the issue as to whether environmental clearance *qua* particular project is grantable or not. All that we have dealt with in the present judgment is about the legality of action of SIEAA in deferring the proposals rather than taking final decisions thereon. Since entitlement of a particular project proponent for grant of environmental clearance is not an issue either raised in the Petition nor have we decided the same, the issue of availability of alternate remedy under the Act of 2016 becomes redundant. We are only issuing

direction to SIEAA to take decisions on proposals submitted before it by applying and interpreting the provisions of the relevant DCPR 2034/UDCPR. Therefore, the objection of availability of alternate remedy is repelled.

29 We, therefore, proceed to pass following order:

ORDER

- i) We direct that the judgment and order dated 13 September 2022 passed by the National Green Tribunal in Appeal No.22 of 2016 shall not be an impediment for SIEAA to decide various proposals submitted by members of Petitioner No.1-Association for grant of environmental clearances on its own merits.
- ii) SIEAA, shall consider and decide each of the proposals for grant of an environmental clearance by applying provisions of DCPR 2034 or UDCPR, as the case may be.
- iii) All questions on merits relating to permissibility of providing recreational open spaces at podium level in a particular project are left open to be decided by SIEAA on its own merits.
- iv) Considering the fact that the proposals submitted by Petitioner No.1 Association are pending since long, SIEAA shall proceed to take a final decision thereon as expeditiously as possible preferably within a period of eight weeks from today.

v) With the above directions, the Writ Petition is partly allowed. Rule made partly absolute in the above terms. No costs.

(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)

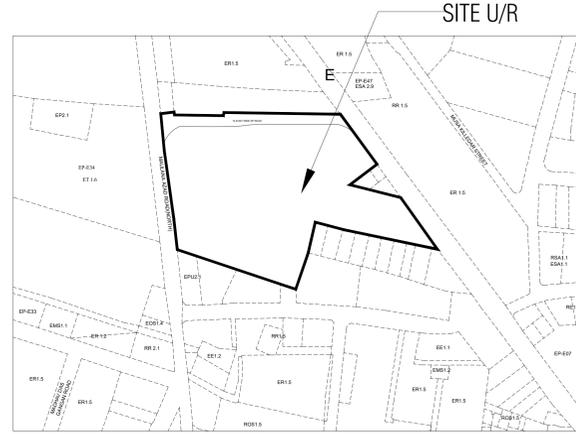
**S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS****SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 11843/2023****(Arising out of impugned final judgment and order dated 27-01-2023 in WPL No. 35671/2022 passed by the High Court of Judicature at Bombay)****SAGAR DEVRE & ANR.****Petitioner(s)****VERSUS****NAREDCO WEST FOUNDATION & ORS.****Respondent(s)****(FOR ADMISSION and I.R. and IA No.86768/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.86765/2023-PERMISSION TO FILE PETITION (SLP/TP/WP/..))****Date : 08-05-2023 This petition was called on for hearing today.****CORAM :****HON'BLE MR. JUSTICE ABHAY S. OKA
HON'BLE MR. JUSTICE RAJESH BINDAL****For Petitioner(s)****Mr. Ashutosh Ghade, AOR
Mr. Vivek Shukla, Adv.
Mr. Ashutosh Ghade, Adv.
Mr. Raj Awasthi, Adv.
Ms. Sneha Balapure, Adv.****For Respondent(s)****UPON hearing the counsel the Court made the following
O R D E R****Application for exemption from filing a certified copy of the impugned judgment is allowed.****Permission is granted to file Special Leave Petition.****Issue notice returnable on 31st July, 2023.****In the meanwhile, there will be stay of the directions contained in the impugned order passed by the High Court.**

Signature Not Verified
Digitally signed by
Anita Malhotra
Date: 2023.05.09
17:52:58 IST
Reason: 

**(ANITA MALHOTRA)
AR-CUM-PS****(AVGV RAMU)
COURT MASTER**

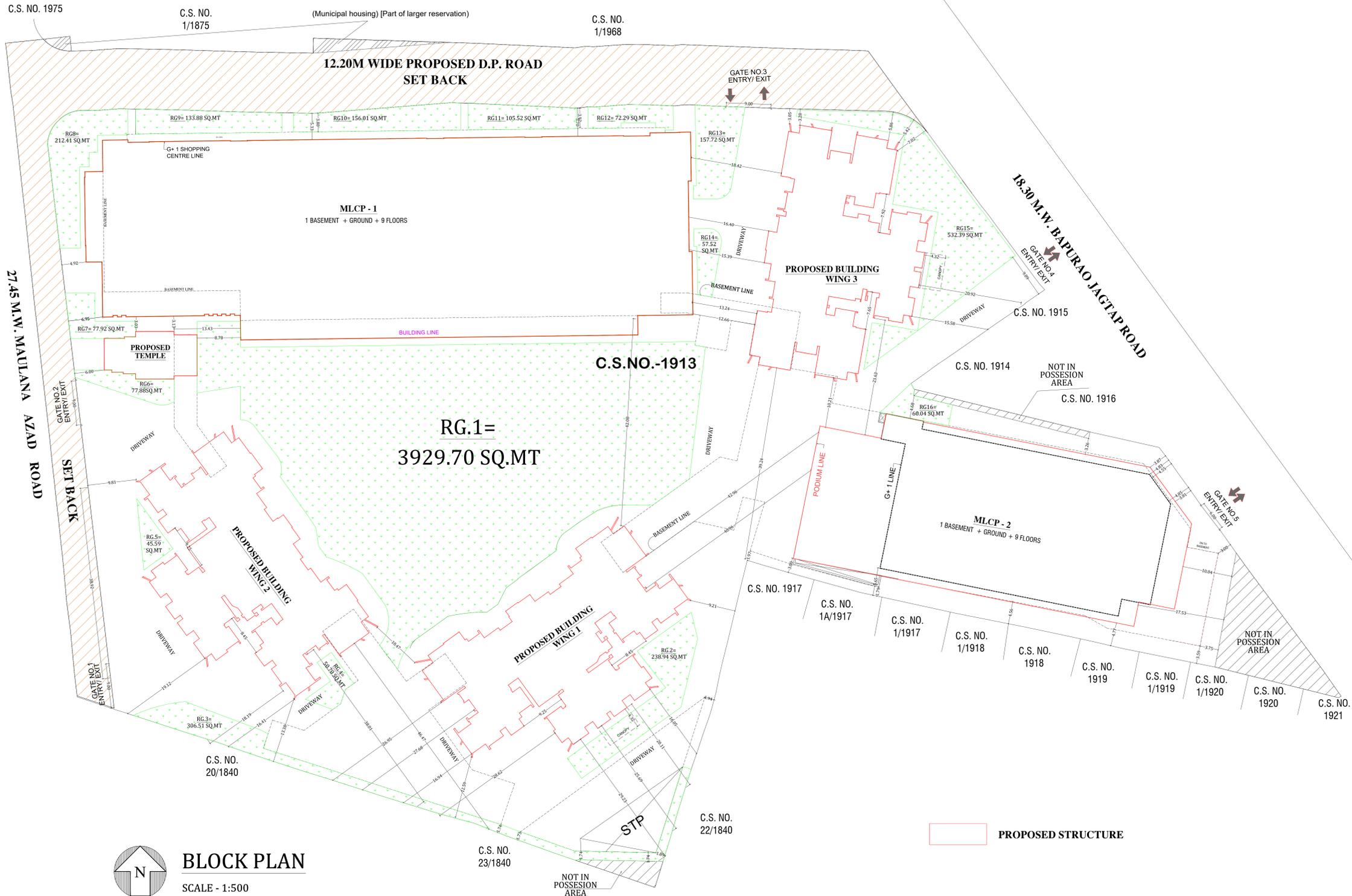
PROFORMA - A		
SN	DISCRIPTION	SQM
1	Plot Area Gross	28356.14
2	Less Setback	3035.79
3	Less Reservation Municipal Housing	52.74
4	Any Subdivision Approved	0.00
5	Lessee	0.00
6	Area Not in Possession	408.64
7	Area to Retain for Mill Activity	0.00
8	Total (2 + 3 + 4 + 5 + 6 + 7)	3497.17
9	Net Plot (1 - 8)	24858.97
10	Existing Built Up Area	37086.64
11	Land Component of existing Built Up Area= (10) / 1.33	27884.69
12	Open Land / Balance Potential for sharing	NA as (11) > (9)
A	Owner Share OF (12)	34% 0.00
B	M.C.G.M. SHARE of (12)	33% 0.00
C	MHADA SHARE of (12)	33% 0.00
D	Net Plot Available For Development	24858.97
13	Plot Considered For FSI Purpose	24858.97
A	Zonal Basic FSI/ Existing BUA (whichever is more)	1.33 37086.64

EXHIBIT - D



RG Statement		
		C.S. No. 1913
1	Net Plot Area	24858.97
2	RG Required (25%)	6214.74
3	RG Proposed on Ground	6215.02

LOCATION PLAN
SCALE - 1:4000



BLOCK PLAN
SCALE - 1:500

PROFORMA - B

CONTENTS OF SHEET
BLOCK PLAN & LOCATION PLAN

STAMP AND DATE OF APPROVAL OF PLAN

PLAN FOR APPROVAL			
S.E. (B.P)C-I	A.E. (B.P)C-IV	E.E. (B.P)C-I	DY.CHE. (B.P)CITY

STAMP AND DATE OF RECEIPT OF PLAN

DESCRIPTION OF PROPOSAL & PROPERTY
PROPOSED DEVELOPMENT ON PLOT BEARING C.S. NO.- 1913 OF BYCULLA DIVISION IN E WARD.

NORTH	JOB. NO.	DRG. NO.	DRAWN BY
	137	01/02	PRACHI
	SCALE	DATE	CHECKED BY
	(as specified)	-	NINAD

REVISIONS DESCRIPTION :
R-0

NAME & ADDRESS OF DESIGN ARCHITECT

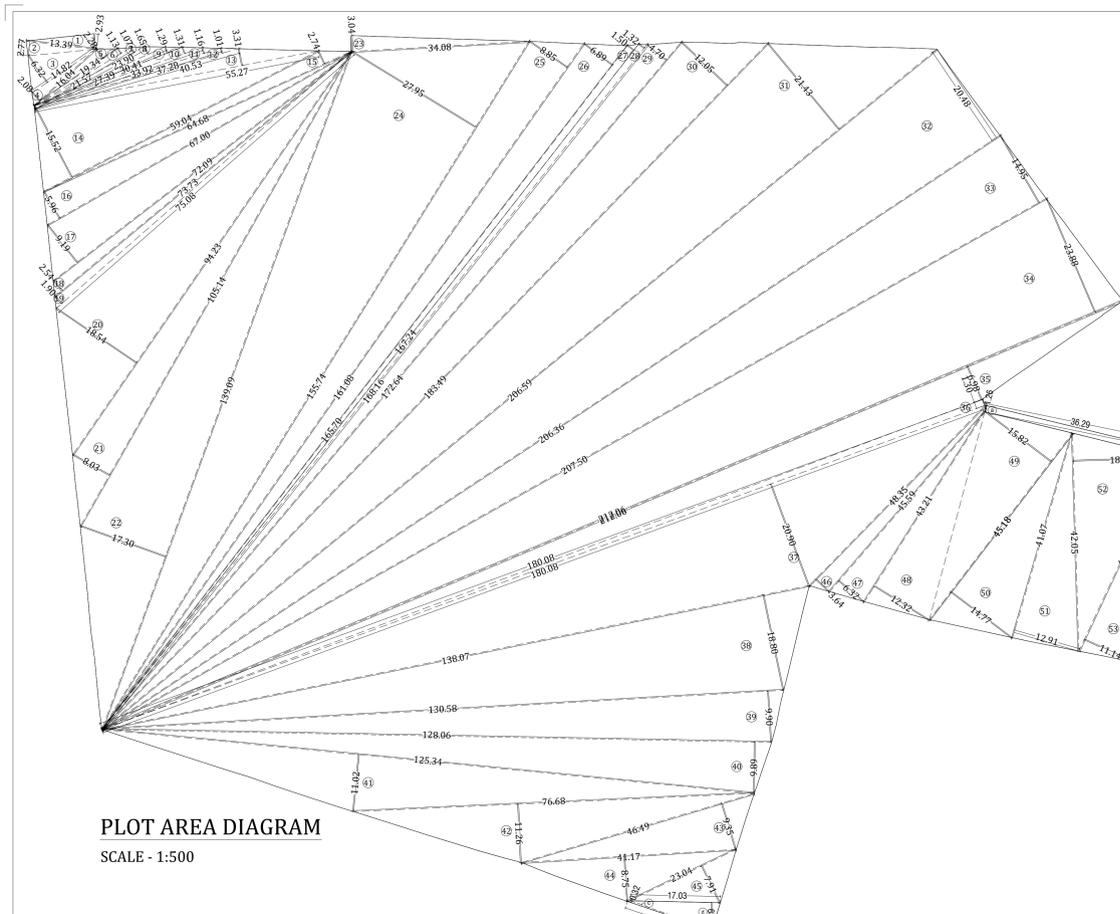
NAME OF THE OWNER
MACROTECH DEVELOPERS LTD

SIGNATURE

NAME AND ADDRESS OF LICENSED SURVEYOR (L.S.)
Shashika Laamant Jadhav

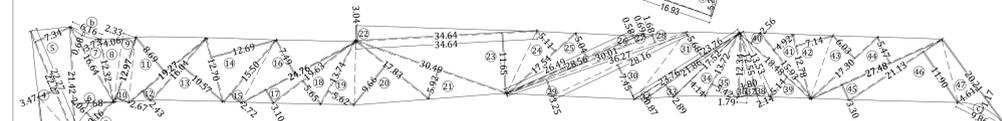
SIGNATURE

SPACE AGE CONSULTANTS
B-106, Natraj Building, Mulund Goregaon Link Road, Mulund (w), Mumbai - 4000 080



PLOT AREA DIAGRAM

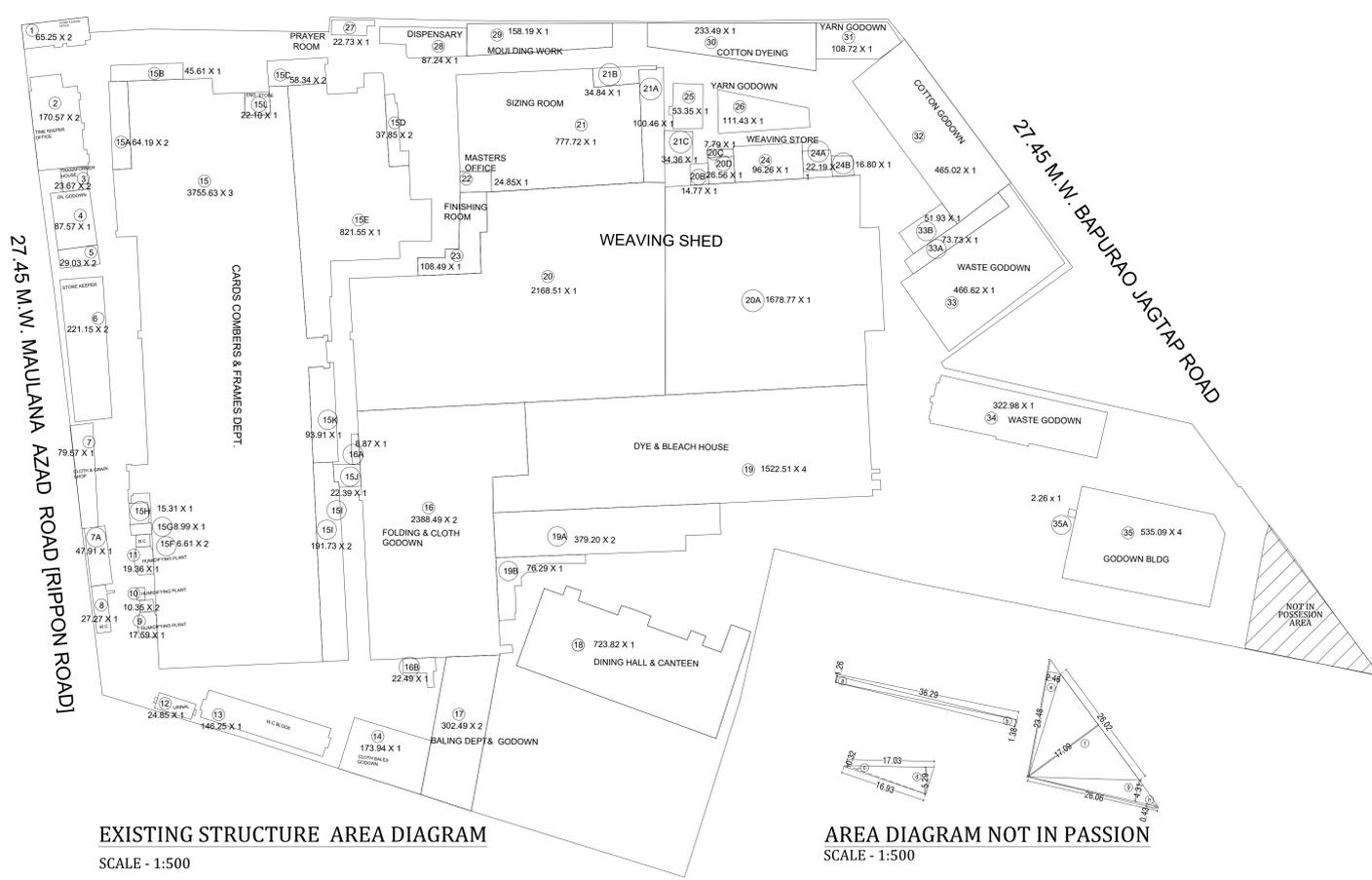
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SET BACK LINE AREA DIAGRAM

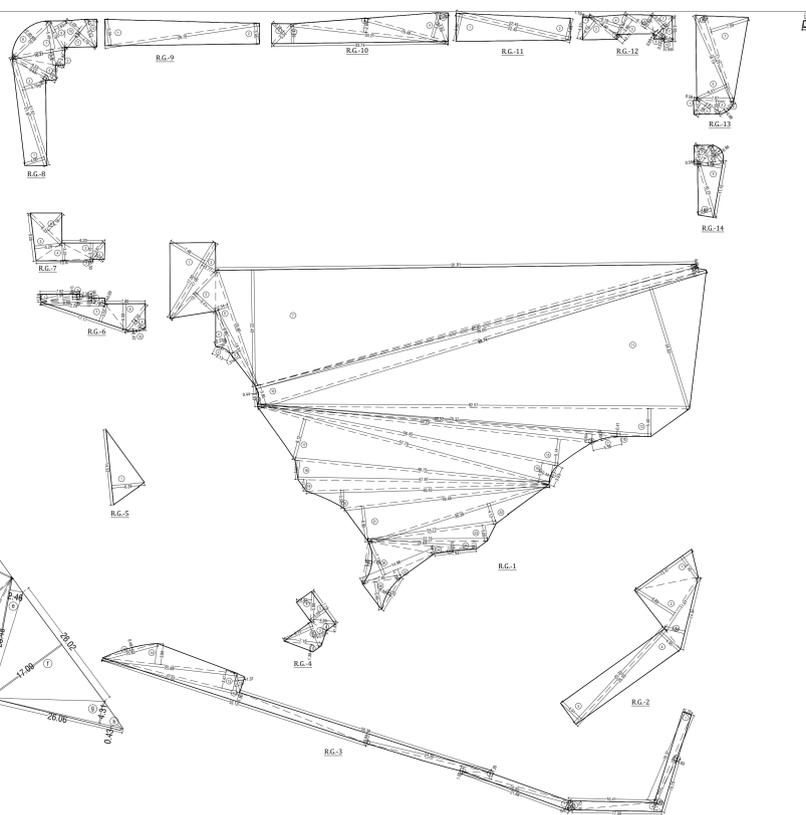
SCALE - 1:500

SET BACK LINE AREA CALCULATION				PLOT AREA CALCULATION			
ADDITION				ADDITION (X)			
1	113.07	X	7.13	0.50	=	410.22	SQ.MT
2	131.96	X	4.98	0.50	=	278.78	SQ.MT
3	28.16	X	6.08	0.50	=	85.61	SQ.MT
4	22.27	X	3.47	0.50	=	38.64	SQ.MT
5	22.27	X	7.34	0.50	=	81.73	SQ.MT
6	21.42	X	7.46	0.50	=	82.25	SQ.MT
7	16.64	X	3.73	0.50	=	31.03	SQ.MT
8	12.32	X	4.06	0.50	=	25.01	SQ.MT
9	12.97	X	2.33	0.50	=	15.11	SQ.MT
10	12.97	X	2.67	0.50	=	17.31	SQ.MT
11	19.27	X	8.69	0.50	=	83.73	SQ.MT
12	19.27	X	2.43	0.50	=	23.41	SQ.MT
13	16.04	X	30.57	0.50	=	84.77	SQ.MT
14	12.70	X	12.69	0.50	=	80.58	SQ.MT
15	15.50	X	2.72	0.50	=	21.08	SQ.MT
16	24.76	X	7.49	0.50	=	92.73	SQ.MT
17	24.76	X	3.10	0.50	=	38.38	SQ.MT
18	19.63	X	5.65	0.50	=	55.65	SQ.MT
19	13.74	X	5.62	0.50	=	38.61	SQ.MT
20	17.83	X	9.66	0.50	=	86.12	SQ.MT
21	38.49	X	5.92	0.50	=	92.51	SQ.MT
22	34.64	X	3.04	0.50	=	52.65	SQ.MT
23	34.64	X	11.65	0.50	=	201.78	SQ.MT
24	17.54	X	5.11	0.50	=	51.80	SQ.MT
25	26.49	X	5.04	0.50	=	66.75	SQ.MT
26	28.56	X	0.58	0.50	=	8.28	SQ.MT
27	30.01	X	7.45	0.50	=	103.55	SQ.MT
28	36.27	X	1.68	0.50	=	38.47	SQ.MT
29	36.27	X	3.25	0.50	=	58.94	SQ.MT
30	28.16	X	7.45	0.50	=	104.90	SQ.MT
31	23.76	X	5.68	0.50	=	67.48	SQ.MT
32	23.76	X	0.87	0.50	=	10.34	SQ.MT
33	21.86	X	2.89	0.50	=	21.86	SQ.MT
34	17.52	X	4.14	0.50	=	36.27	SQ.MT
35	13.72	X	5.42	0.50	=	37.18	SQ.MT
36	12.34	X	1.79	0.50	=	11.84	SQ.MT
37	12.55	X	1.80	0.50	=	11.30	SQ.MT
38	13.53	X	2.14	0.50	=	14.48	SQ.MT
39	18.48	X	5.14	0.50	=	47.49	SQ.MT
40	18.48	X	2.56	0.50	=	23.65	SQ.MT
41	15.93	X	4.92	0.50	=	39.19	SQ.MT
42	12.78	X	7.14	0.50	=	45.62	SQ.MT
43	17.30	X	6.03	0.50	=	52.16	SQ.MT
44	27.48	X	5.47	0.50	=	75.16	SQ.MT
45	27.48	X	3.38	0.50	=	45.34	SQ.MT
46	21.13	X	11.90	0.50	=	125.72	SQ.MT
47	20.21	X	4.61	0.50	=	46.58	SQ.MT
DEDUCTION				TOTAL (a)			
1	10.16	X	2.06	0.67	=	14.02	SQ.MT
1	6.16	X	0.68	0.67	=	2.81	SQ.MT
1	9.06	X	1.17	0.67	=	7.21	SQ.MT
TOTAL (b)				TOTAL AREA (a-b)			
				3035.79			
				3035.79			



EXISTING STRUCTURE AREA DIAGRAM

SCALE - 1:500



RG AREA DIAGRAM

SCALE - 1:500

RG AREA CALCULATION						
1	0.5	X	2.77	X	0.58	1 NO = 0.80 SQ.MT
2	0.5	X	4.92	X	2.59	1 NO = 6.37 SQ.MT
3	0.5	X	7.07	X	2.55	1 NO = 9.01 SQ.MT
4	0.67	X	3.83	X	0.69	1 NO = 1.76 SQ.MT
5	0.5	X	18.10	X	6.41	1 NO = 58.01 SQ.MT
6	0.5	X	18.10	X	1.80	1 NO = 16.29 SQ.MT
7	0.5	X	17.25	X	7.59	1 NO = 65.46 SQ.MT
TOTAL ADDITION						
157.72						

RG AREA CALCULATION						
1	0.5	X	3.64	X	0.59	1 NO = 1.07 SQ.MT
2	0.5	X	4.37	X	2.53	1 NO = 5.53 SQ.MT
3	0.5	X	4.98	X	3.25	1 NO = 8.09 SQ.MT
4	0.67	X	3.85	X	0.90	1 NO = 2.31 SQ.MT
5	0.5	X	11.15	X	4.73	1 NO = 26.37 SQ.MT
6	0.5	X	10.72	X	2.84	1 NO = 14.15 SQ.MT
TOTAL ADDITION						
57.52						

RG AREA CALCULATION						
1	0.5	X	18.47	X	1.23	1 NO = 11.36 SQ.MT
2	0.5	X	22.20	X	3.93	1 NO = 43.62 SQ.MT
3	0.5	X	6.75	X	2.94	1 NO = 9.92 SQ.MT
4	0.67	X	6.75	X	0.55	1 NO = 2.49 SQ.MT
5	0.5	X	18.12	X	3.20	1 NO = 28.99 SQ.MT
6	0.5	X	17.06	X	7.82	1 NO = 66.70 SQ.MT
7	0.5	X	18.12	X	3.32	1 NO = 30.08 SQ.MT
8	0.5	X	8.48	X	10.87	1 NO = 45.98 SQ.MT
9	0.5	X	17.88	X	4.76	1 NO = 42.51 SQ.MT
10	0.5	X	24.95	X	16.46	1 NO = 205.34 SQ.MT
11	0.5	X	13.47	X	6.74	1 NO = 45.39 SQ.MT
TOTAL ADDITION						
532.30						

RG AREA CALCULATION						
1	0.5	X	8.59	X	1.27	1 NO = 5.45 SQ.MT
2	0.5	X	4.33	X	1.00	1 NO = 4.17 SQ.MT
3	0.5	X	5.56	X	7.56	1 NO = 21.02 SQ.MT
4	0.5	X	9.35	X	2.55	1 NO = 11.92 SQ.MT
5	0.5	X	9.35	X	3.74	1 NO = 17.48 SQ.MT
TOTAL ADDITION						
60.04						

TOTAL RG AREA 1 TO 16 = 6215.02 SQ.MT

EXISTING STRUCTURE AREA SUMMARY (AS PER P-LINE AREA)

AREA	FLRS.	TOTAL
1	65.25 X 2.00	130.50 SQ.MT
2	170.57 X 2.00	341.14 SQ.MT
3	23.67 X 2.00	47.34 SQ.MT
4	87.57 X 1.00	87.57 SQ.MT
5	29.03 X 2.00	58.06 SQ.MT
6	221.15 X 2.00	442.30 SQ.MT
7	79.57 X 1.00	79.57 SQ.MT
7A	47.91 X 1.00	47.91 SQ.MT
8	27.27 X 1.00	27.27 SQ.MT
9	17.59 X 1.00	17.59 SQ.MT
10	10.35 X 2.00	20.70 SQ.MT
11	19.36 X 1.00	19.36 SQ.MT
12	24.85 X 1.00	24.85 SQ.MT
13	146.25 X 1.00	146.25 SQ.MT
14	173.94 X 1.00	173.94 SQ.MT
15	3755.63 X 3.00	11266.89 SQ.MT
15A	64.19 X 1.00	64.19 SQ.MT
15B	45.61 X 1.00	45.61 SQ.MT
15C	58.34 X 2.00	116.68 SQ.MT
15D	37.85 X 2.00	75.70 SQ.MT
15E	821.55 X 1.00	821.55 SQ.MT
15F	6.61 X 2.00	13.22 SQ.MT
15G	8.99 X 1.00	8.99 SQ.MT
15H	15.31 X 1.00	15.31 SQ.MT
15I	191.73 X 2.00	383.46 SQ.MT
15J	22.39 X 1.00	22.39 SQ.MT
15K	93.91 X 1.00	93.91 SQ.MT
15L	22.10 X 1.00	22.10 SQ.MT
16	2388.49 X 2.00	4776.98 SQ.MT
16A	8.87 X 1.00	8.87 SQ.MT
16B	22.49 X 1.00	22.49 SQ.MT
17	302.49 X 2.00	604.98 SQ.MT
18	723.82 X 1.00	723.82 SQ.MT
19	1522.51 X 4.00	6090.04 SQ.MT
19A	379.20 X 2.00	758.40 SQ.MT
19B	76.29 X 1.00	76.29 SQ.MT
20	2168.51 X 1.00	2168.51 SQ.MT
20A	1678.77 X 1.00	1678.77 SQ.MT
20B	14.77 X 1.00	14.77 SQ.MT
20C	7.79 X 1.00	7.79 SQ.MT
20D	26.56 X 1.00	26.56 SQ.MT
21	777.72 X 1.00	777.72 SQ.MT
22	27.72 X 1.00	27.72 SQ.MT
23	108.49 X 1.00	108.49 SQ.MT
24	96.26 X 1.00	96.26 SQ.MT
24A	22.19 X 1.00	22.19 SQ.MT
24B	16.80 X 1.00	16.80 SQ.MT
25	53.35 X 1.00	53.35 SQ.MT
26	111.43 X 1.00	111.43 SQ.MT
27	22.73 X 1.00	22.73 SQ.MT
28	87.24 X 1.00	87.24 SQ.MT
29	158.19 X 1.00	158.19 SQ.MT
30	233.49 X 1.00	233.49 SQ.MT
31	108.72 X 1.00	108.72 SQ.MT
32	465.02 X 1.00	465.02 SQ.MT
33	466.62 X 1.00	466.62 SQ.MT
33A	73.73 X 1.00	73.73 SQ.MT
33B	51.93 X 1.00	51.93 SQ.MT
34	322.98 X 1.00	322.98 SQ.MT
35	535.09 X 4.00	2140.36 SQ.MT
35A	2.26 X 1.00	2.26 SQ.MT
TOTAL (X)		37086.64

AREA DIAGRAM NOT IN PASSION

SCALE - 1:500

RG AREA CALCULATION						
1	0.50	X	17.00	X	7.46	1 NO = 63.41 SQ.MT
2	0.50	X	17.00	X	2.77	1 NO = 23.55 SQ.MT
3	0.50	X	12.75	X	5.41	1 NO = 34.49 SQ.MT
4	0.50	X	8.65	X	2.23	1 NO = 9.64 SQ.MT
5	0.50	X	16.34	X	1.31	1 NO = 10.78 SQ.MT
6	0.50	X	23.80	X	2.54	1 NO = 29.97 SQ.MT
7	0.50	X	91.81	X	22.43	1 NO = 1029.65 SQ.MT
8	0.50	X	87.42	X	0.67	1 NO = 29.29 SQ.MT
9	0.50	X	19.08	X	0.89	1 NO = 8.65 SQ.MT
10	0.50	X	89.74	X	3.86	1 NO = 172.75 SQ.MT
11	0.50	X	89.74	X	24.62	1 NO = 1104.70 SQ.MT
12	0.50	X	82.57	X	5.39	1 NO = 222.53 SQ.MT
13	0.50	X	17.00	X	0.41	1 NO = 14.45 SQ.MT
14	0.50	X	69.92	X	1.64	1 NO = 57.01 SQ.MT
15	0.50	X	64.23	X	5.14	1 NO = 165.07 SQ.MT
16	0.50	X	58.45	X	3.83	1 NO = 111.50 SQ.MT
17	0.50	X	17.00	X	8.12	1 NO = 234.01 SQ.MT
18	0.50	X	48.75	X	3.66	1 NO = 89.21 SQ.MT
19	0.50	X	47.97	X	2.17	1 NO = 52.05 SQ.MT
20	0.50	X	46.42	X	3.50	1 NO = 81.24 SQ.MT
21	0.50	X	39.46	X	6.90	1 NO = 136.14 SQ.MT
22	0.50	X	36.28	X	4.12	1 NO = 74.74 SQ.MT
23	0.50	X	24.72	X	3.09	1 NO = 38.19 SQ.MT
24	0.50	X	22.76	X	1.59	1 NO = 18.08 SQ.MT
25	0.50	X	20.84	X	1.42	1 NO = 14.65 SQ.MT
26	0.50	X	14.98	X	7.11	1 NO = 53.25 SQ.MT
27	0.50	X	14.98	X	1.75	1 NO = 13.11 SQ.MT
28	0.50	X	7.48	X	4.49	1 NO = 20.53 SQ.MT
TOTAL ADDITION						
3945.23						

DEDUCTION						
a	0.67	X	3.13	X	0.38	1 NO = 0.79 SQ.MT</