

**BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE
ORIGINAL APPLICATION NO. 25 OF 2023 (WZ)**

In the matter of:

Dileep Nevatia

...Original Applicant

Versus

Union of India & Ors.

...Respondents

**COMPILATION OF DOCUMENTS ON BEHALF OF
RESPONDENT NO. 8 TO 12**

Sr. No	Particulars	Pg. No.
1.	Copy of Writ Petition (L) No. 18045 of 2023.	357 – 539
2.	Copy of the Order dated 11 th July 2023 in WPL No. 18045 of 2023.	540 – 542



Advocates for Respondent No. 8
to 12

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. ^{L 18045} OF 2023

Hari Krishna Exports Private Ltd. & Anr. ... Petitioners

Versus

Municipal Corporation of Greater Mumbai
& Ors. ... RespondentsINDEX

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Advocates for Petitioners

I

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. OF 2023

Hari Krishna Exports Private Ltd. & Anr. ... Petitioners

Versus

Municipal Corporation of Greater Mumbai
& Ors. ... Respondents**PROFORMA**

Office Notes, Office Memorandum of Coram Appearance, Court's Order or Direction/s and Prothonortary's order/s	Court's or Judge's Orders
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II

Office Notes, Office Memorandum of Coram Appearance, Court's Order or Direction/s and Prothonortary's order/s	Court's or Judge's Orders
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III

Office Notes, Office Memorandum of Coram Appearance, Court's Order or Direction/s and Prothonortary's order/s	Court's or Judge's Orders
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. . OF 2023

Hari Krishna Exports Private Ltd. & Anr. ... Petitioners

Versus

Municipal Corporation of Greater Mumbai
& Ors. ... Respondents

SYNOPSIS

I. CHALLENGE IN BRIEF:

Petitioners are approaching this Hon'ble Court challenging Notice dated 24th May 2023 bearing Notice No: GS/DO1GS/196/53-1-MRTP ACT/ GS56N01/24-05-2023 issued under Section 53(1) r/w Section 52(1)(b) and (d) of MRTP Act issued by Respondent MCGM, the same is issued only upon order being passed by Hon'ble National Green Tribunal dated 3rd May 2023 in Original Application No. 25 of 2023 and thus, impugned notice is issued without any application of mind.

II. DATES AND EVENTS:

Date	Event	Exh.
1993	M/s. Arkay Holdings Limited purchased subject property and constructed structure for purpose of residence after obtaining all statutory permissions and approvals.	
1994	Suit came to filed against original owner being Suit No. 5111 of 1994 before Hon'ble Bombay High Court by owner and occupant of adjoining building to subject property, one Mr. Dileep Nevatia, on the	

	grounds the construction of subject property was illegal.	
05.12.2019	Vide Order and Judgment Hon'ble Bombay High Court dismissed Suit No. 5111 of 1994 and held construction carried out was in accordance with law.	
2020	Mr. Dileep Nevatia, filed an Appeal being Appeal No. 49 of 2020 against the order dated 05.12.2019.	
30.07.2021	Petitioner purchased subject property from erstwhile original owner, M/s. Arkay Holdings Limited and subject property is used for residential purposes.	
16.11.2021	Subsequently, Petitioner and Mr. Nevatia came to an amicable settlement wherein Mr. Nevatia would unconditionally withdraw Appeal No. 49 of 2020. Petitioner addressed letter to Mr. Dileep Nevatia along with Banker's Cheque No. 830777 dated 16 th November 2021 drawn in favour of Mr. Nevatia for sum of Rs. 1,25,00,000/- for settling all disputes with respect to subject property.	B 77. 99
10.06.2022	vide Order dated 10 th June 2022, Appeal No. 49 of 2020 came to be dismissed as withdrawn.	C 80 81
27.02.2023	In complete disregard of settlement between them, Mr. Dileep Nevatia filed OA No. 25 of 2023 before Hon'ble National Green Tribunal challenging construction carried out on subject property on identical grounds as Suit No. 5111 of 1994 and Appeal	D 82 128

	No. 49 of 2020.	
03.05.2023	Vide Order dated 3 rd May 2023, Hon'ble Tribunal constituted committee comprising of one member each of MCZMA, MCGM as well as District Collector to make site visit to assess if there is any violation.	E 129 - 136
	Petitioner has filed an Interlocutory Application for dismissal of Original Application No. 25 of 2023.	F 137 - 153
25.05.2023	Petitioner No. 2 was served with Impugned Notice dated 24 th May 2023 bearing Notice No: GS/DO1GS/196/53-1-MRTP ACT/ GS56N01/24-05-2023 under Section 53(1) r/w Section 52(1)(b) and (d) of MRTP Act.	G 154 - 157
26.05.2023	Petitioner replied to the Impugned Notice dated 24 th May 2023.	H 158 - 159
	Hence this Writ Petition	

III. Points to be urged:-

ACTS & AUTHORITIES TO BE REFERRED:-

1. Constitution of India
2. Maharashtra Regional and Town Planning Act, 1966
3. Mumbai Municipal Corporation Act, 1888

IV. AUTHORITIES:-

None at present.

A. Davi

Advocate for the Petitioners

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. OF 2023

In the matter of Articles 14, 19, 21, 226
of the Constitution of India;

And

In the matter of provisions of the
Maharashtra Regional and Town
Planning Act, 1966 (“MRTP Act”);

And

In the matter of provisions of the
Mumbai Municipal Corporation Act,
1888 (“MMC Act”);

And

In the matter of Impugned Notice dated
24th May 2023 bearing Notice No:
GS/DO1GS/196/53-1-MRTP ACT/
GS56N01/24-05-2023 (received on
25th May 2023) issued under Section
53(1) r/w Section 52(1)(b) and (d) of
the MRTP Act;

And



2

In the matter of the notice issued to demolish the dwelling house of the Petitioner in violation of their fundamental right to shelter.

1. **Hari Krishna Exports Private**

Limited, through its Director

Having office at Unit No. 1701,
"The Capital" 17th Floor, B Wing,
Plot No. C-70, Bandra East,
Mumbai 400 051.

2. **Ghanshyam Dholakia, age 54,**

Occ: Business, having residence at
Aikyam (Formerly known as Panhar),
Plot No. 5, Worli Sea Face, Mumbai 400 030.

... Petitioners

Versus

1. **Municipal Corporation of Greater Mumbai**

Through its Commissioner,
Annexe Building, Mahapalika Marg,



Mumbai – 400 001.

2. **Asstt. Engineer (Building & Factory),**

Municipal Corporation of Greater Mumbai,

G/S Ward, Municipal Office,

N. M. Joshi Marg, Mumbai – 400013.

3. **Designated Officer G/South Ward,**

Municipal Corporation of Greater Mumbai,

N. M. Joshi Marg, Elphinstone,

Mumbai – 400 018.

4. **Executive Engineer (BP), City,**

G/S Ward, Bhagwan Walmiki Chowk,

Vidyalankar Marg, Opp. Hanuman Temple,

Wadala (East), Mumbai 400 037.

5. **Maharashtra Coastal Zone Management**

Authority, Through the Additional Chief Secretary,

Environment Department, 2nd Floor, Room No. 217,

Annexe Building, Mantralaya, Mumbai- 32.



... Respondents

4

TO

THE HON'BLE THE CHIEF JUSTICE

AND OTHER PUISNE JUDGES OF

THE HON'BLE HIGH COURT

HUMBLE PETITION OF THE

PETITIONER ABOVE-

NAMED:

MOST RESPECTFULLY SHEWETH:

PARTIES:

1. The Petitioner No. 1 is a private limited company registered under the provisions of the Companies Act, 1956 having its office address specified in the cause title mentioned above and is engaged in the business of manufacturing and exporting of polish diamonds. Petitioner No. 1 is the owner of the property being Aikyam (Formerly known as Panhar), Plot No. 5, Worli Sea Face, Mumbai 400 030 ("subject property"). Petitioner No. 2 is a Director of Petitioner No. 1 and is presently residing at the subject property. The impugned notice has been issued to demolish the development/ changes carried out in the land/ premises of the subject property.
2. Respondent No. 1 is the Municipal Corporation of Greater Mumbai ("MCGM") through its Commissioner. Respondent No. 2 is the Asstt.



Engineer (Building & Factory), MCGM who exercises supervisory control over private buildings and factories and is responsible for their regulation and control. Respondent No. 3 is the Designated Officer – Ward G/South, MCGM appointed under Section 53 (8) of the MRTP Act, 1966 to exercise the powers of the Planning Authority. Respondent No. 4 is the Executive Engineer (BP), MCGM. The Municipal Corporation of Greater Mumbai is a public authority appointed as the Planning Authority under the MRTP Act, 1966 and is responsible for planning and regulating the development of the city of Mumbai. Respondent No. 5 is the Maharashtra Coastal Zone Management Authority (“MCZMA”) constituted under the CRZ Notification 1991 under the provisions of the Environment (Protection) Act, 1986 (“EPA”), responsible for regulation of activities in Coastal Regulation Zones (“CRZ”) and grant of CRZ clearances.

3. Respondent Nos. 1 to 4 are State or its instrumentalities within the meaning of Article 12 of the Constitution of India and as such, are amenable to the writ jurisdiction of this Hon’ble Court.



CAUSE OF ACTION

4. The Petitioners are constrained to approach this Hon’ble Court under its extraordinary jurisdiction as vested under Article 226 of the

Constitution of India thereby challenging the arbitrary, unreasonable and unjustified action of the Respondent Authority in issuing the Notice dated 24th May 2023 bearing Notice No: GS/DO1GS/196/53-1-MRTP ACT/ GS56N01/24-05-2023 (received on 25th May 2023) issued under Section 53(1) r/w Section 52(1)(b) and (d) of the MRTP Act (hereinafter referred to as the “**Impugned Notice**”) as the same is issued only upon the order being passed by the Hon’ble National Green Tribunal dated 3rd May 2023 in Original Application No. 25 of 2023 which is filed at the behest of one Mr. Dileep Nevatia who has in fact settled its litigation in respect of the subject property in the year 2021 and thus, the impugned notice is issued without any application of mind.

5. The Petitioners submit that by way of the impugned Notice, the Respondent MCGM has directed the Petitioners to demolish the development/ changes carried out in the subject property. It is pertinent to note that prior to the issuance of the Impugned Notice, the Petitioners have initiated the process of expansion/ repairs/ renovation of the development/ changes carried out in the subject property under Section 44 of the MRTP Act, 1966 and the same is currently under process. However, pending such application, the Respondent MCGM is taking steps prematurely to implement the impugned notice.



6. The Petitioners submit that the Impugned Notice makes no mention on what grounds the Impugned Notice has been issued. It merely states that it was reported to the Respondent No. 3 that development/ changes were carried out in the subject property without disclosing the source of the information. The Petitioners submit that it appears that the said Impugned Notice has been issued at the behest of certain persons with ulterior motives.
7. The Petitioners by way of the present Petition are seeking;
- a) Quashing and Setting aside Notice dated 24th May 2023 issued to the Petitioners by Respondent No. 3;
 - b) In the interregnum, stay the Notice dated 24th May 2023 issued by the Respondent Authority and to process the Petitioners' application for expansion/ repairs/ renovation of the subject property as per the applicable law.

**BRIEF AND RELEVANT FACTS LEADING UPTO THE
PRESENT PETITION:**

8. In or around the year 1993, one M/s. Arkay Holdings Limited (“Original Owner”) purchased the subject property and constructed a



structure for the purpose of residence after obtaining all the statutory permissions and approvals.

9. All permissions obtained by the erstwhile original owner for the subject property are reproduced herein below in a tabular form for ease of reference:

Sr. No.	Date	Particulars
1.	02.09.1993	IOD for the subject property.
2.	31.01.1994	Commencement Certificate granted by Bombay Municipal Corporation.
3.	12.08.1997	IOD Approved Plan sanctioned.
4.	01.03.2001	Full Occupation Certificate.

10. On 30th July 2021, the Petitioner purchased the subject property from the erstwhile original owner, M/s. Arkay Holdings Limited and the subject property is used for residential purposes.

11. Thereafter, the Petitioner No. 2 started staying in the subject property along with his family after making some repairs and renovations to the subject property.

Litigations qua the subject property



12. The Petitioners submit that the following facts as regards previous litigation surrounding the subject property are necessary to be enumerated for completeness of the facts and circumstances leading to the present Petition:

a) In the year 1994, a suit came to filed against the original owner being Suit No. 5111 of 1994 before the Hon'ble Bombay High Court by the owner and occupant of the adjoining building to the subject property, one Mr. Dileep Nevatia, on the grounds that the construction of the subject property by the original owner was illegal and violative of Development Control Regulations for Greater Bombay, 1991 ("**DCR 1991**"), the Environment (Protection) Act, 1986, the Coastal Regulation Zone Notification ("**CRZ Notification**"), etc. and the Rules thereunder.

b) Vide a detailed Order and Judgment dated 5th December 2019, the Hon'ble Bombay High Court was pleased to dismiss the Suit No. 5111 of 1994 and held that the construction carried out by the original owner was in accordance with sanctioned building plans. Hereto annexed and marked as "**Exhibit - A**" is a copy of

Ex A



the Judgment dated 5th December 2019 passed in Suit No. 5111 of 1994.

- c) Aggrieved by the Order dated 5th December 2019; Mr. Dileep Nevatia, the Plaintiff therein, thereafter, filed an Appeal being Appeal No. 49 of 2020. The Petitioners crave leave to produce and rely on the papers and proceedings of the Suit No. 5111 of 1994 as well as Appeal No. 49 of 2020 as and when produced.
- d) Meanwhile, the Petitioner purchased the subject property from the erstwhile original owner, M/s. Arkay Holdings Limited. The Petitioner desirous of having future relationship as good neighbours approached Mr. Dileep Nevatia to settle all disputes as regards the subject property. Subsequently, the Petitioner and Mr. Nevatia came to an amicable settlement wherein it was agreed that Mr. Nevatia would unconditionally withdraw the Appeal No. 49 of 2020 filed with respect to the subject property and compensation/ damage of sum of Rs. 1,25,00,000/- (One Crore Twenty-Five Lakhs Rupees) was also paid by the Petitioner in lieu of fully, finally and irrevocably resolving and settling the disputes pertaining to the said Property.



e) On 16th November, 2021, the Petitioner addressed a letter to Mr. Dileep Nevatia bringing these facts on record alongwith a Banker's Cheque No. 830777 dated 16th November 2021 drawn in favour of Mr. Nevatia for a sum of Rs. 1,25,00,000/-. The said letter has been duly acknowledged by Mr. Dileep Nevatia. Hereto annexed and marked as "Exhibit - B" is a copy of the letter dated 16th November, 2021 alongwith Banker's Cheque No. 830777 dated 16th November, 2021.

Ex B

f) In pursuance to the settlement arrived at, vide Order dated 10th June 2022, Appeal No. 49 of 2020 came to be dismissed as withdrawn as per the request of Mr. Nevatia, the Appellant therein. Hence, the disputes raised by Mr. Nevatia as regards the subject property attained finality. Hereto annexed and marked as "Exhibit - C" is a copy of the Order dated 10th June 2022 passed in Appeal No. 49 of 2020.

Ex C

g) On 27th February 2023, in complete disregard for the settlement between them, Mr. Dileep Nevatia filed an Original Application being OA No. 25 of 2023 before the Hon'ble National Green Tribunal challenging the construction carried out in the subject property on identical grounds taken up by him in the Suit No.



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5111 of 1994 as well as Appeal No. 49 of 2020. Vide Order dated 3rd May 2023 in OA No. 25 of 2023, the Hon'ble Tribunal constituted a committee comprising of one member each of MCZMA, MCGM as well as the District Collector to make a site visit to assess if there is any violation as alleged and thereafter make a report. The matter has been kept for further consideration on 2nd August 2023. The Petitioner has filed an Application for dismissal of the Original Application on grounds of maintainability before the Hon'ble Tribunal which is pending for adjudication. Hereto annexed and marked as "Exhibit - D" is a copy of the OA No. 25 of 2023 without annexures, "Exhibit - E" is a copy of the Orders dated 14th March 2023 and 3rd May 2023 and "Exhibit - F" is a copy of the Interlocutory Application No. 139 of 2023 filed by the Petitioners in OA No. 25 of 2023 before the Hon'ble Tribunal without annexures.

Ex DEx EEx F

13. On 25th May 2023, the Petitioner No. 2 was served with the Impugned Notice dated 24th May 2023 bearing Notice No: GS/DO1GS/196/53-1-MRTP ACT/ GS56N01/24-05-2023 under Section 53(1) r/w Section 52(1)(b) and (d) of the MRTP Act. By the said Notice, the Petitioner was called upon to reinstate/ restore/ remove the unauthorised development/ changes in the land/ premises situated at the subject



property and to apply under Section 44 of MRTTP Act within one month from the receipt of the impugned notice. Hereto annexed and marked as "Exhibit - G" is a copy of the Impugned Notice dated 24th May 2023.

Ex G

14. Promptly, on 26th May 2023, the Petitioner No. 2 through its Licenced Surveyor, M/s. 3 Dimensional Consultants LLP ("**Licenced Surveyor**") replied to the Impugned Notice dated 24th May 2023 apprising the Respondent Authorities that an application for expansion/ repairs/ renovation of the development/ changes to the subject property has already been submitted on 18th April 2023 in accordance with the provisions of the MRTTP Act, 1966 and DCR 2034 and requested the Authorities to not take any action under the Impugned Notice till the final outcome of the proposal submitted to the Building Proposal Department under File No. P-16330/2023/(730)/G/South/ WORLI.

Ex H

Hereto annexed and marked as "Exhibit - H" is a copy of the Reply to Impugned Notice dated 26th May 2023 and "Exhibit - I" is a copy of the online Application Status for expansion/ repairs/ renovation along with the payment receipt.

Ex I



15. The present status of the subject property is evidenced through photographs herein and is annexed to the present Petition as "Exhibit - J" for reference.

Ex J

16. GROUNDS

A. That all the Respondents in the present Petition are statutory authorities exercising powers under various statutes and performing functions in furtherance of the same. The Respondents being State within the meaning of Article 12 of the Constitution of India are required to act in a fair and reasonable manner in all its dealings with the citizens of India which includes the present Petitioners. The impugned notice issued by the Respondent MCGM is clearly arbitrary, unreasonable, capricious and unlawful and violative of the Petitioner's right under Article 14 and on this ground alone the Impugned Notice should be quashed and set aside.

B. That the Respondent MCGM issued the Impugned Notice against the Petitioners at the behest of persons with vested interest in the said proceedings and the Petitioners have not been apprised of any complaint or report based on which the Impugned Notice was issued.



- C. That the development/ changes made to the subject property are condonable under the DCR 2034 and the Petitioner has already made an application as per Section 44 of the MRTP Act and considering that the subject property is the dwelling house of the Petitioner, the application for condonation of the Petitioner should be considered.
- D. That the Respondent Authorities, by way of the impugned notice has directed the Petitioners to demolish the structure on the subject property, which is the Petitioner's dwelling house and hence, the Impugned Notice is infringing upon the Petitioner's right to shelter.
- E. That the right to shelter has been held to be an essential ingredient of the right to life, which is a fundamental right guaranteed under Article 21 of the Constitution. Presently, the Petitioner No. 2 along with 6 to 8 family members of the Petitioner reside in the subject property.
- F. That such right to shelter has clearly been held as a part of the right under Article 21 by the Hon'ble Supreme Court of India in the case of *Chameli Singh and Ors. Versus State of Uttar Pradesh and Anr.* reported in *1996 (2) SCC 549*. wherein, the Hon'ble Supreme Court has categorically held that right to shelter when used as an essential requisite to the right to live, should be deemed to have been guaranteed



as a fundamental right. Thus, it is incumbent upon instrumentalities of the State to safeguard and ensure such right and any action or inaction which purports to or in effect, abrogates such right is unconstitutional.

17. The Petitioners are approaching this Hon'ble Court invoking its extraordinary jurisdiction under Article 226 of the Constitution of India as in the present circumstances.

18. The Petitioners state that its fundamental, constitutional and statutory rights are being deprived of and the Petitioners have demanded justice but the same has been denied.

19. The Petitioners state that the present petition is within the jurisdiction of this Hon'ble Court as the office of Respondent Authorities are within the jurisdiction of this Hon'ble Court and the entire cause of action has arisen within the jurisdiction of this Hon'ble Court. Therefore, this Hon'ble Court has jurisdiction to entertain and dispose of the present petition.

20. The Petitioners are approaching this Hon'ble Court without any delay or laches.

21. The Petitioners state that it has not filed any other Petition pertaining to the subject matter in this Hon'ble Court or any other Courts in India.

22. Mr. Ghanshyam Dholakia, the Petitioner No. 2 abovenamed on behalf of the Petitioners, who is well aware of the facts and circumstances of the subject matter of the present petition from the records available with the Petitioners as well as personal knowledge is executing the Petition.

23. The Petitioners will rely upon the documents a list whereof is annexed hereto.

24. The Petitioners have paid Court Fee of Rs. ...₹५००००.....

The Petitioners pray for;

- (a) this Hon'ble Court be pleased to issue a Writ of certiorari or a Writ in the nature of certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India, thereby calling for the records and proceedings culminating into the Impugned Notice dated 24th May 2023 (received on 25th May 2023) issued by the Respondent No. 3 and after going through the legality and validity thereof, may be pleased to quash and set aside the same;

- (b) this Hon'ble Court be pleased to issue a Writ of mandamus or a Writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the Constitution of India, directing the Respondents not to take any coercive action in furtherance of the said Impugned Notice;
- (c) pending the hearing and final disposal of this Petition, this Hon'ble Court may be pleased to stay the effect and implementation of the Impugned Notice dated 24th May 2023 and process the Petitioner's application for expansion/ repairs/ renovation of the subject property as per the applicable law;
- (d) pending the hearing and final disposal of this Petition, this Hon'ble Court may be pleased to direct the Respondents to allow the Petitioner to continue the use and occupation of the subject property;
- (e) pending the hearing and final disposal of this Petition, this Hon'ble Court may be pleased to direct the Respondent No. 3 not to take any coercive steps against the Petitioners in pursuance of the Impugned Notice.

- (f) ad-interim relief in terms of prayer clause (c) to (e);
- (g) for costs of this petition;
- (h) for such other and further relief as the Petitioners may pray for in the nature and circumstances of the case.

Mumbai

Dated this 4th day of June 2023.

For Hari Krishna Exports Pvt. Ltd.



Director

Petitioner No. 1



Petitioner No. 2



Advocates for the Petitioners

Before Me



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VERIFICATION

I, Ghanshyam Dholakia, an Adult, Indian Inhabitant, the Petitioner No. 2 abovenamed, having residence at Aikyam (Formerly known as Panhar), Plot No. 5, Worli Sea Face, Mumbai 400 030, do hereby solemnly declare that what is stated in Paragraphs 1 to 15 is true to my own knowledge, and that what is stated in the remaining paragraphs 16 to 24 are stated on information and belief, and I believe the same to be true.

Solemnly declared at Mumbai.)

this day of June 2023.)

(Ghanshyam Dholakia)
Petitioner No. 2

Advocates for the Petitioners

Before Me



BEFORE ME

Adv. Shivaji. N. Dhanage
Notary Govt Of India
Regd. No. 15376 MUMBAI (MS)
404-405, 4th Floor, Davar House,
197/199, Near Central Camera Bldg,
O.N. Road, Fort, Mumbai - 400001.

NOTED & REGISTERED

Page No. 146 Sr. No. 1610

Date 04 JUL 2023

04 JUL 2023



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. OF 2023**

In the matter of Articles 14, 19, 21, 226 of
the Constitution of India;

And

In the matter of provisions of the
Maharashtra Regional and Town Planning
Act, 1966 (“**MRTP Act**”);

And

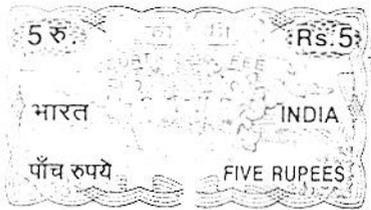
In the matter of provisions of the
Mumbai Municipal Corporation Act,
1888 (“**MMC Act**”);

And

In the matter of Impugned Notice dated 24th
May 2023 bearing Notice No:
GS/DO1GS/196/53-1-MRTP ACT/
GS56N01/24-05-2023 (received on 25th
May 2023) issued under Section 53(1) r/w
Section 52(1)(b) and (d) of the MRTP Act;

And

In the matter of the notice issued to
demolish the dwelling house of the
Petitioner in violation of their fundamental
right to shelter.



1. Hari Krishna Exports Private

Limited, Having office at

Unit No. 1701, “The Capital”

17th Floor, B Wing, Plot No. C-70,

Bandra East, Mumbai 400 051.



2. **Ghanshyam Dholakia**, age 54,
Occ: Business, having residence at
Aikyam (Formerly known as Panhar),
Plot No. 5, Worli Sea Face, Mumbai 400 030.

... Petitioners

Versus

1. **Municipal Corporation of Greater Mumbai**
Through its Commissioner,
Annexe Building, Mahapalika Marg,
Mumbai – 400 001.
2. **Asstt. Engineer (Building & Factory)**,
Municipal Corporation of Greater Mumbai,
G/S Ward, Municipal Office,
N. M. Joshi Marg, Mumbai – 400013.
3. **Designated Officer G/South Ward**,
Municipal Corporation of Greater Mumbai,
N. M. Joshi Marg, Elphinstone,
Mumbai – 400 018.
4. **Executive Engineer (BP), City**,
G/S Ward, Bhagwan Walmiki Chowk,
Vidyalankar Marg, Opp. Hanuman Temple,
Wadala (East), Mumbai 400 037.
5. **Maharashtra Coastal Zone Management Authority**, Through the Additional Chief Secretary,
Environment Department, 2nd Floor, Room No. 217,



Annexe Building, Mantralaya, Mumbai- 32.

... Respondents

To
The Prothonotary & Senior Master
Bombay High Court
Mumbai – 400 032

VAKALATNAMA

Dear Sir / Madam,

We, **Hari Krishna Exports Pvt. Ltd.** and **Ghanshyam Dholakia**, the Petitioner No. 1 and 2 abovenamed, do hereby appoint **Vidhii Partners, Advocates**, High Court, Bombay, to act, appear and plead for us on our behalf in the above matter.

IN WITNESS WHEREOF WE have set and subscribed our hands to this writing at Mumbai. For Hari Krishna Exports Pvt. Ltd.

Dated this 4 day of June 2023.



Director

Petitioner No. 1



Petitioner No. 2



Accepted:



Vidhii Partners,
Advocates for Petitioners
2nd Floor, Darabshaw House,
Shoorji Vallabhdas Marg,
Ballard Estate, Mumbai – 400 001.

MAHLE 337122
vidhii.mumbai@vidhii.partners.com
O.S. 21288

IN THE HIGH COURT OF
JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL
JURISDICTION
WRIT PETITION NO. OF 2023

Hari Krishna Exports Private Ltd.
& Anr. ... Petitioners
Versus

Municipal Corporation of Greater Mumbai
& Ors. ... Respondents

VAKALATNAMA

Dated this 7 day of July 2023

Vidhii Partners,
Advocates for Petitioners
2nd Floor, Darabshaw House,
Shoorji Vallabhdas Marg,
Ballard Estate,
Mumbai – 400 001.



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. OF 2023

Hari Krishna Exports Private Ltd. & Anr. ... Petitioners

Versus

Municipal Corporation of Greater Mumbai
& Ors. ... Respondents

MEMORANDUM OF REGISTERED ADDRESS

Vidhii Partners,
Advocates for Petitioner
2nd Floor, Darabshaw House,
Shoorji Vallabhdas Marg,
Ballard Estate, Mumbai – 400 001.

Advocate for the Petitioners



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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. OF 2023

Hari Krishna Exports Private Ltd. & Anr. ... Petitioners

Versus

Municipal Corporation of Greater Mumbai
& Ors. ... RespondentsLIST OF DOCUMENTS

The Petitioners shall rely upon the following documents in support of this Petition:

Sr. No.	Exhibits	Particulars	Page Nos.
1.	A	Copy of the Judgment dated 5 th December 2019 passed in Suit No. 5111 of 1994	
2.	B	Copy of letter dated 16 th November, 2021 alongwith Banker's Cheque No. 830777 dated 16 th November, 2021.	
3.	C	Copy of Order dated 10 th June 2022 passed in Appeal No. 49 of 2020.	
4.	D	Copy of order OA No. 25 of 2023 without annexures	
5.	E	Copy of Orders dated 14 th March 2023 and 3 rd May 2023	
6.	F	Copy of the Interlocutory Application No. 139 of 2023 filed by the Petitioners in OA No. 25 of 2023 before the Hon'ble Tribunal without annexures	
7.	G	Copy of the Impugned Notice dated 24 th May 2023	



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8.	H	Copy of the Reply to Impugned Notice dated 26 th May 2023.	
9.	I	Copy of online Application for expansion/ repairs/ renovation along with the payment receipt of the scrutiny fees	
10.	J	Photographs showing present status of the subject property.	



Advocates for Petitioners



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

SUIT NO. 5111 OF 1994

Dileep Nevatia,
of Bombay, Indian Inhabitant,
residing at Shashi Deep,
5-A, Worli Sea Face, Bombay 400 025.

... Plaintiff

Versus

1. Messrs. Arkay Holdings Ltd.)
a Company incorporated under)
the provisions of the Companies)
Act, 1956 and having its registered)
office at Maker Chambers-IV,)
Nariman Point, Bombay 400 021.)
2. Municipal Corporation of Greater)
Bombay, a statutory corporation)
incorporated under the provisions)
of the Companies Act, 1956 and)
having its office at Mahanagar)
Palika Marg, Bombay 400 001.)
3. The Dy. Chief Controller of)
Explosives, Explosives Department)
of Ministry of Industry, Industrial)
Insurance Building, Opp.)
Churchgate Station, Bombay 400 020.)
4. The Senior Inspector,)
Worli Police Station,)
BDD Chawls, Bombay 400 018.)
5. The Commissioner of Police,)
Office of the Commissioner of Police,)
D.N. Road, Bombay 400 001.)

... Defendants



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Mr. Dileep Balkrishna Nevatia, in person present.
 Mr. Dinesh Purandare a/w Mr. Jaydeep Raut a/w Ms. Henna D. i/b
 Crawford Bayley & Co. for Defendant No.1.
 Mr. D.S. Shingade for Defendant No.2 – MCGM.
 Mr. Hemant Haryan, Assistant Government Pleader, for Defendant Nos.4
 and 5.

CORAM : R.I. CHAGLA, J.

RESERVED ON : 26th SEPTEMBER, 2019.

PRONOUNCED ON : 5th DECEMBER, 2019.

ORAL JUDGMENT :

1 This Suit has been filed by the Plaintiff who is the owner and occupant of a bungalow constructed on Plot No.5 A situated at Worli Sea Face, Mumbai 400 025, against his adjoining neighbour, the Defendant No.1 who is claimed to have illegally constructed its building on the adjoining plot No.5 thereby violating the various regulations of the Development Control Regulations for Greater Bombay 1991 (DCR 1991) as well as the Environment (Protection) Act 1986 and the Rules thereunder and the exclusive licence/permission issued to Defendant No.1. The Plaintiff has sought decree against Defendant No.1 for the sum of Rs.10 crores as and by way of damages, with interest @ 24% p.a. from the date of filing of the Suit till the date of decree and/or payment or realization thereof as set out in the particulars of claim, which are annexed at Exhibit-

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K to the plaint. The Plaintiff has also sought for setting aside the permission granted by Defendant Nos.2 to 5 to Defendant No.1 allowing Defendant No. 1 to construct a multi storeyed building with two storeyed basements on the said plot No.5 of Worli Sea Face and/or the permission to use dynamite for blasting the rocks. The other prayers sought for are consequential prayers.

FACTS :

2 It will be necessary to give a background of the facts.

The Defendant No.1 had purchased the suit plot in the year 1993. The suit plot viz. Plot No.5 is the adjoining plot to the plot owned by the Plaintiff viz. Plot No.5A situated at Worli Sea Face. Defendant No.1 upon purchasing the suit plot demolished the old structure thereof and shifted heavy construction machinery on the site to construct a multi storeyed apartment building along with two floors of basements, by removing the rock surface of around 25 feet. It is the Plaintiff's case that Defendant No.1 started blasting dynamite at site on permission granted to him by Defendant Nos.3 and 5. The Plaintiff claims that Defendant No.1 had in 1994, given several assurances to the Plaintiff, on the carrying out of excavation during construction but had reneged on these assurances.

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3 The Plaintiff had addressed communications to Defendant No.4 on 21.10.1994 and 24.10.1994 complaining about the alleged activities carried on by Defendant No.1 and requesting for appropriate steps to maintain peace and safety in the area for the well being of the Plaintiff and his family members. The Plaintiff had also addressed communication to Defendant No.1 on 29.10.1994 to permit work to progress further only after getting it confirmed from the appropriate authority that this excavation and basic activity had not endangered the Plaintiff's building. The Plaintiff had addressed further letters to Defendant Nos.4 and 5 in 1994 which also pertained to the uncontrolled and unsupervised blasting undertaken by Defendant No.1 and to take action against the offenders. However, no action was taken by these Defendants. These communications are exhibited in the plaint filed by the Plaintiff. The Suit was filed in the year 1994.

4 It appears that a substantial amendment to the plaint was carried out on 08.03.1997 pursuant to the order of this Court dated 19.04.1997. This was pursuant to a communication addressed by the Plaintiff to Defendant No.2 claiming that Defendant No.1 had carried out illegal construction in violation of the DCR 1991. It is Plaintiff's case that the Plaintiff had repeatedly made representation to Defendant No.2 to stop



the work of Defendant No.1 which was being done in a manner so as to adversely damage the property of the Plaintiff.

5 Soon after filing of the Suit in 1994, a Notice of Motion No.87 of 1995 had been taken out by the Plaintiff. This Court initially by an order dated 23.12.1994 granted ad-interim injunction in terms of prayer clause (d) thereby restraining the Defendant No.1 from carrying out blasting work. By a subsequent order dated 18.01.1995, this Court had recorded the statement of the learned Counsel for the Defendant No.1 that blasting work was complete and no further blasting had been carried out since 21.12.1994. This Court restrained the Defendant from carrying out any further blasting work at site and ordered that construction work may continue at the Defendant's own risk and subject to orders passed by this Court. It appears that thereafter the Notice of Motion was disposed of as it had become infructuous. With regard to prayer clause (d) therein an Architect had been appointed and who submitted a report. A further Notice of Motion No.1642 of 1997 was taken out in the above Suit in accordance with leave granted by this Court. An order came to be passed on 16.06.1997 in the said Notice of Motion declining to grant relief sought for by the Plaintiff with regard to the construction on the neighbouring plot taking into account that the FSI has been wrongly calculated. The



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calculations had not taken into account the basement area. There were photographs submitted by the Plaintiff which indicated that a 7 storeyed building had come into existence. By further order dated 17.12.1988 passed by this Court, it was observed by the learned Single Judge of this Court (Coram : D.K. Deshmukh, J.) that the construction of the building on the adjoining plot is being constructed according to a sanctioned building plan. The sanction had been granted to the building plan by the Planning Authority. Accordingly, the Notice of Motion had been disposed of.

6 It is the case of the Plaintiff in the Plaint that the building is being built on the suit plot by dressing the hill upto a level slightly above the approach road viz. Khan Abdul Gaffar Khan Road. In the plaint which was thereafter amended, it is stated that on the suit plot, a structure consisting of the ground floor and additional 7 floors has been constructed. The ground floor is the closest floor to the street and has a direct access to the street and hence, as per the DC Regulations, it cannot be termed as a basement or a cellar. It is further claimed in the amended plaint that Defendant No.1 has wrongly treated the ground floor to be a basement in order to circumvent the height regulations as specified for category 1 of coastal area for Greater Bombay as given in the DCR Rule 59. It is



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contended that the height of the building is as high as 24.6 mtrs. and hence it is a multi-storied building. The minimum open space from all sides, except the front side, shall be 7.0 mtrs. which had been grossly violated by Defendant No.1 on two sides of the building. Further, it is contended that the open space on the ground floor is fully covered by the ramps and extra construction made below the ramps. Thus, this makes it impossible for fire engines to enter around the ground floor for emergency. It is further contended in the amended plaint that Defendant No.1 has constructed FSI @192% against a maximum permissible FSI of 133%. The Defendant No.1 had also added one more floor i.e. floor 8th and is making preparation to add yet another floor 9th. The Plaintiff has in the amended plaint thus contended that Defendant No.1 had indulged in gross violation of DCR 1991 with the full blessing of Defendant No.2 and inspite of various complaints written by the Plaintiff to Defendant No.2. Apart from the violations of DCR 1991 which was claimed by the Plaintiff in the amended plaint, the Plaintiff has referred to report of the Central Mine Planning & Design Institute Limited (CMPD Institute) which has reported violations of explosive licence issued to Defendant No.1 by the Defendant No.5. However, it is to be noted that despite the substantial amendment carried out to the plaint in 1997, the prayers in the plaint remain the initial prayers sought for when the Suit was filed in 1994.



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7 The Defendant No.1 had sought leave of this Court to file its written statement several years after the Suit was filed. Leave was granted by this Court to file written statement on 26.02.2014. It is stated in the written statement that the building of Defendant No.1 on the suit plot was complete as far back as in August 1997. The various contentions in the plaint have been denied by Defendant No.1 through one Mr. R. Rengarajan, who has verified the written statement by stating that other than paragraph 55 of the written statement which states that Mr. R. Rengarajan, is the Authorised Signatory of the Defendant, he has based his averments on information which is derived from the records maintained by Defendant No.1 which he believes to be true. The Deponent in the written statement has stated that the ground floor as claimed by the Plaintiff, has no direct access to the street or open space and thus cannot be termed as the ground floor. It is further stated in the written statement that the calculation of the height of the building by the Plaintiff as 24.6 mtrs. is based on the false notion that the basement is the ground floor of the building. It is further stated in the written statement that adequate open space as required under law has been left by Defendant No.1 on all sides as well as on the front side of the building. It has been stated that the building under reference does not come under the fire regulations as the building abuts two roads with easy access in case of an emergency. It is further stated that two ramps





have been provided at the side of the building for ingress and egress of cars and the same are not located/situated within the limits of compulsory open space. It has accordingly been stated in the written statement that the Defendant No.1 has carried out construction of the building in accordance with the sanctioned plan and as per the provisions of the DCR, 1991, provisions of the CRZ Notification dated 19.02.1991 issued under the Environment Protection Act, 1986.

8 After the pleadings were completed, this Court on 03.03.2014 framed the issues arising out of the Suit. The issues as well as the findings thereon are as under :-

: ISSUES :

SR. NO.	ISSUES	FINDINGS
1.	Whether defendant no. 1 proves that the suit is barred by law of limitation?	Not required to be answered in view of answer to Issue Nos. 5 to 8
2.	Whether the suit is liable to be dismissed on account of non-joinder of necessary parties?	Not required to be answered in view of answer to Issue Nos. 5 to 8
3.	Whether the plaintiff proves that the suit is	Not required to be



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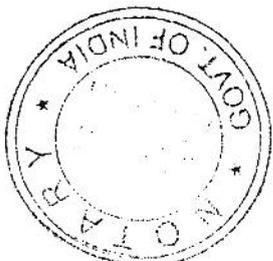


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	maintainable despite of non-service of statutory notice U/s. 80 of the Code of Civil Procedure?	answered in view of answer to Issue Nos. 5 to 8
4.	Whether the plaintiff proves that the suit is maintainable despite of non-service of statutory notice U/s. 527 of the Bombay Municipal Corporation Act?	Not required to be answered in view of answer to Issue Nos. 5 to 8
5.	Whether the plaintiff proves that defendant no. 1 has committed any illegal construction activity as alleged in the plaint or at all?	In the negative.
6.	If the answer to issue no. 5 is in the affirmative, then whether the plaintiff proves that the plaintiff is entitled to make a claim for damages against defendant no. 1 to the tune of Rs.10 Crore or at all?	Since issue No. 5 is answered in the negative, this issue is answered against the Plaintiff.
7.	Whether the plaintiff proves that he is entitled to claim any amount from defendant no. 1 on account of interest at the rate of 24% per annum from the date of filing of the above suit as alleged or at all?	Against the Plaintiff.
8.	Whether the plaintiff proves that he is entitled to claim exclusively the entire amount of damages (including the amount claimed by the original plaintiff no. 1, viz. Late Mrs. Snehalata Nevatia) prayed in prayer clause (a) of the plaint, in view of the	Against the Plaintiff.

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	suit no. 3598 of 1996 pending before this Hon'ble Court?	
9.	What order?	As per final order.

Evidence and Submissions :

9 After framing of the issues, the Plaintiff led his evidence through himself and 10 other witnesses, which witnesses included the Architect responsible for construction of the building as well as concerned officers of Defendant No.2 who have sanctioned the plans for the said construction. In the affidavit in lieu of examination-in-chief, the Plaintiff has referred to the Deed of Assignment dated 10.07.1992 under which the erstwhile lessee assigned the suit plot to Defendant No.1 for a sum of Rs.4 crores and another Rs.40 lakhs was paid towards stamp duty, making a total of Rs.4.40 crores as cost of consideration by Defendant No.1. It is stated that in order to suppress the actual cost of the project and thereby avoid the Environmental Clearance process, the Defendant No.1 deliberately gave a false cost of acquisition of the land/plot of only Rs.5,20,831/- which was the purported annual "lease" rent of the plot. It is stated that Defendant No.1 submitted to Defendant No.2 a highly understated investment of Rs.2,13,13,181/-. The Plaintiff in the affidavit in lieu of examination-in-chief has deposed that violations of the DCR 1991



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have been committed by Defendant No.1 in the construction of the building on the suit plot. The Plaintiff has stated that the basement as referred to by Defendant No.1 is nothing but the ground floor at ground level obtained after the razing of the hill and continues to be a little above the Khan Abdul Gaffar Khan Road, the only road which is accessible to the suit plot. He has relied upon the photograph (marked as "Exhibit P-38") which according to him, shows the lowermost floor at the ground level, having direct access to Khan Abdul Gaffar Khan Road. He has stated that the two ramps were provided by completely enclosing the side open spaces go upto the first floor level, which has been falsely described as the "Stilt Floor", with podium constructed on three sides of the building, leaving no open space at the ground level on the north and south sides of the building. This is claimed to have blocked the flow of air and light to the Plaintiff's property and also blocked the movement of fire-fighting vehicles. He has relied upon the photograph (marked as "Exhibit P-39") to show that the entry to the alleged basement is directly from the front Khan Abdul Gaffar Khan Road, as it is floor at the ground level with direct access to the said road and front side open spaces and as such the alleged "Basement" is in fact the "Ground Floor". It is stated that Defendant No.2 who had informed the Plaintiff that the construction work on the suit plot is being carried out as per approved plans, had maintained complete silence on the





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Plaintiff's request for inspection of the approved plans and other permissions granted to Defendant No.1 including the purported CRZ clearance granted by the competent authority. The approval granted by the Defendant No.2 on or around 11.08.1997 to the revised building plans submitted by Defendant No.1, has been referred to in the affidavit in lieu of examination-in-chief of the Plaintiff. It is stated that the plan shows the building comprising of floors/areas as set out. It is stated that the plan shows the purported basement for car parking has direct access from Khan Abdul Gaffar Khan Road. The driveway is shown on the other three sides of the building at first floor level is in fact a Podium above the ground floor which has been incorrectly referred as the alleged basement. The stilt floor above the basement for "car parking" on the front (west) side and "Electrical Utilities" on the rear side. Six floors of living area above the stilt floor is shown. The terrace is enclosed with an all around high wall of 5.57 mtrs. or around 19 ft. The minimum side open space of only 2.20/2.80 mtrs. on the south side at the ground floor (basement) level and 4.80 mtrs. at the first floor (stilt) level against the minimum requirement of 10.32 mtrs. The level of the road at the rear of the building i.e. Pochkhanawala Road, has been changed and shown to be above the first floor ceiling level and no access is shown to the plot from this road. The FSI as stated in the said plans, being FSI of all areas of 2.197 times and height of 30.98 mtrs.

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It is stated by the Plaintiff that Defendant No.2 had given permission to construct the alleged terrace, which is fully enclosed upto a height of 5.07 mtrs. and further height of 0.5 mtrs. i.e. a total of 5.57 mtrs. and still continue to exempt it from both FSI and height calculations of the building. The Plaintiff has, in the said affidavit, further stated that the Defendant Nos.1 and 2 have deliberately suppressed the double storey height of 5.57 mtrs. from calculating the total height of the building and at the same time give benefit of extra FSI of an entire floor and maybe even two floors to the Defendant No.1 on the alleged terrace, which is fully enclosed and a roof/slab put thereon. It is further stated that the Defendant Nos.1 and 2 have deliberately suppressed the total height of the building in order to evade the prohibition of height beyond 22 mtrs. as applicable to CRZ-II Zone under the CRZ Notification, 1991 and also the requirement of fire protection and additional open space requirements under the D.C. Regulations, 1991. If the additional height of 5.57 mtrs. together with the height of alleged basement is taken, the total height increases to 30.98 mtrs.

10 The deponent has further stated that there is violation of the Coastal Regulation Zone Notification, 1991 of the Environment Protection Act, 1986, as no mandatory environmental clearance has been taken from

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the Ministry of Environment and Forests, Government of India, despite the investment far exceeding Rs.5 crores, which is in violation of Rule (3)(2) (iv) of the CRZ Notification, 1991. The entire portion of the hill on the suit plot is blasted and permanently flattened, which is in complete violation of sub-rule (xiii) of Rule (2) of the CRZ Notification, 1991. The height of the building is far in excess of 22 mtrs., which is in violation of DC Regulation (59). There is violation of fire safety requirements by suppressing the actual height of the structure to be below 24 mtrs. It is stated in the said affidavit that the Plaintiff and his family members have suffered tremendous mental agony and breach of peace because of unauthorized activities on the part of the Defendant No.1 with the blessings of Defendant Nos.2 to 5. For almost two decades, the Plaintiff and his family members have been deprived of proper light and ventilation on account of illegal construction by the Defendant No.1. The particulars of claim given in the said affidavit is by way of damages of Rs.10 crores for the tremendous mental agony and breach of peace already suffered by the Plaintiff and his family members upto the date of the filing of the suit. Further damages for the tremendous mental agony, breach of peace, deprivation of ingress and egress of air and light claimed to be suffered by the Plaintiff and his family members from the date of filing of the Suit to the date of demolition of the alleged illegal suit building of Defendant No.1, which is required to be

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quantified. Further interest is claimed @ 24% p.a. from the date of filing of the Suit till the date of the decree and/or payment or realisation.

11 The Plaintiff has led evidence through other witnesses viz. PW2 to PW11 in order to prove some of the documents filed by the Plaintiff through the makers of these documents. The Plaintiff has relied upon the evidence of the witness PW2, Shri J.S. Arjani from CMPD Institute. The documents produced by him were marked as Exhibit P-56 to Exhibit P-59, for proving that approximately 1700 mtrs. volume of rock had been removed from the Suit plot by using around 1200-1400 kg. of explosives. The evidence of Plaintiff's witness PW5, Mr. Bohman Irani, who was the Architect who prepared the building plans in 1997 and got them finally approved in the year 2001 on behalf of Defendant No.1 and also obtained completion certificate for the suit building has been referred to by the Plaintiff. This in order to contend that this witness could not give answers to certain questions put to him such as the checking of the basement floor level as well as the work done before or after the witness came into picture and whether either the witness or the Defendant No.1 had applied for CRZ clearance. The witness to a question put to him i.e. Question No.54 viz. "After completing the building, did you personally check whether all the requirements as per the approved plans have been complied with?", has

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answered that, "Approval is only given on plans which are already approved". The Plaintiff has relied upon the evidence of the Plaintiff's witness PW5. He has submitted that from this evidence, it is evidently clear that there is only one entry to the suit plot/building i.e. from Khan Abdul Gaffar Khan Road. There was no further work carried out to make an alleged basement of alleged depth of 0.99 mtrs. From the 0.00 level, the height of the building is 2.40 plus 21.76 plus 3.57 plus 0.50 mtrs. i.e. total of 28.23 mtrs. and thus, a multi-storied building. There was no application made for CRZ clearance and an unauthorized floor 8 and even 9 has been made on the alleged terrace, which is covered with a huge wall and glass facade.

12 The Plaintiff has led the evidence of PW10 Mr. Vilas Ganpati Khilare, who at the relevant time in 2001 was the MCGM Sub-Engineer who had visited the suit site and given approval to the final building plans. The Plaintiff has referred to certain questions put to this witness, including Question No.12 viz. "When you went for inspection, did you take measurements to see whether they had tallied with the plans?", to which his answer is "No". To a Question i.e. Question No.26 viz. "Whether these plans tally with the last approved plans (Exhibit P-73 to Exhibit P-75)?", the witness has answered in the affirmative. A Question was put to the witness



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i.e. Question No.38 viz. "Which area is closer to the road - the stilt area or the area below that?" The Answer given is that "The area below the stilt area. This area is shown as basement." To a further question viz. Question No.41 viz. "Are you aware whether this building has got a CRZ clearance?" The answer is "I cannot remember". The Plaintiff has submitted that through this witness it is clear that the plans approved in the year 1997 tally with the plans finally approved in the year 2001 and that the area shown as alleged basement is closest to the road and that there is no CRZ approval granted to the project.

13 The Plaintiff has submitted that upon closing of his evidence on 18.01.2018, the Defendant No.1 informed this Court on 31.01.2018 that it will lead evidence. However, on the next date i.e. on 12.03.2018 the Defendant No.1 informed the Court that it does not wish to lead evidence and accordingly the Suit was kept for final hearing.

14 The Plaintiff has relied upon various decisions of the Supreme Court as well as the other High Courts in support of his contentions. He has relied upon the judgment of the Supreme Court in *Iswar Bhai C. Patel alias Bachu Bhai Patel v. Harihar Behera and another*¹ to contend that the Defendant No.1 having abstained from the witness box and not making

¹ AIR 1999 SC 1341



statement on oath in support of its pleadings set out in the written statement, an inference is required to be drawn against Defendant No.1 that what is stated in the written statement is not correct and that the Court is fully justified in passing the decree in favour of the Plaintiff and against the Defendant No. 1. Insofar as the locus of the Plaintiff is concerned for filing the Suit, he has relied upon the decision of this Court in *Fatima Joao v. Village Panchayat of Mercedes and another*² which has held that the Suit at the instance of a neighbour for violation of plans or rules and bye-laws resulting in an invasion of their right to light, air, privacy or causing material injury, would furnish the Plaintiff a cause of action and it would be open to the Plaintiff to file a Suit to challenge the invasion of his rights causing material injury. He has relied upon the decision of the Supreme Court in *Badat and Co., Bombay v. East India Trading Co.*³ in support of his contention that under Order viii Rules 3, 4 and 5 of Code of Civil Procedure, the written statement must deal specifically with each allegation of fact in the plaint and in this case the Defendant has not specifically denied facts and his denial of facts is evasive, then the said facts shall be taken to be admitted. In such event, the admission itself being proof, no other proof is necessary.

15 He has relied upon the decision of the Supreme Court in

² Reported in AIR 2000 Bombay 444

³ AIR 1964 SC 538



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*Vellore Citizens Welfare Forum v. Union Of India and Ors.*⁴ in support of his contention that the onus of proof is on Defendant No.1 to show that its action is environmentally benign on the polluter pay principle and once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. He has relied upon the judgment of this Court in *Felix Menino Jusus Serrao v. State of Goa and others*⁵ in support of his contention that no construction in such area can be carried out without prior approval of MoEF and that construction carried out without such permission are illegal and as such, liable to be demolished. He has further relied upon decision of the Supreme Court in *Piedade Filomena Gonsalves v. State of Goa and others*⁶ which holds that construction raised in violation of CRZ Notification cannot be lightly condoned. This decision has been referred to by the Supreme Court in a recent decision which was passed on 08.05.2019 and by which the Supreme Court has ordered that no development activity could have taken place in prohibited CR Zone and the permission granted by the Panchayat was illegal and void. This is the decision of the Supreme Court in *Kerala State Coastal Zone Management*

4 AIR 1996 SCC 2715
5 AIR 2001 Bombay 294
6 AIR 2004 SC 3112

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*Authority v. State of Karala Maradu Municipality and others*⁷, by which the Supreme Court ordered demolition of number of apartment blocks in Kochi which were purchased by a few hundred home buyers on the ground that the development was in a prohibited CRZ.

16 He has further relied upon a decision of the Supreme Court in *Commissioner of Income Tax v. Panbari Tea Co. Ltd.*⁸ in support of his contention that the cost of acquisition of the suit plot should be taken into account as it is by way of deed of assignment by which the erstwhile lessee had assigned the perpetual lease of 999 of suit plot to Defendant No.1 for a premium of Rs.4 crores. The Supreme Court has held that when the interest of the lessor has been parted with for a price, the price paid is premium or salami but the periodical payments made for the continuous enjoyment of the benefits under the lease are in the nature of rent. He has also relied upon the decision of the Kerala High Court in *Manakunnam Village v. State of Kerala and others*⁹ and which holds that the valuation of land purchased which itself more is than Rs.5 crores, the Respondent Companies can be permitted to proceed with the project only subject to clearance by the Minister of Environment, Government of India, New Delhi.

17 He has further relied upon the decision of the Supreme Court

- 7 Civil Appeal Nos.4748-4785 of 2019
 8 AIR 1965 SC 1871
 9 Writ Petition No.18742 of 2007 judgment dated 16.12.2015

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in *Municipal corporation of Greater Mumbai and others v. Kohinoor CTNL Infrastructure Company Pvt. Ltd. and another*¹⁰ which has held that leaving no space on ground floor will have a serious impact on the life not only of the residents but also of people in the adjoining areas. Further, the issue of safety of occupants of high - rise buildings, that of the residents in the neighbourhood and the firemen requires urgent consideration. He has submitted that in view of the various violations of the DCR's committed by Defendant No.1 in the construction carried out in the suit plot which has a serious impact on the right to life of the Plaintiff and his family members occupying the adjoining plot, the Suit filed by the Plaintiff be decreed with compensatory cost.

18 The learned Counsel appearing for Defendant No.1 has submitted that both the Plaintiff and Defendant No.1 are lessees of the respective plots which they have acquired on a 999 years lease from Defendant No.2. He has submitted that there is no relief claimed against or relatable to Defendant Nos.3, 4 and 5. He has submitted that the Suit was originally filed by the Plaintiff along with his mother Mrs. Snehlata Nevatia who died somewhere prior to the year 2014. Thereafter, the plaint was amended by only deleting the name of Mrs. Snehlata Nevatia, who was the original Plaintiff No.1. The legal heirs of original Plaintiff No.1 though



¹⁰ AIR 2014 SC (Supp) 1048



alive, were not brought on record by the Plaintiff. He has submitted that the plaint as originally filed i.e. prior to its substantial amendment on 09.05.1997, had sought for reliefs as prayed on the ground that Defendant No.1 was proceeding to construct a building with two floors of basement and for the same had started blasting operations by using explosives on its plot of land. It was submitted in the plaint as originally filed that the Worli Sea Face is a continuous rock structure and any disturbance on account of construction activities in one of the plots would be dangerous to the foundation of the surrounding buildings. The Plaintiff had challenged the legality, validity and propriety of the permissions granted by Defendant Nos.2 to 5 to construct multi-storied building with two storied basement on the suit plot and also the legality, validity and propriety of allowing Defendant No.1 to use dynamite for blasting rocks on the plot. The Plaintiff had claimed damages to the extent of Rs.10 crores by making averment in paragraph 19 of the Plaint that the construction activities of Defendant No.1, which included carrying on work after sunset, using loud machines, heavy compressors and rock drills have caused extreme distress to the family members of the Plaintiff. It is further alleged that Plaintiff No.1 was a patient of high blood pressure who has seriously affected by these activities. It is further alleged that the uncontrolled blasting activities carried out by Defendant No.1 was likely to affect the building foundation

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of the Plaintiff very badly.

19 He has submitted that the Defendant No.1 changed the entire plan for the building and decided to construct one basement, one floor of stilt parking and 6 floors for residential accommodation for its executives, which plan was duly sanctioned by Defendant No.2. The plaint was accordingly amended to challenge the construction carried out as per the amended plans. However, in the amended Plaint, the original prayers were not amended and which had sought for cancellation of the original plan of multi – storied building with two storeyed basement. He has submitted that from the prayers it is apparent that there is no prayer for setting aside the sanctioned plans.

20 He has submitted that the construction of the building is as per the sanctioned plan. This is apparent from the evidence of the Plaintiff's witness No.10 Mr. Khillari, who was Assistant Engineer of Defendant No.2 at the relevant time of the construction carried out and who in answer to Question Nos.26 and 27 put to him by the Plaintiff, stated that the actual construction of the building was in accordance with the sanctioned plans. He has submitted that it is an admitted position that in order to obtain the building completion certificate, Defendant No.1 submitted to Defendant No.2 the "as built" drawings on the basis of which the construction was



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checked and the building completion certificate was issued. He has submitted that the Plaintiff has merely relied upon the Report obtained by him from M/s. B.D. Sahasrabhojane & Associates, an Architects firm. He has submitted that the Architect neither visited the construction site nor examined the sanctioned plans issued by Defendant No.2. The said Architects' firm has made its Report only on the basis of observing the construction from the Plaintiff's plot and on the basis of some drawings which was supplied by the Plaintiff to the said firm. The drawings provided by the Plaintiff to the Architect, on the basis of which the Report was prepared have not been produced in the present trial and did not form a part of the records and proceedings of the Suit. The said Architect who prepared the Report or anyone else from the firm has not been examined in order to prove the Report. He has, thus, submitted that the Architect's Report which forms the foundation of all the allegations contained in the amended plaint is not brought before this Court. The Plaintiff has also not produced any expert evidence to prove that the building is in any manner illegal or constructed in violation of the provisions of law. He has submitted that although the Plaintiff chose to examine the Architect who completed the building project on behalf of Defendant No.1, he has not put his case to the Architect or to any of the Municipal Officers who have produced and proved the building plans that there existed any violation of



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DCR 1991 or any other law. The Plaintiff also does not claim to have any expertise or substantial knowledge about the requirements of building regulations. This is apparent from his answer to Questions (3) to (6) during the course of cross - examination of PW1. His oral testimony is nullified by the expert evidence of the Architect which has been produced by the Plaintiff himself. The plaint which was amended had been re-verified by the Plaintiff who had solemnly declared that the averments made therein is by way of information and believe. Thus, the Plaintiff has neither knowledge nor expertise on these issues.

He has submitted that the two issues which would first arise for determination are issue Nos. 5 and 6 which are as under :

5. Whether the plaintiff proves that defendant no. 1 has committed any illegal construction activity as alleged in the plaint or at all?
6. If the answer to issue no. 5 is in the affirmative, then whether the plaintiff proves that the plaintiff is entitled to make a claim for damages against defendant no. 1 to the tune of Rs.10 Crore or at all?

He has submitted that this Court would have to decide as to whether the Plaintiff has proved that Defendant No.1 had committed any illegal construction. The issue of illegal use of explosives is not an issue which has been framed. He has, however, submitted that the Plaintiff has been unable



to prove that he is entitled to any relief on this ground. He has submitted that the blasting operation by use of dynamite for excavation are of no consequence anymore. The admitted position being that the excavation and use of dynamite was completed in the year 1994 itself. The Plaintiff's structure has not suffered any damage for the past 25 years and that this Court does not need to examine this issue with regard to the correctness of the blasting operations or likelihood of damage to the Plaintiff's property. He has further submitted that the Plaintiff had led no evidence whatsoever to prove that the blasting operations have caused any damage to the Plaintiff's property. He has submitted that the examination and cross-examination of PW2 who is an officer of the CMPD Institute with reference to the Report of the CMPD institute dated 20.02.1990, proves that the Report was merely a Preliminary Study Report and that the observations of the said Institute are not at all of a conclusive nature. This Report which has been relied upon by the Plaintiff is only a preliminary study based on the plans submitted by the Plaintiff. A letter was issued by the CPMD Institute dated 20th February, 1990 (Exhibit P58) with reference to the said Report and which states that about 1200 to 1,400 kg of explosives were used for blasting. However, the Plaintiff had failed to produce in evidence the said plan (s) which had been submitted to the said Institute. He has submitted that it is the case of the Plaintiff himself that apart from blasting,

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there was continuous use of rock drills for the purpose of excavation. The Plaintiff has claimed Rs.10 crores towards damages based on violations created by these drilling machines and accompanying compressors. He has submitted that without prejudice to the above submission if there was any violation of the licence, then at best this could be an offence under the provisions of the Explosives Act which is a complete code in itself for the purpose of determining the nature and quantum of punishment for violation or breach of the license conditions. This Court therefore, does not have the jurisdiction to try or entertain any action for the breach of the licence conditions or for the violation of the provisions of the Explosives Act.

21 He has submitted that the issue of the structure having a basement or not is required to be first decided before considering whether there is any violation of the DCR 1991 as claimed by the Plaintiff. He has submitted that the term "basement" has been defined in the DCR at Regulation 10 to mean the lower storey of a building below or partly below the ground level. Hence, any structure that is even partly below the ground level is also a basement. He has submitted that the 'ground level' is a term which is understood in the DCR 1991 at almost all relevant places, to mean and refer to the average surrounding ground level or the average



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ground level contiguous to the structure. This is borne out by Regulation 2(3)(11)(i) which defines a multi-storeyed building, and Regulation 2(3)(51) which defines the height of a building wherein the height is calculated taking into account 'the average surrounding ground level' and 'average level of the ground around and contiguous to the building', respectively. He has submitted that the term 'ground level' obviously refers to the topography of the land including the slope of the plot. He has submitted that for the purpose of measurement, the line of the ground level is to be considered as the average ground level. The average ground level in case where the ground is sloping, is computed by adding the highest point on the slope in the plot to the lowest point on the slope and then divide by two. This will give the average level of the ground around and contiguous to the building. He has submitted that Regulation 38(9)(i) of DCR 1991 clearly explains that the total area of any basement shall not exceed the area of the plot or twice the plinth area of the building whichever is less. It further allows a basement to be in one or two levels. Regulation 38(9)(ii) prescribes the minimum height to be 2.4 mtrs. Further, Regulation 38(9)(v) prescribes that the upper basement shall be atleast 0.9 mtrs. and not more than 1.2 mtrs. above the average surrounding ground level. He has submitted that Regulation 38(9)(v)(e) provides that vehicular ramps going to the basement shall meet the requirements of Regulation 38(18)(ii). This

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Regulation clarifies that atleast two ramps of adequate width and slope shall be provided at opposite ends which means the two ends of the face of the building on the front side. This regulation contains an enabling clause where such vehicular ramps, may be permitted in the side and rear marginal open spaces if sufficient space is left for movement of fire fighting vehicles.

22 He has placed reliance upon the photographs of the Defendant's plot when the construction of the building was in progress. He submits that the photograph at page 508 of the compilation of documents, clearly shows that the Defendant's plot is a slopping plot and the excavation was being carried out in the middle of the plot leaving the earth at the edge of the plot intact. This is further borne out from the photograph at page 509 of the compilation of documents which shows the excavation and existence of the slope towards the compound wall and that the entire periphery of the plot was left intact. He has further relied upon the photograph at page 510 of the compilation of documents in support of his contention that the central portion of the plot except for the margins on the side was excavated from a point towards the rear end of the plot upto the Worli Sea Face Road on the plot. This is further borne out from the photograph at Exhibit-P38 which also reveals that the slopping earth going



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up towards the rear of the plot while pillars forming the basement are clearly visible. The photographs at Exhibits P29 - 40 show that the excavation was carried out for the purpose of constructing the basement. The building was constructed with the ramp going down to the basement is clear from these photograph at Exhibit P39. He has submitted that for the purpose of constructing a basement, the slopping portion of the plot has to be excavated and the excavation will be substantially more where the height of the slope is maximum which in the present case is at the rear of the plot and will be lesser at the end where the slope is at its least which will be the Worli Sea Face side of the plot in the present case. He has submitted that the excavation was done for the purpose of leveling the earth and constructing the foundation and floor of the basement. He has submitted that the plinth area of the building is what is visible and accessible from the area above the ground. The two sides and the rear of the basement upto the plinth boundary of the stilt floor is covered under the earth.

23 He has submitted that the Plaintiff in his evidence i.e. answers to Question Nos.18 and 63 of his cross-examination has confirmed that the building has been constructed accordingly to the sanctioned building plans. The relevant building plans are at Exhibit-P48 (colly) which are the same



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as Exhibits P70 and P71 and thus Exhibit-P48 (colly) are the same as the as-built plans which are Exhibit-D1 and Exhibit-D3. Upon a reading of the plans, it becomes obvious that the height of the basement is not less than 2.4 mtrs., the area of the basement is not more than twice the plinth area of the building and that two vehicular ramps are provided in front of the building. The plans also show that in order to enter the basement, the ramp is used and that the ramp climbs down the height of 0.9 mtrs. from the beginning of the ramp. Once the floor of the basement is admittedly below, it answers the description of basement as defined in Regulation 2(3)(10), which mandates that any storey of a building even partly below the ground level is the basement. He has submitted that the floor of the basement is 3 ft. below the ground level. The plans show that there is a staircase from the stilt level to the floor of the basement and that the entire portion is below the earth at the rear end. He has submitted that it is obvious that one has to climb a ramp of 3 ft. to reach the ground level of the plot and then climb down from within the plot to reach the gate which is at the street level. He has submitted that it is accordingly exclusively proved and beyond doubt that the bottom floor in the building is the basement as it meets all criteria contained in Regulations 2(3)(10), 2(3)(41), 38(9) and 38(18) of the DC Regulations.



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24 He has submitted that once it has been established that the bottom floor is the basement, the total height of the building from the average ground level to the ceiling of the top floor i.e. the floor of the terrace is 21.76 mtrs. i.e. less than 22 mtrs. This is as per the sanctioned plan and correctness of the measurements has been admitted by the Plaintiff. Regulation 2(3)(11) defines a multi-storeyed building as a building of a height of 24 mtrs. from the average surrounding ground level. Further, Regulation 2(3)(51) determines that a height of a building shall be vertical distance measured from the average level of the ground around and contiguous to the building to the highest point of the building. Further, Regulation 31 mentions that appurtenant structure like roof tanks and their supports ventilation or air-conditioning shafts, lift rooms etc. shall not be included in reckoning the height of the building. Hence, the height of the building according to the sanction plan is less than 22 mtrs. He has accordingly submitted that it is conclusively proved that the structure in question is not a multi-storeyed building.

25 He has submitted that there is enough open space available for the fire engine to move around and the ramps which have been provided are in conformity with Regulation 38(18)(ii). He has submitted that since the building is not a multi-storeyed building, then the entire case



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of the Plaintiff with regard to the inadequacy of open space fails. He has submitted that it is clear from the plans that the portion of the plot which has an open space of 4.66 and 4.8 mtrs. respectively, does not derive light and ventilation from an exterior open space and hence, under Regulation 29(i)(f), the open space is reduced to $1/5^{\text{th}}$ of the height of the building. As the height is less than 22.0 mtrs., a minimum open space of only 4.4 mtrs. is required. He has submitted that admittedly in the present case as per the plan, there is more than 7 mtrs. open space on all the three sides of the building except at the entry points of the building where the open space is 4.66 mtrs. and 4.8 mtrs. on the North and South sides respectively. However, since this is not the multi-storeyed building, it is not required to be shown as to whether there is adequate open space or not. In any event the requirements under the relevant Regulations of the DCR 1991 have been met.

26 He has submitted that the grievance of the Plaintiff is that the Defendant No.1 had utilized 192% FSI as against the maximum permissible of 133%. This calculation of FSI is not proved. It is premised on the basis that the basement is the ground floor, and therefore, the building is one of ground + 7 stories. Further, the Plaintiff has calculated the floor space of the basement and the stilt area as part of the FSI whereas the DCR clearly



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states that the basement and stilt areas are excluded for the purpose of calculating FSI. He has submitted that the Plaintiff has claimed that a wall of 3.57 mtrs. has been built at the terrace level. This is to be added to the height of the building. However, the Plaintiff has not averred in the plaint that the wall at the terrace level is illegal, as contended in oral arguments. He has accordingly submitted that the arguments and contentions which are beyond the scope of the pleadings should not be entertained and that this Court should not enter any finding on allegations which are beyond the scope of the pleadings. Without prejudice to the above, it is submitted that the wall in question is merely a wall which covers the lift machine room, staircase room and water tanks. The admitted sanction plans clearly show the parapet wall above the structure. The Planning authorities have found this to be acceptable and that there is no roof constructed above the terrace. This does not constitute the construction of a floor. This has been confirmed by the PW10 at Q/A No.25 with regard to the height of the building.

27 He has submitted that there is no violation of the CRZ Notification dated 19.02.1991 published by the Ministry of Environment and Forest under Section 3 of the Environment (Protection) Act, 1986 and the Rules thereunder. There are no prohibited activities as suit plot is not



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influenced by tidal actions on the landward side. The construction is legal and valid including the dressing of the natural features. This is in fact permitted within the Notification itself. The Notification sets out that the suit plot falls under CRZ-II category which permits building on the landward side of the existing roads and makes them subject to existing Municipal laws. He has submitted that insofar as the Plaintiff's argument that the construction activity was at a cost of more than Rs.5 crores and hence, under paragraph 3 of the Notification, Central Government permission is required, cannot be accepted. The Plaintiff himself has brought on record the documents filed by Defendant No.1 with the Municipal Corporation showing that the cost of construction as Rs.2.5 crores. He has submitted that it is obvious from the reading of the relevant part of the Notification that the investment in the construction activity relates to the construction activity and not the cost of acquisition of land. He has submitted that the Act is not concerned with the transfer of ownership and that the obvious purpose of the clause in the Notification is to determine the scope and extent of the activity in the coastal area.

28 He has submitted that the Plaintiff has led no evidence whatsoever in support of damages of Rs.10 crores. He has submitted that in the examination-in-Chief, the Plaintiff proceeds to depose that the



damages allegedly suffered by the Plaintiff is required to be quantified. He has submitted that there is no material to show that there was any mental agony to the Plaintiff or any injury or loss caused to the Plaintiff. He has referred to the cross-examination of the Plaintiff wherein he has stated that he maintains medical record of himself and his family members (Q/A 103 to 107 of cross-examination of PW1). However, the Plaintiff has not produced any documentary evidence to prove the alleged case of mental agony. The Plaintiff's claim is required to be dismissed.

29 He has submitted that the decisions relied upon by the Plaintiff are totally irrelevant and do not apply to the facts of the present case. He has submitted that the full bench of the Orissa High Court in *Krushna Kishore Bal v. Sankarsan Samal and others*¹¹ relying upon various judgments including judgment of the Privy Council reported in 1914 PC 45 had determined questions involved in the matter which are very much identical to the issues involved in the present matter. The Court had held that interference with light and air which is not substantial does not give a cause of action to a person entitled to such right even though there is a violation of Municipal Laws. This finding was arrived at by the interpreting Sections 28, 33 and 35 of the Indian Easements Act. He has submitted that in any event in the present matter, the Plaintiff has been unable to prove

¹¹ AIR 1974 Ori.89(FB) Orissa High Court



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that there has been a violation of Municipal laws. Assuming without admitting that there is any such violation, still in view of a clear ratio laid down by the above judgment, the present Suit is liable to be dismissed with costs as the Plaintiff has failed to prove 'substantial damage' and/or 'obstruction creating nuisance' and/or 'material injury' as contemplated in the above judgment. He has thus, submitted that the present Suit is required to be dismissed.

REASONS :

30 Having considered the submissions, it would be necessary to refer to these relevant prayers in the plaint which are prayers (a) and (b) and which read as under :

(a) that this Hon'ble Court be pleased to pass a decree in favour of the Plaintiff and against the Defendant for a sum of Rs.10,00,00,000/- (Rupees Ten Crore only) with interest at the rate of 24% per annum from the date of filing of the suit till the date of decree and/or payment or realisation thereof as more particularly set out in the Particulars of Claim annexed as Exhibit 'K' hereto.

(b) that the Hon'ble Court be pleased to call for the records, papers and files pertaining to the issuance of permission granted by Defendant Nos.2 to 5 to the Defendants No.1 allowing them to construct a multi-storeyed building two



storeyed basements on the Plot No.5 of Worli Sea Face and/or allowing them to use a dynamite for blasting rocks and after going through the validity, legality and propriety thereof be pleased to set aside and cancel the said permission/orders;

From these prayers, it is apparent that the Plaintiff has sought damages in the sum of Rs.10 crores with interest @ 24% per annum from the date of filing of the suit till the date of decree and/or payment or realisation thereof. These damages are claimed to be on account of the tremendous mental agony and breach of peace suffered by the Plaintiff and his family members upto the date of filing of the Suit. It is an admitted position that upto the date of filing of the Suit, excavation work was being carried out at the suit plot by the alleged uncontrolled blasting activities which included blasting of continuous rock structure by use of explosives. The actual construction of the building commenced after the filing of the Suit. This is clear from the orders which have been passed by this Court in the Notice of Motion taken out by the Plaintiff in the above Suit viz. Order dated 23.12.1994 which had restrained Defendant No.1 from carrying out the blasting work activities and the order dated 18.01.1995 which had recorded the statement of Defendant No.1 that the blasting work was complete and no further blasting was being carried out since 21.12.1994. Thus, the prayer for damages cannot be extended to the damages which

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have been caused by virtue of the alleged illegal construction activity. In fact in the affidavit in lieu of examination-in-chief of the Plaintiff, the Plaintiff himself has stated that the further damages for the mental agony and breach of peace, deprivation of ingress and egress of air and light, suffered by the Plaintiff and his family members from the date of the filing of the suit to the date of demolition of the alleged illegal suit building of Defendant No.1, is to be quantified. It is not for this Court to order demolition of the building of Defendant No. 1 or quantify such damages, if any. This is not even been prayed for in the suit inspite of the plaint having been amended.

31 Insofar as the second prayer viz. Prayer (b) is concerned, the Plaintiff has prayed for the setting aside of the permission/orders granted by Defendant Nos. 2 to 5 to the Defendant No. 1 allowing it to construct a multi-storeyed building having two storeyed basements on the suit Plot and/or allowing them to use dynamite for blasting rocks. This permission had been granted as per the original plan which had been submitted by the Plaintiff to the Defendant No. 2 in 1993 i.e. prior to the plans being amended. It is apparent that the plans which were sanctioned by Defendant No.2 and on the basis of which the construction of the building on the suit plot was carried out by Defendant No.1 has not been sought to be set aside



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and/or cancelled by the Plaintiff. This is despite the challenge being raised in the amended plaint that the construction violated the DCR 1991.

32 From the issues which have been framed by this Court, the two substantial issues which would have to first answered are Issue Nos.5 and 6. It is only upon these issues being answered in the affirmative upon the Plaintiff proving that the Defendant No. 1 has committed illegal construction activity and that the Plaintiff is entitled to claim for damages that the other issues would be required to be answered. The parties have also proceeded on the basis that these are the two issues which would require determination before any other issue. Although there were certain arguments on the issue Nos.3 and 4 viz. as to whether the Plaintiff proves that the suit is maintainable despite of non-service of statutory notice U/s. 80 of the Code of Civil Procedure and whether the plaintiff proves that the Suit is maintainable despite of non-service of statutory notice U/s. 527 of the Bombay Municipal Corporation Act, these issues would be academic if this Court answers Issue Nos.5 and 6 in the negative. Issue No.5 requires the Plaintiff to prove that Defendant No.1 has committed any illegal construction activity as alleged in the plaint and the burden will be on the Plaintiff to establish the same. Further, if the answer to issue No.5 is in the affirmative, then the Plaintiff would also have to prove that he has suffered



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damages in the sum of Rs.10 Crores. No issue has been raised as to whether the building on the suit plot is to be demolished as a result of the alleged illegal construction carried out by Defendant No.1 and the only sequitor to that is a claim for damages. I do not accept the submission of the Plaintiff that this Court is required to address the issue of demolition of the building on the suit plot if satisfied that there has been violations of DCR 1991. The decisions relied upon by the Plaintiff viz. *Kerala Coastal Zone* (supra) and the earlier decision of this Court in *Felix Menino Jusus Serrao* (supra) are not applicable in the facts and circumstances of the present case. These decisions have proceeded on the basis that construction carried out without the prior approval of the MOEF or in violation of the CRZ regulations which constructions were prohibited and hence, required to be demolished.

33 In the present case, construction of the building on the suit plot has been carried out by Defendant No.1 in accordance with sanctioned plans. This has also been deposed to by the Plaintiff's own witness viz. PW10 in his examination-in-chief at Q/A Nos.26 and 27 as well as in Q/A No.6 of the cross-examination of the same witness. It appears that the Planning Authority viz. Defendant No.2 had upon inspecting the construction site, had given certificate for construction of the plinth area,



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construction of building above plinth area, a building completion certificate recording that building was constructed in accordance with the sanctioned plan and occupation certificate. In order to obtain the building completion certificate, the Defendant No.1 had submitted to Defendant No.2 the as-built drawings on the basis of which the construction was checked and the building completion certificate was issued. The Plaintiff has himself in examination-in-chief admitted that the building plans which were produced by the Plaintiff himself are the same as the as built plans. The Plaintiff has further in cross-examination in answer to Question No.21 states that there was no document on record to show that the actual FSI consumed was more than that shown in the plan at Exhibit-D-1 (as-built plan). It appears that the dimensions given in these plans produced by the Plaintiff are the same as the as-built plans. The height calculations on these plans were done on the basis of the average ground levels which are calculated and marked on the plans. It is clear from the plans that the height of the basement is not less than 2.4 mtrs., the area of the basement is more than twice the plinth area of the building and that two vehicular ramps are provided in front of the building. It appears from the plans that the floor of basement is admittedly below the ground and thus answer the description of basement provided under Regulation 2(3)(10) which mandates that any storey of the building which is even partly below the



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ground level is the basement. Once, this conclusion is arrived at viz. that there was a basement constructed in the said building, the contentions of the Plaintiff that there were violations with regard to height and open space will not arise as these violations have been alleged on the basis that the basement is nothing but the ground floor of the building.

34 The Plaintiff has merely relied upon a Report obtained by him from M/s. Sahasrabhojane & Associates, an Architect firm to contend that there are various violations of the DC Regulations. However, it is to be noted that the said Architect Firm had neither visited the construction site of Defendant No.1 nor examined the plans sanctioned by the Defendant No.2. The said Architect Firm has made his report only on the basis of observing the construction from the Plaintiff's plot and on the basis of some drawings which were supplied by the Plaintiff to the said Firm. The concerned Architect who had prepared the Report or anyone else from the said Architect Firm has not been examined to prove the Report. Thus, the Architect's Report which appears to form the foundation of the allegations contend in the amended plaint remains unproved. The Plaintiff has also not relied on any expert evidence in support of his allegations of the building on the suit plot in any manner being constructed in violation of the provisions of law. The Plaintiff has examined himself in support of his



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allegations. However, the Plaintiff is admittedly not an expert on issues of construction and Development Control Regulations. This is clear from the re-verification of the amended plaint, wherein the Plaintiff has solemnly declared that the averments made by way of amendment were on basis of information and belief. The Plaintiff has also in his cross-examination been unable to prove that he was an expert on issues of construction and Development Control Regulations. He claims to have an education qualification of B.Sc. Degree from Bombay University in Chemistry and manages family properties. This is clear from his answer to Question Nos.3 and 4 of his cross-examination. Thus, the Plaintiff has been unable to prove through any expert that there has been any violation of DCR, 1991 other than himself claiming that the violations have been committed. In fact, in the evidence of the expert Architect who was present during the construction of the building on the suit plot and who was brought as witness of the Plaintiff has in fact established that there were no violations of the DCR, 1991. In answer to Question No.10 of his cross-examination, where he was asked, whether he agreed that all the terms and conditions mentioned in the IOD and completion certificates were complied with and therefore, the occupation certificate was granted by BMC, he has answered in the affirmative. The Plaintiff's other witness Mr. Khillare (PW10) has in his answer to Questions put to him in examination-in-chief by the Plaintiff



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has affirmed that the actual construction of the building was strictly in accordance with the plans at Exhibit-P-73 to Exhibit-P-75 (Q & A No.27). He has in fact supported the case of Defendant No.1 that the lowest floor of the building is the basement and the level which one entered the building is the road level and the area closer to the road is the area below the stilt level which area is the basement (Q & A Nos.35 and 38).

35 Thus, the Plaintiff has not been able to establish from his witnesses that there has been any violation of the DCR, 1991. I further find that there is no violation of the CRZ Notification dated 19.02.1991 published by the Ministry of Environment under Section 3 of the Environment (Protection) Act, 1986 and Rules thereunder. The suit plot is on the landward side of an existing road and hence, not influenced by tidal actions. I do not accept the contention of the Plaintiff that the cost of acquisition is to be taken into account and/or the construction activity was at the cost of more than Rs. 5 crores and a Central Government permission was required which has not been taken. A bare perusal of the Notification makes it clear that investment in construction activity relates only to construction activity and not the cost of acquisition of the land. Hence, there is no merit in the contention of the Plaintiff. In view thereof, Issue No.5 is answered against the Plaintiff and in the negative.

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36 In view of Issue No.5 having been answered in the negative, the question of damages will not arise and likewise issue No.6 is also answered against the Plaintiff. In any event, assuming that this issue would have to be gone into the Plaintiff has been unable to prove any damages. The Plaintiff has not brought on record any material to show mental agony, breach of peace or any loss caused to the Plaintiff by reason thereof. In fact in the cross-examination of the Plaintiff, he has stated that he maintains medical records of himself and his family members, (Q/A 103 to 107). However, he has not produced any medical record to establish a case of mental agony and hence the claim of damages is required to be dismissed. The other claim of damages which arises on account of tremendous mental agony, breach of peace, deprivation of ingress and egress of air and light suffered by the Plaintiff and his family members from the date of filing of the Suit to the date of demolition of the alleged illegal suit building of Defendant No.1, is not quantifiable. In view of the finding that the Defendant No. 1 has not committed any illegal construction activity there is no question of this Court ordering demolition of the suit building. There is also no such prayer or issue framed. In any event, it is not for this Court to quantify such alleged damages. Hence, the relief of damages which has not even been prayed for in the amended plaint deserves to be rejected.

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37 With regard to the decision of the full bench of the Orissa High Court relied upon by the Defendant No.1 in *Krushna Kishore Bal* (supra), this decision would apply to the facts of the present case. The Plaintiff as in that case has not been able to establish that there has been an inference with light and air which is either substantial or at all and hence, this cannot give a cause of action to the Plaintiff presuming that there is violation of Municipal laws.

38 Regarding the decisions relied upon by the Plaintiff, these decisions have been decided on the facts of those cases and are not applicable in the present case, particularly where the construction of Defendant No. 1 is in accordance with the sanctioned building plans. Further, the Plaintiff on whom the burden of proof was lying has failed to discharge that burden by proving that Defendant No. 1 has committed any illegal construction activity as alleged in the Plaint. Hence, it was not necessary for the Defendant No. 1 to have led evidence. Further, if one was to go only by the plaint by ignoring the written statement filed, the averments therein having not been established, issue Nos. 5 and 6 which are the material issues, are decided against the Plaintiff.

39 Insofar as the other issues are concerned, in view of the answering issue No.5 in the negative, issue Nos.1, 2, 3, 4, 7 and 8 have

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really become academic. Issue Nos.3 and 4 are as under :

3. Whether the plaintiff proves that the suit is maintainable despite of non-service of statutory notice U/s. 80 of the Code of Civil Procedure?
4. Whether the plaintiff proves that the suit is maintainable despite of non-service of statutory notice U/s. 527 of the Bombay Municipal Corporation Act?

There were arguments of the Plaintiff in support of his contention that the Suit is maintainable despite of non-service of statutory notice U/s. 80 of the Code of Civil Procedure, reliance was placed upon the decisions of the Supreme Court in *State of Andhra Pradesh and others v. Pioneer Builders*¹² and decision of Allahabad High Court reported in *Gaja and others v. Dasa Koeri and others*¹³ to contend that there had been a waiver of such statutory notice. This was countered by the learned A.G.P. for the State, by relying upon the decision of *Bihari Chowdhary and another v. State of Bihar and others*¹⁴. It appears in the decision of the Supreme Court in *Bihari Chowdhary* (supra) that notice under Section 80 of C.P.C. is a mandatory provision and hence would be required to be complied with. It is thus apparent that in absence of such notice, the Suit itself is not maintainable on this ground. With regard to the notice under Section 527 of the Bombay Municipal Corporation Act is concerned, reliance has been



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- 12 AIR 2007 SC 113
 13 AIR 1964 Allahabad 471
 14 AIR 1984 SC 1043

Waghmare

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placed by the Plaintiff on the decision of *Motilal Mahadev Sharma and others v. Municipal Corporation of Greater Bombay*¹⁵ to contend that when the Plaintiff seeks urgent orders of this Court by way of injunction, it is not necessary to issue statutory notice under Section 527 of the Act. It appears that this decision would give assistance to the Plaintiff in contending that an urgent ad-interim injunction order had been sought from this Court on account of the blasting work carried out on suit plot. It is appropriate to notice that the learned Counsel for the Municipal Corporation Defendant No.2 had in fact appeared when the ad-interim injunction order was passed. However, considering that the issue Nos.5 and 6 have been decided against the Plaintiff and that the Plaintiff having failed to make out any case for relief sought for, it would be an academic exercise to answer these issues, other than making the above observations.

40 Considering that the Suit is required to be dismissed in view of the above findings, Issue Nos.1 and 2 are not required to be answered and issue Nos.7 and 8 are answered against the Plaintiff.

41 Suit is accordingly dismissed with no order as to costs.



15 AIR 2005 Bombay 344

Waghmare

(R.I. CHAGLA, J.)

TRUE COPY
Adv. for Petitioners

50/50



Date: 16/11/2021

To:
Dileep Nevatia
Shashi Deep
5-A, Worli Sea Face
Mumbai 400 030

Dear Sir,

This is in reference to the building known as Panhar constructed on Plot No. 5 of the Worli Estate of the Municipal Corporation of Greater Mumbai admeasuring 1,349.51 square meters bearing C.S. No. 730 of Worli Division ("said Property").

We have recently purchased the above property from its erstwhile owner, M/s Arkay Holdings Ltd. having its registered office at Chennai House, 5th Floor, New No.7, Esplanade, Chennai and this property will be used for residence of our company's Directors and their families.

We have been given to understand that you had filed a suit in the Bombay High Court in respect of the above said Property being Suit No. 5111 of 1994 "Dileep Nevatia versus Arkay Holdings Ltd. and others". After the suit was disposed off, you have filed an Appeal No. 49 of 2020 in Suit No. 5111 of 1994 ("said Appeal") and Interim Application No.2110 of 2020 in said Appeal ("Interim Application"). The said Appeal and Interim Application are pending in the High Court.

Our Managing Director, Shri Ghamshyambhai Dholakia personally met you and discussed the above pending matter and requested you that, in view of future relationship as good neighbours, you withdraw the said Appeal and Interim Application, as it concerns the property of which we have now become the owners. We have also agreed to pay to you as compensation/damage a sum of Rs. 1.25 crores (Rupees One Crore Twenty-Five Lacs only) in lieu of fully, finally and irrevocably resolving and settling the disputes pertaining to the said Property by withdrawing the above Appeal and Interim Application, which you have agreed.

Accordingly, we are enclosing alongwith our Banker's Cheque No. 830777 dated 16/11/2021 drawn on State Bank of India in your favour for an amount of Rs. Rs. 1.25.00.000/- (Rupees One Crore Twenty-Five Lacs only) as compensation/damage for withdrawing the said Appeal and Interim Application.



Hari Krishna Exports Pvt. Ltd.
Bandra Kurla Complex, Bandra (East), Mumbai - 400 051.
T: +91 22 4300 4300 | F: +91 22 4300 4201 | info@hk.co | CIN: U36912MH2012PTC227014

hk.co



We also request you to take necessary steps to withdraw the said Appeal and Interim Application and thereafter forward to us the copy of the Order withdrawing the said Appeal and Interim Application.

Thanking you.

FOR HARI KRISHNA EXPORTS PRIVATE LIMITED

[Handwritten Signature]
DIRECTOR

[Handwritten Signature]
(RUPESH NEVATI)



Hari Krishna Exports Pvt. Ltd.
B-1701, The Capital, Bandra Kurla Complex, Bandra (East), Mumbai - 400 051
T: +91 22 4300 4300 | F: +91 22 4300 4201 | info@hk.co | IN: U36912MH2012PTC227014

hk.co

जारी करने वाले का नाम भारतीय स्टेट बैंक
 Issuing Branch: DIAMOND BRANCH (MUMBAI)
 चेक नंबर / CODE No: 09276
 Tel No. 022-26752301

बैंकर्स चेक
BANKERS CHEQUE

Key: WEJGUN
 Sr. No: 166235

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D D M M Y Y Y Y

PAY DILEEP NEVATIA

को या उनके आदेश पर

रुपये RUPEES One Crore Twenty Five Lakh Only

OR ORDER

अदा करें ₹ 12500000.00

IOI 000520830777 Key: WEJGUN Sr. No: 166235
 Name of Applicant HARI KRISHNA EXPORTS PVT

AMOUNT BELOW 12500001(0/8)

कृपे भारतीय स्टेट बैंक
 For STATE BANK OF INDIA



अहस्तांतरणीय / NOT TRANSFERABLE

Sangeeta Shetty

AUTHORIZED OFFICER

BRANCH MANAGER

कम्प्यूटर द्वारा मुद्रित होने पर ही वैध
 VALID ONLY IF COMPUTER PRINTED

केवल 3 महीने के लिए वैध
 VALID FOR 3 MONTHS ONLY

₹ 1,50,000/- एवं अधिक के चेक के लिए चेक नंबरों को प्रमाणित करने के लिए दो अधिकारियों द्वारा प्रमाणित किया जाना चाहिए।
 INSTRUMENTS FOR ₹ 1,50,000/- AND ABOVE MUST BE VALIDATED BY TWO OFFICERS



स. ग. रावकवार
 S. M. Rawal
 R-9464

⑈ B 3 0 7 7 7 ⑈ 0000020001: 000520⑈ 16



TRUE COPY
 Adv for Refinancing



Shephali

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL JURISDICTION

APPEAL NO. 49 OF 2020

IN

SUIT NO. 5111 OF 1994

WITH

INTERIM APPLICATION NO. 2110 OF 2020

IN

APPEAL NO. 49 OF 2020

Dileep Nevatia ...Appellant
Versus
Arkay Holding Ltd & Ors ...Respondents

SHEPHALI
SANJAY
MORMARE

Digitally signed
by SHEPHALI
SANJAY
MORMARE
Date: 2022.06.10
17:12:25 +0530

Mr Dileep Nevatia, *Appellant present in person.*
Ms Anaisha Zachariah, *i/b Crawford Bayley & Co, for Respondent*
No.1.
Mr Hemant Haryan, *AGP, for the Respondent-State.*

CORAM G.S. Patel &
M.G. Sewlikar, JJ.
DATED: 10th June 2022

PC:-

1. Mr Nevatia appears online in person. He seeks leave to withdraw the Appeal. At his request, the Appeal is dismissed as



unconditionally withdrawn. The pending Interim Application No. 2110 of 2020 will not survive and is thus disposed of as infructuous.

(M.G. Sewlikar, J)

(G. S. Patel, J)

TRUE COPY

Adv for Petitioners



BEFORE THE NATIONAL GREEN TRIBUNAL

WESTERN ZONAL BENCH AT PUNE

ORIGINAL APPLICATION NO. 25 OF 2023

In the matter of:

Dileep E. Nevatia

.....

Applicant

VERSUS

Union of India & Others

.....

Respondents

INDEX

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Sr. No.	Particulars	Pages
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2.	Memorandum of Application	9 - 47



- APPLICANT IN PERSON

SHASHI DEEP, 5-A, WORLI SEA FACE, MUMBAI 400 030

MUMBAI

DATED: 26.2.2023



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-1-

BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONAL BENCH AT PUNE
ORIGINAL APPLICATION NO. 25 OF 2023

In the matter of:

Dileep B. Nevatia

.....

Applicant

VERSUS

Union of India & Others

.....

Respondents

SYNOPSIS

SN	Date	Particulars
1.	1993	One Arkay Holdings Ltd. purchases Pan Har property and fully demolishes the old structure of predecessor-in-title, and thereafter applies to BMC to approve the plans for construction of a building consisting of a basement, a still floor and six floors
2.		As Pan Har property is situated <u>within 200 meters of the high tide line</u> of the Arabian Sea, it falls in the CRZ-II area of the Coastal Regulation Zone Notification, 1991 and all construction projects in the CRZ areas that are within the Municipal limits of Greater Mumbai, require to be regulated by the BMC, in case the investment is upto Rupees Five Crores, and in case the investment exceeds Rupees Five Crores then the project requires Environmental Clearance from the Ministry of Environment and Forests.



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3. 1994 Applicant files suit No. 5111 of 1994 in Hon'ble Bombay High Court against the construction on Pan Har property for various violations, including the Explosive Act, 1884, Development Control Regulations, Environment (Protection) Act 1986 and the Rules thereunder etc. having Arkay Holdings Ltd., BMC and others as party Defendants.
4. 1995 Arkay Holdings Ltd. submits to BMC its "Indemnity Bond" whereby indemnifying BMC from any legal actions by MOEF, in case the investment in the proposed Pan Har Project exceeds Rupees Five Crores and also submits the "Owner's Affidavit for Building Cost" whereby stating that cost of the proposed building is Rs. 2,13,13,181/-.
5. 1997 BMC gives its approval for construction on Pan Har property of building consisting of a basement, Stilt floor and six upper floors, with total height of 21.76 meters, Front open space with "Water Body/Paddle Pool" and garden and total "Built Up Area" of 1,784.80 square meter.
6. 27.9.2001 BMC approves final building plans submitted by Arkay Holdings Ltd. for Pan Har project vide File No. BB/3294/GS/A
7. 5.12.2019 Hon'ble High Court disposes off suit No. 5111 of 1994 by holding that the Pan Har construction is made in accordance to the approved plans



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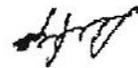
8. 3.1.2020 Applicant assails the Order dated 5.12.2019 by an Appeal before the Division Bench of the Hon'ble High Court being Appeal No. 49 of 2020
9. 30.7.2021 Arkay Holdings Ltd. sells Pan Har property to Respondent No. 8 - Hari Krishna Exports Pvt. Ltd and by Indenture of Assignment, BMC assigns the said Property in the name of Respondent No.8
10. Oct. 2021 Respondent Nos. 8 to 12 use heavy machinery and completely demolish "Water Body/Paddle Pool" and garden in the front open space of Pan Har
11. Nov. 2021 Respondent No. 10 approaches the Applicant and requests that in view of future relationship as good neighbours, he Applicant should withdraw the pending High Court Appeal No. 49 of 2020 in Suit No. 5111 of 1994
12. 10.6.2022 Applicant withdraws High Court Appeal No. 49 of 2020
13. June, 2022 Respondent Nos. 8 to 12 unauthorisedly construct a permanent structure of around 3,000 to 4,000 square feet in the front open space in place of the "Water Body/Paddle Pool" and garden i.e. towards the seaward side of the existing building Pan Har
14. By Jun 2022 With entire building being covered, Respondent Nos. 8 to 12 also construct an unauthorised seventh floor, having huge open terrace on the front side of the building i.e. on the seaward side of the building and also on the back side of the building. Similar, such terraces/ balconies are



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19. Respondent Nos. 8 to 12 also failed to obtain any approval from BMC and they have further violated the provisions of Development Control Regulations 1991 of the BMC Act, MRTP Act, etc.
20. 28.8.2022 By his email to Respondent Nos. 2, 4 and 5 i.e. MCZMA, BMC and AMC, G/South Ward, the Applicant brings to the notice of these Respondents of the violations of CRZ Notification, 1991, BMC Development Control Regulations, etc. that have taken place in the repair and reconstruction of the Pan Har property and to demolish all the unauthorised construction
21. 11.11.2022 Respondent No.4 forwards Applicant's complaint to Respondent No.5 for further direction.
- 22 Nov-Dec 2022 Applicant meets Respondent Nos. 5 and 6 on three occasions and despite repeated assurances by these Respondents to the Applicant, they avoided taking any action.
23. 8.9.2022 By email to Respondent Nos. 1, 2 and 4 i.e. MoEFCC, MCZMA and BMC, the Applicant brings to the notice of these Respondents of the violations of CRZ Notification, 1991, BMC Development Control Regulations, etc. that have taken place in the repair and reconstruction of the Pan Har property and to demolish all the unauthorised construction
24. 7.10.2022 Respondent No.2 - MCZMA writes to Respondent Nos. 3 and 4 i.e. District Collector Mumbai




Suburban and BMC Municipal Commissioner to verify and take necessary action, after verification and send the factual, detailed action taken report to the Authority at the earliest

25. 27.12.2022 Respondent No.1 - MoEFCC writes to MCZMA and directs that the matter may be examined and a report / comments by provided to the complainant directly under intimation the Ministry at an early date
26. 12.1.2023 MCZMA sends reminder to the District Collector Mumbai Suburban and BMC Municipal Commissioner to verify the violations of CRZ Notification 1991 and take necessary action and submit detailed action taken Report to MCZMA within 15 days time
27. Hence, the present Application on account of the failure of the Respondent Authorities to take necessary action against the unauthorised construction and to restitute the property and the environment

POINTS TO BE URGED

1. The Application raises the issue of substantial question relating to environment and community at large is affected by the non-action of the Respondent Nos. 1 to 7 of the violations of the Coastal Regulation Zone Notification, 1991 of the Environment (Protection) Act, 1986 and of Development Control Regulations for Greater Bombay 1961.



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2. The additional construction, repairs and renovation carried out in Pan Har property situated within 200 meters of the HTL in the CRZ-II coastal area, is without the mandatory clearance from MoEFCC and MCZMA.
3. The investment in Pan Har property, after its additional construction, repairs and renovation, far exceeds Rupees Five Crores and yet no mandatory Environmental Clearance is obtained from MoEFCC.
4. The illegal constructions in Pan Har property situated in the CRZ-II coastal area, not only violate the laws relating to the environment but also amount to destruction of our ecosystem and under Section 15(1)(b) and 15(1)(c) of the NGT Act, this Hon'ble Tribunal is empowered to provide for restitution of property damaged and for restitution of the environment for such area or areas.
5. The construction raised, without permission, within 200 meters of the HTL and in violation of CRZ 1991 Notification cannot be condoned and requires to be demolished.
6. The unauthorised construction carried out by the Respondent Nos. 8 to 12 on Pan Har property is blocking light and air to the Applicant, his family members and neighbours and is violative of their right to a healthy life, as guaranteed by Article 21 of Constitution of India and it is the bounden duty of Respondent Nos. 1 to 7 to step-in to protect these rights against the unlawful onslaught by Respondent Nos. 8 to 12.
7. The unauthorised construction at Pan Har property has further violated the "Fire Protection Requirements" and has exposed



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the Applicant, his family and neighbours from grave risk in case of fire in the properties.

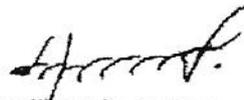
8. The Respondent Nos. 1 to 7 are refusing to act on various complaints of the Applicant.

ACTS TO BE REFERRED

1. Constitution of India.
2. The Environment (Protection) Act, 1986 (29 of 1986) and Notification dated 19th February, 1991 under Section 3(1) and 3(2)(v) regulating Activities in Coastal Regulation Zone.
3. The Development Control Regulations for Greater Bombay, 1991.

AUTHORITIES TO BE CITED

The Applicant will produce the authorities relied upon by him, with the permission of this Hon'ble Tribunal


Applicant in person



BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONAL BENCH AT PUNE
MEMORANDUM OF APPLICATION

(Under Section 18 read with Section 15 of National Green Tribunal Act 2010)

ORIGINAL APPLICATION NO. 25 OF 2023

IN THE MATTER OF:

DILEEP B. NEVATIA

Shashi Deep, 5-A, World Sea Face

Mumbai-400030

... **APPLICANT**

Mobile: 989 21 18864, E-mail: dileep49@hotmail.com

VERSUS

1. UNION OF INDIA

Through the Secretary

Ministry of Environment, Forest and Climate Change

Indira Paryavaran Bhavan

Ali Ganj, Jorbagh Road

New Delhi - 110 003

Phone: 011 2469 5262, E-mail: secy-moe, nic.in

2. MAHARASHTRA COASTAL ZONE MANAGEMENT AUTHORITY

Through its Member Secretary

Environment Department

Mantralaya

Mumbai - 400 032

Phone: 022 2202 9388, E-mail: dir1.mev-mh@nic.in

3. DISTRICT COLLECTOR MUMBAI SUBURBAN

& CHAIRMAN DISTRICT COASTAL ZONE

MONITORING COMMITTEE



[Handwritten signature]

10th Floor, Administrative Building
Near Chetna College, Government Colony
Bandra East
Mumbai - 400 051
Phone: 022 69403333 / 022 69403300
E-mail: collector.mumbaisuburb@maharashtra.gov.in

4. MUNICIPAL CORPORATION OF GREATER MUMBAI

Through its Municipal Commissioner
Municipal Head Office
Mahapalika Marg
Mumbai - 400 001
Phone: 022 2262 0525, E-mail: mc@mcmgm.gov.in

5. SANTOSH DHONDE

Assistant Municipal Commissioner
G/South Ward
Brihanmumbai Municipal Corporation
N.M. Joshi Marg
Mumbai - 400 013
Mobile: 887 933 5291, E-mail: ac.gs@mcmgm.gov.in

6. RAJESH CHAUHAN

Designated Officer (Buildings & Factories)
G/South Ward
Brihanmumbai Municipal Corporation
N.M. Joshi Marg
Mumbai - 400 013
Mobile: 985 062 1889, E-mail: ac01bf.gs@mcmgm.gov.in

7. CHIEF FIRE OFFICER

Mumbai Fire Brigade



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-11

Office of the Chief Fire Officer
 Regional Command Centre-1
 Bapurao Jagtap Marg, Byculla (West)
 Mumbai - 400 008
 Mobile: 2300 1393, E-mail: cfo.mfb@mcgm.gov.in

8. HARI KRISHNA EXPORTS PVT. LTD.

Through its Managing Director
 Unit No. 1701, "The Capital"
 17th Floor, B Wing, Plot No. C-73
 Bandra Kurla Complex, Bandra East
 Mumbai 400 051
 Phone: 022 4300 4300, E-mail: info@hk.co

9. HASMUKH THAKARSHI DHOLAKIA

Director, Hari Krishna Exports Pvt. Ltd.
 Having his Office at Unit No. 1701, "The Capital"
 17th Floor, B Wing, Plot No. C-73
 Bandra Kurla Complex, Bandra East
 Mumbai 400 051
 And Residing at Aikyam (formerly known as Pan Har)
 5, Worli Sea Face
 Mumbai 400 030
 Phone: 022 4300 4300, E-mail: nfo@hk.co

10. GHANSHYAM DHANJI DHOLAKIA

Managing Director, Hari Krishna Exports Pvt. Ltd.
 Having his Office at Unit No. 1701, "The Capital"
 17th Floor, B Wing, Plot No. C-73
 Bandra Kurla Complex, Bandra East
 Mumbai 400 051
 And Residing at Aikyam (formerly known as Pan Har)



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5, Worli Sea Face

Mumbai 400 030

Phone: 022 4300 4300, E-mail: info@hk.co

11. SAVJI DHANJI DHOLAKIA

Director, Hari Krishna Exports Pvt. Ltd.

Having his Office at Unit No. 1701, "The Capital"

17th Floor, B Wing, Plot No. C-70

Bandra Kuria Complex, Bandra East

Mumbai 400 051

And Residing at Aikyam (formerly known as Pan Har)

5, Worli Sea Face

Mumbai 400 030

Phone: 022 4300 4300, E-mail: info@hk.co

12. TULSI DHANJI DHOLAKIA

Director, Hari Krishna Exports Pvt. Ltd.

Having his Office at Unit No. 1701, "The Capital"

17th Floor, B Wing, Plot No. C-70

Bandra Kuria Complex, Bandra East

Mumbai 400 051

And Residing at Aikyam (formerly known as Pan Har)

5, Worli Sea Face

Mumbai 400 030

Phone: 022 4300 4300, E-mail: info@hk.co

...RESPONDENTS

THE APPLICANT MOST RESPECTFULLY SHOWETH:

- i. The address of the Applicant is given above for the service of notices of this Application.



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- II. The addresses of Respondents are given above for service of notices.
- III. The Applicant abovenamed begs to present the Memorandum of Application against the Unauthorised repairs and reconstruction that has taken place in the Applicant's adjoining property situated in CRZ-II area of the 1991 Notification, namely on Plot No. 5 named "Pan Har", now renamed as "Mikyam", which is in utter violation of the Coastal Regulation Zone Notification, 1991 (CRZ 1991 Notification) of the Environment (Protection) Act, 1986 (EP Act), violation of Development Control Regulations for Greater Bombay 1991 (DCR 1991), violation of Article 21 of the Constitution of India by blocking Applicant's access to light and air by not abiding to minimum open space requirements, violation of Fire Safety requirements and thereby putting the Applicant and his family to grave risk to their lives. Moreover, despite the authorities being made fully aware of these violations, rather than restoring the property to it's originally condition and to resolute the surrounding environment, are instead merely passing on the responsibility to each other.

FACTS

- I. That the Applicant is a businessman and is over 73 years of age. The Applicant is a resident of Mumbai and has been involved on several matters concerning the environment. He has also raised the issue of Noise Pollution caused by vehicles using horns, sirens and multi-tone horns and excessive noise produced by moving vehicle before this Hon'ble Tribunal. He has also raised the issue of pollution caused by the poor quality of Kerosene supplied to the poorest segment of the society for their cooking and other purposes



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and also to the Defence personnel, thereby adversely affecting the health of millions of poor people and the Defence personnel all over the country.

2. That Respondent No.1, Ministry of Environment, Forest and Climate Change (MoEFCC) is a Central Government Ministry for the planning, promotion, co-ordination and overseeing the implementation of the country's environmental and forestry policies and programmes. Respondent No.2, Maharashtra Coastal Zone Management Authority (MCZMA), is constituted by MoEFCC and has the power to take the necessary measures for protecting and improving the quality of the coastal environment and preventing, abating and controlling environmental pollution in the coastal areas and deal with environmental issues relating to Coastal Regulation Zone in the State of Maharashtra.
3. That Respondent No.3 is the District Collector Mumbai Suburban (DCMS) and is also the Chairman of District Coastal Zone Monitoring Committee (DCZMC) and is responsible for taking time bound steps for identification of violations of the CRZ Notifications and to initiate action under the EP Act and for removal of encroachments and unauthorised structures in coastal areas of CRZ-I, CRZ-II and CRZ-III.
4. That Respondent No.4 is the Municipal Corporation of Greater Mumbai (BMC) incorporated under the provisions of the Bombay Municipal Corporation Act and is empowered to grant permission to carry out the construction under the provisions of the now renamed Mumbai Municipal Corporation Act (MMC Act) and Development Control Regulations (DCR) framed from time to time.



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Respondent No.5 is the Assistant Municipal Commissioner (AMC) of G/South Ward, within whose jurisdiction fall the Applicant's property and its adjoining property "Pan Har". Respondent No.6 is the Designated Officer (Building & Factories) (DO B&F) of G/South Ward and exercises supervisory control over private buildings and factories and to take action under appropriate provisions of MMC Act/MRTP Act/DCR against owners of private buildings of unauthorized constructions/activity and also to regulate and control factories.

5. That Respondent No.7 is the Chief Fire Officer of Mumbai Fire Brigade, functioning under Respondent No.4 - BMC and is responsible for the provision of fire protection as well as responding to building collapses, drownings, gas leakage, oil spillage, road and rail accidents, bird and animal rescues, fallen trees and taking appropriate action during natural disasters.
6. That Respondent No.8, Hari Krishna Exports Pvt. Ltd, (HKE) is one of the industries' prominent Diamond Exporters with presence and alliances across the globe and is the owner of the Pan Har property, which it has purchased the in the year 2021. Respondent Nos. 9 to 12 are the promoters and Directors of Respondent No.8, who are directly in charge of, and are responsible to, the company for the conduct of the business of the company, as well as the company. Respondent Nos. 9 to 12 and their family members are the only persons who have recently started occupying and residing the Pan Har property, after it has undergone major reconstruction and renovation made under the supervision of Respondent Nos. 8 to 12.



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10. That as per the further requirement of CRZ 1991 Notification and of the BMC, at the same time the said Arkay Holdings Ltd. also submitted to BMC the "Owner's Affidavit for Building Cost" whereby stating that the cost of the proposed building on property bearing C.S. 730 of Worli Division is a little over Rupees Two Crores i.e. Rs. 2,13,13,181/-.

The copy of the aforesaid "Owner's Affidavit for Building Cost" is annexed hereto and marked as **Annexure A-2**.

11. That in view of the aforesaid "Indemnity Bond" and "Owner's Affidavit for Building Cost" submitted by Arkay Holdings Ltd. and in accordance with the provisions of paragraph 6, sub-paragraph (2) of Annexure 1 of CRZ 1991 Notification, BMC took up for processing the proposal submitted by Arkay Holdings Ltd.

12. That sometimes in the year 1997, BMC gave its approval for construction on the said property of a building consisting of the following:-

- (a) Lowermost basement floor car parking and utilities
- (b) Stilt floor, again for car parking and utilities
- (c) Six upper floors for residences, having two separate apartments per floor, with each apartment having separate toilets, kitchen, etc. i.e. a total of 12 apartments
- (d) Open terrace, having water tank, lift room and other utilities
- (e) The total height of the building from Stilt Floor to Sixth Floor to be 21.76 meters
- (f) Front open space with "Water Body/Paddle Pool" and garden



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- (g) The total "Built Up Area" (BUA) of the building to be 1,784.80 square meter
- (h) The total Floor Space Index (FSI) on Plot area of 1,349.51 square meter to be 1.32 i.e. 1,784.80/1,349.51 against the maximum permissible FSI of 1.33
13. That the construction of Pan Har property was completed in the year 2001 and on 27th September, 2001 the Respondent No. 4 - BMC approved the final building plans submitted by M/s Irani Architects, the architect appointed by Arkay Holdings Ltd. for the Pan Har project vide File No. EB/3294/GS/A.
- The copy of the "Area Statement Plan" is annexed hereto and marked as **Annexure A-3**.
- The copy of the "Basement and Stilt Floor Plan" is annexed hereto and marked as **Annexure A-4**.
- The copy of the "Elevation Plan and Floor Plans for Floors 1 to 5" is annexed hereto and marked as **Annexure A-5**.
- The copy of the "Floor Plan for Sixth Floor and the Terrace" is annexed hereto and marked as **Annexure A-6**.
14. That the "Area Statement" Plan at **Annexure A-3** shows that the Pan Har property is approved with a total BUA of 1784.80 square meters, consisting of:-

FLOOR	NET AREA	EXCESS BALCONY AREA	BUILT UP AREA
First	300.29 sq mtr	10.75 sq mtr	311.04 sq mtr
Second	300.29 sq mtr	10.75 sq mtr	311.04 sq mtr



Third	300.29 sq mtr	10.75 sq mtr	311.04 sq mtr
Fourth	300.29 sq mtr	10.75 sq mtr	311.04 sq mtr
Fifth	284.29 sq mtr	-	284.29 sq mtr
Sixth	255.54 sq mtr	0.81 sq mtr	256.35 sq mtr
TOTAL	1740.99 sq mtr	43.81 sq mtr	1784.80 sq mtr

15. That the "Basement and Stilt Floor" Plan at **Annexure A-4** shows that the said two Floors are approved for:-

- (a) Eight numbers of Car Parks in the Stilt Floor, alongwith small Society Office, store and servant's toilet
- (b) Minimum side open space of 4.8 meters (South side) and 4.65 meters (North side)
- (c) Front open space having "Water Body/Paddle Pool" and garden.
- (d) Eight numbers of Car Parks in the Basement, alongwith store, pump room and water plant

16. That the "Elevation Plan and Floor Plans for Floors 1 to 5" at **Annexure A-5** shows that:-

- (a) The total approved height of the building from Stilt Floor to Sixth Floor is 21.76 meters.
- (b) The terrace is approved with a "Lift Pulley Room" and an "Overhead Water Tank"



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- (c) Each of the two units on floors 3 to 4 having living and dining rooms, one medium sized and one tiny bedroom with bathrooms, and a kitchen
- (d) Each of the two units on floor 5 having a smaller living room, a dining room, two medium sized and one tiny bedroom with bathrooms, and a kitchen.
17. That the "Floor Plan for Sixth Floor and the Terrace" at **Annexure A-6** shows that:-
- (a) Each of the two units on floor 6 having a living room, two bedrooms with bathrooms, and a kitchen
- (b) Terrace having Water Tank and area for building services, namely air conditioning, cooling tower, fire pump etc.
18. That the Applicant had earlier filed a suit No. 5111 of 1994 in Hon'ble Bombay High Court against the construction on the Pan Bar property for various violations, including violations of the Explosive Act, 1884 and the Rules thereunder, DCR violations, Environment (Protection) Act 1986 and the Rules thereunder etc. having Arkay Holdings Ltd., EMC and others as party Defendants.
19. That the Indemnity Bond, Owner's Affidavit for Building Cost and the Plans annexed hereto and marked as **Annexure A-1** to **Annexure A-6** were all produced in the suit by Arkay Holdings Ltd. and BMC, admitted by the parties and then marked in evidence in the said suit.
20. That by Final Order dated 5.12.2019 the Hon'ble High Court was pleased to dispose off suit No. 5111 of 1994 by holding that the



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Pan Har construction has been made in accordance to the approved plans, namely the Plans at Annexure A-3 to Annexure A-6 hereto. The Applicant craves leave to refer to and rely upon the said Order dated 5.12.2019 when produced. Soon thereafter, the Applicant assailed the said Order dated 5.12.2019 by an Appeal before the Division Bench of the Hon'ble Court being Appeal No. 49 of 2020. The Applicant craves leave to refer to and rely upon the records and proceedings of the said Appeal No. 49 of 2020 when produced.

21. That in July, 2021 Arkay Holdings Ltd. sold the Pan Har property to Respondent No. 8 - Hari Krishna Exports Pvt. Ltd (HKE). By Indenture of Assignment dated 30th July, 2021, the BMC assigned the said Property in the name of HKE having its registered office at address given in the cause title of the present Application. The said Pan Har property was purchased for use as the personal residence of its promoter Directors and their families.

The copy of the aforesaid Indenture of Assignment dated 30th July, 2021 is annexed hereto and marked as Annexure A-7.

22. That the said Indenture of Assignment duly entered into between Arkay Holdings Ltd., BMC and Respondent No. 10 in his capacity as the Managing Director of HKE, specifically states in para (a) that:-

"(a) The Assignor is the lessee in perpetuity respect of Plot No. 5 of the Worli Estate of the Municipal Corporation of Greater Mumbai admeasuring 1,614 square yards equivalent to 1,349.61 square meters and is the sole



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and absolute owner of the structure standing thereon being residential building known as 'Panhar' comprising basement plus stilt/ground plus six (6) upper floors aggregately admeasuring approximately 19,886 square feet or thereabout carpet area ("said Building")."

23. That soon after purchasing the said property, Respondent Nos. 8 to 12 covered the entire Pan Har building and by taking advantage of the Covid-19 pandemic they started demolishing almost the entire building from inside and also from outside and reconstructed the said property, without obtaining any CRZ and/or DCR Clearance or any other clearances from MoEFCC or MCZMA or BMC.

24. That in October, 2021, Respondent Nos. 8 to 12 used heavy machinery and completely, demolished "Water Body/Paddle Pool" and garden in the front open space of Pan Har.

The copy of the photograph taken on 22.10.2021 showing the ongoing demolition of the front "Water Body/Paddle Pool" and garden is annexed hereto and marked as **Annexure A-8**.

25. That by June, 2022, the Respondent Nos. 8 to 12 unauthorisedly constructed a permanent structure of around 3,000 to 4,000 square feet in the front open space in place of the "Water Body/Paddle Pool" and garden i.e. towards the seaward side of the existing building Pan Har.

The copy of the photograph taken on taken on 12.6.2022 showing the unauthorisedly constructed structure in place of the front "Water Body/Paddle Pool" and garden, is annexed hereto and marked as **Annexure A-9**.



26. That by June, 2022, with the entire building being covered, Respondent Nos. 8 to 12 also constructed an unauthorised seventh floor, having huge open terrace on the front side of the building i.e. on the seaward side of the building and also on the back side of the building. Similar, such terraces/balconies are also unauthorisedly constructed on the seaward side of the building on the first to sixth floors.

The copy of the photograph taken on 26.6.2022 showing the unauthorisedly constructed seventh floor and the terraces/balconies on the front side of the building, is annexed hereto and marked as **Annexure A-10**.

27. That by June, 2022, Respondent Nos. 8 to 12 also unauthorisedly added areas in the side open spaces of the building, starting from the first floor onwards to the sixth floor. This is clearly seen in the photograph at **Annexure A-10**.

28. That by August, 2022, Respondent Nos. 8 to 12 unauthorisedly enclosed the entire still floor and converted the same as living areas.

The copies of the photographs taken on taken on 28.8.2022 showing the unauthorised enclosure of the entire still floor and converting the same as living areas, are annexed hereto and marked as **Annexure A-11** and **Annexure A-12**.

29. That the photographs at **Annexure A-11** and **Annexure A-12** further show the unauthorisedly added areas in the side open spaces, starting from the first floor onwards.



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30. That the unauthorised construction at Pan Har property has resulted in further violations and has adversely affected the flow of light and air of the Applicant and his family and other neighbours, exposing them to grave risk against fire, Open Space violations, etc. as more particularly set out hereunder.
31. That the total height of the Pan Har from Stilt Floor to Sixth Floor of the building, approved by BMC by the plans dated 27th September, 2001, is for 21.76 meters. After adding the unauthorised seventh floor of height of around 3.5 meters (11.5 feet), the revised height comes to around 25.26 meters and in any case far above the height of 24 meters, which applies to "Tower like Structures".
32. That Rule (29) of DCR 1997 specifies minimum side and rear open space in relation to the height of the building for proper light and ventilation to the occupants and the neighbours. Sub-Rule (c) of Rule (29) further states that:-

"Tower-like structures:—Notwithstanding any provision to the contrary, a tower-like structure may be permitted only with 6 m. open space at the ground level and one set-back at the upper levels provided that the total height does not exceed 24 m. If it exceeds 24 m but does not exceed 37.5 m., the minimum open space at ground level shall be 9 m."

33. That the revised height of the Pan Har building far exceeds 24 meters and the minimum open space at the ground level is required to be maintained at 9 meter, so as to ensure proper light



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and ventilation to the occupants and the neighbours. Against this, the minimum side open space, as approved by the plans dated 27th September, 2001, is 4.8 meters (South side) and 4.65 meters (North side). This is even further reduced due to added areas in the side open spaces of the building, starting from the first floor onwards to the sixth floor, which can be clearly seen in the photograph at Annexure A-10.

34. That the aforesaid unauthorised construction carried out by the Respondent Nos. 8 to 12 on the Pan Har property is blocking light and air to the Applicant, his family members and neighbours and is violative of their right to a healthy life, as guaranteed by Article 21 of Constitution and it is the bounden duty of Respondent Nos. 1 to 7 to step in to protect these rights against the unlawful onslaught by Respondent Nos. 8 to 12.
35. That the unauthorised construction at Pan Har property has further violated the "Fire Protection Requirements" and has exposed the Applicant, his family and neighbours from grave risk in case of fire in the properties.
36. That Rule (43) of DCR 1991 sets out "Fire Protection Requirements" and states that:-

"For multi-storeyed, high rise and special buildings, additional provisions relating to fire protection contained in Appendix VIII shall also apply. The approach to the building and open spaces on all sides upto 6 m. width and their layout shall conform to the requirements of the Chief Fire Officer. They shall be capable of taking the weight



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of a fire engine weighing upto 18 tonnes. These open spaces shall be free of any obstruction and shall be motorable.

37. That the minimum side open space, as approved by the plans dated 27th September, 2001, is 4.8 meters (South side) and 4.65 meters (North side) against the minimum requirement of 6 meters from fire safety. This is even further reduced due to added areas in the side open spaces of the building, starting from the first floor onwards to the sixth floor. Moreover, even this inadequate open space is further reduced with obstructions constructed thereon and have therefore become extremely hazardous from fire safety point of view.
38. That Rule (5) of DCR 1991 sets out the Procedure for obtaining Development Permission and Commencement Certificate. Sub Rule (5)(ii) further states that:-

(5)(ii) Fire brigade scrutiny—The plans for all multi-storeyed, high rise and special buildings shall also be subject to the scrutiny of the Chief Fire Officer, and development permission shall be given by the Commissioner only after the clearance by the Chief Fire Officer.

39. That the plans for the unauthorisedly constructed Pan Har building are neither scrutinised nor cleared by the Respondent No.7 - Chief Fire Officer of the BMC and no development permission is given by the Municipal Commissioner.



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40. That Rule (8) of DCR 1991 sets out the Procedure for Inspection. Sub Rule (5)(2) further states that:

"(2) *Inspection by Fire Department*—For all multi-storeyed, high-rise and special buildings, the work shall also be subject to inspection by the Chief Fire Officer, and the Commissioner shall issue the occupancy certificate only after clearance by the said Chief Fire Officer."

41. That the construction of work of Pan Har building, after its reconstruction, are neither inspected by the Respondent No.7 nor any clearance given by the said Respondent and no occupancy certificate is given by the Municipal Commissioner and yet the Respondent Nos. 4 to 7 are failing to take any action against the unauthorised construction, which is now being unauthorisedly occupied by Respondent Nos 8 to 12.

42. That Rule (23) of DCR 1991 sets out the requirement of "Recreational/Amenity Open Spaces". Sub Rule (1)(a) and (1)(b) further states that:

"(23)(1) Open spaces in residential and commercial layouts—

(a) Extent:—In any layout or sub-division of vacant land in a residential and commercial zone, open spaces shall be provided as under:

(i) Area from 1001 sq.m. to 2500 sq.m. 15

sq. feet



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These open spaces shall be exclusive of areas of accesses/ internal roads/designations or reservations, development plan roads and areas for road widening and shall as far as possible be provided in one place

(f) Tree growth:--Excepting for the area covered by the structures permissible under (g) below, the recreational space shall be kept permanently open to the sky and accessible to all owners and occupants as a garden or a playground etc. and trees shall be grown as under :--

(a) at the rate of 5 trees per 100 sq.m. or part thereof of the said recreational space to be grown within the entire plot.

(b) at the rate of 1 tree per 80 sq.m. or part thereof to be grown in a plot for which a sub-division or layout is not necessary.

43. That as the area of the Pari Har land is 1,349.51 square meters, it is required to have minimum of 15% of the land area or 202 square meters as Recreational/Amenity Open Space as a garden. Moreover, this Open Space is required to have at least 5 trees per 100 square meters or at least 10 trees on the land.

44. That in their greed to have maximum constructed area, the Respondent Nos. 8 to 12 have destroyed and removed the front "Water Body/Puddle Pool" and also the front garden, rear garden and replaced them with permanent construction, with the result that there does not exist any compulsory "Recreational/Amenity



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Open Spaces' or garden or trees, etc. on the entire Pan Har land and therefore the Respondent Nos. 8 to 12 have also violated the principle of sustainable development which has been construed by the Hon'ble Supreme Court as an integral part of Article 21 of the Constitution.

45. That for the sake of convenience, the brief particulars of the unauthorised construction at Pan Har property carried out by Respondent Nos. 8 to 12 is annexed hereto and marked as **Annexure A-13.**
46. That from the aforesaid, it is indisputably clear that the Respondent Nos. 8 to 12 have spent huge amounts in the large scale unauthorised construction in the said property situated in CRZ-II area, namely Pan Har, now renamed as Aikyam, at Plot No.5, World Sea Face, Mumbai 400 030, without getting the mandated Environmental Clearance from MoEFCC or MCZMA, as the investment has far exceeded Rupees Five Crores, and have deliberately and wilfully violated the provisions of CRZ Notification, 1991.
47. That the Respondent Nos. 8 to 12 also failed to obtain any approval from BMC and they have further violated the provisions of Development Control Rules of the BMC Act, MRTP Act, etc.
48. That by his email dated 28.5.2022 to Respondent No.2 - MCZMA, Respondent No.4 - BMC and Respondent No.5 - AMC, G/South Ward, the Applicant brought to the notice of these Respondents of the aforesaid violations of the CRZ Notification, 1991, BMC Development Control Regulations, etc. that have taken place in the repair and reconstruction of the Pan Har property, which is right



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across the sea and in CRZ-II area of CRZ 1991 Notification. That with his above email dated 28.8.2022 the Applicant also annexed the copies of the above documents, plans and photographs that are hereto annexed at **Annexure A-3** to **Annexure A-12**.

49. That the Applicant further informed the Respondent Nos. 2, 4 and 5 that the said unauthorised constructions, has resulted in windfall profit personally to Respondent Nos. 8 to 12 of at least Rupees One Hundred Crores.

50. That the Applicant therefore requested the Respondent Nos. 2, 4 and 5 to look into the matter and take action as provided under law, including the CRZ Notification, 1991, Environment (Protection) Act, 1986, etc. and demolish all the unauthorised construction.

51. That the Applicant further requested the Respondent Nos. 2, 4 and 5 to prosecute Respondent No.8, its Directors and their concerned officers under the provisions of the Environment (Protection) Act, 1986.

The copy of the Applicant's aforesaid Email dated 28.8.2022 is annexed hereto and marked as **Annexure A-14**.

52. That the Respondent No.4 forwarded the Applicant's Email to the concerned Departments and by his Email dated 11.11.2022 the Deputy Chief Engineer (Building Proposals) City, informed the Applicant that the complaint matter pertains to the Respondent No.6 - DO B&F of G/South Ward and therefore it is forwarded to Respondent No.5 for further direction.

The copy of the above Email dated 11.11.2022 is annexed hereto and marked as **Annexure A-15**.



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53. That by email dated 12.11.2022 to Respondent Nos. 4, 5 and others, the Applicant requested the Respondent No.5 to fix the Applicant's appointment, either with the Respondent No.5 or with Respondent No.6, so that the Applicant can personally come to their office with the relevant documents and appraise them on my complaint so that the matter can proceed further.

The copy of the above Email dated 12.11.2022 is annexed hereto and marked as Annexure A-15.

54. That over the next one month the Applicant regularly met the Respondent Nos. 5 and 6 and submitted to them the copies of the BMC approved plans and the photographs showing present unauthorised construction. These meetings were held on 23.11.2022, 14.12.2022 and 26.12.2022 and the discussions of the said meetings were also confirmed by the Applicant by WhatsApp on Respondent No.6's mobile No. 985 062 1889. These are:-

14/12/2022

This is Dilcep Nevatia. This is regarding DCR & CRZ violations in Pan Har building on Worli Sea Face.

As discussed last week, can I come today afternoon with the concerned documents and for discussion in the matter.

Kindly confirm the time suitable to you.

Regards

26/12/2022 .

This is Dilcep Nevatia. This is regarding DCR & CRZ violations in Pan Har building on Worli Sea Face.



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I had last visited your office on 14/12/2022 and had submitted the electronic files of the documents referred in by complaint, including the copies of the BMC approved plans showing that the building Pan Har is approved for only stilt plus six floors, PSI calculations, etc and the photographs showing present unauthorised construction.

As you were proceeding on leave from 14/12 to 23/12, you had asked me to contact you on 23/12/22 or thereafter.

You had also informed me that the meantime, your office will also collect the necessary documents, including the approved plans from Building Proposal Department, etc.

Hence, I request you to arrange a meeting tomo. row so that we can further discuss in the matter.

Kindly confirm the time suitable to you.

Regards

28/12/2022

This is Dilcep Nevatia,

Regarding CRZ and other violations in Pan Har building at Worli Sea Face, on 8/9/2022 I had also complained to Ministry of Environment and Forests (MoEFCC).

Today, I have received the copy of MoEFCC letter dated 27/12/2022 to MCZMA to examine the matter and report be provided to the Complainant and also the Ministry at an early date.

The copy of the above letter dated 27/12/2022 is enclosed for your ready reference.

Regards

10/1/2023

This is Dilcep Nevatia. This is regarding DCR & CRZ violations in Pan Har building on Worli Sea Face.



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I had for the third time visited your office on 26/12/2022 and had detailed discussions on the DCR and CRZ violations of Par Har building.

You had then assured me that you will carry out detailed inspection of the property within 2 weeks time and take further action thereafter.

You had also informed me that the meantime, your office will also collect the necessary documents, including the approved plans from Building Proposal Department, etc.

Please let me know if any further action is taken thereafter.

In case no action is taken so far, how long further will it take?

Regards

55. That frustrated with the lack of any action or even any response from the Respondent No.6, on 10.1.2023 the Applicant informed the same to the Respondent No.5 on his WhatsApp mobile No. 887 933 5291, namely:-

10/1/2023

Sir,

I have repeatedly met the Designated Officer B & F regarding the DCR and CRZ violations, but it seems that his office is not inclined to look into the matter.

You may recall that my complaint was forwarded to you for investigation by the Municipa Commissioner. You had directed me to meet the D.O. Unfortunately there is no action being taken.

Hence, I request you to personally look into the above matter.

56. That for reasons best known to him, even the Respondent No.5 has failed to take any action against the violations of DCR 1991 and



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CRZ 1991 Notification, despite specific directions of Municipal Commissioner to investigate the same and to take appropriate action.

57. That by his letter dated 8.9.2022 to Respondent No.1 - MoEFCC, Respondent No.2 - MCZMA, Respondent No.4 - BMC and the Environment Department, Government of Maharashtra, the Applicant brought to the notice of these Respondents of the aforesaid violations of the CRZ Notification, 1991, BMC Development Control Regulations, etc. that have taken place in the repair and reconstruction of the Pan Har property, which is right across the sea and in CRZ-II area of CRZ 1991 Notification. With his above letter 8.9.2022 the Applicant also annexed the copies of the above documents, plans and photographs that are hereto annexed at **Annexure A-3 to Annexure A-12.**
58. That the Applicant further informed the Respondent Nos. 1, 2 and 4 that the said unauthorised constructions, has resulted in windfall profit personally to Respondent Nos. 8 to 12 of at least Rupees One Hundred Crores.
59. That the Applicant therefore requested the Respondent Nos. 1, 2 and 4 to look into the matter and take action as provided under law, including the CRZ Notification, 1991, Environment (Protection) Act, 1986, etc. and demolish all the unauthorised construction.
60. That the Applicant further requested the Respondent Nos. 1, 2 and 4 to prosecute Respondent No.8, its Directors and the concerned officers under the provisions of the Environment (Protection) Act, 1986.



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The copy of the Applicant's aforesaid letter dated 8.9.2022 is annexed hereto and marked as **Annexure A-17**.

- 61 That in response to the Applicant's aforesaid letter dated 8.9.2022, by letter dated 7.10.2022 the Respondent No.2 - MCZMA wrote to Respondent No.3 - District Collector Mumbai Suburban (DCMS) and the Municipal Commissioner of BMC to:-

"Verify and take necessary action in the matter, if any violation of CRZ Notification 1991 as well as 2011 and Hon. High Court Order dated 06.10.2005, 27.01.2010 & 17.01.2018 is observed, you are requested to take appropriate action after verification and send the factual, detailed action taken report to the Authority at the earliest."

The copy of the aforesaid letter dated 7.10.2022 of MCZMA is annexed hereto and marked as **Annexure A-18**.

62. That in response to the Applicant's aforesaid letter dated 8.9.2022, by letter dated 27.12.2022 the Respondent No.1 - MoEFCC wrote to MCZMA on the matter of major CRZ violations in the repairs and reconstruction of Pan Har building and directed that:-

- (1) That on 22.8.2022 the Ministry has asked all the coastal States / UTs to take action on violations of the provisions of CRZ Notification and further that the Ministry has also delegated the power under Section 5 of EP Act, 1986 to all coastal States / UTs.



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(2) In view of the above, the matter may be examined and a report / comments be provided to the complainant directly under intimation the Ministry at an early date.

The copy of the aforesaid letter dated 27.12.2022 of MoEFCC is annexed hereto and marked as **Annexure A-19**.

53. That pursuant to the aforesaid letter dated 27.12.2022 of MoEFCC to MCZMA, by reminder letter dated 12.1.2023 the MCZMA once again wrote to DCMS and the Municipal Commissioner of BMC to verify the violations of CRZ Notification 1991 and take necessary action and **submit detailed action taken Report to MCZMA within 15 days time.**

The copy of the aforesaid reminder letter dated 12.1.2023 of MCZMA is annexed hereto and marked as **Annexure A-20**.

64. That the 15 day period to submit the "Action Taken Report" by the Respondent Nos. 3 and 4 on the CRZ and other violations has already lapsed and no such report is received by the Applicant and there is no action taken by the Respondent Nos. 1 to 6 on the blatant violations carried out on the unauthorised constructions at the Pan Har property.

65. That it is evidently clear that for reasons best known to them, the Respondent Nos. 1 to 6 are failing to take any actions against the unauthorised constructions at the Pan Har property by the Respondent Nos. 8 to 12, in deliberate and wilful violations of the CRZ Notification, 1991, the Mumbai Municipal Corporation Act, Development Control Regulations, etc. At the same time, the unauthorised construction carried out after July, 2021 onwards



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has resulted in windfall profit personally to Respondent Nos. 8 to 12 of at least Rupees One Hundred Crores.

66. That after purchasing the Pan Har property, the Respondent Nos. 8 to 12 carried out the entire re-construction under the garb of huge covers over the entire building and it was only since 26th June, 2022 onwards i.e. when these covers were being regularly removed and the reconstructed building being exposed, that the Applicant realised the extent of the unauthorised construction that was carried out in the Pan Har property.
67. That sometimes in the month of November, 2021 the Respondent No. 10 approached the Applicant and requested that in view of future relationship as good neighbours, the Applicant should withdraw the pending High Court Appeal No. 49 of 2020 in Suit No. 1994 of 1994 and also the pending I.A. in the said Appeal and also offered him a token amount, which was far less than the damages of Rs. 10 crores claimed in the suit, alongwith interest thereon.
68. That in the interest of future relationship and as a good neighbour, the Applicant proceeded to withdraw the High Court Appeal No. 49 of 2020, little knowing that while making such assurances, the Respondent No.9 had already started the unauthorised construction and the said Respondent deliberately made false assurances to the Applicant and thereby wilfully misled him to withdraw the Appeal, which the Applicant did on 10th June, 2022. The copy of the Order dated 30.6.2022 in High Court Appeal No. 49 of 2020 is annexed hereto and marked as **Annexure A-21**.



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GROUNDS

69. That the Applicant is filing the present Application on following among other grounds:

- (A) Because the Application raises the issue of substantial question relating to environment and community at large is affected by the non-action of the Respondent Nos. 1 to 7 of the violations of the Coastal Regulation Zone Notification, 1991 of the Environment (Protection) Act, 1986 and of Development Control Regulations for Greater Bombay 1991;
- (B) Because the additional construction, repairs and renovation carried out in Pan Har property situated within 200 meters of the HTL in the CRZ-II coastal area, is without the mandatory clearance from MoEFCC and MCZMA;
- (C) Because the investment in Pan Har property, after its additional construction, repairs and renovation, far exceeds Rupees Five Crores and yet no mandatory Environmental Clearance is obtained from MoEFCC;
- (D) Because the illegal constructions in Pan Har property situated in the CRZ-II coastal area, not only violate the laws relating to the environment but also amount to destruction of our ecosystem;
- (E) Because the illegal constructions in Pan Har property pollute the environment;



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- (F) Because allowing such illegal constructions to exist in the coastal areas violate fundamental rights of the citizens under Article 21 of the Constitution of India;
- (G) Because the right to healthy environment has been construed as a part of the right to life under Article 21 by way of judicial pronouncements and this Hon'ble Tribunal has special jurisdiction for enforcement of these rights;
- (H) Because under Section 15(1)(b) and 15(1)(c) of the NGT Act, this Hon'ble Tribunal is empowered to provide for restitution of property damaged and for restitution of the environment for such area or areas;
- (I) Because the cause of filing the present Application is independent from the High Court suit No. 5111 of 1994, as the present violations have taken place after the Respondent Nos. 8 to 12 purchased in Pan Har property in the month of July, 2021;
- (J) Because the construction raised, without permission, within 200 meters of the HFL and in violation of CRZ 1991 Notification cannot be condoned and requires to be demolished;
- (K) Because the unauthorised construction carried out by the Respondent Nos. 8 to 12 on the Pan Har property is blocking light and air to the Applicant, his family members and neighbours and is violative of their right to a healthy life, as guaranteed by Article 21 of Constitution of India and it is the bounden duty of Respondent Nos. 1 to 7 to step-in to protect



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these rights against the unlawful onslaught by Respondent Nos. 8 to 12;

- (L) Because the Respondent Nos. 8 to 12 have spent huge amounts in the large scale unauthorised construction in the Pan Har property situated in CRZ-II area, without applying for or obtaining the mandated Environmental Clearance from MoEFCC or MCZMA, and have deliberately and wilfully violated the provisions of CRZ Notification, 1991;
- (M) Because the Respondent Nos. 8 to 12 have also failed to apply and obtain any approval from BMC and they have further violated the provisions of Development Control Rules of the BMC Act, MRTP Act, etc.;
- (N) Because for reasons best known to them, the Respondent Nos. 1 to 7 are failing to take any actions against the unauthorised constructions at the Pan Har property by the Respondent Nos. 8 to 12, made in deliberate and wilful violations of the CRZ Notification, 1991, the Mumbai Municipal Corporation Act, Development Control Regulations, etc.;
- (O) Because the unauthorised construction carried out after July, 2021 onwards has resulted in illegal profit to Respondent Nos. 8 to 12 of at least Rupees One Hundred Crores;
- (P) Because the unauthorisedly constructed permanent structure of around 3,000 to 4,000 square feet in the front open space in place of the "Water Body/Paddle Pool" and



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garden i.e. towards the seaward side of the existing building Pan Har is in clear violation of the CRZ 1991 Notification;

- (Q) Because the Respondent Nos. 8 to 12 have demolished almost the entire Pan Har building from inside and also from outside and reconstructed the said property, without applying for permissions or obtaining any CRZ and/or DCR Clearance and/or any other permissions from MoEFCC or MCZMA or BMC;
- (R) Because the Respondent Nos. 8 to 12 have constructed an unauthorised seventh floor, having huge open terrace on the front side of the building i.e. on the seaward side of the building and also on the back side of the building;
- (S) Because the Respondent Nos. 8 to 12 have constructed unauthorised terraces/balconies on the seaward side of the building on the first to sixth floors;
- (T) Because the Respondent Nos. 8 to 12 have unauthorisedly added areas in the side open spaces of the building, starting from the first floor onwards to the sixth floor;
- (U) Because the Respondent Nos. 8 to 12 have unauthorisedly enclosed the entire stilt floor and converted the same as living areas;
- (V) Because the unauthorised construction at Pan Har property has resulted in further violations and has adversely affected the flow of light and air of the Applicant and his family and



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other neighbours, exposed them to grave risk against fire.
Open Space violations, etc.;

- (W) Because of the unauthorised construction, the revised height of the Pan Har building far exceeds 24 meters and the minimum open space at the ground level is required to be maintained at 9 meter, so as to ensure proper light and ventilation to the occupants and the neighbours;
- (X) Because against the required minimum side open space of 9 meters, the earlier approved open space of 4.8 meters (South side) and 4.65 meters (North side) is further reduced due to added areas in the side open spaces of the building, starting from the first floor onwards to the sixth floor;
- (Y) Because the unauthorised construction carried out by the Respondent Nos. 8 to 12 on the Pan Har property is blocking light and air to the Applicant, his family members and neighbours and is violative of their right to a healthy life, as guaranteed by Article 21 of Constitution and it is the bounden duty of Respondent Nos. 1 to 7 to step-in to protect these rights against the unlawful onslaught by Respondent Nos. 8 to 12;
- (Z) Because the unauthorised construction at Pan Har property has further violated the "Fire Protection Requirements" and has exposed the Applicant, his family and neighbours from grave risk in case of fire in the properties;
- (AA) Because the construction work at Pan Har property, after its re-construction, are neither inspected by the Chief Fire



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Officer of the BMC nor any clearance given by the Chief Fire Officer;

- (BA) Because no occupancy certificate is given to the Pan Hat property, after its unauthorised re-construction, by the Municipal Commissioner and yet the Respondent Nos. 4 to 7 are failing to take any action against the unauthorised construction, which is now being unauthorisedly occupied by Respondent Nos. 8 to 12;
- (CC) Because the construction of work of Pan Hat property, after its re-construction, is neither inspected by the Chief Fire Officer of the BMC nor any clearance given by the Chief Fire Officer and no occupancy certificate is given by the Municipal Commissioner and yet the Respondent Nos. 4 to 7 are failing to take any action against the unauthorised construction, which is now being unauthorisedly occupied by Respondent Nos. 8 to 12;
- (DD) Because the occupation of the reconstructed Pan Hat property by Respondent Nos. 8 to 12, without occupation certificate, cannot be countenanced and permitted in law;
- (EE) Because there does not exist any compulsory "Recreational/Amenity Open Spaces" or garden or trees, etc. on the entire Pan Hat land and therefore the Respondent Nos. 8 to 12 have also violated the principle of sustainable development which has been construed by the Hon'ble Supreme Court as an integral part of Article 21 of the Constitution;



[Handwritten Signature]

70. That this Hon'ble Tribunal has got jurisdiction to hear the present Application because the issue is of substantial question, related to environment and implementation of the enactments specified in Schedule I of the National Green Tribunal Act, 2010.
71. That the Applicant states and submits that he is therefore entitled for an Order of this Hon'ble Tribunal directing the Respondent Nos. 1 to 7 to restore the Pan Har property, including its usage, as per the last plans approved by the Respondent No.4 in or around the month of September, 2001 including the plans at **Annexure A-3** to **Annexure A-6** hereto, and with the cost of demolition and restoration to be borne by the Respondent Nos. 8 to 12.
72. That the Applicant states and submits that, pending the hearing and disposal of the present Application, the Applicant is entitled for Orders of this Hon'ble Tribunal directing the Respondent Nos. 8 to 12 to forthwith desist from using in any manner the unauthorisedly constructed areas of the Pan Har property as set out in the schedule to **Annexure A-13** hereto.
73. That the Applicant states and submits that, pending the hearing and disposal of the present Application, the Applicant is entitled for further Orders of this Hon'ble Tribunal directing the Respondent Nos. 1 to 7 to seal the unauthorisedly constructed areas of the Pan Har property carried out by Respondent Nos. 8 to 12 as set out in the schedule to **Annexure A-13** hereto and any further unauthorisedly constructed areas that may be discovered by the Respondent Nos. 1 to 6 during its inspection.
74. That the Applicant further states and submits that, pending the hearing and disposal of the present Application, the Applicant is



[Handwritten Signature]

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entitled for further Orders of this Hon'ble Tribunal directing the Municipal Commissioner of Respondent No. 4 to inquire into the conduct of Respondent Nos. 5 and 6 in permitting this illegality in Pan Har property and give his report to this Hon'ble Tribunal.

75. That the Applicant further states and submits that, pending the hearing and disposal of the present Application, the Applicant is entitled for further Orders of this Hon'ble Tribunal directing the Member Secretary of Respondent No. 2 to inquire into the conduct of Respondent No. 3 in failing to take action against the illegal construction in Pan Har property and give his report to this Hon'ble Tribunal.
76. That the Applicant undertakes to file the hard copies of large plans at Annexure A-3 to Annexure A-6 hereto, soon after the present O.A. is registered.

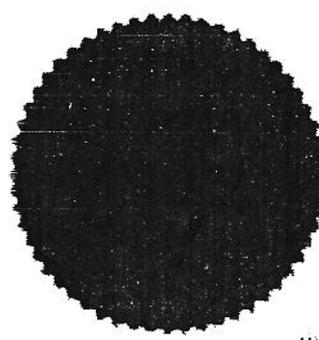
LIMITATION

77. That the cause of action for filing the present Application arose sometimes in the month of June, 2022, when the Applicant came to be aware of the unauthorised construction carried out by Respondent Nos. 8 to 12 in the Pan Har property and therefore the present Application, filed under Section 15 of the NGT Act for restitution of property and environment, is within the period of limitation of five years and is within time.



PRAYER

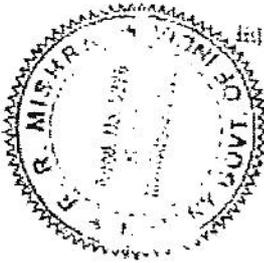
In view of the above facts and circumstances it is most respectfully prayed that this Hon'ble Tribunal may be pleased to issue orders:



i) Directing the Respondent Nos. 1 to 6 to restore the Pan Har property, including its usage, as per the last plans approved by the Respondent No.4 in or around the month of September, 2001 including the plans at Annexure A-3 to Annexure A-6 hereto, with the cost of demolition and restoration to be borne by the Respondent Nos. 7 to 11;

ii) Directing the Respondent Nos. 2, 4 and 5 to prosecute the Respondent Nos. 7 to 11 and their concerned officers under the provisions of the Environment (Protection) Act, 1986;

iii) Pass any such other or further order as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.



[Signature]

APPLICANT IN PERSON

SHASHI DEEP, 5-A, WORLD SEA FACE, MUMBAI 400 030

VERIFICATION:

I Dilcep Nevatia, S/o Balkrishna Nevatia k/o Shashi Deep, 5-A, World Sea Face, Mumbai 400 030 aged about 73 years do hereby verify that the contents of the foregoing paras are true to my personal knowledge and the legal submissions are believed to be true on legal advice and that I have not suppressed any material fact.

Date: 26.2.2023

Place: Mumbai

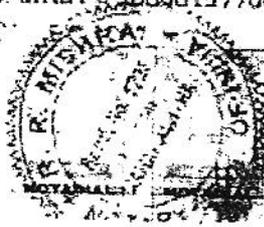
Seen the Driving Licence

No. MH01-20090127700

NOTED & REGISTERED
Sr. No. 25 Page No. 03
Date 26.02.2023

APPLICANT

TRUE COPY
Adv. Petition



[Signature]
26/2/2023
R. MISHRA
Advocate & Notary Public, Govt. of India
Regd. No. 6128
Res. 502, Maruti Tower, 5th F
K. Maru, Lower Patel, Mumbai
Mobile: +91-99202 76528

Item No. 1

(Pune Bench)

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

(By Video Conferencing)

Original Application No. 25/2023 (WZ)

Dileep B. Nevatia

.....Applicant

Versus

Union of India & Ors.

....Respondent(s)

Date of hearing: 14.03.2023

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Applicant : Applicant-in- Person

ORDER

1. This application has been filed with the prayer that Respondent No. 1/MoEF&CC, Respondent No. 2/Maharashtra Coastal Zone Management Authority (MCZMA), Respondent No. 3/District Collector, Mumbai Suburban & Chairman, District Coastal Zone Monitoring Committee and Respondent No. 4/Municipal Corporation of Greater Mumbai (MCGM) be directed to restore the Panhar property, which is said to be located at Cadastral Survey No. 730 having corresponding Plot No. 5, Khan Abdul Gaffar Khan Road, Worli Sea Face, which also falls in CRZ-II area of CRZ Notification, 1991 and within 200 meters from the HTL.

2. The submission made is that the earlier owner of the said property i.e. Arkay Holding Ltd. had got approval from the BMC for construction of the property in question with a cost little over Rs. 2 crores i.e. Rs. 2,13,13,181/-. The BMC in the year 1997 gave its prior approval for the construction and the said construction was completed in the year 2001.



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Thereafter, the BMC had inspected the said property and gave final approval to the said building on 27.09.2001. The Total BUA for the said construction is recorded as 1784.80 sq. meters and the Applicant has annexed the approved plans as Annexure A-4 to A-6. After the construction, the said property was transferred by Indenture of Assignment dated 30.07.2021 to the Respondent No. 8/Hari Krishna Exports Pvt. Ltd., where-in it is recorded that a sole and absolute owner of the structure standing on Plot no. 5, Worli Estate of the Municipal Corporation of Greater Mumbai being residential building known as 'Panhar' comprising basement plus stilt/ground plus six (6) upper floors aggregately admeasuring approximately 19,886 sq. feet. The grievance, which has been raised by the Applicant, is that Respondent No. 8 the lessee of the said property, and their occupants, which are Respondent Nos. 9 to 12 had started demolishing the said building from inside and outside and reconstructed the said property without obtaining CRZ clearance/DCR Clearance from appropriate authorities, therefore, it is prayed that the said property should be directed to be restored.

3. The Applicant is emphasizing that the provisions of CRZ Notification, 1991 would be applicable in this case as the project was earlier approved under the said Notification but in our estimation, it should be governed by the provisions of CRZ Notification, 2011. The Applicant in this regard seeks time to convince us in the present case as to whether the CRZ Notification, 1991 would be applicable, which can be done at his end by the next date. However, in the interest of justice, we admit this application finding that substantial question relating to adverse impact on environment appears to have been made out.

4. We find that Respondent Nos. 5 & 6 are Government officials who need not be impleaded by name, since the higher authorities have already



been impleaded, hence they are not required to be impleaded and hence they need to be deleted and we order accordingly. The Applicant is directed to make compliance of the same by the next date.

5. Registry is directed to issue Notice to the Respondents, returnable within 04(four) weeks.

6. Applicant is directed to provide copy of the application and relevant documents to the Respondents within a week.

7. Respondents are directed to submit their reply within 04(four) weeks providing copies of the same to the other parties in advance.

8. Applicant is also directed to take necessary steps for service upon the Respondents by both ways and also through available e-mail.

Put up this matter on 03.05.2023

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

March 14, 2023
Original Application No. 25/2023 (WZ)
P.Kr



Item No. 1

(Pune Bench)

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

(WITH HYBRID OPTION)

Original Application No. 25/2023 (WZ)
I. A. No. 110/2023(WZ) & I. A. No. 112/2023(WZ)

Dileep B. Nevatia

.....Applicant

Versus

Union of India & Ors.

....Respondent(s)

Date of hearing: 03.05.2023

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Applicant : Applicant in-person
Respondent(s) : Mr. Raghvendra Kulkarni h/f Mr. Rahul Garg, Advocate
for R-1/MoEF&CC
Mr. Aniruddha S. Kulkarni, Advocate for R-2/MCZMA
Mr. Prakash Shejal, Advocate for R-4/MCGM &
R-7/Chief Fire Officer
Mr. Saket Mone along-with Mr. Abhishek Salian,
Advocates for R-8 to 12/PP

ORDER

1. From the side of Applicant, Applicant in-person has appeared, who has filed service affidavit, as per which service of notice upon all the Respondents is found to be sufficient.

2. From the side of Respondent No. 1/MoEF&CC, learned Counsel Mr. Raghvendra Kulkarni holding brief of learned Counsel Mr. Rahul Garg has appeared, who submits that he would seek instruction from the Department and would be filing reply affidavit within a period of two weeks, the same is allowed.



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3. From the side of Respondent No. 2/Maharashtra Coastal Zone Management Authority (MCZMA), learned Counsel Mr. Aniruddha S. Kulkarni has appeared, who seeks two weeks' time to file reply affidavit and the same is allowed. He also apprised us that he has not received a copy of Original Application, although the Applicant has apprised us that the same has been served upon him but we cannot ascertain as to whether the copy has been provided or not, therefore, we direct the learned Counsel for the Respondent No. 2 to obtain a copy of Original Application directly from the Applicant.

4. The learned Counsel for the Respondent No. 2 has also pointed out that he has sent an e-mail dated 02.05.2023 to the Respondent No. 4/MCGM asking for a report in the matter in the light of grievances mentioned in the order of NGT. In this regard, the Applicant has pointed out that earlier on 07.10.2022, the Under Secretary, Environment Department had written a letter to the District Collector, Mumbai Suburban & Chairman, DCZMC and the Municipal Commissioner, MCGM, where-in a request was made to verify and take necessary action in the matter of violation of CRZ Notification in repair and reconstruction of building Pan Har Plot No. 5, Khar Abdul Gaffar Khan Road, Worli Sea Face, Mumbai and a request was made to take appropriate action after verification and send a factual report.

5. We are not concerned as to which information is being sought by the Respondent No. 2 from the Maharashtra Coastal Zone Management Authority (MCZMA), but as far as this matter is concerned, we want his reply as regards the relief prayed against him by the Applicant.

6. None has appeared from the side of Respondent No. 3/District Collector Mumbai Suburban despite sufficient service.



7. From the side of Respondent No. 4/MCGM and for Respondent No. 7/Chief Fire Officer, Mumbai fire brigade, learned Counsel Mr. Prakash Shejal has appeared, who prays that two weeks' time may be allowed to file reply affidavit and the same is allowed.

8. The Applicant has deleted the name of Respondent Nos. 5 & 6 because of that reason, the numbering of the said Respondents does not show their names.

9. From the side of Respondent Nos. 8 to 12, learned Counsel Mr. Saket Mone has appeared, who prays that two weeks' time may be allowed to file reply affidavit and the same is allowed.

10. The Applicant has also drawn our attention to two interim applications, which have been filed by him.

11. In I.A. No. 110/2023(WZ), prayer is made for a direction to be issued to Respondent Nos. 8 to 12 to desist from using for any purpose whatsoever the unauthorized construction and the areas of Pan Har (property in question); and further it is prayed that this Tribunal may appoint a Receiver in respect of the unauthorized construction and the areas at Pan Har property in question.

12. When we enquired from the Applicant as to whether a copy of this Interim Application has been served upon all other parties, he says that he has not served the same, therefore, we direct that a copy of the same shall be served upon all the Respondents within a week and reply against the same may be filed by the respective Respondents within a period of two weeks' thereafter,

13. In I.A. No. 112/2023(WZ), prayer is made for appointing an Architect to visit the property in question to ascertain unauthorized



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construction carried out by the Respondent Nos. 8 to 12; the representative of Applicant, the Respondent Nos. 1 to 4 & 7 along-with the Applicant's Architect or structural engineer and photographer may also be permitted to accompany Architect to be appointed by NGT for the purpose of inspection of the property in question; in case any resistance is found to be there from the side of Respondent Nos. 8 to 12 to prevent such inspection, police protection should also be allowed. We direct the Applicant to serve a copy of this I.A. also upon all the Respondents within a week, who may file reply affidavit in respect of this application as well within a period two weeks' thereafter.

14. In view of the prayers, which have been made by the Applicant, we deem it appropriate to constitute a Committee comprising one Member each of :-

- (i) The Maharashtra Coastal Zone Management Authority (MCZMA);
- (ii) The Municipal Corporation of Greater Mumbai (MCGM); and
- (iii) District Collector.

15. The Maharashtra Coastal Zone Management Authority (MCZMA) shall be the nodal agency for coordination and logistic support.

16. The Committee is directed to visit the site within a week after giving prior notice to the Applicant and all the concerned parties and submit a factual and action taken report with regard to the violation and if any action is taken thereon, within a period of one month.

17. The report in the matter be filed by the Committee by e-mail at ngt-pune@gov.in preferably in the form of searchable PDF/ OCR Support PDF and not in the form of Image PDF.



BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE
INTERLOCUTORY APPLICATION NO. OF 2023 (WZ)
IN
ORIGINAL APPLICATION NO. 25 OF 2023 (WZ)

Hari Krishna Exports Pvt.

Ltd. & Ors.

...Applicants

In the matter of:

Dileep Nevatia

...Original Applicant

Versus

Union of India & Ors.

...Respondents

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Sr.No	Exhibit	Particulars	Pg. No.
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Soni

Advocates for Applicants/ Orig.
Respondent No. 8 to 12

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BEFORE THE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH, PUNE

INTERLOCUTORY APPLICATION NO. OF 2023 (WZ)

IN

ORIGINAL APPLICATION NO. 25 OF 2023 (WZ)

1. Hari Krishna Exports Pvt. Ltd.
Through its Managing Director
Unit No. 1701, "The Capital"
17th Floor, B Wing, Plot No. C-70,
Bandra Kurla Complex, Bandra East,
Mumbai 400 051.
2. Hasmukh Thakarshi Dholakia,
Director, Hari Kirshna Exports Pvt.
Ltd., Having his Office at Unit No.
1701, "The Capital" 17th Floor, B
Wing, Plot No. C-70, Bandra Kurla
Complex, Bandra East, Mumbai 400
051. And Residing at Aikyam
(formerly known as Pan Har) 5, Worli
Sea Face, Mumbai 400 030
Phone: 022 4300 4300, Email:
info@hk.co
3. Ghanshyam Dhanji Dholakia,
Director, Hari Kirshna Exports Pvt.
Ltd., Having his Office at Unit No.
1701, "The Capital" 17th Floor, B
Wing, Plot No. C-70, Bandra Kurla



Complex, Bandra East, Mumbai 400
051. And Residing at Aikyam
(formerly known as Pan Har) 5,
Worli Sea Face, Mumbai 400 030
Phone: 022 4300 4300, Email:
info@hk.co

4. Savji Dhanji Dholakia,

Director, Hari Kirshna Exports Pvt.
Ltd. Having his Office at Unit No.
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Wing, Plot No. C-70, Bandra Kurla
Complex, Bandra East, Mumbai 400
051. And Residing at Aikyam
(formerly known as Pan Har) 5,
Worli Sea Face, Mumbai 400 030
Phone: 022 4300 4300, Email:
info@hk.co

5. Tulsi Dhanji Dholakia

Director, Hari Kirshna Exports Pvt.
Ltd. Having his Office at Unit No.
1701, "The Capital" 17th Floor, B
Wing, Plot No. C-70, Bandra Kurla
Complex, Bandra East, Mumbai 400
051. And Residing at Aikyam
(formerly known as Pan Har) 5,
Worli Sea Face, Mumbai 400 030



...Applicants/

Orig. Respondent No. 8 to 12

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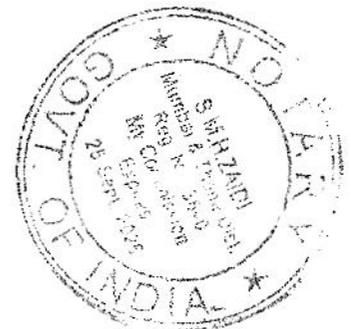
IN THE MATTER OF:

Dileep Nevatia, Shashi Deep,
5-1, Worli Sea Face, Mumbai –
400030, Mobile: 9892118864,
Email: dileep49@hotmail.com

... Original Applicant

Versus

1. Union of India, Through the Secretary, Ministry of Environment, Forest and Climate Change, Indira Paryavaran Bhawan, Ali Ganj, Jorbagh Road, New Delhi – 110 003, Phone: 011 24695262, Email: secy-moef@nic.in
2. Maharashtra Coastal Zone Management Authority, Through its Member Secretary, Environment Department, Mantralaya, Mumbai – 400 032, Phone: 022 22029388, Email: dir1.mev-mh@nic.in
3. District Collector Mumbai Suburban & Chairman District Coastal Zone Monitoring Committee 10th Floor, Administrative Building, Near

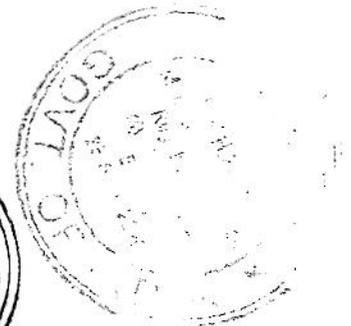


Chetna College, Governmetn
Colony, Bandra East, Mumbai – 400
051 Phone: 022 69403333/ 022
69403300
Email: [collector.mumbaisuburban@
maharashtra.gov.in](mailto:collector.mumbaisuburban@maharashtra.gov.in)

4. Municipal Corporation of Greater
Mumbai Through its Municipal
Commissioner, Municipal Head
Office, Mahapalika Marg, Mumbai –
400 001, Phone: 022 22620525,
Email: mc@mCGM.gov.in

5. Santosh Dhonde
Assistant Municipal Commissioner,
G/ South Ward, Brihanmumbai
Municipal Corporation, N. M. Joshi
Marg, Mumbai – 400 013
Mobile: 887 9335291, Email:
ac.gs@mCGM.gov.in

6. Rajesh Chauhan, Designated
Officer (Buildings & Factories),
G/South Ward, Brihanmumbai
Municipal Corporation, N. M. Joshi
Marg, Mumbai – 400 013
Mobile: 9850621889, Email:
ae01bf.gs@mCGM.gov.in



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7. Chief Fire Officer, Mumbai Fire Brigade, Office of the Chief Fire Officer, Regional Command Centre-1, Bapurao Jagtap Marg, Byculla (West), Mumbai – 400 008, Mobile: 23001393

Email:cfo.mfb@mcbgm.gov.in

8. Hari Krishna Exports Pvt. Ltd.

Through its Managing Director

Unit No. 1701, "The Capital"

17th Floor, B Wing, Plot No. C-70,

Bandra Kurla Complex, Bandra East,

Mumbai 400 051.

9. Hasmukh Thakarshi Dholakia,

Director, Hari Kirshna Exports Pvt.

Ltd. Having his Office at Unit No.

1701, "The Capital" 17th Floor, B

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Sea Face, Mumbai 400 030
Phone: 022 4300 4300, Email:
info@hk.co

12. Tulsi Dhanji Dholakia

Director, Hari Kirshna Exports Pvt.
Ltd. Having his Office at Unit No.
1701, "The Capital" 17th Floor, B



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Wing, Plot No. C-70, Bandra Kurla
Complex, Bandra East, Mumbai 400
051. And Residing at Aikyam
(formerly known as Pan Har) 5, Worli
Sea Face, Mumbai 400 030

...Respondents

APPLICATION FOR DISMISSAL OF
THE CAPTIONED ORIGINAL
APPLICATION ON BEHALF OF
RESPONDENT NOS. 8 TO 12 ON THE
GROUND OF MAINTAINABILITY:

The Applicants/ Original Respondent Nos. 8 to 12 most respectfully
submit as under:

- 1) The Respondent No. 8 is a private limited Company registered under the provisions of the Companies Act, 1956 and is engaged in the business of exporting and manufacturing diamonds and diamond jewellery and the Respondent Nos. 9 to 12 are the directors of the Respondent No. 8. The property being Aikyam (formerly known as Pan Har), 5, Worli Sea Face, Mumbai 400 030 ("**subject property**") is used for residential purposes. The Original Applicant has filed the



captioned Original Application alleging various violations with respect to the subject property.

2) The Respondent Nos. 8 to 12 are in receipt of the captioned original Application and have carefully perused the grounds and contentions raised in the Memo of the Original Application, which has been filed invoking original jurisdiction of this Hon'ble Court under Section 15 and 18 of National Green Tribunal Act, 2010 ("NGT Act").

3) The Respondent Nos. 8 to 12 state that on a bare perusal of the captioned Original Application, as filed, it is abundantly clear that the same is not maintainable as per the extant law and deserves to be dismissed at the threshold without getting into the merits, by this Hon'ble Tribunal on the following grounds:

- i. Res Judicata/ Issue Estoppel/ Principle Analogous;
- ii. Suppression of Material Facts;
- iii. Violations of DCR and MRTP Act not in the purview of NGT.



4) The Respondent Nos. 8 to 12 submit that the aforesaid grounds of maintainability are being raised without prejudice to the fact that even on merits, the original application has failed to make out a prima



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facie case against the Respondent Nos. 8 to 12 with respect to the subject property.

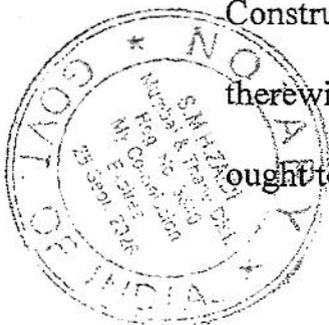
RES JUDICATA/ CONSTRUCTIVE RES JUDICATA/ ISSUE ESTOPPEL/ PRINCIPLE ANALOGOUS:

- 5) The Original Applicant has filed several litigations raising almost identical issues as the present original application with respect to the subject property. The Original Applicant first filed a Suit before the Hon'ble Bombay High Court being Suit No. 5111 of 1994 against the original owner of the subject property Arkay Holdings Pvt. Ltd. wherein issues which are raised in the present proceeding qua CRZ Notification, DCR, Environment (Protection) Act, 1986 with respect to the subject property were raised. Vide a detailed Judgment and Order dated 05.12.2019, the Suit No. 5111 of 1994 was disposed off. The original applicant, thereafter, filed an Appeal against the Judgment and Order dated 05.12.2019 being Appeal No. 49 of 2020 in Suit No. 5111 of 1994 along with Interim Application No. 2110 of 2020 in the said Appeal. On 10th June, 2022, the Appeal No. 49 of 2020 was unconditionally withdrawn by the original applicant after coming to a settlement with the present owners of the subject property, i.e., the Respondent Nos. 8 to 12. Hence, the issues with respect to allegations qua violation of provisions of DCR, CRZ



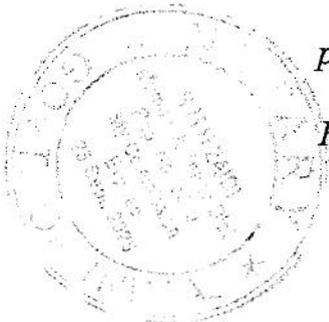
Notification and Environment (Protection) Act, 1986 has attained finality. Hereto annexed and marked as "Exhibit-A" is copy of the Judgment dated 05.12.2019 in Suit No. 5111 of 1994. The Respondent Nos. 8 to 12 crave leave to produce and rely upon the papers and proceedings of Suit No. 5111 of 1994 and Appeal No. 49 of 2020 as and when produced.

- 6) It is trite law that once a matter has been determined in a former proceeding or ought to have been pressed into consideration by a party, it is not open to the party to reagitate a matter again. If the same issues have to be re-examined by this Hon'ble Tribunal, it would simply be an abuse of the process of this Hon'ble Tribunal and the same should not be allowed.
- 7) The Respondent Nos. 8 to 12 state that the original applicant is estopped from filing a fresh Petition on the same grounds before another forum as these issues have been agitated by the original applicant before the Hon'ble Bombay High Court. Thus, the present Original Application would be hit by the principles of Res Judicata, Constructive Res Judicata, Issue Estoppel and principles analogous therewith and would accordingly not be maintainable and hence ought to be dismissed.



SUPPRESSION OF MATERIAL FACTS:

- 8) It is settled law that a person who approaches the Court for granting relief is under an obligation to disclose all material and important facts which have a clear bearing on the issues raised in the matter. And if a person approaches the Court with unclean hands, they must be dealt with iron hands.
- 9) The Respondent No. 8 to 12 state that the Original Applicant has failed to place on record vital and material facts and documents before this Hon'ble Tribunal that clearly demonstrate that the captioned application ought to be dismissed in limine.
- 10) Respondent Nos. 8 to 12 state that the Original Applicant has selectively disclosed facts which also amounts to suppression of material facts. The Original Applicant has cleverly only mentioned in Para 18 at Page 20 of the captioned original application that "*the Applicant had earlier filed a Suit No. 5111 of 1994 in Hon'ble Bombay High Court against the construction on the Pan Har property for various violations...*" and averred at Para 20, Page 20 that "*..by Final Order dated 5.12.2019 the Hon'ble High Court was pleased to dispose off Suit No. 5111 of 1994 by holding that the Pan Har construction has been made in accordance to the approved*



plans....thereafter, the Applicant assailed the said Order dated 5.12.2019 by an Appeal before the Division Bench of the Hon'ble Court being Appeal No. 49 of 2020." The Original Applicant has only perfunctorily averred in the original application that he had filed Suit No. 5111 of 1994 and an Appeal No. 49 of 2020 without disclosing that identical issues were raised therein. The Original Applicant has not annexed the pleadings of Suit No. 5111 of 1994 or the Appeal No. 49 of 2020 or the Final Order dated 5.12.2019 for reasons best known to the original applicant.

- 11) The original applicant has also cleverly averred in Para 68 at Page 37 of the captioned application that "*in the interest of future relationship as a good neighbour, the Applicant proceeded to withdraw the High Court Appeal No. 49 of 2020..*" without disclosing the fact that the original applicant withdrew the Appeal No. 49 of 2020 after settling the issues with the Respondent Nos. 8 to 12 and accepting an amount of Rs. 1,25,00,000/- (Rupees One Crore Twenty Lakhs) as compensation/ damage for fully and irrevocably resolving and settling the disputes pertaining to the subject property. On 16th November, 2021, Respondent No. 8 through its Director addressed a letter to the original applicant bringing these facts on record alongwith a Banker's Cheque No. 830777 dated 16.11.2021 drawn



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02

in favour of the Original Applicant for a sum of Rs. 1,25,00,000/- as compensation/ damages for withdrawing the Appeal No. 49 of 2020 and Interim Application No. 2110 of 2020. The said letter has been duly acknowledged by the original applicant. Hereto annexed and marked as "**Exhibit-B**" is a copy of the letter dated 16th November, 2021 alongwith Banker's Cheque No. 830777 dated 16.11.2021.

- 12) The Respondent Nos. 8 to 12 state that this act of the Original Applicant clearly makes the Original Applicant guilty of *suppressio veri* and *suggestio falsi*. The captioned original application is not a bonafide application and the original applicant is not a bonafide litigant. The Original Applicant has actively attempted to mislead this Hon'ble Tribunal and on this ground alone the present original application is liable to be dismissed.



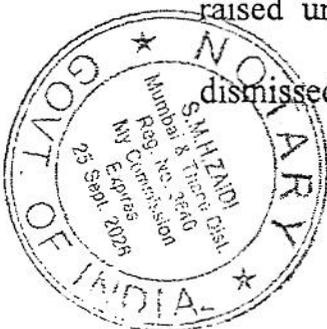
ALLEGATIONS QUA VIOLATIONS OF DCR AND MRTP ACT DO NOT COME UNDER THE PURVIEW OF NGT:

- 13) The Respondent Nos. 8 to 12 state that the Original Applicant has sought to raise allegations qua violations of the provisions of the Development Control Regulations ("DCR") and the Maharashtra Regional and Town Planning Act ("MRTP") and this Hon'ble Tribunal ought not to entertain them as it does not fall within the



ambit of this Hon'ble National Green Tribunal ("NGT"). It is a well settled principle of law that the Hon'ble NGT being a creation of the NGT Act, 2010, 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 allegations of contravention of the DCR or MRTP Act do not fall within the ambit of Schedule-I of the NGT Act, 2010. Therefore, this Hon'ble Tribunal ought not to entertain the Original Application as the Original Applicant ought to have approached an appropriate forum for dealing with the alleged issues as raised in the Original Application. On this ground alone, the Original Application ought to be dismissed.

- 14) Without prejudice to what is contended hereinabove, the Respondent Nos. 8 to 12 state that all the issues taken up in the captioned original application with respect to the DCR violations has been taken under DCR, 1991 which has been superseded by the Development Control and Promotional Regulations, 2034 ("DCPR 2034") for areas within Greater Mumbai. Therefore, the contentions raised under DCR 1991 by the Original Applicant ought to be dismissed as untenable in law.



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15) In these facts and circumstances, the Respondent Nos. 8 to 12

pray as follows:

- a) This Hon'ble Tribunal may be pleased to dismiss the Original Application No. 25 of 2023 filed by the Original Applicant;
- b) For costs;
- c) Any other reliefs as this Hon'ble Tribunal may deem it in the facts and circumstances of the present case.

Place: Mumbai.

Dated this day of June, 2023.

For Hari Krishna Exports Pvt. Ltd.

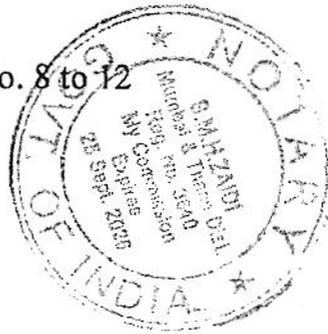


Director

Authorised Signatory of
Respondent No. 8 to 12



Advocates for Respondent No. 8 to 12



VERIFICATION

I, Ghanshyambhai Dholakia, being the Authorised Signatory of the Respondent No. 8 to 12 above named, do hereby state on solemn affirmation that whatever is stated in the para nos. 1 to 4 is true to my knowledge and whatever stated in remaining paras are the legal submissions and prayers, which are made on legal advice which I believe to be true.

Solemnly affirmed at Mumbai.)

this 15 day of June, 2023.)

Identified by me:

Before Me
For Hari Krishna Exports Pvt. Ltd.



Director
Authorised Signatory of
Respondent No. 8 to 12



Advocates for Respondent No. 8 to 12

BEFORE ME

S. M. H. ZAIDI
NOTARY
Government of India
Mumbai & Thane Dist.

15 JUN 2023

NOTED & REGISTERED
Sr. No. 186 Page No. 119
Book No. 22 Date 15 JUN 2023

15 JUN 2023

TRUE COPY
Adv for Petition



MUNICIPAL CORPORATION OF GREATER MUMBAI

G/S ward Office Bldg., N.M.Joshi Marg, Elphinstone, Mumbai-400 018

NOTICE UNDER SECTION 53 (1) r/w SECTION 52 (1) (b) and (d) OF THE MAHARASHTRA REGIONAL AND TOWN PLANNING ACT, 1966 (One Month Notice)

S.A.C. No.: GS1103360150000

Notice No.: GS/DO1GS/196/53-1-MRTP ACT/GS56N01/24-05-2023 Date: 24/05/2023

Ref No.: 168015

To,

Owner / Occupier,

✓ Shri. Ghanshyam Dholakia,

Aikyam Building (Formerly known as Panhar),

Plot no. 5,

Worli Sea Face,

Khan Abdul Gaffar Khan Road,

Worli Mumbai – 400 030

Sir/Madam,

Whereas the undersigned has been appointed as the Designated Officer under section 53(8) of Maharashtra Regional and Town Planning Act, 1966 (herein after for the brevity sake referred as the said Act) to exercise the powers of Planning Authority under Section 53,54,55 and 56 of the said Act.

AND whereas it has been reported to me that, you have commenced, undertaken or carried out development or instituted or changed the use of land/premises as described in schedule appended below:-

1. Which is not in accordance with the permission granted or in contravention of any condition subject to which such permission has been granted.

2. In contravention of the permission which was duly modified.

You are, therefore, hereby called upon:

To reinstate/restore/remove the unauthorized development/changes in the land/premises situated at Aikyam Building (Formerly known as Panhar), Plot no. 5, Worli Sea Face, Khan Abdul Gaffar Khan Road, Worli, Mumbai – 400 030 (C. S. No. 730 of Worli Division) as per the permission granted / sanctioned plan bearing no EEBPC/3294/GS/A DT: 27.09.2001 from Basement to Sixth Floor (i.e. Entire Building)

Apply under section 44 of M.R.T.P. Act for retention of the work before the Competent Authority i.e. Executive Engineer (Building Proposal) Department of M.C.G.M. within one month from receipt of this notice.



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OR

Please note that on failure to comply with the aforesaid requisition, the unauthorized work mentioned in schedule below will be demolished by MCGM at your risk and cost and you will also be liable for prosecution under the said Act and the aforesaid requisition will be carried out at your risk and cost.

SCHEDULE

(Description of the unauthorized development together with the particular of land)

Site inspected on Dt: 08.05.2023 in consonance with Building Completion plans under Proposal no. EEBPC/3294/GS/A DT: 27.09.2001

Basement Floor.

1. RCC Staircase on North-East side of building is demolished and the space is created into a room.
2. Addition and alterations in Parking space no 9 & 10 & converted into a room adm 4.98m x 3.36m by constructing BM walls.
3. Addition and alterations in Parking space no 15 & 16 & converted into a room adm 5.9m x 2.9m, 2.35m x 2.7m, 3.0m x 2.35m by constructing BM walls.
4. Construction of room adm 4.60m x 4.0m & 4.2m x 2.59m (toilet block) with BM walls in the open space/ drive way between parking slot no 9/10 & 15/16.

Ground Floor.

1. RCC Staircase (From ground floor to basement) on North-East side of building is demolished and the space is created into a room.
2. Driveway to ground floor is closed by erecting glass panels on both entry and exit on north and south side of building.
3. Two ducts on left and right side of lifts are converted into store room by constructing BM walls and carrying out addition and alterations.
4. Parking slot no 5, 6 & 7 on the west side of building are converted into a hall.
5. Unauthorized construction of pantry adm 4m x 2m by constructing BM walls in place of servants toilet beside parking slot no 5 on south-west of building.
6. Demolition of existing oval shaped RCC structure of canopy, water body / paddle pool and garden on the front side (seaside) of the building and construction of a rectangular shaped regular RCC flat slab with no any water body/ paddle pool.
7. Service lift at ground floor beside staircase is extended upto basement.
8. Unauthorized encroachment into the parking slot no 8, by creation of door entry into the building by demolishing the peripheral wall of building.

First Floor

Addition and alteration in flat no 1 on west side of building and converted existing bedroom, living room it into a gymnasium. Construction of swimming pool admeasuring 7.75m x 4.7m in the existing bedroom and toilet area of flat no 1.



Third Floor

Addition, alterations in existing flat no 1 & 2 at third floor by demolishing all internal BM partition walls and constructing walls at new locations as per the sketch.

Fourth Floor

Addition, alterations in existing flat no 1 & 2 at fourth floor by demolishing all internal BM partition walls and constructing walls at new locations as per the sketch.

Fifth Floor

1. Demolition of existing RCC ceiling slab above flat no 1 on fifth floor and demolition of all existing internal BM partition walls and converting it into a single big hall with height of two floors.
2. Demolition of all existing internal BM partition walls in flat no 2 at east side and converting it into a Pooja room, kitchen and dining hall.

Sixth Floor

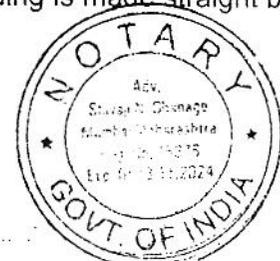
1. Demolition of all existing internal BM partition walls of flat no 3 & 4 at east side and converting it into one single room for play area & other room for indoor theatre.
2. Demolition of existing RCC floor slab & all existing internal BM partition walls of flat no 1 & 2 on sixth floor and converting it into a single big hall of double floor height including flat no 1 & 2 at fifth floor.

Terrace Floor

1. Construction of room (bedroom) admeasuring 8.9m x 5.25m, toilet adm 4.7m x 5.40m, room adm 3.8m x 3.99m, room adm 2.25m x 3.8m, room adm 1.90m x 5.36m on east side on open terrace above sixth floor.
2. Construction of room (lounge) admeasuring 6.39m x 11.0m, toilet adm 4.41m x 5.44m, shower room adm 3.95m x 1.76m, wardrobe room adm 5.51m x 3.9m on west side on open terrace above sixth floor.
3. Unauthorized casting of slab above Pergola beams on west side of terrace and creating a seating space.
4. Unauthorized construction of RCC slab for roofing on terrace above sixth floor and using the same as seventh floor.

General Observations

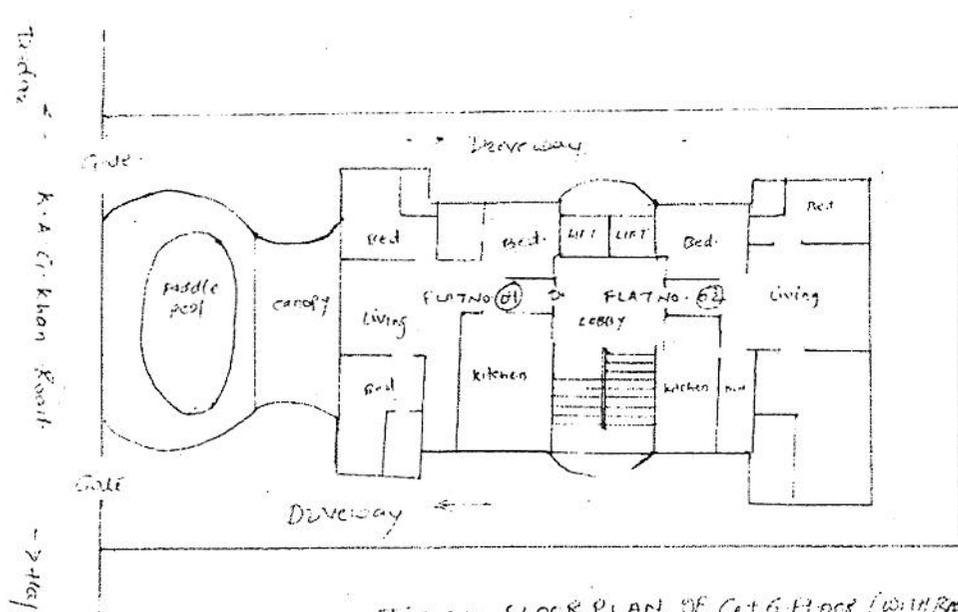
1. Unauthorized encroachment over the existing RCC chhajja on the periphery of the building on all floors from ground floor to sixth floor and merging it into the internal floor area/ carpet area of the building.
2. Unauthorized erection of glass façade on the periphery of the building from ground floor to existing terrace of the building.
3. The curved portion on the east and west side of the periphery of the building is made straight by erecting glass façade.



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SKETCH

Note: Sketch is not to scale



TYPICAL FLOOR PLAN OF G+6 FLOOR (WITH BATTERY)

Plot No. 57 PANTHR BUILDING (AIKYM BLDG), KHAN ABAD
GAFFAR KHAN ROAD, WORLI, MUMBAI.

Date: 24/05/2023

Signature: *[Signature]*
 Name: Rajesh K. Chavan
 Designated Officer-Ward G/South



Received
 25-05-2023
[Signature]

TRUE COPY
 Adv *[Signature]* for Petitioners

3 Dimensional
CONSULTANTS LLP

1) To,
Asstt. Engineer (Building & Factory) G/S Ward,
Municipal Office, N.M.Joshi Marg,
Lower Parel, Mumbai 400013.

2) To,
EE(BP) City , G/S Ward,
Bhagwan Walmiki Chowk,
Vidyalankar Marg, Opp. Hanuman Temple,
Wadala (East), Mumbai: 400 037.

बृहन्मुंबई महानगरपालिका
सहायक आयुक्त (अ.स.प.)
Date: 26/05/2023.
31 MAY 2023
वेळ ११, १२, १३, १४, १६, १७, १८,
क्र. ३३/

E/469438/2023/G/S/WORLI

Sub:- Proposed Addition & Alteration of existing building on Plot Bering CTS No. 730, Village Worli, Division at Khan Abdul Gaffar Khan Road, Worli Mumbai - 400 018. G/south Ward.

Ref: 1) Notice under 53(1) of MRTP act u/no:-GS/DO1GS/196/53-1-MRTP A/GS56N01/24-05-2023 dated 24/05/2023
2) BMC File No. P-16330/2023/(730)/G/South/WORLI
3) BMC payment Receipt No. : 18/4/2023/003335 dated. 18.04.2023.
4) MCZMA letter u/no. OA 2023/CR 8/TC-4 dated 25.04.2023.

Sir,

This is with reference to the Notice received by the owner Shri Ghansyam Dholakiya Notice under 53(1) of MRTP act u/no:-GS/DO1GS/196/53-1-MRTP A/GS56N01/24- 05-2023 dated 24/05/2023.

We have been appointed as Licenced Surveyor by the Owner of the building Shri. Ghanshyambhai Dholakia Managing Director of M/s Hari Krishna Exports Pvt Ltd for regularization of the work carried out beyond approval on land bearing CS no 730 of Worli division who has appointed us to represent the case on their behalf to MCGM. Please find enclosed Copy of the appointment letter appointing us as Licensed Surveyor.

We have already started the process of regularization of the said work carried out beyond approval. The work so carried out is of approvable nature as per the regulations of DCPR 2034 by obtaining the approvals of the competent authorities.

We have submitted the proposal on behalf of the owners, online and have also paid the necessary mandatory scrutiny fees (copy of fee receipt is enclosed herewith for your reference).

Thus we hereby state that we have submitted the proposal as per the section 53(3) of MRTP act to regularize the work carried out beyond approval within 30 days from the receipt of the said notice.

You are hereby requested not to take any action, till the final outcome of the proposal submitted to the Building proposal department online under file no P-16330/2023/(730)/G/South/WORLI, who has been requested separately to obtain the necessary sanction of the competent authority in the said building file.

Thanking You,
Yours Faithfully,
M/s. 3 Dimensional Consultants LLP

Jinish
Narendra Soni

Shri Jinish Soni
Licenses Surveyor
S/588/LS

Digitally signed by
Jinish Narendra Soni
Date: 2023.05.29
16:38:40 +05'30'



Date: 26/05/2023.

1) To,
Asstt. Engineer (Building & Factory) G/S Ward,
Municipal Office, N.M.Joshi Marg,
Lower Parel, Mumbai 400013.

2) To
EE(BP) City , G/S Ward,
Bhagwan Walmiki Chowk,
Vidyalankar Marg, Opp. Hanuman Temple,
Wadala (East), Mumbai: 400 037.



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Thanking You,
Yours Faithfully,
M/s. 3 Dimensional Consultants LLP

Jinish
Narendra Soni
Digitally signed by
Jinish Narendra Soni
Date: 2023.05.29
16:38:40 +05'30'

Shri Jinish Soni
Licenses Surveyor
S/588/LS



525

Close

Application Details

File No. : P-16330/2023/(730)/G/South/WORLI

SAC No. : NA,

Title/Subject : Proposed Addition & Alteration of existing Residential building on plot bearing CS No. 730 of Village Worli, Division at Khan Abdul Gaffar Khan Road, Worli (Mumbai), 400 018, G/South Ward.

Zone Name : City Ward Name : G/South

Plot No. : 730 CS No./ CTS No. : 730

Road/Street Name : Khan Abdul Guffar Khan Road TP Scheme : 0

Division / Village : 2045 Gut No. :

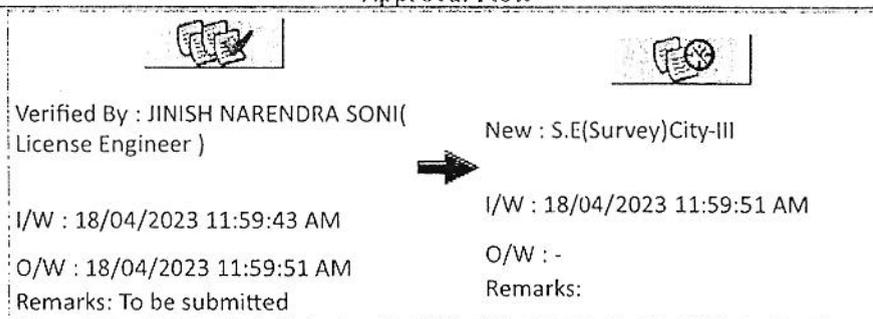
CTS No. : 730

Architect/LE/SE Name : JINISH NARENDRA SONI Inward Date : 7/4/2023

Notice Letter No. : 342/1172/23

Structural Engineer : Hiten R Mahimtura

Approval Flow





Transaction Status
 Payment Received

Receipt Number	: 18/4/2023/003335	Receipt Date	: 18-Apr-23
Reference Number (Challan Number)	: CHE/BP/108355/23	File Number	: P-16330/2023/(730)/G/South/WORLI
Transaction Number	: YHMP1846735890		
Received From	: Shri Ghanshyambhai Dholakia Managing Director of M/s. Hari Krishna Exports Pvt. Ltd.	Architect / L.S. Name	: JINISH NARENDRA SONI
Received Address	: Plot Bearing CS No. 730 of Village Worli, Khan Abdul Gaffar Khan Road, Worli Mumbai- 400018		
Address	: MCGM	GST Number	: 27AAALM0042L3Z4
State Name	: MAHARASHTRA	UIN Number	: ———
State Code	: 27	Place of Supply	: Mumbai, Maharashtra
PAN Number	: ———	Registered	: No

Sr. No.	Activity	Description	Net Amount (INR)	CGST	SGST	IGST	Gross Value (INR)	Mode of payment	Transaction Details
1	CHE/BP/108355/23	Payment against challan generated	9,032.00				9,032.00	Online	Transaction No.- YHMP1846735890 Date - 18-04-2023 Bank -

Amount in Words : Rupees Nine Thousand Thirty Two Only

Note- This is System generated receipt ,does not require signature

TRUE COPY
 Adv for Reference

527

EXHIBIT - J
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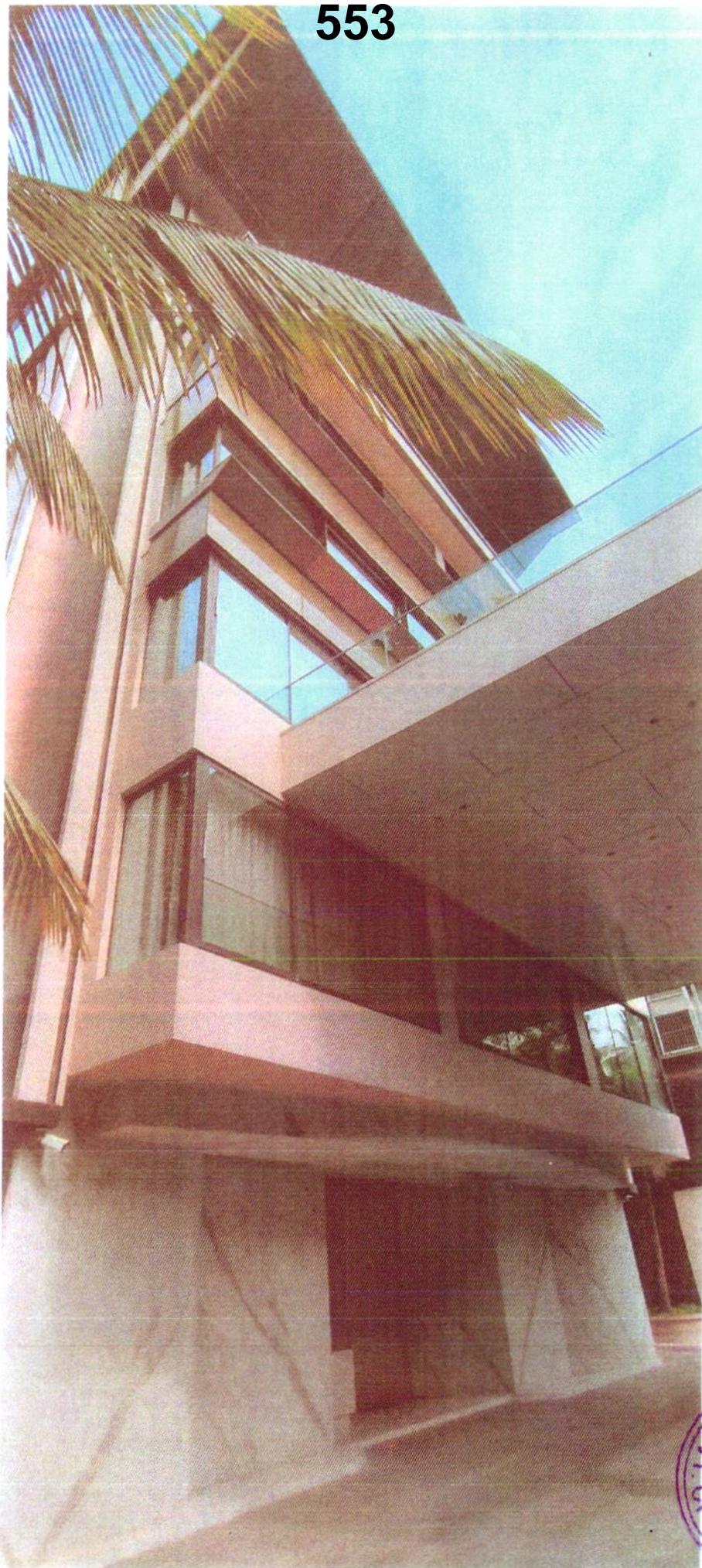
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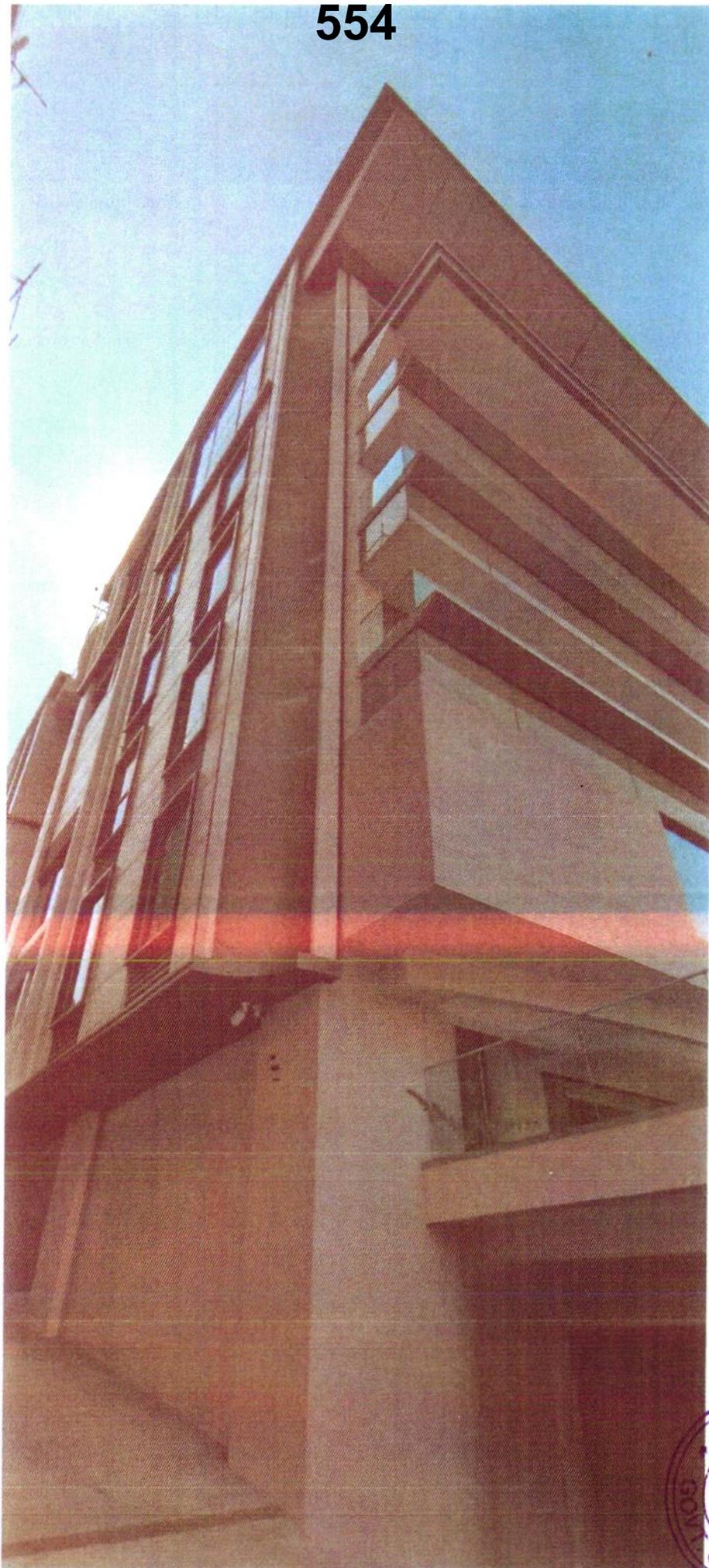
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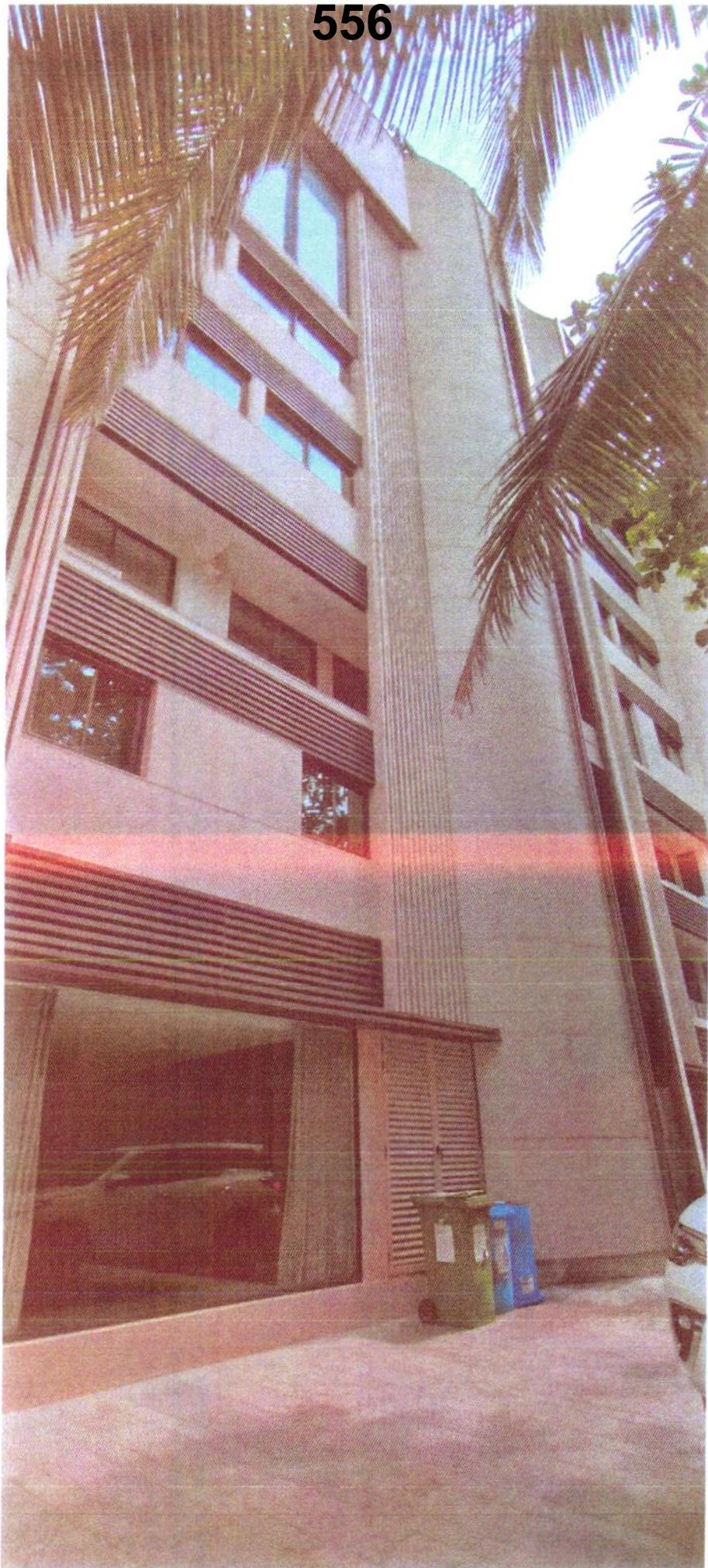
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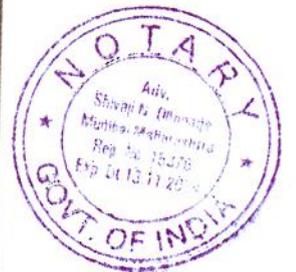
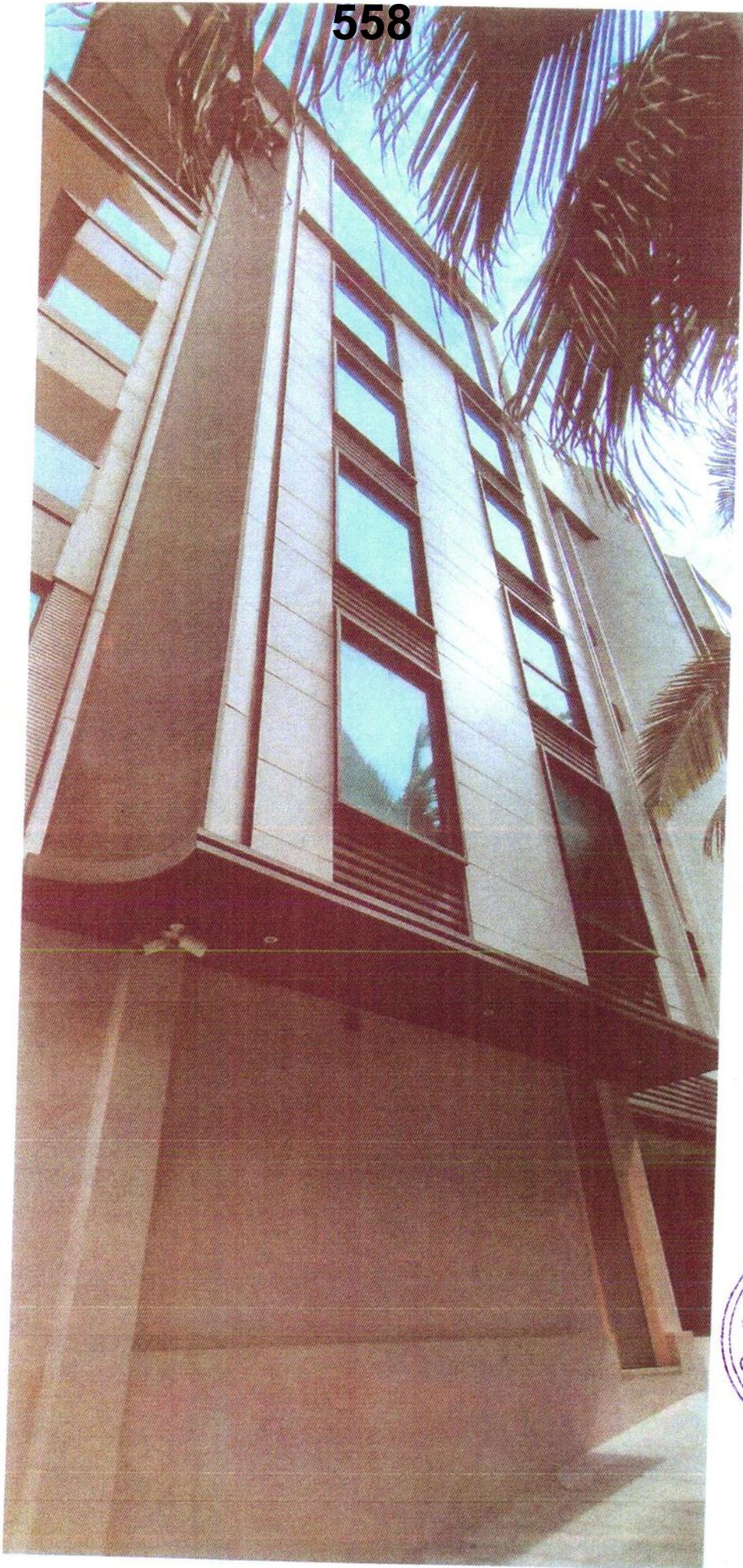
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TRUE COPY
OF
Adv. for Petition

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. OF 2023

Hari Krishna Exports Private Ltd. & Anr. ... Petitioners

Versus

Municipal Corporation of Greater Mumbai
& Ors. ... Respondents

ADVOCATE'S CERTIFICATE

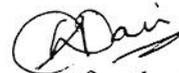
To

The Prothonotary & Senior Master/ Registrar (OS)
Bombay High Court,
Mumbai – 400 001

Dear Sir / Madam,

We do hereby certify and state that the present petition is filed under Rule 636(1)(b) of the High Court Original Side Rule and same pertains to the Division Bench of this Hon'ble Court and same be placed before the Hon'ble Division Bench.

Dated this ___ day of July 2023



Advocate for the Petitioners

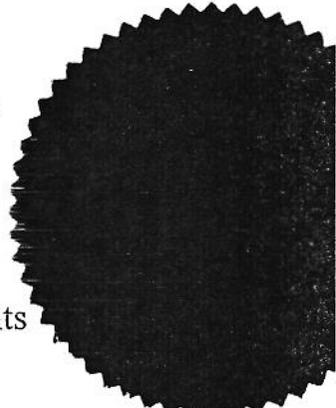


IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. OF 2023

Hari Krishna Exports Pvt. Ltd. & Ors. ... Petitioners

Versus

Municipal Corporation of Greater Mumbai
& Ors ... Respondents



AFFIDAVIT IN SUPPORT

I, Ghanshyam Dholakia, Petitioner No. 2, having residence at Aikyam (Formerly known as Panhar), Plot No. 5, Worli Sea Face, Mumbai 400 030, do hereby state on solemn affirmation as under:

1. I say that the Petitioners have filed the present Petition seeking reliefs as are more particularly set out therein. I am filing this affidavit in support of the writ petition.

2. I repeat, reiterate and confirm what has been stated in the memo of the petition and the same may be treated as part and parcel of the present affidavit.

3. I say that I have a good case on merits and pray that the relief/s as prayed in the petition may kindly be granted in my favour.

Solemnly affirmed at Mumbai]

This ___ day of June 2023 BEFORE ME

[Signature]
Petitioner No. 2

[Signature]
Advocate for the Petitioners
Adv. Shivaji. N. Dhanagare
Notary Govt Of Ind.
Regd. No. 15376 MUMBAI (MS)
405, 4th Floor, DAVAR HOUSE,
197/199, Near Central Camera Bldg,
D N Road Fort, Mumbai - 400001

04 JUL 2023

BEFORE ME & REGISTERED

Page No. 196 Sr. No. 611

Dated 04 JUL 2023



IN THE HIGH COURT OF
JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL
JURISDICTION
WRIT PETITION NO. OF 2023

Hari Krishna Exports Private Ltd.
& Anr. ... Petitioners
Versus

Municipal Corporation of Greater Mumbai
& Ors. ... Respondents

AFFIDAVIT IN SUPPORT

Dated this 4th day of July 2023



Vidhi Partners,
Advocates for Petitioners
2nd Floor, Darabshaw House,
Shoorji Vallabhdas Marg,
Ballard Estate, Mumbai – 400 001.



CERTIFIED TRUE COPY OF THE RESOLUTION PASSED BY THE BOARD OF DIRECTORS OF HARI KRISHNA EXPORTS PVT. LTD. IN ITS MEETING HELD ON TUESDAY, 13TH JUNE 2023 AT THE REGISTERED OFFICE OF THE COMPANY AT UNIT NO. 1701, 17TH FLOOR, THE CAPITAL, B-WING, BANDRA KURLA COMPLEX, BANDRA (EAST), MUMBAI- 400051.

“RESOLVED THAT the consent of the Board of Directors of the Company be and is hereby accorded to authorize Mr.Ghanshyambhai Dholakia (DIN 01474986), Managing Director, of the Company to represent the Company in legal proceedings of Write Petiion initiated before the Hon’ble High Court of Bombay for the property Aikyam (Formerly known as Panhar), Plot No. 5, Worli Sea Face, Mumbai 400 030.”

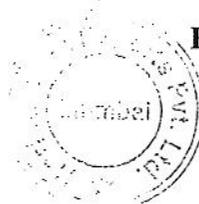
“RESOLVED FURTHER THAT Mr.Ghanshyambhai Dholakia (DIN 01474986), Managing Director, of the Company, be and is hereby severally authorised to file and/or to defend the Company Petition under the applicable law before the competent Court, Tribunal, Authorities or Forums including any Appellate Tribunal/ Hon’ble High Courts/ any other courts for and on behalf of the Company as and when required to give effect to the above resolution.”

“RESOLVED FURTHER THAT Mr.Ghanshyambhai Dholakia (DIN 01474986), Managing Director, of the Company, be and is hereby severally authorised to engage any Advocate/Solicitors/Consultants and to submit Vakalatnama, statements, documents, evidences, declarations, etc. before the appropriate Authorities/Court on behalf of the Company as and when required and to enter into compromise, settlement of case they may consider appropriate in the interest of the Company.”

“RESOLVED FURTHER THAT Mr.Ghanshyambhai Dholakia (DIN 01474986), Managing Director, of the Company, be and is hereby severally empowered from time to time to delegate the authority conferred on him in favour of any other officials of the Company or other persons (representatives) as he may deem fit in the best interests of the Company and such delegation may be made by them from time to time through a authority letter or by any other means.”

Date: 13th June 2023
Place: Mumbai

For Hari Krishna Exports Pvt. Ltd.



Handwritten signature of Mr. Hasmukhbhai Dholakiya
Mr.Hasmukhbhai Dholakiya
DIN No. 01474973



Hari Krishna Exports Pvt. Ltd.

B-1701, The Capital, Bandra Kurla Complex, Bandra (East), Mumbai - 400 051.

T: +91 22 4300 4300 | F: +91 22 4300 4201 | info@hk.co | CIN: U36912MH2012PTC227014

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IN THE HIGH COURT OF
JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL
JURISDICTION
WRIT PETITION NO. OF 2023

Hari Krishna Exports Private Ltd.
& Anr. ... Petitioners
Versus

Municipal Corporation of Greater Mumbai
& Ors. ... Respondents

WRIT PETITION

Dated this 4 day of July 2023



MAHLF 372/22
Vidhii Partners,
Advocates for Petitioners
2nd Floor, Darabshaw House,
Shoorji Vallabhdas Marg,
Ballard Estate, Mumbai – 400 001.



IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) No. 18045 OF 2023

Hari Krishna Exports Private
Limited, thr. ITXS Director

...Petitioner

Vs.

Municipal Corporation of
Greater Mumbai
thr. Its Commissioner

...Respondent

Dr. Milind Sathe, Senior Counsel a/w. Mr. Saket Mone a/w. Anchita Nair i/b. Vidhii Partners for Petitioner

CORAM : SUNIL B. SHUKRE &
RAJESH S. PATIL, JJ.

DATED : 11th JULY, 2023

P.C.:

1. Heard learned counsel for the Petitioner , learned counsel for the Corporation and also learned counsel for Respondent No.5, who appear by giving notice on behalf of the respective respondents.

2. Rule. Rule is made returnable forthwith for final disposal by consent of parties.

3. In response to the impugned show cause notice, the Petitioner has already filed regularization application under Section 53(1) of the MRTP Act. This application is of the date of 31st May, 2023. So it

is quite clear that till the time the application is decided by the Corporation, Corporation is not expected to act upon the impugned show cause notice. It is also clear that an appropriate decision in accordance with law on the regularization application would have to be taken by the Corporation at the earliest.

4. That being so, we are of the view that purpose of this petition would stand served by issuing the following directions:

(i) Respondent No.4 is directed to decide the regularization application dated 26th May, 2023 filed by the Petitioner, which was received by the Commissioner on 31st May, 2023 at the earliest, in accordance with law by giving opportunity of hearing to the Petitioner.

(ii) We direct that, if felt necessary by the Petitioner, the Petitioner shall be permitted to file additional documents, if any.

(iii) We further direct that the final order that would be passed by Respondent No.4 in pursuance of these directions shall be communicated in writing to the Petitioner.

(iv) We further direct that till the time decision is taken on the regularization application of the petitioner, no coercive action shall be taken against the Petitioner in pursuance of the impugned show cause notice.

(v) We further direct that in case the final decision to be rendered

by Respondent No.4 goes against the Petitioner, no coercive action shall be taken against the Petitioner for a further period of two weeks from the date of receipt of the communication of such an order by the Petitioner.

(vi) Writ petition is allowed accordingly. Rule is made absolute in the above terms.

(RAJESH S. PATIL, J.)

(SUNIL B. SHUKRE, J.)