

BEFORE THE NATIONAL GREEN TRIBUNAL
EASTERN ZONAL BENCH, KOLKATA, WEST BENGAL
FINANCE CENTRE, 3RD FLOOR, NEW TOWN

MEMORANDUM OF APPLICATION

Original Application No. 108 of 2020

IN THE MATTER OF:

Ankur Sharma

...Applicant

-versus-

State of West Bengal & Ors.

...Respondents

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Date: 08.02.2022

Place: Kolkata

Advocate:



08 FEB 2022

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COUNTER AFFIDAVIT ON BEHALF OF HERITAGE REGENCY

DEVELOPERS LLP, THE RESPONDENT NO. 10

I, Subhas Kumar Goenka, son of Late Narayan Prasad Goenka, aged about 60 years, by faith Hindu by occupation Service, working for gain at 3A, Auckland Place, 10th Floor, Kolkata – 700 017 do hereby solemnly affirm and say as follows:

1. I am the authorized representative of the respondent No. 10 abovenamed. I am competent and have been duly authorized by the respondent No. 10 to make and affirm this affidavit on behalf of the respondent No. 10. I am fully acquainted with the facts and circumstances of the case.

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2. I have read a copy of an Original Application affirmed on 3rd December, 2020, by Ankur Sharma (hereinafter referred to as the "said Application"). I have also read the affidavits of the Environment department and West Bengal Pollution Control Board, and I have understood the meaning and purport thereof.

3. I state that the said petition is misconceived and not maintainable in law or in the facts of the case. The said petition is based entirely on falsehood. Before dealing with the original application and the affidavits of the Environmental Department, Government of West Bengal, West Bengal Pollution Control Board, I say as Follows:



(i) I state that the project in question which is a real estate project, named Windmere (formerly Windflower), situated at Mouza- Talbanda, P.S. Ghola, (now New Barrackpore) J.L. No.28, under Bilkanda -1 Gram panchayat (hereinafter referred to as the "said project") is being developed strictly in accordance with law. There is no conversion or filling up of any water body at site and the respondents have preserved and maintained the water body which is in a portion of the property being Dag No.92 comprised of an area of 2023.64 sq meter (12.38% of land Area).

(ii) At the time when the respondent Nos. 8 and 9 acquired the portion of the land forming part of Dag No. 92, there was in existence a brick built wall inside the water body which demarcates the portion of Dag No.92 which belonged to the previous owner and which he was selling to the

respondent Nos. 8 and 9. This wall inside the water body had been there for a very long time and was brought into existence well before our conveyance in order to divide the water body into two parts. However, at the very first instance when during site inspection on 19th July, 2021 (in terms of the order dated 2nd June, 2021 passed by the Hon'ble Tribunal) an issue was raised by the Committee as to the existence of this wall and it was indicated that the wall should be demolished, immediately the wall was so demolished. A photograph of the part of the water body at present where the wall previously existed taken from more or less same angle as photographs 2.0 in the report was taken is annexed hereto and marked with the letter "A"

- (iii) The water body as acquired by these respondents has remained as it is except for the wall now demolished in the month of September 2021. Neither the sanctioned plan nor the proposed development includes the walkways, roadways, pathways, or housing at the periphery of the water body/ pond. There is no iron and steel fabrication work over the water body. The water body has been left untouched and to protect the water body and to ensure that no part of the embankment collapses during the construction of buildings surrounding the water body, sufficient protection has been given to the embankment. This has been noted in the inspection report. These are all temporary protection which will be removed immediately after the building surrounding the water body is constructed. If the Hon'ble Tribunal directs immediate removal of the temporary side support, then in that case the same would be done. However, at the cost of repetition I state that the temporary side support of the embankment is in the interest of preserving and maintaining the

water body during the period of construction. There is no concrete fencing of the water body.

(iv) Waste water or sewage or solid waste is not dumped into the water body and the same also applies to C&D waste. In fact, it is in the interest of the project that the water body is maintained at it is. The water body is the prime high light of the project and has been publicized extensively in all the brochures and advertisements that we have so far published and circulated. A copy of the brochure and an advertisement is annexed hereto and collectively marked with the letter "B".

(v) No plastic or other waste material is dumped into the water body. However, a problem has now arisen by virtue of the inner partition wall being demolished which was not anticipated earlier. In the part of the water body which is beyond our premise and in the ownership of third parties, there are regular acts of misuse and it is beyond our control to stop dumping of external products into the water body which is beyond our premises. This Hon'ble NGT may therefore pass whatever order it deems fit and proper against the owners of the remaining part of the water body and adjoining lands as would be necessary for the protection and preservation of the water body. However, it may be noted that the petitioner with ulterior motive has approached this Hon'ble Tribunal with false allegations in respect of 2028.64 sq. mtrs. area of the water body falling in our portion leaving aside the water body which is the area where the acts of misuse are taking place.

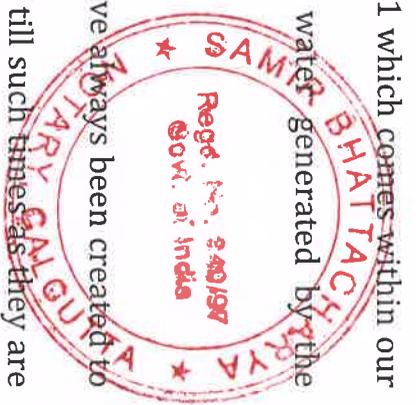


(vi) In our portion of the embankment surrounding 2028.64 sq. mtrs. areas, we undertake to plant shrubs and herbs referred to in recommendation Nos. 8 and 9.

(vii) No part of Dag No. 101 which comes within our premises is a water body as would be evident from the affidavit in question as well as the inspection report. The Dag sheet annexed to the inspection report also states that Dag No. 101 is entirely danga land. Anyhow, no construction work is going on in the portion of Dag No. 101 which comes within our premises. Environmental norms for waste water generated by the housing complex are being strictly followed.

(viii) Water trapping sites/ sedimentation traps have always been created to collect the waste water and retention thereof till such times as they are re-used. The sedimentation traps have to be continuously created because in the usual course they get filled up and it is an on-going process which has always scrupulously been followed. The committee at the time of visit also did not find any waste water from the project being generated.

(ix) There has never been any complaint from neighbours with the project activity and we have at all material times taken all possible measures to avoid disturbance to the surroundings. Loading / unloading operation have always taken place during the day time and piling work, operation of ready mix plant and vibrator has never taken place during night time. No tree has been felled and there has been any violation of the West Bengal Trees (Protection & Conservation in Non-Forest Areas) Act, 2006. Unpaved inner roads have always been cleaned with clarified waste



water. Rain water harvesting for the project is being carried out and will be carried out with the progress of the project. This is as per environmental clearance. Energy efficient electronic systems have been promoted. High efficiency lamps and electronic ballasts are used and necessary steps are being taken in this regard.

- (x) The total investment made by the answering respondent alone in the said project is over Rs. 71.00 Crore, which excludes the cost of land incurred by the land owners. An aggregate sum of Rs. 55.00 crores have already received from the flat-buyers who have also obtained project finance from various banks and financial institutions. For development of the said project, finance has been obtained by these respondents from Axis Bank Limited and repayment commitments have to be made by these respondents. This can be achieved only by way of completing the development and realizing the proceeds of sale of the 500 nos. of Units which are being constructed in the six Towers.

- (xi) The respondent states that the allegation that the entirety of the said premises comprise of water body is altogether false. Apart from what has been stated above, it is stated that previously the said premises consisted of land and structures in addition to the existing waterbody of 2023.64 sqm. A few satellite photographs showing the earlier nature of user of the said premises are annexed hereto and collectively marked with the letter "C". These photographs would go to show that the entirety of the said premises could not have comprised of water body at any point of time and only a portion of the said premises consisted of water body. Copy of a recent satellite picture of the said premises is annexed hereto and



marked with the letter "D". This picture will show that no portion of the water body within the said project land has been altered.

4. Now dealing with the Original Application, I say that with respect to para 1 it is denied that the applicant has a conscious thought about the degradation of environment. It is denied that the applicant has locus standi to present this application before this Hon'ble Tribunal. No any question relating to environment arises as alleged or at all.

5. With reference to paragraphs 2 to 14 of the said application, I say that said project land is situated and lying at Dag no. 93(P), 167(p), 168(p), 169(p), 172(p), 173 under L.R. Khatian no. 2138 and Dag no.90/680(P), 101(P), 92(P),174(p),175(P),176, 177, 178, 179, under L.R. Khatian no. 2137, Mouza- Talbanda, i.e. only part of the mentioned Dag Nos. and not the whole. It is denied that the entire premises consisted of water body, as alleged or at all, only Dag no.92 consists of water body at the said premises. The details of land have been annexed by the applicant in the Original Application as Annexure P1. The question of filling up any water body by the respondent or any of their predecessors-in-interest does not arise. All allegations to the contrary are denied and disputed. The Committee formed by the Learned Tribunal vide its order dated 3rd June, 2021 has also submitted its Report in this regard after conducting a field visit and has not mentioned any filling of ponds to have taken place. It is denied that any damage to the ecology has been caused by virtue of development of the said project or any water body has been damaged as alleged or at all. As to the complaints lodged by the applicant being Annexure P2 to the said application, these are frivolous, vexatious, malafide and full of falsity.

6. With reference to paragraphs 15 to 27 of the said application, it is once again denied that we have encroached or filled up any water body in course of the development of the said project as alleged or at all. Satellite images annexed to the said application does not and could not have shown the entire premises as water body, save and except the water body that existed in a portion of the said premises. The satellite photographs annexed to the said application are not legible and I am not in a position to make any comments thereon. I however reiterate that there is an existing water body in Dag No. 92 of the said premises, and the portion thereof lying within the said project land remains unaltered. The complaints made by the applicant to the Pollution Control Board and other authorities are frivolous, vexatious and mala fide and the accordingly, the said authorities were correct in not taking note of the same.



7. With regard to the Affidavit of the Environmental Department I would say that the wall which is mentioned in the said Affidavit which is stated to have been constructed in Dag No.92 was already existing at the time, when the answering respondent entered into agreement with the owners i.e. respondent Nos. 8 and 9. I say that the wall has already been demolished by the answering respondent, therefore now there is no existence of any wall in Dag No.92.

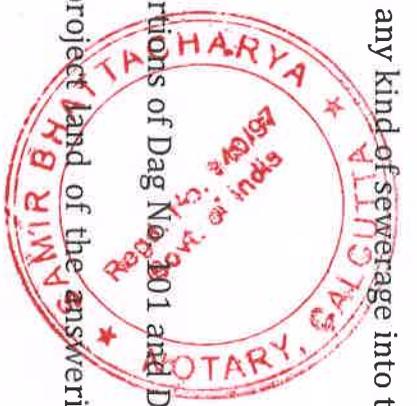
8. I say that as the project is still under construction, therefore the pond has not been cleared of the water hyacinth, which is naturally occurring. The answering respondent undertakes to clear the pond once the construction is complete.

9. I say that the water body is fenced off with bamboo poles to protect the embankment of the water body in a natural way, as stated in the report. No concretization has been done by the answering respondent.

10. With regard to the affidavit of the West Bengal Pollution Control Board, I repeat and reiterate that the concrete structure i.e the wall has been demolished by the answering respondent. I say that there is no provision for any concrete pathway/walkway/road at the periphery of the pond.

11. I say that we have already started the activity of planting medicinal plants on the bank of the pond. I also say that the water body upsurges the beauty of the project and thereby the marketable value of the project, therefore there is no question of dumping any kind of sewerage into the pond.

12. I say that there is no water body in the portions of Dag No. 101 and Dag No. 90/680 which fall within the said project land of the answering respondent.



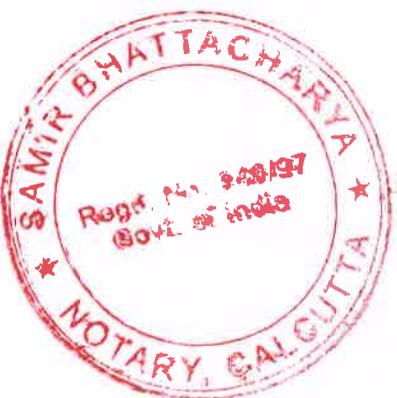
13. I say that construction of the said project is being done in terms of the sanctioned plan and the part of the construction on Dag No. 90/680 is over 40 feet away from the embankment. If at all there is any conversion of land going by the records maintained by the B.L. & L.R.O. then as per the provisions of the West Bengal Land Reforms Act, 1955, this is not the proper forum to adjudicate such issue. No water body has been filled up and this is not an environmental issue. The conversion application filed by these respondents under Section 4C of the West Bengal Land Reforms

Act, 1955 is pending and it is reasonably expected that the same would be granted. Anyhow, this is beyond the scope and purview of the present proceeding.

14. I say that no work of construction is carried out during night time, conditions of the Environmental Clearances include rain water harvesting and therefore the answering respondent is bound to follow the conditions of the Environment Clearances.

15. I say that no case has been made out in the said application and therefore the relief as prayed in the said application may be denied.

16. That the statements made in paragraphs 1 to 14 are true to my knowledge, and those made in paragraph 15 are my humble submissions before this Hon'ble Tribunal.



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VERIFICATION



I, Subhas Kumar Goenka, son of Late Narayan Prasad Goenka, aged about 60 years, by faith Hindu, by occupation Service, working for gain at 3A, Auckland Place, 10th Floor, Kolkata – 700 017 do hereby verify that the contents of the paragraphs 1 to 14 are based on information and/or derived from sources which I verily believe to be true and I have not suppressed any material facts and circumstances and the rest are my humble submissions.

HERITAGE REGENCY DEVELOPERS LLP

Subhas Goenka

Authorized Signatory
Signature of the applicant

Shri Swika

Advocate

Identified by me:

DATE: 08.02.2022

PLACE: Kolkata

Advocate



Notary Public
Notary Public, Kolkata, India
Regd. No. 840197

Samir Bhattacharya
Notary, Govt. of India
Regd. No. 840197
Kolkata, West Bengal, India

08 FEB 2022

SAMIR BHATTACHARYA
NOTARY
Regd. No. 54097
6/6, ...





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Image 03/2002



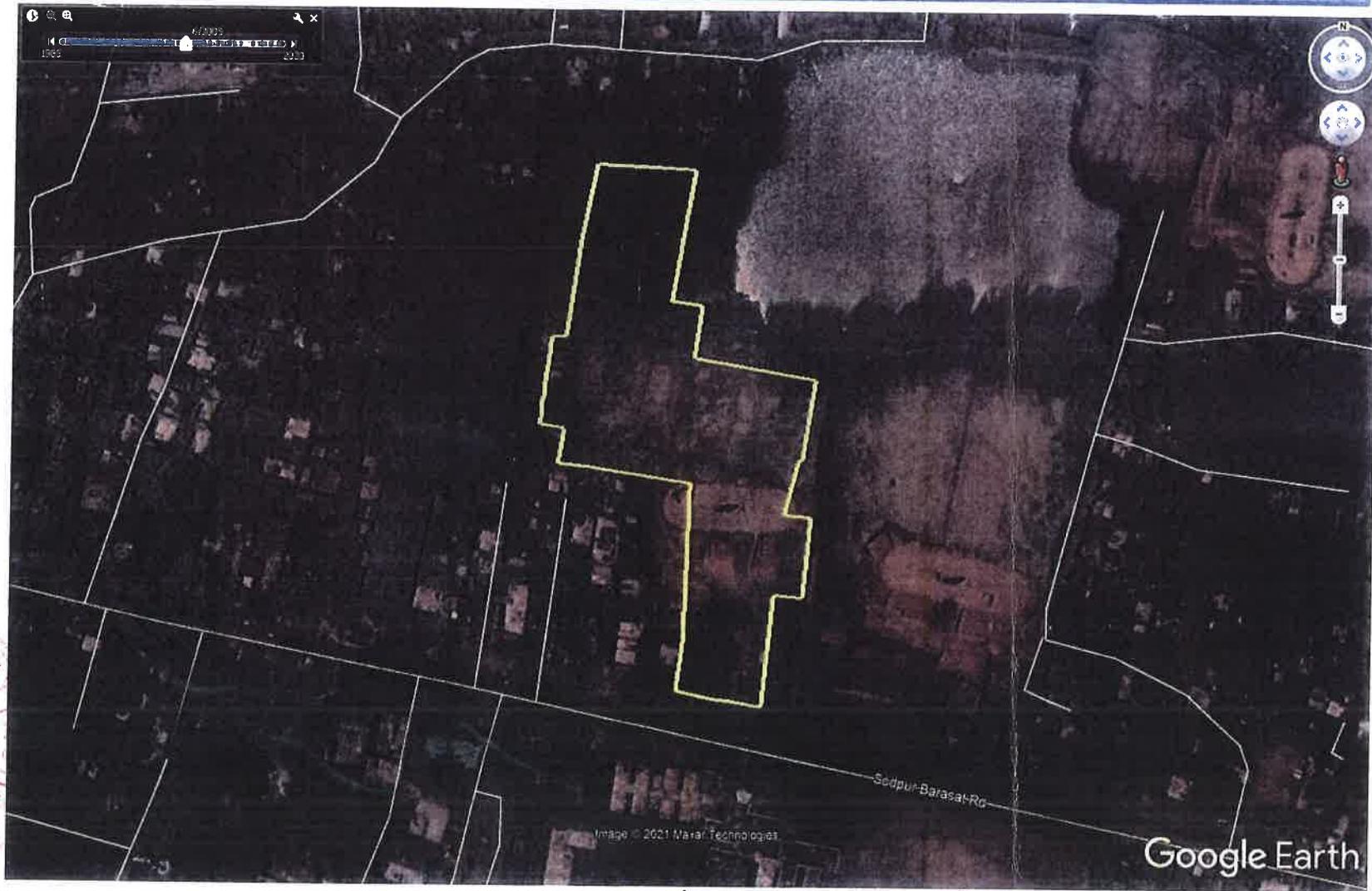


Image 04/2005



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Image 01/2009

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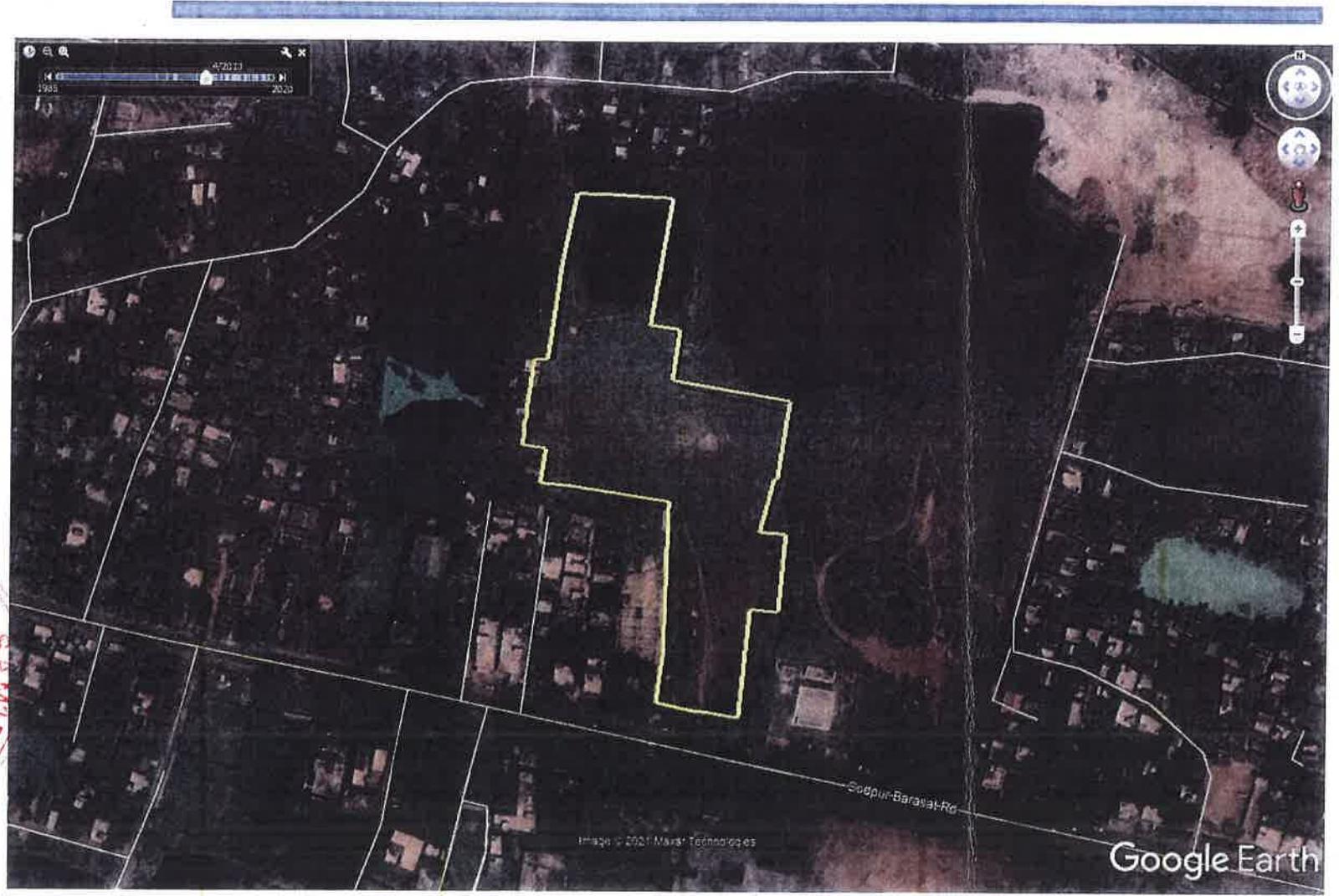


Image 04/2010

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Image 03/2012



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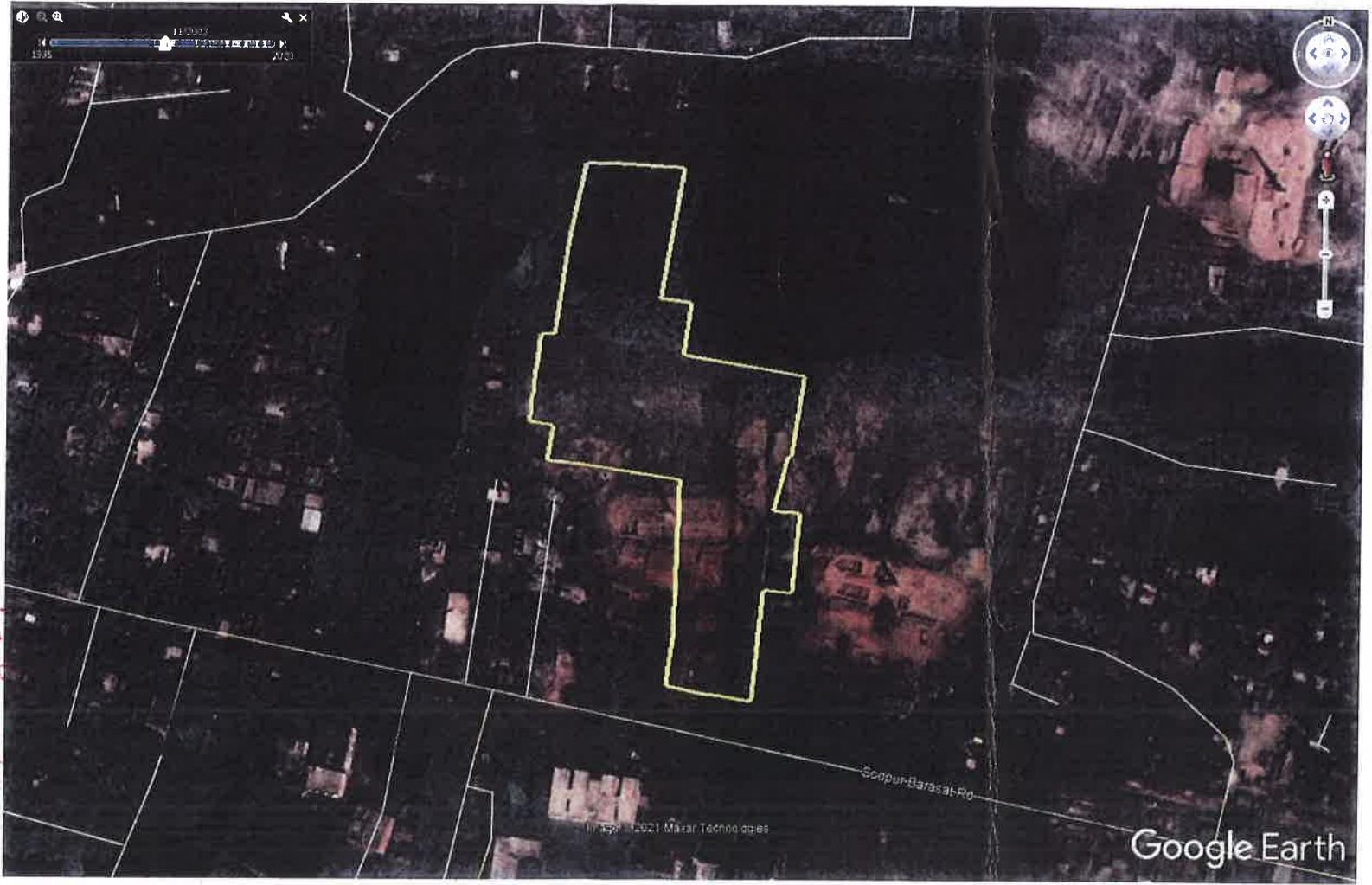


Image 11/2013

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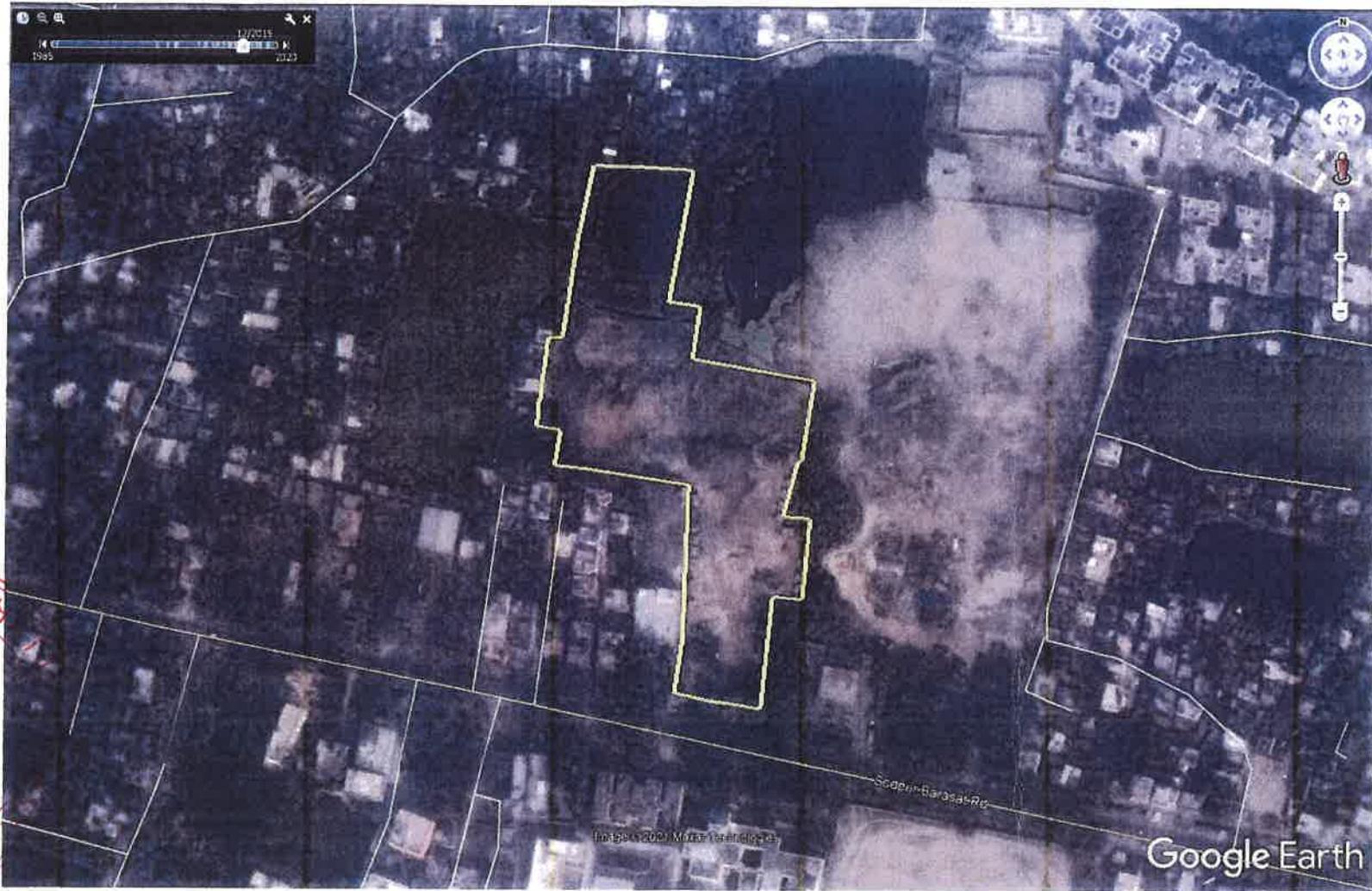


Image 12/2015

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Image 10/2016



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Image 09/2017

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Image 11/2019

Annexure - 'D'

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Image 05/2020