

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
WESTERN ZONE BENCH, PUNE**

Original Application No. 66/2019 (WZ)

**KUMAR CITY RESIDENTS CO-OPERATIVE
HOUSING SOCIETY LTD.**

----- APPLICANT

V/S

**KUMAR URBAN DEVELOPMENT PVT. LTD.
AND OTHERS.**

----- RESPONDENTS

AFFIDAVIT

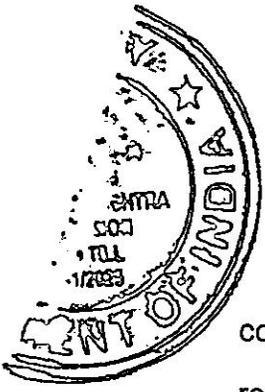
I, MR. DIVENDER KUMAR DHAMIJA, Age - 63 Years, Occupation - Business, A Chairmen of Applicant Society, R/at Cluster No. 11/15, Kumar City Residents Co. Op. Hsg. Ltd., S.No.13B/1+2+3 (Part), S.No.14 (Part), Kalyani Nagar, Wadgaon Sheri Pune - 411014, do hereby solemn affirmation is as under-

1. That on the last date i.e. on dt. 16.10.2020 the Hon'ble Tribunal has directed the parties to provide clarification on certain issue. So also, in the present matter the Respondent Nos. 1 and 2 have filed their Reply to the Original Application. The Applicant has gone through the Reply filed by the Respondents, wherein they found various misleading and frivolous statements and therefore in order to raise objection and further to provide required clarification, today the Applicant is filing present Affidavit In Reply in the present matter. The contentions made in the Original Application be read as a part and parcel of the present Affidavit.
2. That in Para No. 2 of Reply, the Respondent has alleged that the Applicant is a habitual, vexatious litigant and they filed various cases before the Courts and Government Departments. The Applicant submits that they have filed Special Civil Suit No. 556/2019 before the Hon'ble Civil Court, Pune for protecting their Civil Rights and the said proceeding is not relating to the issues



in respect of the Environment. So also, the Complaints lodged with various Government Departments are also filed for protecting Civil Rights. None of the said Court Case / Complaints is / are filed for agitating substantial questions related to the Environment. Therefore, the allegation regarding habitual and vexatious litigants is false and misleading.

3. That in Para No. 3 of the Reply, the Respondents have alleged that the Applicant has alleged misled this Hon'ble Tribunal by not disclosing that there has been substantial development on the Land adm. 163938 Sq. Mtrs. and various projects are also constructed upon the same. The Applicant submits that in Para No. 13 of the Original Application as well as by way of Annexure A-6, the Applicant has specifically disclosed the development carried out at the Larger Land. That in Para Nos. 3 and 4 of the Reply, the Respondents have provided information about nature of Amenity, Membership of club, Annual subscription of club, Members of the Society, working of club, formation of Society etc. However, for the purpose of deciding Environmental Issues agitated in the Original Application, the said information is of no use.
4. That in Para No. 5 of the Reply, the Respondents have alleged that the proposed Building at Amenity Plot is consists of Permissible Shopping and as the Applicant has no right, title and interest in the Amenity Plot, the Applicant has no any Locus to raise objection about the proposed construction. The Applicant submits that the Amenity Plot is a part and parcel of Land, which is referred in all the purchase Agreements executed by Respondent Nos. 1 and 2 in favour of members of the Applicant Society. As per the provisions of Maharashtra Ownership of Flats Act 1963, the Respondent Nos. 1 and 3 were / are bound to convey the Amenity Plot in the name of the Applicant society. Considering the said Civil Rights of the Applicant Society, they have already filed Special Civil Suit No. 556/2019 before the Hon'ble Court seeking conveyance of Amenity Plot. Therefore, the allegation that the Applicant has no any rights, title or interest in the Amenity Plot is totally misleading. As far as alleged sanction of Permissible Shopping Building upon the Amenity Plot is

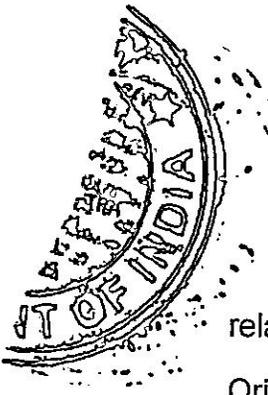


concerned, the Building Plans sanctioned by the Respondent No. 4 are in respect of huge Commercial Mall and not in respect of the Permissible Shopping Building. That as per the Development Control Rules, the Amenity Plots are meant for the public utility and not for satisfying the commercial needs of the Builders. Though the Respondents are talking about Permissible Shopping Building, the construction actually sanctioned is totally against the concept of the Permissible Shopping. Therefore, the Respondents have no right to carry out alleged construction at the Amenity Plot.

5. That in Para No. 8 of the Reply, the Respondents have alleged that the cause of action for the present Original Application as well as for Special Civil Suit No. 556/2019 are the same and one. The Applicant reiterates that the Special Civil Suit No. 556/2019 is filed by the Applicant for enforcing their civil rights and no any Environmental issue is involved in the said Civil Suit. The copy of the Plaint of the said Civil Suit is already filed at Annexure - A6. The perusal of the Plaint makes crystal clear that the cause of action for the said Suit is totally different.

6. That in Para No. 9 and 10 of the Reply, the Respondents have contended that they have obtained construction Permission vide Commencement Certificate No. 2614/2017 from the Respondent No. 4, but the said Permission is not challenged by the Applicant till date. However, the said contention is totally wrong. That in Para No. 19 of the Original Application the Applicant has specifically challenged the alleged Construction Permission granted vide Commencement Certificate No. 2614/2017.

So far as the allegation that the Hon'ble Tribunal does not have the jurisdiction in respect of the cases arising from Maharashtra (Urban Areas) Protection and Preservation Of Trees Act, 1975 is concerned, the Applicant submits that the said allegation is totally misleading. It is pertinent for the Hon'ble Tribunal to note that in addition to the issues relating to the Cutting of Trees is concern, the Applicant has raised various other substantial questions

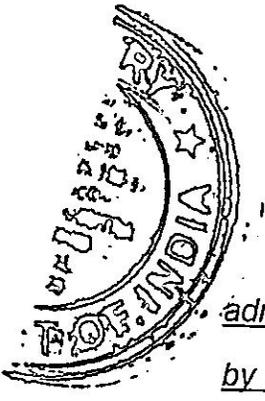


relating to the Environment. As such, addition of cause of illegal trees in Original Application can not be a ground for dismissal of present matter.

The Applicant further submits that the act of Cutting of Trees has caused substantial loss to the Environment. So also, though the Respondent Nos. 2 and 3 are liable for the act of Cutting Trees, till date the Respondent Nos. 4 and 5 have not initiated any legal action against the said Respondents.

7. The Applicant submits that it is true that by the Order of Temporary Injunction passed below Exhibit 5 in Special Civil Suit No. 556/2019, the Respondent Nos. 1 to 3 were restrained from carrying out construction at the Amenity Plot. But the said Order is nothing but an enforcement of civil rights of the Applicants. So also, though the Respondent Nos. 1 to 3 have challenged the said Injunction Order before the Hon'ble Bombay High Court vide Appeal No. 92414/2020, till date operation of Injunction Order is still not stayed. Therefore, though the said Injunction Order is passed, the Tribunal can very well proceed with the Interim Application filed in the present Application.

8. That in Para No. 14 of the Reply, the Respondents have referred the Injunction Order Passed in RCS No. 1813/2008. On the basis of the said Order, the Respondents are contending that the Slab constructed on the Nala is reflecting on all the sanctioned Building Plans and the same is carried out as per the Permission / Sanction granted by the District Collector and Respondent No. 4. However, it is pertinent to note that no such Permissions are granted by the District Collector or Respondent No. 4 to the other Respondents for doing Slab work upon Nala and also for the work of channelization of Nala. So also, though such Permissions are granted the same are totally illegal and prejudicial to the Environment. The perusal of the development Plan field at *Annexure-A17* clearly shows that the Nala passing through the Larger Land is a natural water stream. Any civil work carried upon such natural water steam is totally prejudicial to the Environment. Minute verification of Order passed in Misc. Civil Appeal No. 238/2010 reveals that Slab work referred in the said Order is just



adm. 15 Ft. x 10 Ft. and the same is passing through the Buildings developed by the Respondent Nos. 1. However, the slab referred in Original Application is in addition to the above slab adm. 15 Ft. x 10 Ft. So also, it is the specific case of the Applicant that in addition to the slab work, the Respondents have diverted the Nala as per their convenience and further illegally constructed huge civil structure and Building upon the Nala. It is pertinent for the Hon'ble Tribunal to note that Joint Committee Report clearly states that (i) P.P. is failed to comply with the provisions of Air Act, 1981 and Water Act, 1974. (ii) The P.P. has carried out construction without E.C. (iii) The Slab Work, Badminton Court, Swimming Pool, Civil Structure etc. are illegally constructed upon Nala. All these aspects clearly shows that act of Respondents are totally prejudicial to the Environment. Therefore, the passing of the Injunction Order in a Civil Suit will not create any hurdle in passing appropriate Order/s by the Hon'ble Tribunal in the interest of Environment.

9. That in Para Nos. 15 and 19 of the Reply, the Respondents have contended that they have obtained Environment Clearance, but the same is also not challenged by the Applicant. It is the further contention of the Respondent that they have already paid fine of Rs. 5.58 Crores to MPCB as a part of violation as directed under the Joint Committee Report dt. 21.01.2020.

The Applicant hereby clarified that the Environment Clearance was granted during the pendency of the present matter on dt. 13.12.2019 and therefore on dt. 27.02.2020 the Applicant has already filed I. A. No. 21/2020 in the present O.A. seeking amendment of Original Application. By way of the said amendment, the Applicant is proposed to challenge the alleged Environment Clearance also. Therefore, the allegation that the Environment Clearance is not challenged is totally misleading. As far as submission of Bank Guarantee of Rs. 5.58 Crore by the Respondents to MPCB is concern, the Applicant submits that the said Bank Guarantee is just a Guarantee for effective implementation of the Remedial Plan and Natural and Community Resource Plan. The said Bank Guarantee is not towards the fine.



10. The Applicant submits that as the substantial question of Environment pertaining to the larger Land has arisen, the Applicant is compelled to file the present proceeding. The present proceeding is not at all filed for any vested interest or for threatening any of the Respondents. It is further pertinent to note that Applicant is a Co. Operative Housing Society and there are near about 137 Bonafide Members in the Society and therefore also there is no any case of vested interest or threatening, as alleged by the Respondents.

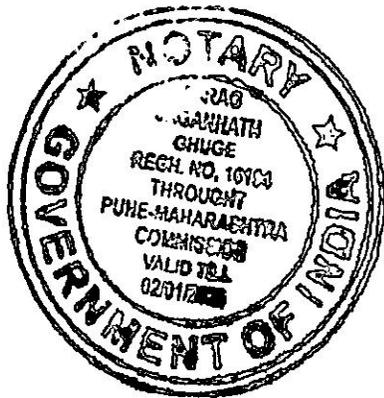
All the content of the above Para are true and correct to the best of my knowledge, belief and information in witness whereof I have signed hereto below on DT. 15.01.2021 at Pune.



[Signature]
AFFIANT

I know the AFFIANT

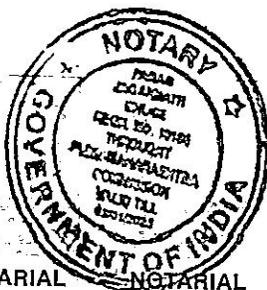
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ADVOCATE



BEFORE ME

[Signature]
PARAG J. GHUGE
NOTARY
GOVT. OF INDIA
15 JAN 2021

Noted & Registered
at Sr. No. A-287/2021



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