

**BEFORE THE NATIONAL GREEN TRIBUNAL  
EASTERN ZONE BENCH KOLKATA**

Original Application No. 05/2022/EZ

**IN THE MATTER OF:**

Dr. Bina Basnett

...Applicant

-Versus-

State of Sikkim and Ors.

...Respondents

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DATE: 25 .02.2022

DRAWN AND FILED BY:

PLACE: KOLKATA

Sudesh Joshi  
Addl. Advocate General  
Govt. of Sikkim

**BEFORE THE NATIONAL GREEN TRIBUNAL  
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**IN THE MATTER OF:**

Dr. Bina Basnett

... Applicant

-Versus-

State of Sikkim and Ors.

... Respondents

**COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT**

**NO. 10, GANGTOK MUNICIPAL CORPORATION.**

TO

THE HONOURABLE CHAIRPERSON AND HIS

COMPANION MEMBER OF THE

HON'BLE NATIONAL GREEN TRIBUNAL

EASTERN ZONE BENCH KOLKATA

The Humble Counter Affidavit of the Respondent No. 10

**MOST RESPECTFULLY SHEWETH:-**

I, Hem Kumar Chettri aged about 49 years S/o Late P. B. Chettri R/o Gangtok, Sikkim by occupation a Government Servant, do hereby solemnly affirm and state as follows: -

- I. I am the Municipal Commissioner, Gangtok Municipal Corporation, Government of Sikkim. The Gangtok Municipal Corporation has been arrayed as Respondent No. 10 herein. I am aware of the facts and circumstances of the present case and I am thus fit and competent to make, swear



and affirm this affidavit for and on behalf of the respondent  
No. 10.

- II. I have personally perused a copy of Original Application No. 05/2022/EZ filed by the Original Applicant herein and sent by an email dated 21.01.2022 and have understood the intent and purport thereof. The allegations and submissions made in the said Original Application No. 05/2022/EZ which are contrary to records and those which are not specifically admitted are deemed to have been denied.
- III. That before traversing paragraph wise to the various statements and allegations contained in the said Application, the Respondent No. 10 deems it fit and essential to place the following facts and our preliminary submissions for the just decision of the present case: -

**PRELIMINARY SUBMISSIONS**

1. That the Gangtok Municipal Corporation, the Respondent No. 10 herein is a statutory body established under the Sikkim Municipalities Act, 2007 by the Government of Sikkim. The Sikkim Municipalities Act, 2007 came into force on and from 19.05.2007. The Respondent No. 10 as on date is an authority which basically deals with trade license and looks after the cleanliness of the Gangtok Municipality as per various notifications issued by the State Government. The building plan approval (by Town Planning Cell) within the jurisdiction of the Gangtok Municipality have also been transferred to the Respondent No. 10 from the Respondent No. 4 in the year 2017.



2. That due to limited land available in and around Gangtok, the Government of Sikkim in order to give its citizen a better infrastructure facilities took a policy decision in the year 2018 – 2019 to demolish the old three storied Taxi stand near the old West Point School Complex and to develop a multi-(level) storied car park cum commercial plaza on the same area. The State Government took this policy decision to commission this "BROWNFIELD" project taking into account the scarcity of suitable lands in the heart of the city that would cater to all.

The said project is to come up on land measuring 5707.80 sqm with commercial floor coverage at 50%, parking floor coverage @ 75% and the number of storeys at 14 as per the original proposal.

3. That the Respondent No. 2, Gangtok Smart City Development Limited vide its letter bearing Memo No. 608/GSCDL/2021 dated 04.10.2021 submitted one set of architectural & structural drawing pertaining to "Multilevel Car Parking cum Commercial Development" at Old West Point School seeking approval of its Blue Print Plan (hereinafter referred to as BPP). The answering respondent GMC having gone through the same and thereafter vide letter dated 08.10.2021 sought for various documents/reports including the stability report, if any, given by respondent No. 3. The answering respondent vide its letter dated 12.10.2021 also specifically sought for any order/letter granting approval or Government relaxing the norms as prescribed by Sikkim Building



Regulation 1991. True copy of the letters dated 04.10.2021, 08.10.2021 and 12.10.2021 are marked and collectively appended as **ANNEXURE R/1**

4. Subsequently, the answering Respondent duly considered all the documents and approved the Construction for 11 storied structure issued vide letter no: 3839/MISC/TPC/GMC/2021/979 dated 31.12.2021. True copy of the letter dated 31.12.2021 is marked and appended as **ANNEXURE R/2**. Further, among various conditions, one of the conditions categorically stated that before the commencement of the building, a prior permission was required from the GMC in Form V. The said permission was obtained on 10.01.2022. True copy of the permission dated 10.01.2022 is marked and appended as **ANNEXURE R/3**.
  
5. That through the documents so received it was learnt that the Respondent No. 2, Gangtok Smart City Development Limited vide its letter bearing Memo No. 42/SPV/GSCDL/2019 dated 03.04.2019 sought for Geo technical and feasibility report of Multilevel, Car Parking cum Shopping Hub from the Respondent No. 3- Department of Mining & Geology which has the statutory function to assess and provide site stability report. The Respondent No. 3 after carrying out a thorough geological and Geo- technical investigation of the project site at Old West Point School by the technique of Diamond Core drilling gave the "Site Stability



Report” dated 29.12.2021 stating that the said site falls in Zone One of areal Stability Zonation Mapping System adopted by it.

6. It is also submitted that this proposal of Respondent No. 4, Department of Urban Development was also approved by the State Cabinet in its Cabinet meeting held on 11.06.2021, however the said approval is for a 4+7 storeys building subject to confirmation of a Geotechnical investigation and Report. Further additional 3 floors may also be considered once clarity is obtained after completion of Geotechnical investigation and design report, as the DPR will have to be approved by the authority later.
7. That through the documents received it submitted that the Respondent No. 2-GSCDL, after the approval given by the Government of Sikkim for construction of the Multilevel Car Parking cum Commercial Development at Old West Point School, the said project would also fulfil the GREEN BUILDING criteria being Gold standard by the Indian Green Building Council. Further the said project is in Stability Zone – 1 and the structure had been designed for 14 floors as its original design. It is further submitted that the instant project is to come up on a "Brownfield site" on which there existed an old car parking building and an old school building both of which were in extremely dilapidated condition.
8. The answering Respondent would also like to bring to the kind attention of this Hon'ble Tribunal that this is a project on



a Government land and hence out of purview of the Notification No: GOS/UD&HD/6(294)2001 dated: 16/10/2001. In the said Notification, Point no: 1 part (4) which clearly states 'that they shall apply to both government allotted sites and private sites' only. Further the notification also mentions that as per Regulation No: 39 "Power to Relax"- *"incase of genuine difficulties arising out of the implementation of any of the regulations in regards to buildings & structures proposed to be constructed by the Govt. of Sikkim or Govt. of India or any registered organization the state government reserves the right to relax from application of any of the provisions which it considers justifiable on the merit of each case"*.

9. It is humbly submitted before this Hon'ble Tribunal that Gangtok as a city due to rapid urbanisation and population growth over a period of time is facing serious parking problem and traffic congestion and by implementation of the said project will help in resolving parking problem among other things.

**PARAWISE REPLY:**

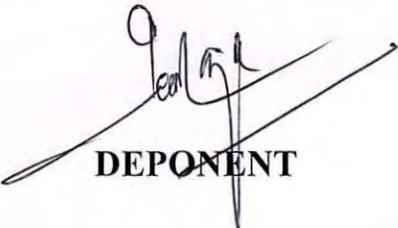
1. That the contents of paragraph 1 and 3 of the Application does not warrant any response, however, anything to the contrary stands denied, and the Applicant be put to strict proof of the same.



2. That the contents of first part of paragraph 2 of the O.A. are matters of record and anything to the contrary stands denied. However, it is specifically denied that the answering Respondent is the 'authority' under which the construction of the building in question is taking place. It is pertinent to state here that respondent No. 10 as per the Government of Sikkim accorded approval for the 11 storied project and has approved the Blue Print Plan (BPP) for construction of multilevel car parking cum shopping complex of total 11 storied only, as sought by Respondent No. 2.
3. The content of the paragraph 3 need no response.
4. That the contents of paragraph 4 of the Application does not specifically pertain to respondent No. 10 and hence denied, and the Applicant be put to strict proof of the same. However, the para 4.4 is denied that there is any breach of the notification dated 19.03.2021. The permission of the extra floors has been obtained by the project proponent and acknowledged by the answering Respondent through a due process.
5. That the content of the para 5 is denied as the NGT Act, 2010 does not contemplate a continuous cause of action but cause of action first arose.



6. The content of the para 6 which relates to the facts of the Applicant, among others, which is denied for want of knowledge . The contents of the preliminary submissions may be read as response to this para.
7. That the contents of paragraph 7, i.e. the grounds set forth in the Application by the applicant are false, misconceived and hence not tenable in the eyes of law as well as facts. Hence, the present application deserves to be dismissed.

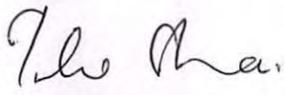
  
**DEPONENT**

### VERIFICATION

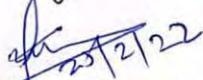
I, the above named deponent do hereby verify and state that the statements made in paragraphs 1 to 8 in the preliminary submissions and 1 to 4 in the parawise reply are true and information received through records, that no part of it is false and nothing material has been concealed therefrom.

Affirmed on this the 25<sup>th</sup> day of February, 2022 at Gangtok.

IDENTIFIED BY:

  
 Yadav Sharna  
 Court. Advocate  
 Gangtok, East Sikkim

  
**DEPONENT**  
 solemnly affirmed before me on this 25<sup>th</sup> day of Feb, 2022 by Shri/Smt/Miss. Hem Kumar Chellu of Gangtok who is known to me & I am Smt/Miss. Yadav Sharna of Gangtok.

  
 Mr Sujan Sunwar  
 Oath Commissioner (East)  
 High Court of Sikkim  
 Vide Notification No. 38/HCS/30.09.21



Gangtok Smart City Development Limited,  
Level 5 Kissan Bazar, Gangtok,  
Sikkim - 737101  
E Mail - [gangtoksmartcity@gmail.com](mailto:gangtoksmartcity@gmail.com)  
CIN - U9309090WB2017SGC223807

Memo No: 608/GSCDL/2021

Dated: 04/10/2021

To

The Additional Chief Town Planner,  
Gangtok Municipal Corporation,  
Gangtok, East Sikkim.

**Subject: Submission of one set of architectural & structural drawing pertaining to the work 'Multilevel-Level Car Parking cum Commercial Development at old West Point School near MG Marg, Gangtok, East Sikkim'.**

Sir,

I am forwarding herewith one set of architectural & structural drawing pertaining to the work 'Multilevel-Level Car Parking cum Commercial Development at old West Point School near MG Marg, Gangtok, East Sikkim' for accord of approval from Gangtok Municipal Corporation.

Thanking you

Yours faithfully

Enclosure: as above

Chief Executive Officer

Gangtok Smart City Dev. Ltd.

**Chief Executive Officer**  
Gangtok Smart City Development, Ltd.  
Kishan Bazar, Gangtok-737101  
Sikkim.

ATP-I

For need but ph.

04/10/21

UPC  
Pls open a new file  
04/10/2021



GANGTOK MUNICIPAL CORPORATION

DEORALI, SIKKIM

Issue No. 3839 / MISC. / TPC / Gme / 2021 / 936

Date. 8 / 10 / 2021

To,

The Chief Executive Officer,  
Gangtok Smart City Dev. Ltd.,  
Gangtok, Sikkim

**Sub: for Documents**

Sir,

As directed by the higher authority and as per the Ref. Memo No: 608/GSCDL/2021 dated: 04/10/2021 from Gangtok Smart City Dev. Ltd. regarding approval of drawings for BPP purpose the Gangtok Municipal Corporation is in receipt of Architectural & Structural drawings for the project "**Multi-Level Car Parking cum Commercial Development**" at old West Point School, Gangtok, East Sikkim.

However for the purpose of BPP process following document may be kindly furnished please:

- i) Parcha / Land Documents / Land Details
- ii) Sale Deed/Gift Deed/Lease Deed / Lease Agreement
- iii) Stability Report / Site Stability Report vetted by Mines & Geology Department, GOS
- iv) Cadastral Map
- v) Site Plan / Master Plan by Empanelled Architect
- vi) Details of Consultants / Project Management Team
- vii) Company Registration & Signatory Authority
- viii) Structural Details & Analysis
- ix) Construction Management Plan
- x) Green Building Implementation (if any) & by which group whether GRIHA / IGBC

Thanking you

Yours faithfully

ok

*Imita Shenga*  
Assistant Town Planner II  
Gangtok Municipal Corporation

Assistant Town Planner - II  
Gangtok Municipal Corporation

**GANGTOK MUNICIPAL CORPORATION**

DEORALI, SIKKIM.

Issue No. 381(A)/GMC/2021

Date..12/10/2021

To,

Chief Executive Officer,  
Gangtok Smart City Dev. Ltd,  
Gangtok, Sikkim.

***Sub: Submission of architectural & structural drawing pertaining to the work "Multi-Level Car Parking cum Commercial Development at old West Point School near MG Marg".***

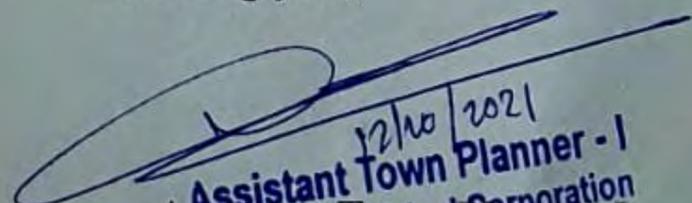
Sir,

The undersigned has been directed to send this letter pertaining to the above mentioned project regarding any approval or documents from the Government of Sikkim for relaxation of floors above five and half storey and horizontal coverage as per Sikkim Building Construction Regulation 1991.

The documents mentioned above may be kindly be furnished which would enable GMC to further process the above mentioned project for approval.

Further, it is to inform you that the approval of B.P.P will be accorded for only 11 floors against the 14 floors as submitted in accordance to the cabinet approval.

Thanking you,

  
12/10/2021  
Assistant Town Planner - I  
Gangtok Municipal Corporation

Gangtok Municipal Corporation.



GANGTOK MUNICIPAL CORPORATION

DEORALI, SIKKIM

Issue No. 3839/MISC/TPC/Gmet/2021/979

Date. 8/12/2021

**FORM – III**

(See regulation 09 of the Sikkim Building Construction Regulation, 1991)

**Form of Sanction**

To,

(Party -1)

The C.E.O.,

Gangtok Smart City Dev. Ltd.,

Gangtok, Sikkim

(Party – 2)

M/s MESASO Infrastructure Pvt. Ltd.

3<sup>rd</sup> mile, Siliguri,

West Bengal - 734003

**CONSTRUCTION ORDER**

(VALIDITY OF THIS ORDER IS FOR THREE YEARS)

With reference to your application dated 12/10/2021, approval has been granted (as per Cabinet Approval accorded by the cabinet vide Cabinet Extract no: CON/CAB/283/2021/6655 dated: 11.06.2021) for construction of proposed eleven storied GOLD RATED Green Building measuring 310071.87 sq.ft. to come up at old West Point parking area, Gangtok revenue block. Arithang Ward No. 09

The proposed structure is approved for registered landed property having Private Site Measuring: 60984sq.ft. (1.40 acre) vide Parcha/Sale Deed bearing Khatiyani No. 686(P), 715 & 716.

Project Mode : PPP under Gangtok Smart City Dev. Ltd.

**Key Consultant's for the Project:**

	<b>EXPERTISE</b>	<b>Name of expert</b>
1	Independent Engineer	Mr. Eshwar Shrestha
2	Architecture, Landscape & Interior Design	Mr. Vikram Rathod (SALIENT Consultants)
3	Structural Design	Mr. Sanjiv Parekh (SPA Consultants)
4	MEPF	Pankaj Dharkar Associates, Ahmedabad
5	Green Building Consultant	Pankaj Dharkar Associates, Ahmedabad
6	Hospitality Consultant	ENVEE Engineering Pvt. Ltd. New Delhi



**This construction order is approved on the following conditions:-**

1. Prior permission for commencement of the building should be sought for on **Form V** obtainable from Gangtok Municipal Corporation or GSCDL.
2. In case, the ownership is found to be defective at any stage of time the approval accorded and this order shall stand automatically revoked and the

structure/work building thus constructed shall be considered as without proper approval and shall be dealt accordingly.

3. The construction of the building should be completed no later than three years from the date of issue of construction order. Failure to do so the B.P. Plan automatically shall stand cancelled and the B.P. Plan should be submitted for renewal.
4. No new building or part thereof shall be occupied or allowed to be occupied or used or permitted to be used by any person until permission has granted in that behalf.
5. The construction should be as per approved BPP and no deviation is permissible without the prior permission of the Government.
6. The construction should be as per the order and supervision of Gangtok Municipal Corporation Town Planner/Engineer.
7. The Engineer/Town planner of Gangtok Municipal Corporation must be informed before the foundation is laid. Only after the foundation is passed by Divisional Engineer/Town planner, the construction shall be allowed to continue.
8. Strict quality control to be maintained in the process of construction.
9. There should be enough facilities for good sanitation and drainage system.
10. The door or window panels shall be fixed in such a way that they shall not, when open project on any street.
11. The building shall not be constructed within 10 ft. of the live electric wire running on any public street.
12. The land vacated in consequence of the enforcement of the set back limit shall form part of the public street.
13. The excavated earth obtained from site development & foundation, shall not be dumped on public street, road, gully and jhoras. Moreover any building materials found lying on the road setback or over drains shall be seized and auctioned without ant notice whatsoever, and action shall be taken as per the bye-laws against the defaulters.
14. **No construction involving earth excavation works shall be allowed with effect from 1<sup>st</sup> of June 2022 to 30<sup>th</sup> of September 2022.** Anyone found carrying out construction in contravention of the above shall be penalized as per the relevant clause of the Sikkim Allotment and House Sites and Construction of Building (Regulation and Control) Act, 1985 as amended in 2000, and the Sikkim Building Construction Regulation, 1991 as amended in 2000. Such person shall also be solely responsible for the loss of life and property, as a result of such unauthorized excavation/construction.

Two copies of the approved B.P. Plans are returned herewith for your record.

  
Town Planner  
Gangtok Municipal Corporation  
Town Planner

**Gangtok Municipal Corporation.**

Note: Contact: Mr. Naresh Pradhan, Assistant Town Planner - I, G.M.C, Mob No: 94344 47827



GANGTOK MUNICIPAL CORPORATION  
DEORALI, SIKKIM

**FORM - V**

(See regulation 10 of the Sikkim Building Construction Regulation, 1990)

To,

Date: 10/01/2022

The Municipal Commissioner,  
Gangtok Municipal Corporation,  
Deorali, Sikkim.

**Subject: Notice of commencement of the Construction / reconstruction / alteration / repair of building**

Dear Sir/Madam,

I/We, hereby certify that the construction / reconstruction / alteration / repair in  
Khasara No. 683/3114, 715, 716 Khatiyani No. 1440 at  
Old West Point School Area, Gangtok will be commenced on \_\_\_\_\_ as per your  
approval vide construction order no. 3889/misc/TPC/GMC/2021/979 dated 31.12.2022  
in accordance with the Blue Print Plan approved.

Yours faithfully,

Signature of Owner:- \_\_\_\_\_ For, **Mesaso Infrastructure Private Limited**

Name (in Block letter):- SHUBHAM MALU

Address:- Old West Point School Complex,

Near M.G. Marg, Gangtok, Sikkim

Phone no:- 6380944250

*Shubham*  
5  
**Authorised Signatory**  
10.01.2022

*ACTP*  
*9/1*  
10/01/22

*JP*  
10/01/22

*ATP-I*

*Ph. process.*

*Receved*  
*10/01/22*  
Town Planner  
Gangtok Municipal Corporation

-TRUE COPY-

**VAKALATNAMA**  
BEFORE THE NATIONAL GREEN TRIBUNAL  
EASTERN BENCH, KOLKATA  
ORIGINAL APPLICATION NO. 05/2022

IN THE MATTER OF:

DR. BINA BASNETT

Applicant

-VERSUS -

STATE OF SIKKIM & ORS.

Respondent(s)

KNOW ALL to whom these presents shall come that I, ....., **RESPONDENT** / OPPOSITE PARTY, in the above Original Application do hereby appoint and return **Additional Advocate General Mr. Sudesh Joshi and Fizza Zaidi** Advocate of the National Green Tribunal, to act, appear and plead in the above noted case in the Tribunal.

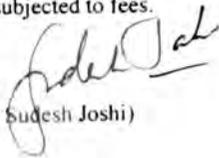
To sign, file, verify, present pleadings, appeals, cross objections or petitions for execution, review, revision, withdrawal, compromise or other petitions or affidavits or other documents and all other proceedings that may be taken in respect of any application connected with the same or any decree or order passed therein on my/our behalf, and to represent me/us and to take all necessary steps on my/our behalf in the above matter.

And I/We the undersigned do hereby agree to ratify and confirm all acts done by the Advocate or his substitute in the matter as my I our own acts, as if done by me justify to all intents and purposes. I/We agree to ratify all act done by the aforesaid advocate, in pursuance of this authority.

IN WITNESS WHEREOF I/We do hereunto set my/your hand to those present the contents of which have been understood by me/us on this ..... day of .....2022.

Accepted subjected to fees.

Advocate  
(AAG Mr. Sudesh Joshi)



Client  
(.....)




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**MEMO OF APPEARANCE**

To,

The Registrar,  
National Green Tribunal, Eastern Zone Bench  
Kolkata - 700156.

Sir,

Kindly enter my appearance in the above matter on behalf of the Respondent/ Opposite Party.

Dated .....

Advocate for the  
Petitioner(s)/ Appellant(s)/ Respondent(s)