

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

Original Application No. 46 of 2021 (W.Z.)

[Earlier Appeal No. 09 of 2021 (W.Z.)]

Dilip Pandurang Koli & Ors.

...Applicants

Versus

Union of India & Ors.

...Respondents

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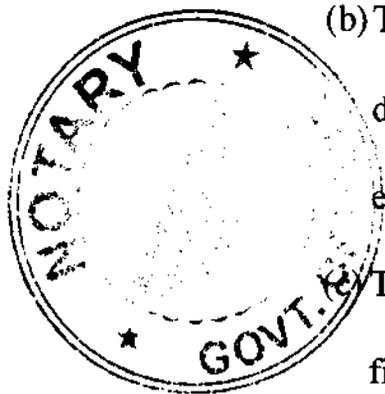
Affidavit in Reply on behalf of the Original Applicants to the Expert

Committee Report:

I, Dilip Pandurang Koli, Applicant No. 1 herein, residing at At.Uran Koliwada, Post., Tal.Uran, Dist.Raigad-400702 do solemnly state and affirm as under-

1. The present Original Application was filed seeking to challenge the joint CRZ and Environmental Clearance dated 9th October 2019 granted to the Respondent No. 2 for the balance work of the 4th Container Terminal and liquid chemical terminal. The primary grounds of challenge to the joint CRZ and Environmental Clearance are as follows-

- (a) That the area where the proposed work is to be carried out is a CRZ-IA area and the joint CRZ and EC erroneously record the fact that it is a CRZ-IV area



(b) That the mandatory stage of public hearing has been done away with despite the EIA Notification, 2006 not containing any provision empowering either the EAC or the MoEF-CC to do so

(c) That there has been no assessment of the impact of the project on fishing activities

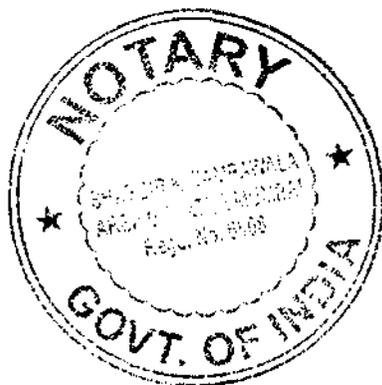
(d) That the Respondent No.2 has violated the conditions of the previous environmental clearances

2. This Hon'ble Tribunal *vide* its order dated 23rd June 2021 constituted a four-member committee comprising of nominees of the MoEF-CC, State SPCB, MCZMA and District Magistrate, Raigad to give an independent factual report on the issues raised in the Original Application.

3. The Applicants herein were invited to participate in the Committee proceedings on 7th September 2021. The Committee was shown various maps indicating the existence of mudflats and fishing practices. A map of the Jawaharlal Nehru Port Trust area prepared by the Naval Hydrographic Office, India, which shows the existence of salt pan lands and mud flats adjacent to the JNPT port area was shown to the Committee. The said map also indicates the existence of fishing stakes and states that "*fishing stakes are liable to be met within the area covered by this chart except for the duration of the S W Monsoon.*" Hereto annexed and marked as **Annexure**

A-1 is a copy of the map. On 7th September 2021, the Committee was also shown the photographs of Uran mudflats before the construction of the 4th Terminal and after the construction of Phase I of the 4th Container Terminal. Subsequently the Committee visited the site on 8th September 2021. Hereto annexed and marked as **Annexure A-2** are the photographs that were shown to the Committee.

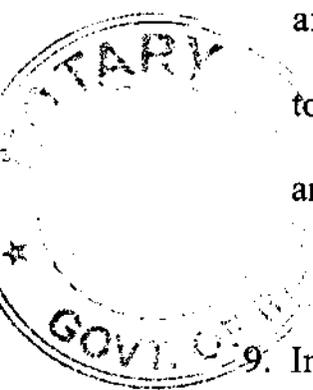
4. The Expert Committee was also appraised about the rich history of fishing activities in this region. The Applicants herein explained to the members of the Expert Committee that before JNPT commenced its operations, the bed of the Thane creek, which is the approach channel leading to the JNPT port, comprised of rocky substrate known as the continental shelf. The Thane Creek had many visible marine islands namely Oyster Rock, Middle Ground Coastal Battery, Cross Island View, Ramadevi, Gull Island (Kashyacha Khadak), Sheva, Nhava, Gharapuri, Butcher, Uran, Panje, Dongari etc. This is evident from a map which sets out the navigational course for boats by masting light beacons so as to avoid the rocky peaks (known as promontories) that are submerged under water. Hereto annexed and marked as **Annexure A-3** is a copy of the said map.



5. The continental shelf or submerged coastland is of vital importance to fisheries. It is the shallowest part of this seabed and comprises of shallow tide pools and rock crevices. As this part is shallow and the sunlight reaches its bed, algae, plankton, etc. grew in abundance which was food for fish. This naturally developed marine environment attracted many migratory fish for breeding, molting (a process involving the shedding of old exoskeleton and formation of new exoskeleton), spawning, and also acted as nursery and feeding ground. Extensive and productive fishing grounds were available in this region and was very crucial for the fisherfolk.
6. The crabs, lobsters, prawn etc. would normally move from inshore to offshore to lay their eggs. These eggs would hatch offshore in these crevices of the rocky bed that offered a protective covering. Once hatched the new-borns would be carried back naturally inshore (estuarine and mangroves etc.). When they mature they go back to the offshore where they would form burrows within these rocky cervices.
7. It was explained to the Expert Committee that the crevices and crannies of the continental shelf of Thane Creek formed vital habitats of crustaceans and molluscs that used these cave-like environs as their home or habitat.



8. The Expert Committee was appraised of the multiple clearances granted to JNPT for projects such as the 330 metre extension, the deepening and widening of the JNPT channel for which 1774 hectares of the sea bed was dredged. Apart from this, maintenance dredging of the channel is also frequently carried out. These projects have had an impact on an area of approximately 200 square kilometre comprising of creeks, estuaries, mudflats and mangroves as well as on the sea bed. Apart from the damage caused due to the reclamation of the inshore estuarian areas, the mud which is used for reclamation or excavated during dredging, flows with the tidal water (High tide and Low tide), the sediments spread into the traditional fishing areas and gets accumulated at the bottom of creek as well as in the mud flats. The crevices and crannies of these rocks at the bottom of the creek have been filled up and the bed has become almost flat. As a result of this the breeding and spawning grounds, molting grounds and nurseries of fish at the seabed are destroyed. Furthermore, the sediments clog the fish gills reducing resistance to diseases, lowering growth rate and affecting fish eggs and larvae development. This is unrecoverable damage to the continental shelf and fishing area, costing the daily survival of fish and fishermen.



9. In short this entire region was of vital importance for fisheries and was used for feeding, breeding, spawning as well as a nursery for fish. The

activities of JNPT have led to the degradation of inshore estuarian region as well as the offshore rocky bed, which as explained above, are both extremely important for fisheries. The present project proposes the reclamation of mudflats which will lead to a further degradation of the fragile coastal ecology. It was explained that since this habitat has been lost permanently the damage is unrecoverable and has put the daily survival of the fisherfolk in peril.

10. During site visit on 8th September 2021 the Expert Committee was shown that the mouth of the Nhava Sheva Creek has been narrowed beyond the marking shown in CZMP Map 2018 which is now a bottle neck passage, causing increased pressure of tidal water within the creek as a result of which fishing boats are unable to safely navigate these waters. Although this is not the subject matter of the present application, this was shown to the Expert Committee so as to explain the impact that the expansion of the port has had on fishing activities already, which stand to be exacerbated by the 4th Container Terminal.

11. The said Committee submitted its report dated 13th September 2021 to this Hon'ble Tribunal. Some of the notable findings of the Committee are as follows-



(a) The committee observed the presence of mudflats within the project site (*Pg. 268, para 3*);

(b) The Committee has noted the fact that the project is likely to adversely impact fishing activities (*Pg. 271, Sr. No. 3 of chart*).

12. Under the CRZ Notification 2011 mudflats are categorized as CRZ-IA areas. Paragraph 3 (xii) of the notification prohibits any construction activities in CRZ-I areas except those specified in paragraph 8. While ports and other foreshore activities are permitted within CRZ-IB areas under paragraph 8, such activities are not permitted within CRZ-IA areas, which are ecologically fragile. It is submitted that the entire process of appraisal of the environmental impacts of a project would depend on which category of CRZ it falls within. In the present matter the entire appraisal process proceeded on the footing that the project was located in only CRZ-IV areas.

13. The Committee at pg. 269 states that *“as per the said approved CZMP, the site of triangular balance reclamation of the 4th terminal is situated in CRZ-IV area. Small part of the landing point of triangular balance reclamation work is touching in CRZ IA.”*

(emphasis supplied)



14. However, it later notes the fact that as per the approved CZMPs, the project falls within CRZ-IV. A perusal of the project superimposed against the CZMP map which is attached to the report at pg. 277 makes it abundantly clear that this is factually incorrect. The map quite clearly shows part of the project falling within CRZ-IA area. This is also evident from the maps at pgs. 177 and 178 of the Original Application. In fact, the application for CRZ clearance in two places (at pg. 93 and pg. 98 of the O.A.) notes that the project falls within CRZ-IA. This has apparently been explained away as a "typographical error" by JNPT. It is evident that this is a belated attempt at justifying the deliberate attempts to mislead the authorities.



15. Assuming that the CZMP map indicates that the project falls within CRZ-IV, the CRZ Notification stipulates that projects are to be appraised not only as per the approved CZMPs but also in accordance with the provisions of the Notification [Paragraph 4.2(ii) of the CRZ Notification, 2011]. Therefore if, as observed by the Expert Committee, the project site contains mudflats, it must be considered as a CRZ-IA area and appraised accordingly, notwithstanding the fact that the CZMP may indicate otherwise.

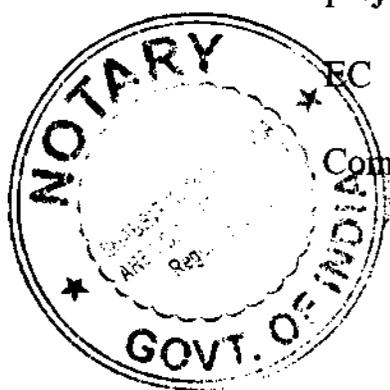
16. The fact that the discrepancy in the CRZ areas within the application for CRZ clearance has not been noted by the MCZMA and the EAC while

19. The analysis and appraisal has been perfunctory and discloses abdication of duty on the part of the MCZMA, the EAC and consequently the MoEF. It is submitted that on account of the above, the entire process stands vitiated. In *Hanuman Laxman Aroskar vs. Union of India & Ors.* [(2019) 15 SCC 401] the Supreme Court while deliberating on the function of the EAC has held as follows-

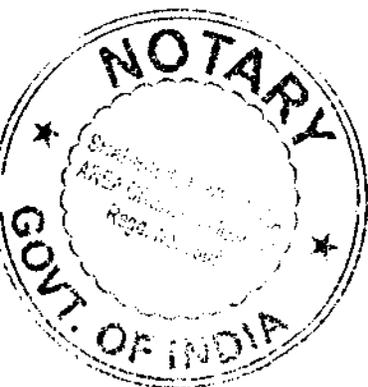
“129. ...In the absence of a critical analysis, EAC failed in discharging its duties under the 2006 notification. The recommendations of the EAC furnish a guide for the moEFCC. Indeed, the 2006 Notification stipulates that the recommendations of EAC would normally be accepted. Consequently, a failure of due process before EAC, as in the present case, must lead to the invalidation of EC.”

20. With regard to the other observations of the Expert Committee it is submitted as follows-

- (a) Public hearing – The Committee in speculating the reasons why the EAC exempted the public hearing has stated that the proposed project involves the construction of the balance work for which the EC was already granted by the MoEF in 2008. However, the Committee has failed to appreciate the fact that the Respondent No.2



was directed by the EAC to obtain a fresh environmental clearance for the balance work of the 4th Container Terminal and that would entail following all the steps prescribed under the EIA Notification for obtaining an EC, i.e. (i) screening (ii) scoping (iii) public consultation and (iv) appraisal. The EIA Notification does not grant either the EAC or the MoEF-CC the power to exclude any stage of the EC process regardless of whether the application is for completing the balance work of a project for which an EC has been granted previously or otherwise.



21. It is therefore submitted that in light of the above, the joint EC and CRZ Clearance dated 9th October 2019 cannot be sustained and ought to be set aside by this Hon'ble Tribunal.

Solemnly affirmed at Mumbai)

Dated this 4th day of October 2021)

[Signature]
Dilip Koli

(Original Applicant No.1)

Identified by me

[Signature]

Meenaz Kakalia

Advocate for the Applicant:



BEFORE ME
[Signature]
S. K. TAMBAWALLA
ADVOCATE, HIGH COURT
B-23, Taheri Manzil
Nesbit Road, Mazgaon
Mumbai - 400 010

Before me

4/10/21





01/02/2005 JNPT

Legend 491

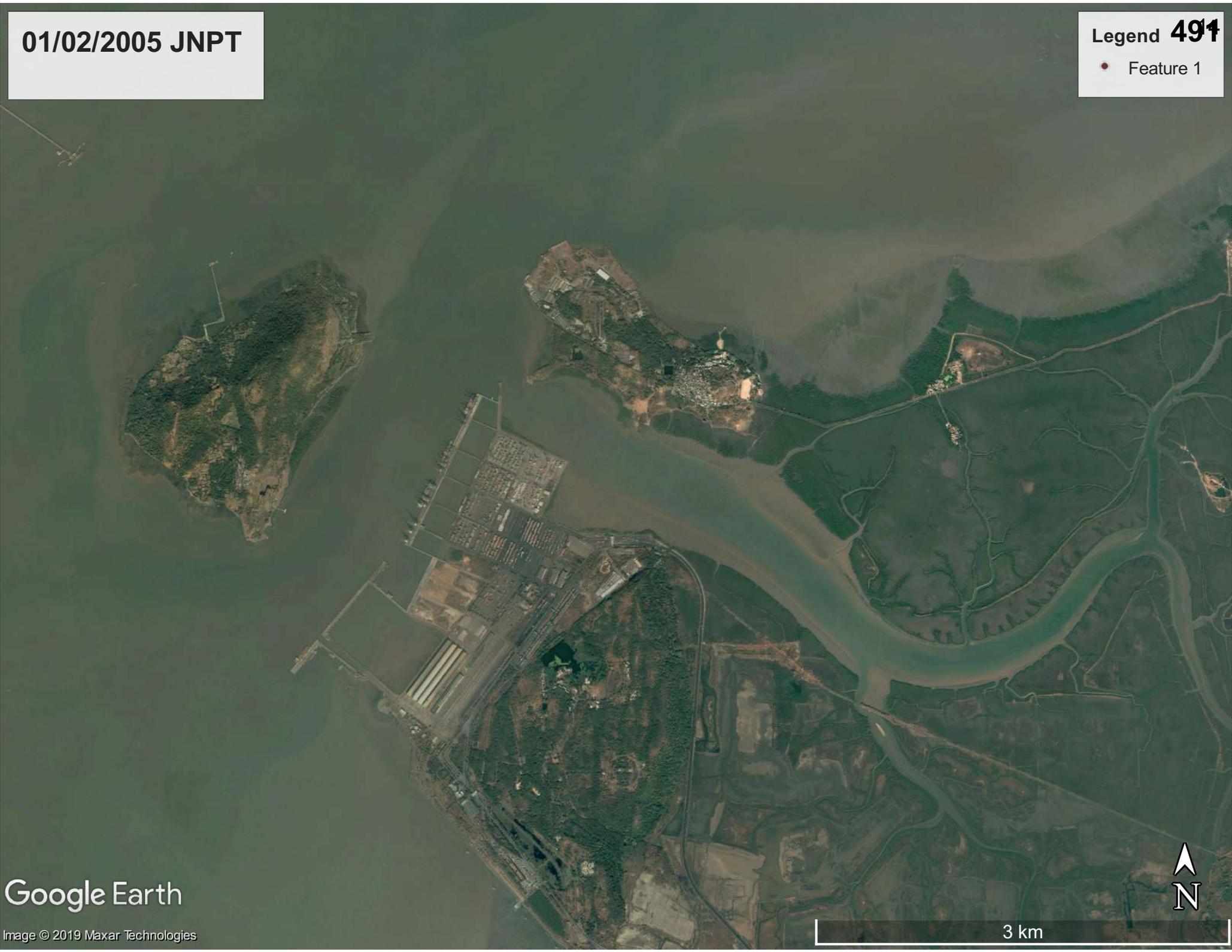
• Feature 1

Google Earth

Image © 2019 Maxar Technologies



3 km





**INDEX MAP
(GEO DIGITAL MAP)**



SCALE : 1:50,000



- REFERENCES TO BOMBAY**
1. Atomic City
 2. Port Trust Office
 3. District Engineer's Office
 4. Police Station
 5. Municipal Corporation Office
 6. Public Health Officer's Office
 7. Fire Station
 8. Police Station
 9. Fire Station
 10. Fire Station
 11. Central Fire Station
 12. Fire Station
 13. Fire Station
 14. Fire Station
 15. Fire Station
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DETAILS OF FOREST LAND

Sr. No.	NAME OF WORK	VILLAGE	TALUKA	S/GUT. No.	TYPE OF FOREST	LENGTH X WIDTH MTR.	AREA		FOUR BOUNDRIES				COORDINATE			
							SQ. M	HA.	N.	E.	S.	W.	NORTH	EAST		
1.	CONSTRUCTION OF LEADING LIGHTS BY ERECTING TOWER / POLES.	GHARAPURI	URAN		WATER BODY	5.00 X 5.00 X 3	75.00	0.0075	WATER BODY	WATER BODY	WATER BODY	WATER BODY	18°57'455"	72°55'695"	18°57'375"	72°55'766"
2.	CONSTRUCTION OF LEADING LIGHTS BY ERECTING TOWER / POLES.	GHARAPURI	URAN	59	RESERVED FOREST	5.00 X 5.00 X 2	50.00	0.0050	59	59	59	59	18°57'643"	72°56'014"	18°57'520"	72°56'006"
2.	CONSTRUCTION OF LEADING LIGHTS BY ERECTING TOWER / POLES.	GHARAPURI	URAN	67	RESERVED FOREST	5.00 X 5.00 X 1	25.00	0.0025	67	67	67	67	18°57'430"	72°56'053"		
TOTAL -							150.00	0.0150								
FOREST LAND							= 0.0075 HA.									

REFERENCE

- RESERVED FOREST
- PROTECTED FOREST
- ACQUIRED FOREST
- UNCLASS FOREST
- WATER BODY
- KARNALA BIRD SANCTUARY
- 5.00 KM. LINE FROM PROTECTED AREA
- 10.00 KM. LINE FROM PROTECTED AREA
- PROPOSED LOCATION OF LEADING LIGHT TOWER WITH NO.

(Signature)
 Deputy Conservator of Forest
 Jambhale Netro Post Trust
 Alibon