

AFFIDAVIT WITH REFERENCE TO THE JOINT COMMITTEE REPORT DATED 21ST APRIL, 2023 FILED BY THE MPCB IN THE ORIGINAL APPLICATION NO02 OF 2020. (VAIBHAV TAPKIR VS TANISH ASSOCIATES) ON BEHALF OF PMRDA (RESPONDENT NO.3)



BEFORE HON'BLE NATIONAL GREEN TRIBUNAL WESTERN ZONE BENCH, AT-PUNE ORIGINAL APPLICATION NO.02 OF 2020WZ.

Vaibhav Tapkir and One Another.

...) Applicants.

VS

M/s Tanish Associates and Others.

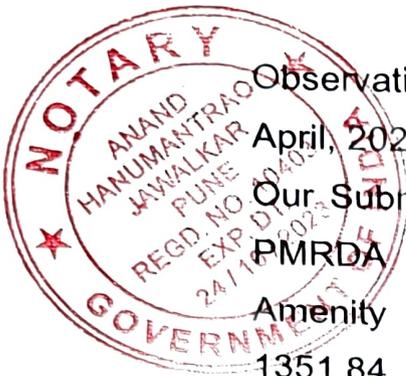
...) Respondents.

Affidavit in response to the points raised in the report dated 21st April, 2023 submitted by the Joint Committee.

I, Sunil P. Marale, Age 53 Years, Metropolitan Planner of the Respondent - PMRDA and Authorized Signatory, do hereby state on solemn affirmation only with a limited purpose of bringing on record the provisions of the DCPR, 2018 in pursuance of the new points raised in the report dated 21st April, 2023 submitted by the Joint Committee on last date as under:

- 1) Submission of Inadequate Information by the PMRDA in Marathi - The Joint Committee Report dated 21st April, 2023 raised this objection to the information submitted by the PMRDA in Marathi. (2.1:

(Handwritten signature in blue ink)



Observations on page 125 of the Joint Committee Report dated 21 April, 2023.)

Our Submissions: In fact, the only information communicated by the PMRDA in Marathi is in respect of due to oversight the FSI for Amenity Building was shown 1551.84 square meters instead of 1351.84 square meters for Gat No.498/2+3, which clarification was directly sent to the SRO, MPCB, Pune-II in reply to his Letter dated 17-01-2023. He has referred the said clarification in the Joint Committee but unnecessary taken objections about Marathi-Letter dated 25 January, 2023. Except correction or clarification about the FSI of Amenity Building of 1351.84 square meters for Gat No.498/2+3 which was shown due to oversight as 1551.84 square meters, no other major point was given in the said communication by the PMRDA.

As far as the contention about inadequate information in respect of building configurations, building details, total built up area etc., the available approved sanctions and completion certificates are already filed by the Project-Proponent and there is no change in the details, hence, no further necessity to submit again it The project-proponent is having all details in respect of sanction, layout approval plans, plinth check certificate etc. in respect of Gat No. 498/2+3 and he should have provided it.

2) Joint Committee Report gives its observations about 3 Different Constructions are as under:

- A) That the Completion -Certificates of the different Gat Nos. Le., a) Gat No.1098/1, b) Gat No.504 & c) Gat No.1098/2 +3 respectively have been granted simultaneously on 31 July, 2017 (Pages 128-129)
- B) These constructions are also carried out simultaneously (Para-3.2 observations on page-132 of the Report)

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C) The main gate, approach roads and internal roads are common for all the buildings on plots and there is no demarcation of the plots, hence it appears to be one project (Point No.2.2 at Page 130)

Our Submissions are as under:

Joint Committee Report specifically admits that the First Sanctions were granted by the Sub Divisional Officer, Sub Division, Khed to three different Gat Nos at 3 different dates and years also viz: 2012, 2012 and 2013 respectively long back before more than 10 years, then on what basis these Commencement-Certificates of the different Gat Nos. Le, a) Gat No.1098/1, b) Gat No.504 & c) Gat No 1098/2+3 respectively.

How can these 3 Gat Nos and Commencement-Certificates be clubbed together merely because of the Completion Certificates for these 3 different projects of the Project-Proponent have been granted on one date 31 July, 2017? The main gate, approach roads and even internal roads with common STP can be provided for common benefit of all societies. In fact, scheme of Common STP/ETP are introduced for the purposes of combined operation and maintenance, economical savings etc. MPCB has granted a no of permissions for Common or Joint ETP/STP etc.

3) Joint Committee raised another new objection to the 9 meters road and channelization of the natural nalla using RCC-Pipes, which is said to be traversing within boundary wall along the north direction and further exit and traversed towards north direction: Hon'ble Tribunal directed to the PMRDA to file on record the DCPR-Rules referred by the earlier Joint Committee appointed by this Hon'ble Tribunal in this behalf.



The Respondent-PMRDA hereby relies upon the Para No.-B of Clause-

13.1 in respect of the Requirement of Site which is reproduced as under: 13.1 (b) No piece of land shall be used as a site for the construction of building if the site is within a distance of 9 m. from the edge of water mark of a minor water course (like nalla) and 15 m. from the edge of water mark of a major water course (like river, water body) shown on Regional Plan/Development Plan or village/city survey map or otherwise;

Provided that where any water course passes through a low-lying land without any well-defined banks the owner of the property may be permitted by the Metropolitan Commissioner to read or to realign the same with the same land according to cross section determined by the Metropolitan Commissioner without changing the portion of the Wet and butt of shall be water course in such case marginal open spaces 4.50m from the edge of the DCPR enclosed herewith and attached as an Extract of 'A'.

The then Metropolitan Planner (Development Permission Department) in his Affidavit of September, 2021 specifically submitted in Para-3 (v) that about distance of meters from the edge of water mark of a minor water course like nalla and 15 meters from the edge of a major water course like river. It is stated that the Developer has channelised the said nalla as stated above and kept 9 meters distance from the building. A Copy of the said Affidavit is enclosed herewith and marked as an Annexure- 'B'.

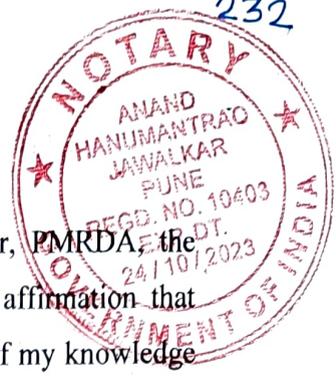
4) About the STP & OWC and obtaining of Consent from the MPCB may initiate appropriate actions.

Solemnly affirmed on this 9th June, 2023 at Pune.

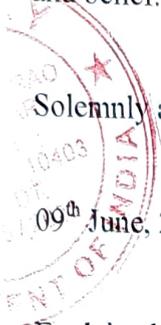
Affiant

Authorized Signatory

VERIFICATION



I. Sunil P. Marale, Age 53 years, Metropolitan Planner, PMRDA, the authorized signatory for PMRDA do hereby state on solemn affirmation that what is stated in foregoing paras is true and correct to the best of my knowledge and belief.



Solemnly affirmed at Pune)

09th June, 2023)

Explained & Interpreted by me)

Respondent No. 03

Before me

BEFORE ME

ANAND H. JAWALKAR
NOTARY GOVT. OF INDIA
PUNE DIST

Advocate for the Deponent

09 JUN 2023



PUNE METROPOLITAN REGION DEVELOPMENT AUTHORITY



PUNEMETROPOLIS

FINAL

**DEVELOPMENT CONTROL
AND PROMOTION
REGULATIONS FOR PUNE
METROPOLITAN REGION
DEVELOPMENT AUTHORITY
(PMRDA)
(DCPR-2018)**

December 2018

**Metropolitan
Commissioner,
PMRDA**

**PART II
GENERAL LAND DEVELOPMENT
REQUIREMENTS**

13.0 REQUIREMENTS OF SITE

13.1 SITES NOT ELIGIBLE FOR CONSTRUCTION OF BUILDING:

No piece of land shall be used as a site for the construction of building

- (a) If the Authority considers that the site is insanitary, incapable of being well drained or it is dangerous to construct a building on it;
- (b) If the site is within a distance of 9 m. from the edge of water mark of a minor water course (like nala) and 15 m. from the edge of water mark of a major water course (like river, water body) shown on Regional Plan/Development Plan or village/city survey map or otherwise;

Provided that where a minor water course passes through a low lying land without any well-defined banks, the owner of the property may be permitted by the Metropolitan Commissioner to restrict and or to realign the same within the same land according to cross section as determined by the Metropolitan Commissioner, without changing the position of the inlet and outlet of the water course. In such case marginal open spaces shall be at least 4.50 m. from the edge of the trained nala;

- (c) Notwithstanding anything contained hereinabove, the Authority shall be entitled to take cognizance of the existence of all water courses whether shown on the Regional Plan or not, while sanctioning layouts and no person shall take any action without the permission of the Authority which results in reducing the water way or closing or filling up of any existing water course. If any watercourse, whether shown in the Regional Plan/Revenue Record or not, but existing on the site/land, owned by private person, the area under such water course shall not be deducted for computation of FSI.
- (d) If the owner of the plot has not shown to the satisfaction of the Authority all the measures required to safeguard the construction from constantly getting damped;
- (e) If the building is proposed on any area filled up with carcasses, excreta, filth and offensive matter till the production of certificate from the Competent Authority to the effect that it is safe from the health and sanitary point of view, to be built upon;
- (f) If the use of the site is for the purpose, which will be a source of annoyance to the health and comfort of the inhabitants of the neighbourhood;
- (g) If the plot has not been approved as a building site by the Metropolitan Commissioner;
- (h) If the proposed use of land or occupancy of the building on the site does not conform to the land use proposals in the Regional/Development Plans or Zoning Regulations;
- (i) If the level of the site is less than prescribed datum level depending on topography and drainage aspects;
- (j) If it doesn't derive access from an authorised street/means of access described in these Regulations;
- (k) If the land is within a prohibited distance from the Defense Establishments as decided by The Ministry of Defense, Government of India;
- (l) If it is within the river / lake boundary and blue flood line of the river (prohibitive zone);
- (m) If the site is hilly and having gradient more than 1:5 whether shown on the Regional Plan or not;
- (n) If the site is not developable / buildable by virtue of restrictions imposed under any law or guidelines of any Government department.

13.2 Distance of site from Electric Lines: No structure including verandah or balcony shall be allowed to be erected or re-erected or any additions or alterations made to a building on a site within the distance quoted in Table No. 2 below in accordance with the prevailing Indian Electricity Rules and its amendments from time to time between the building and any overhead electric supply line. Amenity space shall not be shown under the overhead electric supply lines.

Before Hon'ble National Green Tribunal
Western Zone, At - Pune

Original Application No 2 of 2020

Shri Valbhav Tapkir.....) Applicants

Vs

M/s Tanishq Associates & Or) Respondents

Affidavit in respect of the steps taken to comply with the Order passed by Hon'ble Tribunal dated 17.08.2020

I, Vivek Kharwadkar, Metropolitan Planner, (Development Permission Department) PMRDA, having my office at S. N. 152-153, Maharaja Sayajirao Gaikwad, Udyog Bhavan, Aundh, Pune - 411067, do hereby state on solemn affirmation and filing this preliminary affidavit only with a limited purpose of bringing on record the report in respect of the preliminary spot inspection carried out by the team constituted by Hon. Tribunal to the site of the Constructions at the Gut No .498/1, 498/2 & 498/3 Mouje - Charholi, Taluka - Khed, District - Pune, which is the subject-matter of the present Application No.2/2020 before this Hon'ble Tribunal. I shall not be deemed to admit anything save except whatever specifically stated in the Report. I crave leave to file an additional affidavit as and when necessary.

1. The PMRDA being one of the Member of the Committee, has submitted its Report with regard to the visit & inspection carried out of the site in question on 26.11.2020. A copy of the Letter True Translation of the Marathi Office Note & the Report on the points raised in Application filed by the Applicant in the present application before this Hon'ble Tribunal is enclosed herewith and marked as an Annexure-1.
2. I would like to submit that the Applicant has lodged a joint complaint about the constructions carried out at the Gut Nos. 498/1, 498/2 and 498/3 respectively. However, the Planning Authority has given Separate Building Permissions on these Gut Numbers from time to time. The status of these permissions can be summarised as under:
 - a) The Revised building permission has been granted by Sub Divisional officer, Sub division khed to the construction at Gut No.498/1, Charholi, Taluka - Khed, District- Pune vide Outward No. Sakhad / Bishe/ SR/ 11 /2012, dated 02.01.2015 for the area admeasuring 8434 square meters, The Occupation Certificate bearing No.P.K. 716/17-18 dated 31.08.2017 has already been obtained from the PMRDA. The BUA of 5797.28 Sq. mt. had been approved by authority for Construction of Building Nos. A, B & C. I crave leave to refer to & rely on building permissions and occupation certificate as and when necessary.

Further, Cluster Housing Construction permission has been granted by the Sub-Divisional Officer, Sub-Division- Khed by his Letter dated 07.11.2013 for the Buildings 'I' & 'J' having BUA of 7544.97 square meters, After that the revised permission was given by PMRDA Date - 28/10/2016 on G. No. 498/2, 498/3 having plot area 13004.00 Sq.mt. and Built up area 11170.89 Sq.mt. The Respondent-Authority (PMRDA) has granted an Occupation Certificate dated 31.07.2017. I crave leave to refer to & rely on building permissions and occupation certificate as and when necessary.

3. I would now like submit the factual position observed at the time of the visit and inspection carried out by the committee in respect to the points raised by the Applicant in this Application No.2/2020 as below:

- i) During the actual spot inspection to the site in question, it was observed that the stream of South-North Nalla is passing through Western side of the Gut No.498/1. The said portion of the nalla is found to be open from the Alandi - Markal Road up to the Plot of the Respondent No.1. Thereafter, the Respondent No.1 has channelised the said portion of nalla and at some places Nalla was channelised by R.R.C. pipes. The said nalla further observed to be met at the existing nalla at Gut No. 497. After observing the Proposal submitted by the Applicant with Demarcation Map, it was noticed that the said nalla has not been delineated (Rekhankan) on the Demarcated Map. No Untreated Sewage was observed to be discharged in to nalla. The Applicant (Respondent No.1) has completed construction of the STP & the STP was observed to be in operation. No treated sewage was observed to be discharged in the nalla. Presently, no construction was observed on the channelised enclosed portion of nalla. However, it was observed that, the parking was done in between the said Channelised Nalla & the Building.
- ii) Respondent No.1 has installed the STP for the treatment of the domestic effluent generated from the Housing Project was observed during the visit. No untreated sewage effluent was observed to be discharged in to the nalla.
- iii) With regard to the contentions raised about the Drainage- Line from the land of the farmers adjacent to the said project, which directly or indirectly may meet in to the Indrayani River about 15 Metres deep from the ground, the MPCB may regulate it under grant of Consent for the STP & Discharge.
- iv) The above act of the respondent No.1 contended to be polluting the entire water body, which is also stated to be fatal for the crops in the fields. These contentions are also pertain to the MPCB & should have been regulated

under grant of Consent to Operate to the SIP & by imposing necessary conditions for Discharge & Utilization of Sewage after due treatment. 237

v) With regard to a distance of 9 meters from the edge of water mark of a minor water course like a nalla & 15 meters from the edge of a major water course like a river etc, it is submitted that the Developer has channelised the said nalla as stated above and kept 9 meters distance from the building.

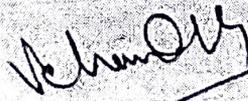
vi) The contentions of point no 5, 6, 7, 8, 9, 10, 11, 12, 13 & 14, it will be more appropriate that the Committee constituted in the matter may offer its comments jointly. The Respondent - PMRDA is duty bound to comply with the action if any suggested or recommended by the Committee constituted in this matter after visit, inspection and joint consultation with all concerned.

vii) The Respondent- PMRDA has visited and carried out joint inspection and further after discussions with all the concerned has signed the Report dated 23th August 2021 on the basis of joint Visit Dated 28/01/2021 on the basis of joint Visit Dated 28/01/2021

Solemnly affirmed on this.....day of Sep, 2021 at Pune.

Identified by

Affiant



(Vivek Kharwadkar)

Authorised Signatory

Advocate

Vivek Kharwadkar
Chief Metropolitan Planner
Pune Metropolitan Regional Development Authority
Pune

Verification

I, Vivek Kharwadkar, Metropolitan Planner of the Respondent No. 3 say and submit that the contents of the para 1 to 3 of this Affidavit are true and correct to the best of my knowledge & belief. All the Annexure are the true copies of my office record.

Dated this day of sep, 2021 at Pune

For Respondent No.3



Vivek Kharwadkar
Chief Metropolitan Planner
Pune Metropolitan Regional Development Authority
Pune

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL, PUNE

ORIGINAL APPLICATION NO 02/2020(WZ)

Valbhav Tapkir & Anr..... Applicant(s)

Versus

Ms. Tanish Associates & Ors. Respondent (s)

Report by the Joint Committee

Date of Site visit:	28.01.2021
Address:	M/s.Tanish Srushti, Gat No.498/1, 498/2, 498/3, at Village Charoli Kh, Tal-Khed, Dist-Pune

The visit to the site is carried out by Mrs. Vaishali Waghmare, Tahsildar, Khed, Shri. Shamrao Chavan and Shri. Rahul Divekar, PMRDA & Shri. Nitin Shinde Sub-Regional Officer, MPCB Pune-II.

It is submitted by PMRDA authority that Sub-Divisional Officer Khed has granted building permission on Gat No. 498/1, Charoli, Taluka Khed, District Pune, for total plot area of 8,434 sq.mtr. on 02.01.2015. In this matter PMRDA Authority has also issued occupancy certificate on 31.08.2017 for built up area of 5,797.28 sq.mtr. Having building no. A, B & C.

Also, Sub-Divisional Officer Khed has granted building permission on 07.11.2013 on Gat No. 498/2, 498/3 for group building having total plot area of 13,004 sq.mtrs which includes building no. I & J, having built-up area 7,544.97 sq.mtr. Again, PMRDA authority has granted revised building permission on Gat No. 498 dt. 28.06.2016 for total plot area of 13,004 sq. mtr. and built up area of 11,170.89 sq.mtr.

During visit, it is observed that there are building no. A B C which are constructed on Gat. No. 498/1 and building no. I & J which are constructed on Gat. No. 498/2 & 498/3, with due permission from competent authority separately. However, the main gate, internal roads, approach roads, amenities are same for all the projects, and there is no demarcation between Gat. No. 498/1, 498/2, 498/3, and hence it seems that the project is group project.

During visit it is observed that PP has provided sewage treatment plant for the treatment of domestic effluent generated from the project at Gat. No. 498/1, 498/2 & 498/3 and no untreated sewage found discharged into the nalla i.e. for the entire project.

Sr. No.	Points stated in the application	
1	<p>The present Application pertains to substantial issue of environment, as the Respondent No.1 has constructed his site under the name and style "Tanish Srushti" situated at Property bearing No. 498/1, 498/2, 498/3 at Village Charoli Kh, Tal-Khed, Dist-Pune on natural nalla which has totally blocked the Nala and also obstructed the natural nala which has totally blocked the Nala and also obstructed the natural flow of water. The Respondent No.1 is also letting the untreated sewage effluent in the adjoining Nala which meets the Indryanal river thereby polluting the entire water body.</p>	<p>As per the report submitted by Tahsildar Khed it is observed that, the natural nalla is flowing from Western side of Gat no.498/1. This nalla is an open drain coming from Alandi-Markai road. This open nalla is channelized by project proponent i.e. builder and at some places it is channelized through by laying RCC pipelines, this nalla further meets to the another nalla situated in the Gat no.497, as per the records submitted by the developer this open nalla is not marked on the map. During visit no untreated effluent found into the nalla. PP has provided Sewage Treatment Plant (STP) for the treatment of domestic effluent. During visit no construction activity/construction observed on nalla. It is also observed that, there is a parking lot in between channelized nalla and constructed buildings.</p>
2	<p>The Applicant states That the entire project of the Respondent No.1 is spread over Gat No.498/1, 498/2, 498/3 Village Charoli, Kh, Tal-Khed, Pune. The Applicant seeks to raise "substantial question relating to the environment pertaining to the construction of Parking and temple done by the Respondent No.1 on the Natural Nallah situated at Gat No.498/1 at Village Charoli Kh, Tal-Khed, Dist-Pune, and has totally blocked the Nala thereby obstructing the free flow of water.</p>	<p>As per the report submitted by Tahsildar Khed it is observed that, the natural nalla is flowing from Western side of Gat no.498/1. This nalla is an open drain coming from Alandi-Markai road. This open nalla is channelized by project proponent i.e. builder and at some places it is channelized through by laying RCC pipelines, this nalla further meets to the another nalla situated in the Gat no.497 as per the records submitted by the developer this open nalla is not marked on the map. During visit no untreated effluent found into the nalla. PP has provided</p>

		<p>for the treatment of domestic effluent. During visit no construction activity/construction observed on nalla. It is also observed that, there is a parking lot in between channelized nalla and constructed buildings.</p>
3	<p>The Applicant states the Respondent No.1 has constructed buildings on the Gat No.498/2 & 498/3 is also letting the untreated Sewage-</p> <ul style="list-style-type: none"> • Into the adjoining Nallah taking a drainage line from the land of the farmers adjacent to the said Project. • Into the Indrayani river directly by taking a drainage line about 15 mtrs deep from the ground which directly meets the river. 	<p>As per the report submitted by Tahsildar Khed it is observed that, for the treatment of Domestic effluent generated from the project at Gat no.498/1, 498/2,498/3, PP has provided STP & no untreated sewage found discharge in to the nalla.</p>
4	<p>The Applicant states that there are clear Rules defined by the Government of Maharashtra, Urban Development Department, Mantralaya, Mumbai regarding the Regional Areas. The DCRP bearing Notification No-TPS-1812/157/CR 71/12/REC NO 34/12/UD 13/DT 21st November 2013 clearly states- No piece of land shall be used as a site if the site is within a distance of 9 m. From the edge of water mark of minor water course (like nallah) and 15 m. From the edge of water mark of a major water course (like river, water body) shown on Development Plan or village/city survey map or otherwise, provided that where a minor water course passes through a low lying land without any well-defined banks, the owner of the property may be permitted by the Commissioner to restrict and or to re-align the same within the same land, along with cross section as determined by the Municipal Commissioner without changing the position of the inlet and outlet of the water course. In such case marginal open space shall be at least 4.50 m. From the edge of the trained nala. The DCRP bearing Notification No -TPS-1812/157/CR 71/12/REC NO 34/12/UD 13/DT. 21st November 2013 is hereby marked and Annexed as "Annexure I" by the applicant.</p>	<p>As per the report submitted by Tahsildar Khed it is stated that, as per DCRP notification-Rules no. 11.1(b), PP has channelized the open nalla & the edge of nalla is 9.0mtr away from constructed building.</p>
5	<p>The Applicants state that Moreover the Respondent No.1 does not have a functional STP. The Respondent No.1 even after being aware of the Rules and Regulations and with the help of the other Respondents is letting the untreated sewage effluent directly into the adjoining Nallah which meets the Indrayani river thereby causing a grave Water Pollution. Photographs showing the same are hereby marked and Annexed as "Annexure 4" by the applicant.</p>	<p>For the treatment of Domestic effluent generated from the project at Gat no.498/1, 498/2,498/3, PP has provided STP & no untreated sewage found discharge in to the nalla.</p>

6 The Applicant states he has visited the office MPCB (R.2) dated 9th December 2019 on an open inspection day. The Respondent No.2 turned a blind eye and gave them a reply stating-
 "The Documents are not available in this office".
 The RTI Application dated 9th of December and the Reply of MPCB dated 10/12/2019 is hereby marked and Annexed as "Annexure 5" by the applicant.

RTI received to this office & submitted reply on 10.12.2019 that, Application for obtaining Consent by project M/s.Tanish Associates and Jalaram Park, Charoli Kh, Tal-Khed, Dist-Pune is not available with this office.

In view of above, joint committee has to say that the PP has provided sewage treatment plant for the treatment of domestic effluent generated from the project at Gat. No. 498/1, 498/2 & 498/3, and no untreated sewage found discharged into the nalla.

Date :- 23/08/2021

Nitin Shinde
 23/08/21
 (Nitin Shinde)

Sub Regional Officer,
 Pune-II, MPCB

Valshall Waghmare
 (Valshall Waghmare)
 Tahsildar Khed

Rahulkdivakar
 23/8/2021
 PMRDA