

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

AT PUNE

ORIGINAL APPLICATION NO. 115 OF 2023

IN THE MATTER OF:

Dr. Atul Sheth & Ors.

...Applicant

VERSUS

The Guhagar Nagar Panchayat,

Guhagar & Ors.

...Respondents

OBJECTIONS ON BEHALF OF THE APPLICANTS

TO THE JOINT COMMITTEE REPORT OF OCTOBER 2023.

ADVOCATE FOR THE APPLICANTS:

Nrupal A. Dingankar, Pushkara A. Bhonsle,

Naman Shrestha & Mahesh Jadhav.

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Drawn on : 25.11.2023

Filed on : 27.11.2023

Place: Pune



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**OBJECTIONS ON BEHALF OF THE
APPLICANTSTO THE JOINT
COMMITTEE REPORT OF
OCTOBER 2023.**

To,

The Hon'ble Chairman and
His Hon'ble Companion Members of
The Hon'ble National Green Tribunal.

The humble objections of the Applicants above named
Most Respectfully Showeth,

1. The Applicants had approached this Hon'ble Tribunal u/s 14 r/w Sec. 18(1) of the National Green Tribunal Act, 2010 raising a substantial question of Environment, thereby challenging the establishment of the Municipal Solid Waste Facility at the Proposed Site i.e. Survey No.134/9, Village Guhagar, Tal.

Guhagar, Dist. Ratnagiri by the Respondent No. 1, which is contrary to the Solid Waste Management Rules, 2016.

2. The present matter was listed before this Hon'ble Tribunal on 01.09.2023, whereby after considering arguments raised on behalf of the Applicants, this Hon'ble Tribunal vide its order 01.09.2023 was pleased to opine that the prima facie case adversely impacting the environment was made out and thus, the Hon'ble Tribunal was pleased to admit the present case. Further this Hon'ble Tribunal deemed it just and proper to call for Joint Committee Report. The Joint Committee was directed by this Hon'ble Tribunal vide its order 01.09.2023 as follows:

“17. The Committee is directed to visit the site and assess the present status of the Solid Waste Management at Guhagar, assess the suitability of the site, in terms of the Solid Waste Management Rules, 2016 and also identify the alternative sites available, if any and submit a report within a period of four weeks”

In terms thereof, the Joint Committee conducted a site visit on 06.10.2023 and submitted its Report before this Hon'ble Tribunal. Thereafter, the matter was listed before this Hon'ble Tribunal on 19.10.2023, whereby the Counsel appearing on behalf of the Applicants raised objections to the Joint Committee Report that the Joint Committee failed to give any opinion regarding suitability of the land for setting up of the MSW Plant. Therefore, this Hon'ble Tribunal directed the Applicants to submit detailed objections against the Joint Committee Report. In compliance of the directions passed by this Hon'ble Tribunal vide its Order dated 19.10.2023, the Applicants are filing the present objections to the Joint Committee Report of October 2023.

3. At the outset, it is most respectfully submitted that the contents of the Joint Committee Report are denied. Nothing therein shall be deemed to be admitted, unless specifically admitted herein, for the reason of non-traverse.
4. On perusal of the Joint Committee Report of October 2023, the Applicants realised that the Joint Committee Report is baseless and does not rely on any

scientific data. The Joint Committee has merely relied upon the Site Selection Committee Approval dated 08.02.2021 and failed to conduct any independent study to honour the directions of this Hon'ble Tribunal with regards to assessing the suitability of the Proposed Site for construction of the MSW Facility. In pursuance thereof, the Applicant No. 1 approached H&Z Associates, registered Architectural & Structural Consultants practicing in the District of Ratnagiri, Maharashtra to conduct the studies regarding suitability of the Proposed Site for construction of the MSW Facility.

5. H&Z Associates conducted a Contour Survey and prepared the drawings to assess the slope of the Proposed Site. H&Z Associates, after conducting the studies concluded that the slope of the land is 1:4 (avg). It was further stated by H&Z Associates that in terms of Clause 3.1.1 of the Unified Development Control and Promotion Regulations for Maharashtra State (UDCPR), no piece of land shall be used as site for construction of building if the site is hilly and having gradient more than 1:5. Thus, it is clear from the said report that, the Proposed Site being 1:4 (avg), gradient is not suitable for construction and in terms of UDCPR such construction would be illegal.

Further, the H&Z Associates also conducted a survey to assess the distance of the Water Supply Wells as well as Bore Wells from the proposed sites. On perusal of the said report, it is clear that the well which has been called as abandoned vide the Joint Committee Report is at the distance of 131.5 mtrs from the Proposed Site. Also, the another bore well is at the distance of 147.72 mtrs. from the centre of the Proposed Site. Thus, in terms of Sub-clause (vii) of Clause '(A)' to the Schedule I to the MSW Rules, 2016, the Proposed Site would not be viable for the establishment of MSW Facility as proposed by the Respondent No. 1.

A copy of the report regarding Topography of Land/ Gradient of Land issued by H&Z Associates, registered Architectural & Structural Consultants practicing in

the District of Ratnagiri, Maharashtra dated 25.11.2023 is enclosed herewith as **ANNEXURE O-1.**

6. With respect to the Joint Committee Report of October 2023, the Applicants has to state as follows:

A. The Joint Committee Report of October 2023, shows complete non application of mind as the Joint Committee failed to assess the suitability of the Proposed Site for establishment of MSW Project as directed by this Hon'ble Tribunal vide its order dated 01.09.2023:

- i. Vide the order dated 01.09.2023, as mentioned hereinabove, this Hon'ble Tribunal had specifically directed the Joint Committee to assess the suitability of the site in terms of Solid Waste Management Rules, 2016. However, the Joint Committee vide its report has erroneously recorded data and concluded that no alternative site is required to be identified merely because the Site Selection Committee has already approved the proposed site.
- ii. The Joint Committee vide its report has brought on record authorisation granted by the Respondent No.3 dated 16.10.2023 granted to the Respondent No.1. On perusal of the authorisation dated 16.10.2023, it is clear that the same has been granted for landfill site as the conditions at Annexure-I to the Authorization dated 16.10.2023 are clearly for landfill site. Schedule I to the MSW Rules 2016 gives specifications for Sanitary Landfills. Clause '(A)' to the Schedule I to the MSW Rules 2016 gives specifications regarding criteria for site selection. Sub-clause (vii) of Clause '(A)' to the Schedule I to the MSW Rules 2016, enumerates that the landfill site shall be 100 mtrs. away from river, 200 mtrs. away from a pond, 200 mtrs. from highways, habitations, public parks and water supply wells. Thus, in terms of the MSW Rules, 2016 no MSW project can be setup within 200 mtrs. From habitation and water supply wells.

- iii. The Joint Committee at para 4 of the report recorded that two houses including the Applicant house is approximately 170 mtrs. away from the proposed site. The said observation of the committee is erroneous and baseless, as the Joint Committee has failed to bring on record any scientific data or to establish any methodology used to calculate the said distance. Thus, the observations are vague. On the contrary, the Applicants brought on record the Google Image at page no.120 of the record of the present proceedings clearly depicting that the house of the Applicant is barely 90 mtrs. away from the proposed site. Further, it is submitted that the Report issued by H&Z Associates clearly depicts that the distance of the House of the Applicant No. 1 is 117.5 Mtrs from the centre of the Proposed Site.
- iv. The Joint Committee Report at para 5.5 records that there is one abandoned well at about 146 mtrs. and another well was observed at 258 mtrs. At the cost of the repetition, it is submitted that the observations of the Joint Committee are vague and baseless as the Joint Committee failed to provide any scientific data to that effect. Further, it is submitted that, there are other water supply wells around the territory of the Proposed Site, however, same were ignored by the Joint Committee for the reasons best known to them. There is no material of what so ever nature to even establish that well found at the distance 146 mtrs. is abandoned. Further, it has been established herein above that the house of the Applicant No.1 is within 90 mtrs. of the proposed site and the Applicant No.1 has a water supply borewell adjacent to the said house. The said bore well within the land owned by the Applicant No. 1 is at the distance of 147.72 Mtrs from the Proposed Site, which is clear from the Report of H&Z Associates, registered Architectural & Structural Consultants practicing in the District of Ratnagiri, Maharashtra. It is further submitted that during site visit of Joint

Committee on 06.10.2023, the Applicant No.1 had specifically indicated the well adjacent to his house. Also, the well which was indicated to be an abandoned well, is a properly constructed well of a laterite stone, thus there is no doubt that the said well is an abandoned well. A copy of the photographs of the well which was referred as abandoned well in the Joint Committee Report of October 2023 is enclosed herewith as **ANNEXURE O-2**.

- v. It is clear from above mentioned facts that the water supply wells as well as the residential houses are existing within 200 mtrs. from the proposed site. Thus, the site as selected by Respondent No.1 for establishing MSW Project is not suitable in terms of the Sub-clause (vii) of Clause '(A)' to the Schedule I to the MSW Rules 2016. The Joint Committee vide its report failed to appreciate the said facts which shows clear non application of mind by Joint Committee while preparing the Report of October 2023.

B. The absolute reliance of the Joint Committee on the letter of the District Committee dated 08.02.2021 to hold that 'no alternative site is required to be identified' is nothing but a subterfuge and an attempt of a Joint Committee to misguide this Hon'ble Tribunal.

- i. At para 7.2 and 7.3 of the Joint Committee Report, the Joint Committee brought on record a Letter of District Committee dated 08.02.2021 along with its annexure depicting site selection check list relied by the District Committee while granting the approval for purchase of the proposed land for MSW Project. At para 8 of the Joint Committee Report of October 2023, the Joint Committee concluded that no alternative site required to identified merely on the ground that existing site is approved by Site Selection Committee. Such reliance by the Joint Committee on approval of Site Selection Committee is erroneous.

- ii. Even the Applicants had produced the same data along with the petition at Annexure A5 at page 63 to 65 of the record of the present proceedings. It is the case of the Applicants that the said data is not in consonance with the ground's reality. It is also established hereinabove that the habitation and water resources well is within 200 mtrs. of the proposed site. The data relied by the District Committee depicts the water supply well to be at distance of 500 mtrs. approx. and a habitation at the distance 300 mtrs.
- iii. Thus, it is clear that the data attached with the letter of the District Committee dated 08.02.2021 is not correct and thus, the absolute reliance of the Joint Committee on the said data shows that the Joint Committee has not taken any efforts to honour the directions passed by this Hon'ble Tribunal.

C. The Joint Committee failed to address the issues raised by the Applicants in the present Application as well as the representation dated 06.10.2023 on behalf of the Applicants submitted to the Joint Committee during the site visit.

- i. In terms of the directions issued by this Hon'ble Tribunal vide its order dated 01.09.2023, the Applicants provided a copy of the present Original Application to the Joint Committee. Further, this Hon'ble Tribunal had directed the Joint Committee to issue a prior notice to the Applicants before conducting the inspection of the proposed site. In terms thereof, the Applicant No. 1 was present during the site visit and also submitted a detailed Representation dated 06.10.2023 to the Joint Committee. *(A copy of the Representation on behalf of the Applicants submitted to the Joint Committee constituted by this Hon'ble Tribunal dated 06.10.2023 already forms a part of the record of the present proceedings at Pg. 228-249)*

- ii. Without prejudice to the objections regarding distance of the Proposed Site from the wells and habitation, the Applicants had raised issues regarding excessive slope of the land as well as the Proposed Site being in a close vicinity of the habitation of the wild animals. Vide the Representation dated 06.10.2023 submitted to the Joint Committee, the Applicants had raised issues regarding excessive slope of the Proposed Site, which would make the site impermissible for any construction such as MSW Facility. The Joint Committee at Para 4.0 merely records that the site is located on the land having hill slope. Thus, the Joint Committee ought to have conducted further study to assess the slope of the land. At the cost of repetition, it is stated that in terms of the Report of H&Z Associates, the slope of the land is 1:4(avg), which is not permissible in terms of Unified Development Control and Promotion Regulations for Maharashtra State (UDCPR). In terms thereof, it is clear that the Joint Committee Report failed to address the issue regarding excessive slope of the land raised by the Applicants.
- iii. Further, it is the contention of the Applicants that the Proposed Site is in the close vicinity of the habitation of Wild Animals. The Joint Committee Report did not utter a word regarding the same and fails to address the said issue.
- iv. Also, the Respondent No. 1 being a 'Local Body' within the meaning of MSW Rules, 2016, in terms of Rule 15(a) of the MSW Rules, 2016 ought to have a Solid Waste Management Plan. Vide Para 4 of the Joint Committee Report of October, 2023, the Joint Committee recorded the Status of Solid Waste Management at Guhagar Nagar Panchayat. However, there is no mention of the Guhagar Nagar Panchayat having any Solid Waste Management Plan in terms of Para 15(a) of the MSW Rules, 2016. In absence of any mention of such Solid Waste Management Plan, it may be concluded that no such plan exist and

thus, in absence of the same, the Respondent No. 1 shall not be allowed to carry out the construction of MSW Facility at the Proposed Site.

7. Lastly, it is submitted that the Joint Committee as constituted by this Hon'ble Tribunal was comprising of the Representatives of the Guhagar Nagar Panchayat (i.e. the Respondent No. 1), the Representative of the District Collector Office, Ratnagiri (i.e. the Respondent No. 2) and the Representative of the Maharashtra pollution Control Board (i.e. the Respondent No. 3) who are the Party Respondents in the present Original Application. Also, the members of the Joint Committee were involved in process of initial approvals granted to the Respondent No. 1 for purchase of the Proposed Site. Thus, it is most respectfully submitted on behalf of the Applicants that the Joint Committee has acted with a bias to protect the interest of the Respondent No. 1 thereby ignoring the mandate of the Environmental Law more specifically the MSW Rules, 2016.
8. In terms of the contentions raised hereinabove, it is clear that the findings of the Joint Committee are based on assumptions and presumptions and no independent study has been carried out by the Joint Committee to address the issue and assess the suitability of the Proposed Site for establishing the MSW Facility of the Respondent No. 1. Therefore, this Hon'ble Tribunal may be pleased to set aside the Joint Committee Report of October 2023.
9. Also, vide the said Joint Committee Report of October 2023, it has come on record that the Respondent No. 1 is carrying out construction at the Proposed Site and approx. 60% of the work has been completed till date. However, it is clear from the above contentions that the Proposed Site is not feasible for establishment of MSW Facility of the Respondent No. 1 and thus, this Hon'ble

Tribunal may consider granting relief to the Applicants in terms of Prayer Clause No. 11(e) and 11(f) of the present Original Application.

Drawn on : 25.11.2023

Filed on : 27.11.2023

Place: Pune



ADVOCATE FOR THE APPLICANTS:

Nrupal A. Dingankar, Pushkara A. Bhonsle,
Naman Shrestha & Mahesh Jadhav.

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ORIGINAL APPLICATION NO. 115 OF 2023

BETWEEN

Dr. Atul Sheth & Ors.

...Applicant

VERSUS

The Guhagar Nagar Panchayat, Guhagar & Ors.

...Respondents

AFFIDAVIT

I, Mr. Atul Sheth, Occupation: Medical Practioner, Age: Adult, Residing at:- 438D, Markandi, Chiplun, Dist. Ratnagiri, 415605, Currently at Sangli, Maharashtra do hereby solemnly affirm and state as under:

1. That I am the Applicant No. 1 in the above mentioned Original Application as such am conversant with the facts and circumstances of the case and am competent to swear to this affidavit.
2. That I have read the contents of the accompanying Reply-Objections to the Joint Committee Report, the same being drafted by my counsel under my instructions and that the contents of Reply-Objections to the Joint Committee Report are facts in brief believed to be true on legal advice and that I have not suppressed any material fact.
3. That the annexures filed along with the present Reply-Objections to the Joint Committee Report are the true copies of their respective originals.

BEFORE ME

Noted and Registered
No. 1738/2023
Dated - 25/11/2023

Adv. Siddu A. Mahadik
Notary Govt. of India
Regd. No. 15217 Sangli (MS)

[Signature]
DEPONENT



VERIFICATION

Verified at Sangli on this 25 day of November, 2023 that the contents of the present affidavit are true and correct and nothing material has been concealed therefrom.

AFFIDAVIT

Dr. Atul Vasanti Sheth
S/o. Vasanti Sheth At-Chiplun
ged. 56 years Occ. medical practitioner

Do Hereby State on Oath. That the Contents of Documents are True and Correct to the best of my knowledge & belief.

Hence Verified on

[Signature]
DEPONENT



Topography of Land / Gradient of Land

To whomsoever it may Concern

Date – 25/11/2023

This Is to Certify that the Land Bearing Survey Num 134/9 at villege-Guhagar, Guhagar, Ratnagiri has a Slope of 1: 4 (avg)from Road level to the top of The Hilly Region of the Plot.

The Slope of the said Plot lies in Slope of 1: 4 (avg) and as per **UNIFIED DEVELOPMENT CONTROL AND PROMOTION REGULATIONS FOR MAHARASHTRA STATE, JAN 2022** Clause No. 3.1.1 No piece of land shall be used as a site for the construction of building, iii) If the site is hilly and having gradient more than 1:5. (Refer Photo Attached on page no. 03.)

The above information is based on the Drawing & data made available to us in the form of Contour survey Drawings.

The above letter is issues on the Request of Mr. Atul sheth.

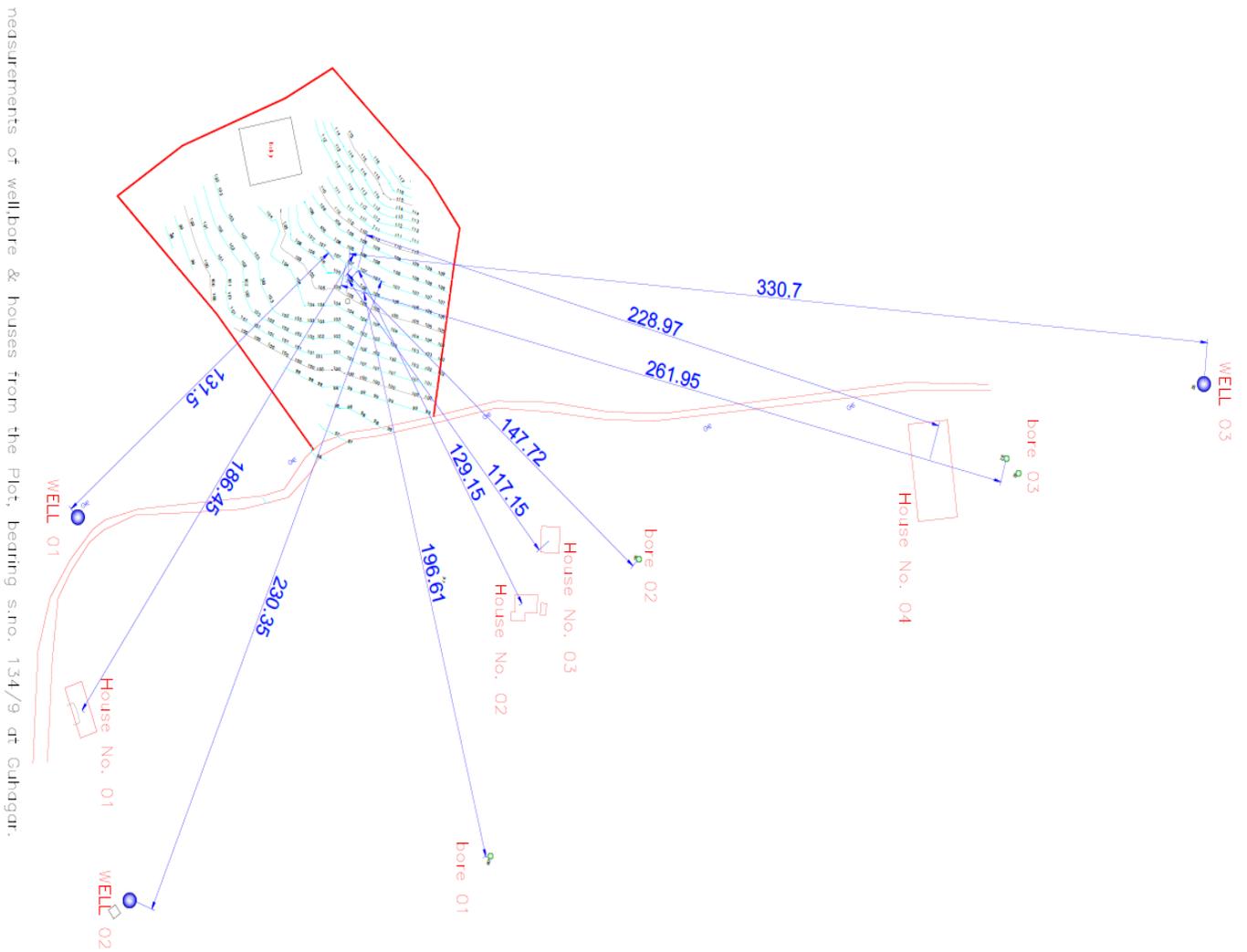


H&Z Associates

Followings Observations are made from the drawings made available to us in form of Contour Survey.

- 1- Distance between well Num. 01 to the Centre of Plot = 131.50 m
- 2 - Distance between well Num. 02 to the Centre of Plot = 230.35 m
- 3 - Distance between well Num. 03 to the Centre of Plot = 330.70 m
- 4- Distance between bore Num. 01 to the Centre of Plot = 196.61 m
- 5 - Distance between bore Num. 02 to the Centre of Plot = 147.72 m
- 6 - Distance between bore Num. 03 to the Centre of Plot = 261.95 m
- 7 - Distance between House Num. 01 to the Centre of Plot = 186.45 m
- 8 - Distance between House Num. 02 to the Centre of Plot = 129.15 m
- 9 - Distance between House Num. 03 to the Centre of Plot = 117.15m
- 10 - Distance between House Num. 04 to the Centre of Plot = 228.97 m

Refer attached photos of drawings.



CHAPTER-3
GENERAL LAND DEVELOPMENT REQUIREMENTS.

3.1 REQUIREMENTS OF SITE

3.1.1 Site not Eligible for Construction of Building

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

- i) If the Authority considers that the site is insanitary, incapable of being well drained or is dangerous to construct a building on it;
- ii) If the entire site is within a distance of 6 m. from the edge of water mark of a minor water course (like nallah, canal) and 15 m. from the edge of water mark of a major water course (like river) shown on Development Plan/Regional Plan or village/city survey map or otherwise.

Provided that where a minor water course passes through a low lying land without any well-defined banks, the owner of the property may be permitted by the Authority to canalise water course within the same land without changing the overall alignment and the position of the inlet and outlet of the water course according to cross section as determined by the Authority. In such case, marginal open space shall be as stipulated under these regulation and shall be measured from edge of the trained nallah.

iii) If the site is hilly and having gradient more than 1:5;

- iv) If the site is not drained properly or is incapable of being well drained;
- v) If the owner of the building has not proposed appropriate measures required to safeguard the construction from constantly getting damp to the satisfaction of the Authority;
- vi) In case the building is proposed on any area filled up with carcasses, excreta, filth and offensive matter, then certificate from the Authority to the effect that it is safe from the health and sanitary point of view, to be built upon, is required;
- vii) If the use of the site is for the purpose, which in the opinion of the Authority will be a source of annoyance to the health and comfort of the inhabitants of the neighbourhood;
- viii) If the proposed occupancy of the building on the site does not conform to the land use proposals in the development plans/ Regional Plan or Zoning Regulations;
- ix) If the level of the site is less than prescribed datum level depending on topography and drainage aspects;
- x) If it doesn't derive access from an authorized street/means of access of adequate width as described in these Regulations;
- xi) If it is within the river and blue flood line of the river (prohibitive zone), unless otherwise specified in these regulations;
- xii) If the site is within the boundary of Coastal Regulation Zone where CRZ Regulation does not allow development;
- xiii) If the site is not developable by virtue of restrictions imposed under any law or guidelines of any Government Department;
- xiv) If the entire site is within a distance of 50 m. from the mean high flood level of a wetland. The mean shall be calculated as per the provisions of Wetlands (Conservation and Management) Rules, 2017.


-TRUE COPY-



PROOF OF SERVICE

294



Nrupal Dingankar <nrupal252525@gmail.com>

OA NO. 115 of 2023 between Dr. Atul Vasant Sheth & Ors. V. The Guhagar Nagarpanchayat, Guhagar & Ors.

1 message

Nrupal Dingankar <nrupal252525@gmail.com>

Mon, Nov 27, 2023 at 6:29 PM

To: adv.manasi.joshi@outlook.com, aniruddha1488@gmail.com, "swanand23@gmail.com" <swanand23@gmail.com>

Sir/Ma'am,

Please find attached herewith a copy of the Objections to the Joint Committee Report of October 2023 on behalf of the Applicants in the above mentioned matter. Please consider this email as service of the same on your esteemed office.

Regards,
Nrupal Dingankar
Advocate
Supreme Court of India
A10, LGF, Lajpat Nagar III,
New Delhi, 110024.

 **Objections_Atul Sheth.pdf**
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