

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, AT NEW DELHI
ORIGINAL APPLICATION NO. 312 OF 2016**

Arun Kumar Sharma

... Original Applicant

VERSUS

MOEF&CC

.... Respondents

IN THE MATTER OF:-

Mehul Shah

...Applicant/Intervenor

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Dated :- 05.02.2021

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DATED 07.11.2019**

1. That before placing the objections to the report dated 08.12.2020 filed by the Expert Committee appointed vide order dated 07.11.2019, it would be relevant to give a brief background of the Intervenor i.e. Sh. Mehul Shah.

BRIEF BACKGROUND

2. That in the year 2012, the Applicant herein along with two other partners purchased the land bearing Khasra No. 118 (part), 119 and 120 in the Area named as **Hetamji**, Municipal Area, Mt. Abu (hereafter known as "**the land in question/ Site No.12**") by way of a registered sale deed dated 17.04.2012.

A copy of the Jamabandi (Khevat/ Khatoni) is annexed herewith and marked as **ANNEXURE R/1**.

3. That the land in question was categorised in the land usage as 'Hotel' in Master Plan of 2001 which was changed to 'Residential'

in the Master Plan of 2000-2025 and the same got further changed to 'partly Residential and partly in Plantation' in the present Zonal Master Plan 2030.

A copy of the Draft Master Plan of 2001 is annexed herewith and marked as **ANNEXURE R/2**.

A copy of the Draft land use plan of 2025 is annexed herewith and marked as **ANNEXURE R/3**.

4. That due to various bans on construction by one or the other courts in the entire Mount Abu region, the Applicant/Intervenor could not raise the construction for residential purposes.

5. That thereafter the Environment Department, Government of Rajasthan after receipt of approval from MoEF&CC (Respondent No.1 herein) vide letter dated 28.09.2015, notified the Zonal Master Plan for Mount Abu Eco Sensitive Zone vide Notification No. F.12(3)/Env./2009/Part-III dated 29.10.2015.

At this juncture, it is worthwhile to mention that the said Zonal Master Plan needs to be prepared in accordance with the Notification dated 25.06.2009 issued by the Respondent No.1 herein (MoEF&CC) vide the said Notification only, Mount Abu was declared as Eco-Sensitive Zone and there were guidelines which were to be considered while preparing it. However, the same were properly considered by each and every department and because of which it got the approval from the Respondent-Ministry.

6. That thereafter, the present Original Application has been filed by one Dr. Arun Sharma before this Hon'ble Tribunal challenging the Zonal Master Plan 2030 for Mount Abu, Rajasthan vide O.A. No.

312 of 2016 on the ground that the same is not in conformity with the MoEF&CC notification dated 25.06.2009.

7. That thereafter, this Hon'ble Tribunal vide its order dated 31.05.2016 stayed the sanction of all fresh plans for constructions.

At this juncture, it is worthwhile to mention that the Applicant/Intervenor could not raise the construction even after the approval of the Zonal Master Plan 2030 by the MoEF&CC due to the stay order of this Hon'ble Tribunal.

8. That the Applicant/Intervenor herein therefore moved a Miscellaneous Application for Impleadment for impleading themselves as a necessary party in the present proceedings on 09.05.2018 being M.A. No. 748/2017 in O.A. No.312 of 2016 as any outcome of these present proceedings would have direct bearing on the constitutionally guaranteed rights of the Applicant/Intervenor.

9. The said M.A. No. 748/2017 came before this Hon'ble Tribunal for hearing on 25.07.2018, however, no particular order could be passed but this Hon'ble Tribunal heard the present Intervenor along with the other Intervenor and since then the present Intervenor is addressing this Hon'ble Tribunal in order to safeguard its rights as his property is situated in *Hetamji*, Mount Abu. An order dated 25.07.2018 is extracted herein below for ready reference :

"The only point which has been considered in today's hearing is the question whether Mrs. Mohini Bhullar and Dr. Major General Madhusudan Singh Bedi who are the Applicants in the intervention application have an existing residence since mid

80s with requisite permissions. The Applicants have filed documents in support of their claim.

Learned counsel for the Applicant may look into the documents and give his response within one week from today. If any similar other application has been filed, response may be filed to the same also."

A copy of the order dated 25.07.2018 passed by this Hon'ble Tribunal in OA No. 312 of 2016 in the captioned matter is annexed herewith and marked as **ANNEXURE R/4**.

10. That thereafter vide order dated 26.11.2018, the Hon'ble Tribunal directed the Respondent-Ministry to evaluate the discrepancy of approved Zonal Master Plan, 2030 with ESZ Notification dated 25.06.2009 by constituting a committee only with reference to the following sites in the said Plan:

1. Inside Salim Ali Bird Sanctuary;
2. Aranya Village
3. Behind Maganji
4. Inside Salim Ali Bird Sanctuary
5. Hill Sahil
6. Sunset Road Scheme
7. Sunrise Housing
8. Takhtawala
9. Takhtawala
10. Arna Village
11. Mohanpura
- 12. Hitamji**
13. Near STP Plant

At this Juncture, it is worthwhile to note that this Hon'ble Tribunal directed the Respondent-Ministry to constitute a committee having two Representatives of MoEF&CC, Representative of School and Architectures Delhi and Representative of CPCB and further vide the said order dated 26.11.2018, narrated the mandate of the committee.

A copy of the order dated 26.11.2018 passed by this Hon'ble Tribunal is annexed herewith and marked as **ANNEXURE R/5**.

11. Pursuant to the aforesaid order dated 26.11.2018, the said committee visited Mt. Abu from 31.07.2019 to 2.08.2019 and after meeting, the committee visited the above-mentioned disputed sites and also interacted with the local residents on the issues raised by this Hon'ble Tribunal and after thoroughly examining the same, the committee gave site wise observation vide its report dated 09.03.2019. The site wise observation of the land in question (i.e. *Hetamji* - Sh. Mehul Shah's land) in the report dated 09.03.2019 is reproduced herein under for ready reference:

Hetamji

“As per the land use plan of 2009 ESZ Notification, this site has been shown in Residential and Plantation/Agriculture/Vacant Land. The State Government has proposed an expansion of residential area at this site due to natural growth of local population. The land is situated within Municipal limits, this site can be developed as residential site provided no construction should be allowed on Hill slopes of more than 20 degrees and there should be a buffer of upto 50 meters between construction and forest boundary. Other parameters as per Eco-Sensitive Zone and ZMP will also have to be adhered to.”

12. That vide order 07.11.2019 the Hon'ble Tribunal further constituted the Committee of Expert Members as the Hon'ble Tribunal was not satisfied with the observation and recommendations of the report dated 09.03.2019, and directed the expert members to evaluate each and every aspect of the above mentioned thirteen sites, again. A relevant extract of the order

dated 07.11.2019 is reproduced herein below for ready reference:

“9. Accordingly, without expressing any opinion on merit, we direct further exercise to be undertaken by modified Committee as follows:

- 1. An Expert of Ecology from G.P. Pant Institute, Almora, Uttarakhand to be nominated by the Director of Institute.*
- 2. A senior Scientist from MOEF & CC, to be nominated by the Secretary, MOEF & CC.*
- 3. A senior Scientist from the Indian Council of Forestry Research and Education, Dehradun.*
- 4. Senior Scientist from Wadia Institute of Himalayan Geology, Dehradun, to be nominated by the Director.*
- 5. Scientist/ Senior official from the Central Pollution Control Board, New Delhi.*
- 6. Representative of School of Planning and Architecture, New Delhi.*
- 7. Member Secretary, Rajasthan Pollution Control Board, shall be a member and Nodal Officer, who shall ensure the compliance.*

10. The Committee may take into account the material already on record but undertake further study in terms of the directions of this Tribunal and also take into account the pattern of studies in the context of Manali (referred to order of this Tribunal dated 19.09.2018 in O.A. No. 635/2017, Ramesh Chand v. State of Himachal Pradesh), Shimla (referred to order of this Tribunal dated 16.11.2017 in O.A. No. 121/2014, Yogendra Mohan Sengupta v. UOI & Ors. and Kasauli (referred to order of this Tribunal dated 05.10.2018 in O.A. No. 218/2017, SPOKE Vs. KasauliGalaxie Resorts (Kasauli case).”

A copy of the order dated 07.11.2019 passed by this Hon'ble Tribunal is annexed herewith and marked as **ANNEXURE R/6.**

13. That the Applicant/Intervenor herein made a representation dated 16.01.2020 before the Expert Committee constituted vide order dated 7.11.2019 passed by this Hon'ble Tribunal, in reference to site number 12 i.e. *Hetamji* stating that the proposed residential use of land in question is consistent with the ESZ Notification.

A copy of the representation dated 16.01.2020 made by the Applicant/Intervenor before the Expert Committee is annexed herewith and marked as **ANNEXURE R/7**.

14. That pursuant to the above directions, another Report dated 08.12.2020 has been placed on record filed by the Expert Committee appointed vide order dated 07.11.2019 wherein, the site of the Applicant/Intervenor i.e. *Hitamji* has been marked as unsuitable for construction without providing any justifications to it and the committee has come to a baseless conclusion, thus it is legitimate to state that the committee acted on sheer conjectures and surmises. The following are the objections qua the Report dated 08.12.2020 :

OBJECTIONS TO THE REPORT

15. At the outset, it is submitted that the final recommendation of the present Committee is on the basis of a pick and choose policy qua many affected parties. On the basis of the same survey, observation and criteria, parties such as Sunrise Housing Society and Behind Maganji's Mountain have been allowed to carry out construction. Even though the case of the Applicant is based on the same premise, he has not been recommended for said purposes by the Committee, without any legal

cogent and admissible evidence. This sole reason shows that the purpose and intent of the orders passed by this Hon'ble Tribunal have not been reached so as to seek the opinion/ recommendation from an independent committee/ agency. In this view of the matter and in view of the following details and suggestions, the present report filed by the committee is unacceptable in law and the same needs to be examined by the Hon'ble Court so as to see the correctness and validity of the same.

SATELLITE DATA NOT SUFFICIENT

16. **No proper ground truthing done to determine vegetation or land use.** It is humbly submitted that satellite data of different spatial resolutions such as Landsat (30 m), Sentinel 2 (10 m) and Cartosat 1 (2.5m) have been used for providing satellite images given in the report by the Expert Committee dated 8.12.2020 (ref page 20). The report states that "*it appears from the satellite images that there exists a good to very good vegetation cover during the study period (2009-2020)*". However, it is pertinent to note that there is no evidence of proper ground truthing done for the process of gathering objective and provable data in relation to the vegetation cover. At this juncture, it is pertinent to mention that ground truthing is important here as it allows image data to be related to real features and materials on ground. The collection of ground truth data enables calibration of remote- sensing data and aids in the interpretation and analysis of what is being sensed whereas, aerial imagery or remote sensing data is used to map surface features such as

vegetation or land use, ground truthing is used to check or validate data using observations on the ground. Thus, the committee chose not to verify the same on ground which shows the approach of the very first approach of the committee knowing the fact that this report will affect thousands of people and their livelihoods.

17. It is pertinent to note that ground truthing entails verifying that surface features or hazards are accurately described and actually located at the reported location. However, there is no information brought on record by the Expert Committee in the present report dated 08.12.2020, so as to analyze and examine any discrepancies in the images (ref fig.10, page 18). Therefore, at this juncture, the concept of “ground truthing” is important here to bring out the correct facts which the satellite images, provided in the report dated 08.12.2020 by the Expert Committee, is unable to determine.

NO DESCRIPTION OF TEMPORAL CHANGES

18. **No detailed description of “temporal changes” mentioned with the provided images to study and scrutinise the mentioned sites.** It is submitted that the report by the expert committee mentions that “*Temporal changes*” have been identified at the mentioned 13 sites inside Mt. Abu ESZ as viewed through satellite images and it appears from the satellite images that there exist a good to very good vegetation cover during the study period 2009-2020, which in turn make the changes in land use to be insignificant after the notification is-

sued by the Ministry of Environment, Forest and Climate Change (MOEF&CC) dated 25.06.2009 which declared Mount Abu as the Eco-Sensitive Zone (ESZ). However, it is seen that there is no detailed description of these “temporal changes” mentioned with these images to study and scrutinise the said temporal changes in each of these sites and therefore, a conclusion of this sort cannot be relied upon. It is further submitted that as per the land use plan of 2009 ESZ Notification, site number 12 referred to as ‘*Hetamji*’ has been marked as Residential and Plantation/ Agricultural/ Vacant Land. It is pertinent to note that even an ‘open space’ and ‘vacant land’ can be seen in the images given in the Report (ref page 33, fig. 25) which shows that the land in question is suitable for construction as the vacant land is meant for the construction as per the plan sanctioned by the authorities.

MAJOR LAND PORTION BELOW 20 DEGREE SLOPE

19. **The major portion of the land in question falls under the 0-20 degree slope category and therefore, fits the criteria.** It is humbly submitted that according to the Zonal Master Plan 2030, the slope map of municipality area displays that areas with 0-10% slope are least sensitive and suitable for development and 10-20% slope is marginally suitable for developmental activities. Further taking on account this criteria, the Applicant/ Intervenor’s land i.e *Hetamji* covers 2.441 Ha. in the 100 m buffer zone and 9.627 Ha. in the 200 m buffer zone under the 0-20% degree slope category and only 0.698 Ha. in the 100

m buffer zone and 2.938 Ha. in the 200 m buffer zone, under >20 degree slope category (ref table 3, table 4, page 23) in the said report. Therefore, it is observed that 47.16% slope in the 100 m buffer zone and 76.6 % slope in the 200 m buffer zone falls under the category of 0-20% slope category and it is clearly mentioned that domain with slopes having slopes <20 degree are geologically stable and suitable for construction. It is important to mention here that considering the above mentioned figures, only 23.4% slope falls under above 20% degree slope category. That even then site number 12 (land in question/Intervenor's land) is marked unsuitable for residential construction in the report by the Expert Committee. Thus, the major portion of the land in question falls under the 0-20 degree slope category and shall be allowed for the purpose of residential construction.

A true copy of the relevant Map depicting the slope in 100m buffer zone and 200m buffer zone is annexed herewith and marked as **ANNEXURE R/8.**

BIASED NATURE TOWARDS OTHER SITES

20. **The said report is factually incorrect and biased towards other sites.** It is most respectfully submitted that other sites mentioned in the report such as Sunset Road Scheme, having slope less than 20 degree, that is 3.061 Ha under 100 m buffer zone and 10.048 Ha under the 200m buffer zone in the 0-20 degree slope category which is **close to the forest land** was permitted for construction with the ESZ criteria of a buffer zone with forest and water stream. Similarly, Sunrise Housing

Society having slope less than 20 degree, that is 3.045 Ha under the 100m zone and 11.22 Ha. under the 200m zone in the 0-20 degree slope category **which is near a local natural stream (nala)** is allowed constructional activity as per norms, complying with the ESZ criteria of the buffer zone with water stream and forest. Therefore, the same criteria ought to have been applied to site number 12- *Hetamji* (land in question) as the major portion of the land comes under the 0-20 degree slope category as it is in consonance with the ESZ Notification dated 25.06.2009. It is further submitted that the said report is factually incorrect as even though the major portion of the land in question is suitable for construction according to the ZMP and ESZ Notification, the report by the Expert Committee has marked it as unsuitable for construction which is completely baseless and based on a criteria best known to the committee which the committee did not even explain in the report while making the site not suitable for construction.

21. **Adjacent villages, Arna Village and Mohanpura village are proposed for residential buildings and construction with same criteria as Hitamji.** It is also pertinent to note that *Arna* village and *Mohanpura village* which are adjacent to *Hitamji* are proposed for residential buildings and construction with slope less than 20 degree same as *Hitamji*. *Arna* village covers 2.561 Ha. under the 100m buffer zone and 6.356 Ha. under the 200m zone in the 0-20 degree slope category and is marked as suitable for construction. Similarly, *Mohanpura village* covers 2.854 Ha. under the 100m buffer zone and 10.308 Ha. under

the 200m buffer zone in the 0-20 degree slope category and is marked as suitable for construction. Therefore, it can be seen that other sites with less than 20 degree having the same criteria as *Hitamji* have been allowed construction whereas, *Hitamji* has been marked as unsuitable for construction which is completely against the principle of equality and this shows that the present report dated 08.12.2020 is self-contrary in nature and same needs to be quashed and this Hon'ble Tribunal may appoint an individual agency to work on it so as to get an accurate picture of the entire issue in hand.

22. **That there is construction and development in the nearby area.** It is humbly submitted that the area surrounding the land of site number 12, i.e *Hetamji*, has been developed and occupied by *Hetamji* village abaadi. Indeed, some land adjacent to the land in question (Intervenor's land) has also been developed. Further land next to the land in question also have non-agricultural permission for development thereof. There also exists a building/construction on the land in question consuming the area of about 3 *bighas* (approx). In that view of the matter also, the designation of part of the land in question in residential zone is in harmony with the surrounding development and ESZ Notification and excluding the Intervenor's land is completely unjustified.

A copy of photographs depicting the surrounding areas near Khasra No. 118, 119 & 120 are annexed herewith and marked as **ANNEXURE R/9**.

NO STUDY ON SOIL EROSION

23. **No information or study based on soil erosion has been presented in the report.** That it is pertinent to note that the Expert Committee for site number 12 (i.e. *Hetamji*) has observed (ref page 30) “*that areas with **steep slopes** are also rich in vegetation with thick soil covers making the landscape more prone to erosion and instability.*” However, it is submitted that there is no study through any scientific method or reports or any images provided to support any analysis of soil erosion by the Expert Committee in the present report. Hence, it should not be considered a ground for instability of the land in question as there is no data or information provided to support the same.

NO DATA/STUDY OF KHAJLOOR TREES IN HETAMJI

24. **No information has been provided to determine the specific number of khajoor trees.** It is further submitted that the expert committee explicitly states (ref page 30) that site number 12 (i.e. *Hetamji*) has “*domain with low slope that is covered with the luxuriant growth of natural phoenix sylvestris (khajoor trees) and that any construction shall lead to deforestation caused by felling of trees.*” However, it is pertinent to note that no survey has been done to determine the specific number of khajoor trees in the said area due to which the land in question is said to be unsuitable for construction. It is further submitted that there does not exist any dense forest with rock faces or otherwise on the land in question. Thus, it cannot be concluded that the green area is getting affected by khajoor trees and for the said reasons also, the use of land in question

is not contrary to the provisions of the ESZ Notification. At this juncture, it is humbly submitted that the Intervenor has already mentioned before the various authorities and even during the course of argument before this Hon'ble Tribunal, it was mentioned that no trees will be cut while raising the construction.

25. **Major portion of the land falls under 0-20 degree slope category.** It is submitted that while considering the radius of the land in question, the total area of the land in question is 15.704 Ha. and that *Hetamji* covers 2.441 Ha. in the 100 m buffer zone and 9.627Ha. in the 200 m buffer zone under the 0-20 degree slope category, which means that *Hetamji* covers 12.068 Ha. in the 0-20 degree slope category and only 3.636 Ha. falls under the >20 degree slope category. Therefore, domain with low slopes having slopes <20 degree are geologically stable and suitable for construction (ref fig 25 (a), page 33) and that the major portion the land is question is under the 0-20 degree slope category and shall be allowed for residential construction but still the site in question has been marked as unsuitable without having any concrete studies qua the same.

NON-APPLICATION OF DOCTRINE OF UNIFORMITY

26. That it is most respectfully submitted that the present Report states that site number 5 *Hill Sahil* has mostly steep (>30 degree) slope. However, *Hill Sahil* covers 86.14% slope under 0-20% degree slope category and only 13.86% degree slope in above 20% degree slope category. Similarly, *Hetamji* covers

76.6% slope under 0-20% degree slope category and only 23.4% slope in above 20% degree slope category and both are still marked as unsuitable for construction. At the same time, site number 3, **Behind Maganji's Mountain** with 85.1 % slope under the 0-20% degree slope category and site number 7 Sunrise Housing Society with 89.32% degree slope under 0-20% degree slope category are marked as suitable for construction purposes. Thus, an inference can be drawn from these situations stating that the report is made in a manner so as to oust and remove the Gujarati community as the Expert Committee has applied a pick and choose policy and has therefore, not carried out any principles uniformly in the said report.

REPORT IS CONTRARY IN NATURE

27. **Contrary remarks by the Expert Committee.** It is apposite to mention that the Expert Committee in its report dated 08.12.2020 has observed (ref page 30) that landscape with low slopes is geologically stable and suitable. In fact, the Committee has observed two domains in *Hetamji* area, wherein the landscape with low slopes is suitable for construction. However, while still forming the conclusion, the committee marked the site (i.e. *Hetamji*) not suitable for construction which contrary in itself as it is erroneous on the part of the committee to say the site is suitable and on the other hand, they have marked it as unsuitable. Thus, the entire report may be reviewed properly and thoroughly by an independent agency. The relevant part of the observation (ref page 30) and recommen-

dation (ref page 80) of the Committee is reproduced herein for ready reference:

Hetamji

Observation :

"The site is considered for residential settlement for the expansion of the local population in the ZMP 2030. At this site two domains of the landscape have been identified (i) domain with low slopes having slopes <20 degree that is geologically stable and suitable for construction (Fig. 25a) and the domain with high slopes (that even reach >30 degree) that is not geologically unstable for construction (Fig. 25b). The areas with the steep slopes are also rich in vegetation with thick soil covers making the landscape more prone to erosion and instability.

The domain with low-slope that lies adjacent to the Abu Road - Mount Abu road cut may be permitted for construction based on geology (Fig. 12a). But, this domain of low slope is covered with the luxuriant growth of natural Phoenix sylvestris (Khajoor Tree) and any construction shall lead to deforestation caused by felling of these trees. This act of deforestation may spoil the ecosystem of this region."

Recommendation :

"This site is considered for residential settlement for the expansion of the local population in the ZMP 2030.

At this site two domains of the landscape have been identified domain with low slopes having slopes <20 degree that is geologically stable and suitable for construction and the domain with high slopes (that even reach >30 degree) is not geologically stable for construction.

Most of the area falls over 20 degree slope and is more prone to erosion and should not be put under construction.

Gently sloping land towards the road side (<20 degree) has a natural stand of Phoenix sylvestris (Khajoor tree) that should be protected.

Conclusion : Site is not suitable for construction."

RESIDENTIAL PLACE BEING A BASIC NEED

28. It is submitted that housing is a basic human need and also a basic human right and the said right has been guaranteed in the Constitution of India. It is further submitted that Article 21 of the Constitution of India encompasses within its ambit the right to shelter and to live in habitable conditions with all civic amenities and to use their properties as permitted by law. Thus, the said land in question shall be permitted to be used for residential purposes as it is not in contravention of the ESZ Notification and any other law.
29. **The said land is in consonance with the ESZ criteria of 50m away from forest boundary and water body.** It is pertinent to note that the land in question, is at least 200 feet (approx) away from a water body which situates beyond the road constructed at the boundary of site number 12 (i.e. *Hetamji*). Moreover, the land in question is far away from Nakki Lake, sites of public heritage like Dilwara temple and wildlife sanctuary. Hence, the development of the land in question for residential use would not have any adverse/detrimental effect on the environment and it is in consonance with the ESZ criteria of 50m away from forest boundary and water body. However, even then the Expert Committee has marked the site as suitable.

LAND IN QUESTION IS WITHIN MUNICIPAL LIMITS

30. The said land is within Municipal limits. It is pertinent to note that the land in question has been marked as “partly residential” and “partly plantation” in the New Master Plan 2030 which is a part of the site named as *Hetamji* in the order dated 07.11.2019. The land in question is within Municipal limits and is situated in Ward 12 of Mount Abu Municipality and part of it is in residential zone while the rest is agricultural land. It is submitted that the Applicant herein is a law abiding citizen and has proposed to use his land as per the law and plans sanctioned by the Municipality.

A true copy of Ward 12 issued by the Municipal Corporation is annexed herewith and marked as **ANNEXURE R/10**.

LAND USE IS IN CONSONANCE WITH THE ESZ NOTIFICATION

31. It is most respectfully submitted that the ESZ notification provides that the ZMP shall demarcate all the existing village settlements, tribal areas including tribal hamlets, types and kinds of forests, agricultural areas, fertile land, green areas, horticultural areas, orchards, lakes and other water bodies, natural heritage sites including points (such as Sunset Point) and man-made heritage sites, steep slopes, drainage channels, first order streams, ground water, recharge areas and areas rich in ground water, spring recharge areas, spring lines and other environmentally and ecologically sensitive areas and no change of land use from **green uses** such as orchards, horticulture areas, agriculture parks and other like places **to non-green** uses shall be permitted in the ZMP, except that strictly limited conversion of agricultural lands may be permitted to meet the

residential needs of the existing local residents together with natural growth of the existing local population, without the prior approval of the State Government. Further, no change in use of land from tribal uses to non-tribal uses shall be permitted without the prior approval of the State Government. Thus, in the present case, the Applicant/Intervenor has been allotted the land partly for residential use, looking to the population growth and the same is completely in accordance with the intention of ESZ formation.

32. **The change of land use of the land of site number 12 is in consonance with the ESZ Notification.** It is submitted that according to the report by the Expert Committee dated 09.03.2019, under site specific observations in relation to site number 12, it has been observed that :

“ 3.10 Hetamji

The State Government has proposed an expansion of residential area at this site due to natural growth of local population. The land is situated within Municipal limits, this site can be developed as residential site provided no construction should be allowed on hill slopes of more than 20 degrees and there should be a buffer of upto 50 meters between construction and forest boundary.”

At this juncture, it is pertinent to note that the land of site number 12 is agricultural land and was never designated as “green area”. A part of land of site number 12 was designated as residential zone in the proposed plan 2001- 2005. In the proposed ZMP- 2010 also, part of the land of site number 12

was designated in residential zone and no part of land of site number 12 was designated as "green area." It is further submitted that apart from the fact that no portion of land of site number 12 was designated as "green area", it is pertinent to note that the entire land of site number 12 was never used either for orchards or for horticultural activities. Hence, the change of land use of the land of site number 12 is in consonance with the ESZ Notification dated 25.06.2009.

33. In view of the above objections, it is humbly submitted that the report is self-contrary in nature and no sufficient study has been conducted. Therefore, a High Powered Committee or Independent Institution may be appointed so as to bring on record the correct facts and proper observation before this Hon'ble Tribunal and further direction may be issued to do extensive study with proper mechanism so that there shall be a logical basis for the conclusion.

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**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI
ORIGINAL APPLICATION NO. 312 of 2016**

IN THE MATTER OF:
Arun Kumar Sharma

...Applicant

Versus

Ministry of Environment Forests & Climate Change & Anr.

... Respondents

IN THE MATTER OF
Mehul Shah

...Applicant/Intervenor

AFFIDAVIT

I, Mehul Shah, S/o Sh. Jayantibhai. P.Shah aged about 47 years, R/o Bungalow No. 2, Sheryans Society, Opposite Old Civil Court Disa, District Banas Kantha, North Gujarat-35, Presently at New Delhi, do hereby solemnly affirm and declare as under:

1. That I am the of the Applicant/Intervenor in the instant matter and am well conversant with the facts and circumstances of the case and thus competent to swear this affidavit.
2. That the accompanying Objection/ Reply to the Report has been drafted under my instructions, which I have read and understood. I further state that the averments made therein are true and correct to my knowledge.
3. That the annexures filed alongwith the Objection/ Reply are true copy of their respective originals.

*I Identify the deponent who has
Signed/Put T.I. in my presence*

Mehul S. Shah

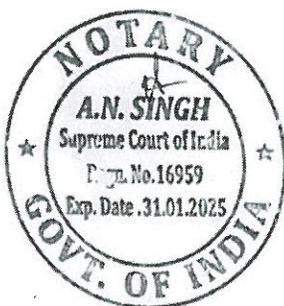
DEPONENT

VERIFICATION:

Verified at New Delhi on this 12th day of Jan 2021 that the contents of my aforesaid affidavit are true and correct to my knowledge. No part of it is false nor anything material has been concealed therefrom.

Mehul S. Shah

DEPONENT



ATTESTED

A.N. Singh, Notary
Notary Public, Govt. of India, Delhi

12 JAN 2021



**Jamabandi (Khevat /
Khatoni) (copy)**

23 Form P-26 (C)
(See Rule 153A)
Annexure: R-1

Village Name: - Hetamji

Last Chosla Aadhar Samvat: - 2074 - 2077 Jamabandi 2076
(Year 2019)

Patwar Lighter: - Abuparvat

Name of the land holder: - Government.

Land fund : - Abpavarvat

Area Unit: - Hectare

Tehsil: - Aburod

Account Number New: - 40

District: - Sirohi

Account Number Old: - 43

Tenant Name: -

1. Anantkumar son Jayantilal Joshi Part - 11/218 Caste - Brahmin S. Palanpur Gujarat Khatedar
2. Abhaykumar Putra Ramanlal Part - 9/1090 Caste - Agarwal S.A.
3. Omprakash Putra Shubhakaran Part - 38/1635 Caste - Baran Sa. Basnikavian Tehsil Raipur Hall Naida Khatedar
4. Govind Vallabh son Shubhakaranji Part - 19/3270 Caste - Baran sa. Basnikavian Tehsil Raipur Hall Naida Khatedar
5. Jagdish son Shubhakaranji Part - 19/3270 Caste - Baran sa. Basnikavian Tehsil Raipur Hall Naida Khatedar
6. Jayantibhai son Prabhuram Bhai Part - 1/10 caste - Patel sa. Ahmedabad account holder
7. Donaldaladoberldlobo son Leoncimanlobo Part - 13/545 Caste - Christian sa. Mumbai accountant
8. Nadeem Anjumkha son Mohammed Saiyed Khan Part - 13/1090 Caste - Muslim S. Govardhannagar Nimbahera Chittodgarh Khatedar
9. Nalini Bhandawat Wives Dns M Bhandawat Part - 13/545 Caste - Agrawal Sa. Jodhpur accountant
10. Navdeep Singh son Indrajit Singh Thakkar Part - 19/1090 Caste - Punjabi S. Jaipur Khatedar
11. Nitinbhai son Jessingbhai Bhojak Part- 3/218 Caste - Brahmin Ahmedabad Khatedar
12. Neetu Agarwal wife Pradeep Agarwal Part - 19/2180 Caste - Agarwal Sa. Under account holder
13. Pranatidas wife Gotamkumardas Part - 73/1090 Caste - Tambolkar Sa. Body accountant
14. Prem Son Roopchand Thawani Part - 19/1090 Caste - Rajput
15. Premkunwar wife Kailash Singh Part - 13/1090 Caste - Baran sa. Hilodi District Nagaur Khatedar
16. Belaben U. Gandhi wife Urmish Gandhi Part - 1/10 caste - Gandhi sa. Baroda accountant
17. Major Basant Prakash son Kailash Bahadur Part - 19/545 Caste - Mathur Sa. C-153 Sector 50 Noida Hall
18. Mehul J. Shah Putra Jayantibai P. Shah Part - 3/10 Caste - Shah Sa. Mount account holder
19. Randeep Singh Son Indrajit Singh Thakkar Part - 19/1090 Caste - Punjabi S. Jaipur Accountant
20. Rakesh Putra Ghanshyam Pathak Part- 11/1090 Caste- Brahmin Sa. Ahmedabad account holder
21. Raghav Sabharwal son Vijay Sabharwal Part- 2/545 caste- Rajput S. Delwada Khatedar
22. Raju Bambhani son Lakshman Bambhani Part - 19/2180 Caste - Sindhi Sa. Under account holder
23. Rajveer Singh son Surendra Singh Part - 13/1090 Caste - Baran sa. Pratapnagar Tejaji Chowk Chittodgarh Khatedar
24. Laxman Agarwal son Banwarilal Part - 19/2180 Caste - Agarwal S.A.
25. Vikrambasantchangulani son Balvant Changulani Part- 9/545 caste- Sindhi Sa. 72 Industrial Estate Bhilai (MP) account holders
26. Shyamgovind Putra Jamnalal Part - 19/1090 Caste - Mathur S. Udepur Khatedar
27. Subhash Son Roopchand Thawani Part - 19/1090 Caste - Rajput Sa. Body accountant
28. Sulochana Balwant Changlani wife Balwant Changulani Part- 37/1090 Caste- Sindhi Sa. 72 Industrial Estate Bhilai (MP) account holders
29. Sushila Agarwal wife Ramanlal Part - 4/545 caste - Agarwal sa. Under account holder
30. Susheela Daga wife Ishwar Chand Daga Part - 19/2180 Caste - Jain Sa. Under account holder
31. Hansaben wife Chandrakant Bhojak Part - 3/218 Caste - Brahmin Ahmedabad Khatedar

4
पटवारी, अबू पर्वत
(मू० अ०) अबू रोड
07/12/2019



Jamabandi (Khevat /
Khatoni) (copy)

Form P-26 (C)
(See Rule 153A)

Village Name: - Hetamji

Last Chosla Aadhar Samvat: - 2074 - 2077 Jamabandi 2076
(Year 2019)

Patwar Lighter: - Abuparvat

Name of the land holder: - Government.

Land fund : - Abpavarvat

Area Unit: - Hectare

Tehsil: - Aburod

Account Number New: - 40

District: - Sirahi

Account Number Old: - 43

Land record number	Area	Land classification	Cultivator paid rent	Sources of irrigation	Certified enrollment number and date in order of transfer	Comment
381/118	13.7831	barren	13.7831	21.78		
Total measles - 1	13.7831		13.7831	21.7800		

This form is for the information of the applicant only.

It cannot be used as a witness in any court.

Date of issue of copy: - 9-Dec-2019



~~सस प्रति लिपि~~

Y
पटवारी, आबू पर्वत
(मू० अ०) आबू रोड
०९/१२/२०१९

(T.C)

27
Annexure: R/4

BEFORE THE NATIONAL GREEN TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Original Application No. 312 of 2016
(M.A. Nos. 569 of 2016, 418 of 2018, 748 of 2018 & 807 of 2018)

IN THE MATTER OF :

Dr. Arun Kumar Sharma Vs. MoEF & CC & Anr.

**CORAM : HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Present:

Applicant

Mr. Amit Sibal, Sr. Adv. Mr. Sushant Singh, Ms. Geetika Kapur, Mr Abhinav Jagannath, Mr. Ambar Bhushan and Mr. Vinay Tripathi, Adv.

Respondent No. 1:

Mr. Balendu Shekhar, Mr. Sriansh Prakash, Mr. and Mr. Raj Kumar Maurya, Adv.

Mr. Saurabh Rajpal and Mr. Adhiraj Singh and Mr. Vikramjeet Singh, Adv. for State of Rajasthan

Mr. Nishit Agrawal and Mr. Kushagra Pandey, Adv.

Mr. Dhaval Mehrotra and Mr. Rishi K.S. Gautam, Adv.

Mr. Puneet Jain and Mr. Abhinav Gupta, Adv.

Mr. Pinaki Misra, Sr. Adv., Mr. Nishit Agarwa, Mr. Kushagra Pandey, Adv.

Date and Remarks	Orders of the Tribunal
Item No. 16 July 25, 2018 dv	<p>The only point which has been considered in today's hearing is the question whether Mrs. Mohini Bhullar and Dr. Major General Madhusudan Singh Bedi who are the applicants in the intervention application have an existing residence since mid 80s with requisite permissions. The applicants have filed documents in support of their claim.</p> <p>Learned Counsel for the applicant may look into the documents and give his response within one week from today. If any similar other application has been filed, response may be filed to the same also.</p> <p>List this matter for final hearing on 14th August, 2018, as prayed.</p> <p>....., CP (Adarsh Kumar Goel)</p>

	<p>Item No. 16</p> <p>July 25, 2018 dv</p>	<p>.....,JM (S.P. Wangdi)</p> <p>.....,EM (Dr. Nagin Nanda)</p> <p>25.07.2018</p>
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~~(T.V)~~



Item No. 01

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Original Application No. 312 of 2016
(M.A. Nos. 569 of 2016, 418 of 2018,
748 of 2018, 807 of 2018 & 1246/2018)

Dr. Arun Kumar Sharma

Applicant(s)

Versus

Ministry of Environment, Forest and Climate Change & Anr.

Respondent(s)

Date of hearing: 26.11.2018

**CORAM :HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

For Applicant(s):

Mr. Amit Sibal, Sr. Adv. Ms. Nina R. Nariman, Ms. Geetika Kapur and Abhinav Jagannath, Mr. Ambar Bhushan, Mr. Vinay Tripathi, Mr. Sushant Singh and Mr. Ankit Kaushal, Advocates.

For Respondent (s):

Mr. Prateek Yadav. and Mr. Raj Kumar Maurya, Adv.
Mr. Saurabh Rajpal and Ms. Shikha Sandhu, Adv.
for State of Rajasthan
Mr. Sandeep Mishra, Advocate in MA 748/2018
Mr. C.K. Singh, Sr. Advocate and Mr. Dhaval Mehrotra, Advocates
Mr. Puneet Jain and Mr. Abhinav Gupta, Advocates.
Mr. Pinaki Misra, Sr. Adv., Mr. Nishit Agarwa, Mr. Kushangra Pandey, Advocates

ORDER

1. This application challenges the Zonal Master Plan, 2030 (ZMP 2030) for the Mount Abu Eco-sensitive Zone (MA ESZ). Further prayer is for constitution of an Expert Committee to review the said plan.

2. Averments in this Application are that vide Notification dated 25.06.2009, issued by the MoEF under the provisions of the Environmental (Protection) Act, 1986, Mount Abu was designated as Eco-Sensitive Zone (ESZ). The Notification mentions that the area has significant ecological importance. It comprises of tropical dry deciduous forests at lower altitude and evergreen forests at higher

altitude. Flora and fauna of the region comprise of several endemic and rare species. Besides, Mount Abu has natural heritage such as Nakki Lake and man-made heritage like Dilwara temple apart from other heritage buildings and structures. The Notification notes that adverse impact has been noticed due to degradation of environment with excessive soil erosion on account of water and air pollution and volcanic activities endangering natural resources and affecting health and survival of human beings. The Notification gives boundaries of the ESZ wherein the activities are to be regulated by preparation of a ZMP for the restoration of denuded areas, conservation of existing water bodies including Nakki Lake, management of catchment areas, watershed management, groundwater management, soil and moisture conservation, needs of local community, conservation of heritage sites (both natural and cultural) and their surroundings and such other aspects of the ecology and environment that may need attention.

3. The ESZ notification further provides that the ZMP shall demarcate all the existing village settlements, tribal areas including tribal hamlets, types and kinds of forests, agricultural areas, fertile land, green areas, horticultural areas, orchards, lakes and other water bodies, natural heritage sites including points (such as Sunset Point) and man-made heritage sites, steep slopes, drainage channels, first order streams, ground water, recharge areas and areas rich in ground water, spring recharge areas, spring lines and other environmentally and ecologically sensitive areas and no change of land use from green uses such as orchards, horticulture areas, agriculture parks and other like places to non-green uses shall be permitted in the ZMP, except that strictly limited conversion of agricultural lands may be permitted to meet the residential needs of the existing local residents together with natural growth of the

existing local population, without the prior approval of the State Government. Further, no change in use of land from tribal uses to non-tribal uses shall be permitted without the prior approval of the State Government. With regard to tourism, it is specifically mentioned that a detailed carrying capacity study was to be carried out by the State Government based on existing infrastructure “and not on future projections” of any project that may require environmental or forest clearance. Mount Abu has natural sites such as Nakki Lake, Toad rock, rock formations, waterfalls, pools, springs, gorges, caves, points, walks etc. and plans for their conservation in their natural setting shall be incorporated in the ZMP and Sub-Zonal Master Plan. Strict guidelines shall be drawn up by the State Government to discourage construction activities at or near these sites including in the garb of providing tourist facilities. The general pool reserve areas in the zone shall be reserved. According to the Applicant, the rare species of wildlife are under serious threat by unregulated and impressive developmental activities.

4. The ZMP 2030 has been notified on 29.10.2015, after approval by the MoEF vide letter dated 28.09.2015.

5. According to the applicant, the notified ZMP 2030 is not consistent with the ESZ Notification dated 25.06.2009 in as much as the said plan fails to discourage construction activities at or near the heritage sites, conserve the existing water bodies, permits change of land use by illegal structures. Rock climbing has also been permitted, including sport climbing by fixing permanent anchors. Construction has been allowed on green tracks to benefit some builders.

6. Though, the Ministry of Environment, Forest and Climate Change, (MoEF&CC) vide its letter dated 28.09.2015, while

approving the ZMP, placed a restriction on change of land use from green uses, the ZMP allows paying guest accommodation in residential land which will be commercialization by back door and will be indirect land use change. ZMP does not take care of the fact that the locations of the STP, Aarna Jain Dharamshala Area, Gurukul locations at Sunset Road and Takhatwala bungalow need to be preserved. The water is limited and its quality needs to be retained by not allowing construction near the water bodies, including in the garb of providing the tourist facilities. The number of tourists to be permitted is required to be restricted to protect the environment.

7. The MoEF&CC, in its counter affidavit, has opposed the application by submitting that ZMP 2030 was issued after public hearing. The responsibility for preparation and implementation of the ZMP is with the State Government. There is requirement to constitute a Monitoring Committee to monitor the implementation of the ZMP which will take care of the concerns of the applicant. The State Government has been asked to make a provision for rectification of errors or loopholes and also to restrict the change of land use.

8. The State of Rajasthan has also opposed the application. Reference has been made to the order of the Hon'ble Supreme Court dated 19.09.2004 in W.P. (C) No. 202 of 1995, *T. N. Godavarman vs. Union of India*, constituting a committee comprising of three members in consultation with the Central Empowered Committee(CEC), pending issuance of ESZ. After the ESZ notification, order dated 19.08.2011 was passed by the Hon'ble Supreme Court in *T.N. Godavarman Thirumulpad Vs. Union of India*, (2011) 14 SCC 390 at page 392 to the effect that interested parties could place their response to the ZMP and the same will be finalized after considering such response. The ZMP was submitted to the

MoEF for approval and notified after approval was granted. The MoEF constituted a Monitoring Committee comprising of local residents and NGOs as members. Revised committees were also constituted by the MoEF&CC vide order dated 24.01.2012 and 05.05.2015. The State Government engaged the Department of Environment Planning, School of Planning and Architecture as consultant and also consulted the concerned departments, including Environment Department, Forest Department, Tourism Department, Pollution Control Board, SDO, Mount Abu, Secretary UIT, Mount Abu, Municipal Commissioner, Mount Abu, Archaeological Department and Underground Water Resource Department etc. Public objections were also considered. A detailed study of natural and man made heritage, forest, flora and fauna, wetlands, wildlife and other environmental and ecological aspects was carried out. Issue of tourist promotion has been duly addressed. No development has been proposed in the forest land or on slopes of more than 20 degrees. Conservation of forest, wetland, hill slopes and green areas has been given prime importance. There is a proposal for installation of air and noise monitoring stations. There is provision for reuse of waste water, on site waste water treatment and planning and management of waste water resources.

9. This application was filed before this Tribunal on 27.05.2016. On 31.05.2016, this Tribunal directed that no fresh plan should be sanctioned for construction without specific leave of the Tribunal. In view of the said order, certain intervention applications have been filed either seeking permission for repairs, or seeking permission for constructions, claiming to be within the purview of the ESZ and ZMP. Vide order dated 30.01.2018, permission for construction for residential purposes was granted for 'Takhtawala Building' subject to consideration of slope and geological studies and there being no felling of trees and also plan being in conformity with the Hill architecture.

Similar permission was also given for some other areas of Mount Abu mentioned in the order subject to the area being residential and subject to the same conditions as applicable to the 'Takhtawala building'.

10. We have heard the learned counsel for the applicant, learned counsel for the MOEF&CC, State of Rajasthan and for the interveners.

11. Main contention raised on behalf of the applicant is that comparison of land use plan annexed to Mount Abu ZMP for the year 2010 and the proposed land use plan annexed to the ZMP 2030 shows land use change which is inconsistent with the ESZ notification. In particular, reference has been made to the following points in the said plan:-

1. Inside Salim Ali Bird Sanctuary;
2. Aranya Village
3. Behind Maganji
4. Inside Salim Ali Bird Sanctuary
5. Hill Sahil
6. Sunset Road Scheme
7. Sunrise Housing
8. Takhtawala
9. Takhtawala
10. Arna Village
11. Mohanpura
12. Hitanji
13. Near STP Plant

12. Apart from the above, following points have been raised to point out inconsistencies in the ZMP 2030 as compared to ESZ notification or otherwise:-

- (i). ZMP provides that no construction is to be permitted in the wetland within 50 meters from the water bodies and wherever possible such buffer zone along the wetlands should be wider. Requirement of buffer zone between construction and the wetlands should have been atleast 100 meters, as per study referred to in the ZMP itself in Chapter - III.

- (ii). Having regard to the fact that the soil of the hills is loose and the area has potential for landslides, no development should be allowed at slopes having 35 degree or more. Hitanji and Hill Sahil have slopes higher than 35 degree. The same have been described as residential. Thereby, there is possibility of construction being allowed.
- (iii) There is degradation leading to wildlife decline, as noted in ZMP. This requires invocation of Precautionary Principle while permitting any development in the area.
- (iv) Nakki lake is a 'no construction zone' as per ESZ but ZMP permits organized commercial activities for facilities to the tourists and such activities could be cafeteria, shopping areas and accommodation.
- (v) ESZ notification provides for conservation of Toad rock but the ZMP has provision for ropeways which may result in rock not being conserved as required.
- (vi). The ZMP provides for 6700 tourists per day and also refers to carrying capacity having being under taken, as required under the ESZ notification, but the said carrying capacity report has not been furnished. Thus, carrying capacity has to be carried out to assess number of vehicles to be allowed and number of tourists to be allowed, having regard to the available existing infrastructure.
- (vii). Rocks in the ESZ area are required to be conserved but provision in the ZMP for adventure tourism permits sport climbing which may require drilling of the rock which will be against the spirit of the ESZ.
- (viii). Forest Policy, 1988 will be violated if there is reduction in green area as a result of activities permitted under

the ZMP, permitting converting green areas into non-green areas for facilities to tourists, including construction of hotels and resorts. Thus, mere denial of the State Government that no development on land with tree cover is contemplated and that there will no reduction in green area, does not fully appreciate the impact of ZMP. If green area is to be protected, provision for hotels, resorts etc. has to be deleted.

13. Learned counsel for the applicant referred to enunciation of Precautionary Principle, in the judgements of Hon'ble Supreme Court in 2004 (12) SCC 118 para 48, *M.C. Mehta Vs. Union of India & Ors.* and 2006 (1) SCC 1, para 86, 87 and 89, *T.N. Godavarnman Thirumulpad Vs. Union of India & Ors.*

14. We asked the learned counsel for MoEF&CC whether any expert study was carried out prior to grant of approval to the ZMP 2030 or whether points raised on behalf of the applicant have been addressed. In absence of any stand in the counter affidavit of MoEF&CC or instructions, no positive statement could be made.

15. Learned counsel for the State of Rajasthan supported the stand in the counter affidavit dated 06.09.2016 and two further affidavits dated 27.10.2017 and 19.03.2018.

16. Learned counsel for the interveners opposed the above contentions and submitted that ZMP 2030 is consistent with the ESZ, the interveners are original residents and their activities are not in any manner prohibited by the ESZ. It was also submitted that there is no absolute bar to change of land use. The bar can be lifted with the permission of the State Government. Approval for construction has been granted prior to 2010.

17. Learned counsel for the applicant however submitted that his objection is to an amusement park and a hotel. Even if any

permission was granted prior to 2010, the same could be of no avail after ESZ notification was issued and till ZMP 2030 was finalized.

18. At this stage, we do not consider it necessary to go into the merits of individual claims of intervenors for construction. We have to first consider the issue whether ZMP 2030 conforms to the ESZ.

19. There is no merit in the plea that there is absolute power for change of land use, with approval of the State. There are inherent limitations in exercise of such powers. Environment law has to be read into the Development Laws on the accepted concepts of 'Precautionary Principle' and the 'Sustainable Development principle'. ESZ Notification itself is part of the Precautionary Principle and Sustainable Development principle. These principles have been treated as part of Article 21 of the Constitution of India and also are statutory principles to be followed by this Tribunal under Section 20 of the National Green Tribunal Act, 2010. The Precautionary Principle operates wherever there is a potential threat of serious damage to the environment. As already noted, the issuance of ESZ notification itself is application of Precautionary Principle. Procedure of MoEF&CC clearance to ZMP is also part of application of the Precautionary Principle. This Tribunal has considered the concerns for protection of ecologically fragile hills recently vide order dated 05.10.2018 in Original Application No. 218 of 2017 SPOKE Vs. Kasauli Galaxie Resorts (Kasauli case). Directions were issued for restriction on construction activity, for slope stability, for waste management based on carrying capacity study.

20. Even though, we refrain from making any final comment on merits on the contention that ZMP 2030 provisions are in conflict with ESZ notification, we are satisfied that there is certainly need for consideration of the issue by an Expert Committee which is constituted as follows:-

1. Two representatives of MoEF&CC – an officer not below the rank of Joint Secretary/Advisor and an Expert of Eco-Sensitive Zone (ESZ) to be nominated by MoEF&CC;
2. Representative of School of Planning and Architecture, Delhi - the institution which was hired as consultant by the State of Rajasthan. Representative should be senior level land scape expert.
3. Representative of Central Pollution Control Board of the level of Director/Additional Director.

21. The Committee will undertake comparison of ZMP 2030, in terms of letter of MoEF&CC dated 28.09.2015 and ESZ Notification dated 25.06.2009 and point out the aberrations in some besides comparing ZMP 2030 map with reference to pre-existing 2010 map in the light of ESZ notification. Thirteen (13) locations noted above must also be specifically looked into. The Expert Committee may also look into the suggestions relating to prohibiting use of plastics, burning of garbage/ or any other waste, proper laying of high tension lines for protecting animals and birds life particularly in Salim Ali Bird Sanctuary area, preventing forest fire, conservation of Nakki lake and water quality management, siting and operation of Solid Waste processing plant in accordance with Solid Waste Management Rules, 2016 (with reference to sanctuary area), any other issues relating to environment management which may become a part of ZMP 2030, including observations of this Tribunal in Kasuali case.

22. The Committee will also look into the points of concern raised by the applicant in reference to conversion of green areas to non-green areas, permissibility of construction on higher degree slopes, conservation of rocks, water bodies and wildlife and other heritage sites, the issue of water scarcity, carrying capacity of Mount Abu with regard to number of tourists and vehicles to be permitted having regard

to the availability of the infrastructure without relying upon future projection, as required in terms of ESZ notification.

23. The Committee may assume its charge within one month from the receipt of copy of this order by the MoEF&CC. The Nodal Agency will be MoEF&CC. The report of the Committee may be furnished within three months after assumption of charge by the Committee which may be forwarded by MoEF&CC to this Tribunal by e-mail at ngt.filing@gmail.com.

24. The *status quo* as on today in terms of the orders dated 31.05.2016 and 30.01.2018 with regard to any construction in the area will be operative till the finalization and acceptance of report of the Committee by this Tribunal.

25. The application is disposed of except for consideration of the report.

26. The MoEF&CC may revise its approval in the light of the above report, if necessary and consequential action may also be taken by the State of Rajasthan, subject to any challenge to the report as per law.

27. The report may be placed for consideration before this Tribunal on 30.04.2019.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

November 26, 2018
A


(T.C)

Item No. 01

40
Annexure: R/6
Court No. 1

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

Original Application No. 312/2016
(M.A. No. 212/2019 & M.A. No. 227/2019)

Dr. Arun Kumar Sharma

Applicant(s)

Versus

Ministry of Environment, Forest &
Climate Change & Anr.

Respondent(s)

Date of hearing: 07.11.2019

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P WANGDI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

For Respondent(s):

Mr. P.S. Narsimha, Senior Advocate, Mr. Nishit Agrawal, Advocate to intervenor Pryajnesh Shah Mr. Sriansh Prakash, Advocate for Impleaded party
Mr. Puneet Jain, MR. Abhinav Deshwal, Advocates
Mr. Dhaval Mehrotra, Advocate for MA 227 of 2019

ORDER

1. The issue for consideration is whether Zonal Master Plan, 2030 (ZMP 2030) for the Mount Abu Eco-sensitive Zone (MA ESZ) to the extent of change of land use compared to the land use stipulated in ZMP 2010 is inconsistent with the ESZ notification dated 25.06.2009.
2. The applicant challenged the ZMP 2030 as notified on 29.10.2015 with the grievance that land use change provided

therein was not consistent with the ESZ notification particularly with the reference to following locations:-

1. Inside Salim Ali Bird Sanctuary;
2. Aranya Village
3. Behind Maganji
4. Inside Salim Ali Bird Sanctuary
5. Hill Sahil
6. Sunset Road Scheme
7. Sunrise Housing
8. Takhtawala
9. Takhtawala
10. Arna Village
11. Mohanpura
12. Hitanji
13. Near STP Plant

3. Further pointed contention on behalf of the applicant is that ZMP 2030 had deficiencies as follows:-

- (i). *ZMP provides that no construction is to be permitted in the wetland within 50 meters from the water bodies and wherever possible such buffer zone along the wetlands should be wider. Requirement of buffer zone between construction and the wetlands should have been atleast 100 meters, as per study referred to in the ZMP itself in Chapter - III.*
- (ii). *Having regard to the fact that the soil of the hills is loose and the area has potential for landslides, no development should be allowed at slopes having 35 degree or more. Hitanji and Hill Sahil have slopes higher than 35 degree. The same have been described as residential. Thereby, there is possibility of construction being allowed.*
- (iii). *There is degradation leading to wildlife decline, as noted in ZMP. This requires invocation of Precautionary Principle while permitting any development in the area.*
- (iv). *Nakki lake is a 'no construction zone' as per ESZ but ZMP permits organized commercial activities for facilities to the tourists and such activities could be*

cafeteria, shopping areas and accommodation.

- (v) ESZ notification provides for conservation of Toad rock but the ZMP has provision for ropeways which may result in rock not being conserved as required.
- (vi). The ZMP provides for 6700 tourists per day and also refers to carrying capacity having being under taken, as required under the ESZ notification, but the said carrying capacity report has not been furnished. Thus, carrying capacity has to be carried out to assess number of vehicles to be allowed and number of tourists to be allowed, having regard to the available existing infrastructure.
- (vii). Rocks in the ESZ area are required to be conserved but provision in the ZMP for adventure tourism permits sport climbing which may require drilling of the rock which will be against the spirit of the ESZ.
- (viii). Forest Policy, 1988 will be violated if there is reduction in green area as a result of activities permitted under the ZMP, permitting converting green areas into non-green areas for facilities to tourists, including construction of hotels and resorts. Thus, mere denial of the State Government that no development on land with tree cover is contemplated and that there will no reduction in green area, does not fully appreciate the impact of ZMP. If green area is to be protected, provision for hotels, resorts etc. has to be deleted.

4. This Tribunal considered the matter on 26.11.2018 and it was observed that no expert studies had been carried out for grant of approval to the ZMP 2030 and the issues raised by the applicant had not been gone into. Since environment law had to be read into the development laws, any Master Plan has to be consistent with the Precautionary and Sustainable Development Principles, particularly in and near ESZ areas.

5. The Tribunal referred to earlier order dated 05.10.2018 in Original Application No. 218 of 2017, *SPOKE Vs. Kasauli Galaxie Resorts (Kasauli case)*, wherein a study was directed to be carried out for finalizing the master plan in an eco fragile area.
6. Accordingly, the Tribunal directed constitution of an expert Committee as follows:
 1. Two representatives of MoEF&CC – an officer not below the rank of Joint Secretary/Advisor and an Expert of Eco-Sensitive Zone (ESZ) to be nominated by MoEF&CC;
 2. Representative of School of Planning and Architecture, Delhi - the institution which was hired as consultant by the State of Rajasthan. Representative should be senior level land scape expert;
 3. Representative of Central Pollution Control Board of the level of Director/Additional Director.
7. The mandate of the Committee was to be as follows:-

“The Committee will undertake comparison of ZMP 2030, in terms of letter of MoEF&CC dated 28.09.2015 and ESZ Notification dated 25.06.2009 and point out the aberrations in some besides comparing ZMP 2030 map with reference to pre-existing 2010 map in the light of ESZ notification. Thirteen (13) locations noted above must also be specifically looked into. The Expert Committee may also look into the suggestions relating to prohibiting use of plastics, burning of garbage/ or any other waste, proper laying of high tension lines for protecting animals and birds life particularly in Salim Ali Bird Sanctuary area, preventing forest fire, conservation of Nakki lake and water quality management, siting and operation of Solid Waste processing plant in accordance with

Solid Waste Management Rules, 2016 (with reference to sanctuary area), any other issues relating to environment management which may become a part of ZMP 2030, including observations of this Tribunal in Kasuali case.

The Committee will also look into the points of concern raised by the applicant in reference to conversion of green areas to non-green areas, permissibility of construction on higher degree slopes, conservation of rocks, water bodies and wildlife and other heritage sites, the issue of water scarcity, carrying capacity of Mount Abu with regard to number of tourists and vehicles to be permitted having regard to the availability of the infrastructure without relying upon future projection, as required in terms of ESZ notification."

8. Though the Committee was to furnish its report within three months from the order dated 6.11.2018 report has been filed almost after more than 9 months on 04.09.2019. We find from the report that the Committee has assumed the ZMP to be conclusive on the ground that suitability analysis test had already been carried out by the State Government. This approach is inconsistent with the directions of this Tribunal. If the analysis of the State Government was to be treated as final, there was no need for the Committee.
9. Accordingly, without expressing any opinion on merit, we direct further exercise to be undertaken by modified Committee as follows:

1. An Expert of Ecology from G.P. Pant Institute, Almora, Uttarakhand to be nominated by the Director of Institute.
2. A senior Scientist from MOEF & CC, to be nominated by the Secretary, MOEF & CC.

3. A senior Scientist from the Indian Council of Forestry Research and Education, Dehradun.
4. Senior Scientist from Wadia Institute of Himalayan Geology, Dehradun, to be nominated by the Director.
5. Scientist/ Senior official from the Central Pollution Control Board, New Delhi.
6. Representative of School of Planning and Architecture, New Delhi.
7. Member Secretary, Rajasthan Pollution Control Board, shall be a member and Nodal Officer, who shall ensure the compliance.
10. The Committee may take into account the material already on record but undertake further study in terms of the directions of this Tribunal and also take into account the pattern of studies in the context of Manali (referred to order of this Tribunal dated 19.09.2018 in O.A. No. 635/2017, *Ramesh Chand v. State of Himachal Pradesh*), Shimla (referred to order of this Tribunal dated 16.11.2017 in O.A. No. 121/2014, *Yogendra Mohan Sengupta v. UOI & Ors.* and Kasauli (referred to order of this Tribunal dated 05.10.2018 in O.A. No. 218/2017, *SPOKE Vs. Kasauli Galaxie Resorts (Kasauli case)*). The Committee may also take into account the order dated 19.01.2019 passed by this Tribunal. The Committee will be free to associate any other Expert or Institution.

11. The Committee will be at liberty to consider the viewpoint of all the stake holders.
12. The Committee may commence its proceedings at the earliest complete the exercise preferably within two months and furnish its report by 31.01.2020 by e-mail at judicial-ngt@gov.in.

List for further consideration on 12.02.2020.

Adarsh Kumar Goel, CP

S.P Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM

November 07, 2019
Original Application No. 312/2016
A

(T.U)

47 ¹

Annexure: 177
Date :16.01.2020

To,

The Expert Committee
(Constituted under the Order
dated 7.11.2019 passed by the
Hon'ble NGT in O.A. No. 312/2016)

Re.: Location No.12 referred to in Order dated 7.11.2019

I, Mehul Shah, residing at J.P. Complex, MK Choraya, Near
Puranik Bhawan (Odhana Sarce Showroom), Mount Abu, beg to
submit as under :

1. That I with two others are the owners of Survey No. 118 (part), 119 and 120 (hereafter "the land in question") which is part of Location No.12 referred to as Hetamji in the Order dated 7.11.2019. The land in question is situated in Ward 12 (old Ward 6) of Mount Abu Municipality and part of it is in residential zone while the rest is agricultural land.

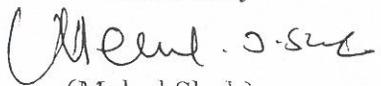
It may be pointed out that Hetamji by itself is a very large area and the land in question forms only part thereof.

2. That the land of Location 12 is agricultural land and was never designated as 'Green area'. A part of land of Location 12 was designated in residential zone in the proposed Master Plan-2001-2025. In the proposed ZMP-2010 also part of the land of Location 12 was designated in residential zone and no part of land of Location 12 was designated as 'Green area'.
3. That ZMP-2030, however, slightly increases the area of land of Location 12 in residential zone but maintains substantial part of Location 12 as agricultural land.
4. That, apart from the fact that no portion of land of Location 12 was designated as 'Green area', it is also pertinent that the entire land of Location 12, including the land in question, was never used either for orchards or for horticultural activities or as an agricultural park or other like activities. Hence, the change of land use (being slight increase in residential area) of the land of Location 12 is in consonance with the ESZ Notification dated 25.6.2009 even assuming that the land of Location 12 was a 'Green area'. Moreover, the change of use is also required for the residential needs of existing population of Mount Abu and natural growth of such population.
5. That it is also relevant that area surrounding the land of Location 12 has been developed and occupied by Hetamji village aabadi. Indeed, some land adjacent to the land in question has also been developed. Some other lands also have non-agricultural permission for development thereof. There also exists a building/construction on the land in question consuming the area of about 3 bighas (approx.). Photographs of the development surrounding the land in question are

enclosed herewith for ready perusal of the Hon'ble Committee. In that view of the matter also, the designation of part of the land in question in residential zone is consistent with the surrounding development and ESZ Notification.

6. That the land in question is, at least, 200 feet (approx.) away from a water body which situates beyond the road constructed at the boundary of Location 12. Moreover, the land in question is far away from Nakki lake, sites of public heritage like Dilwara Temple and wild-life sanctuary. To the best knowledge of the owners of the land in question, no wild animal like panther/leopard or sloth bear has ever been sited on the land in question. Hence, the development of the land in question for residences would not have any adverse effect on the environment.
7. That the land in question is incapable of being developed in slopes higher than 20 degrees inasmuch as it is the stand of the State Government that no development has been proposed (and, therefore, impermissible) on land having slopes of more than 20 degrees. Hence also, the proposed residential use of land in question is consistent with the ESZ Notification.
8. That there does not exist any dense forest with rock faces or otherwise on the land in question. The owners of the land in question do not propose to fell the existing trees standing on the land in question. For these reasons also, the use of land in question is not contrary to the provisions of the ESZ Notification.
9. That the Owners of the land in question are also ready to furnish an undertaking that they shall be abiding by the provisions of the ESZ Notification as and when they develop the land in question in accordance with law.

Yours truly



(Mehul Shah)

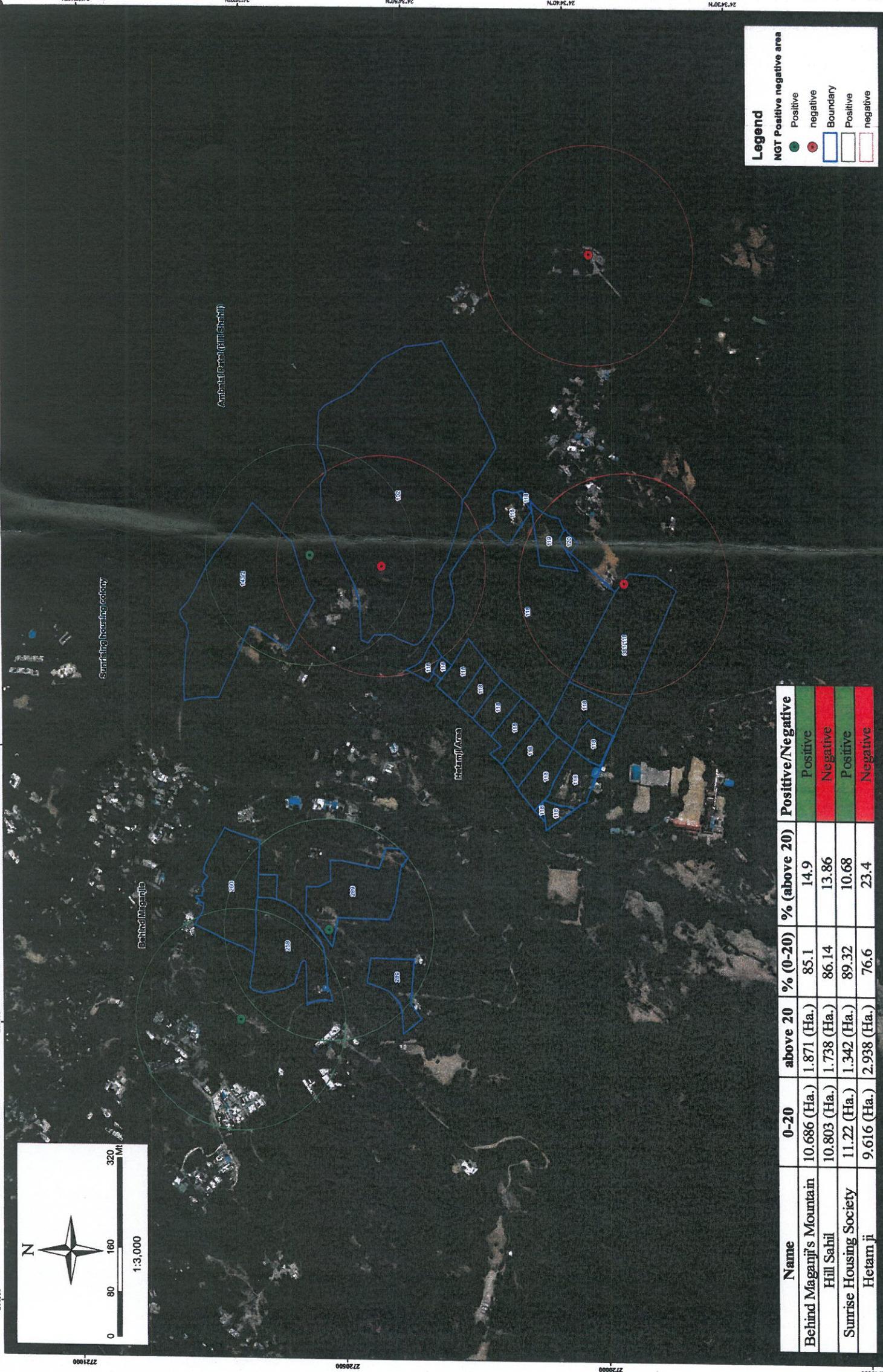
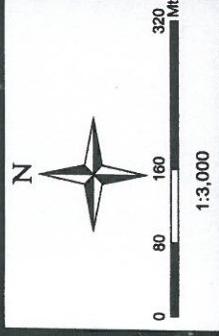
Mo. 9825095401

Encl.

1. Draft master plan of 2001 which shows that our land is in residential cam hotel zone.
2. Draft land use plan of 2025 which shows that question no. 12 land shows in residential zone.
3. Photos of khasara no. 118 (photos no. 1 to 8)
4. Photos of surrounding constructed building/ development questionised land no - 12. (Photos no. 9 to 20)
5. Photos of construction /development questionised land no- 12 (photos no. 21 to 25)
6. Google map with demarcation of question no. 12 land, inside and outside development / construction including abadi area.

Total Page 1 to 15





Legend

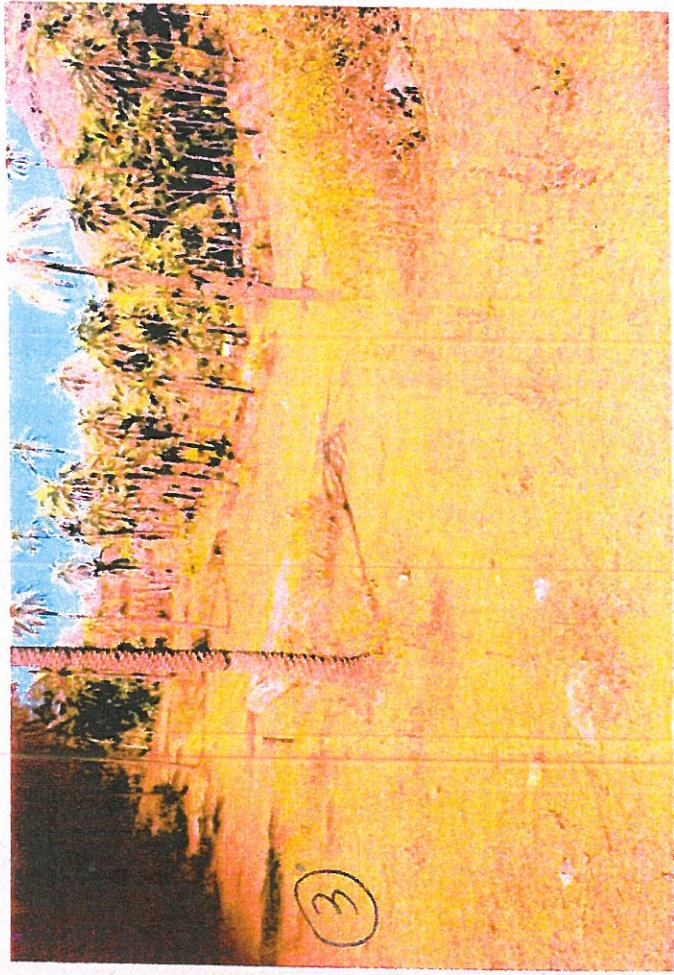
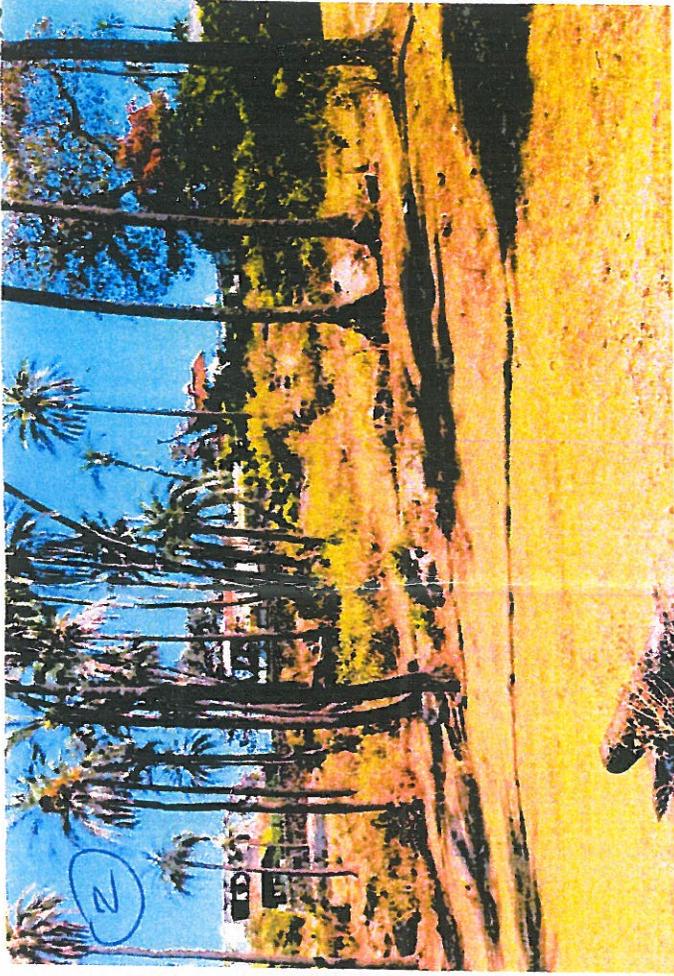
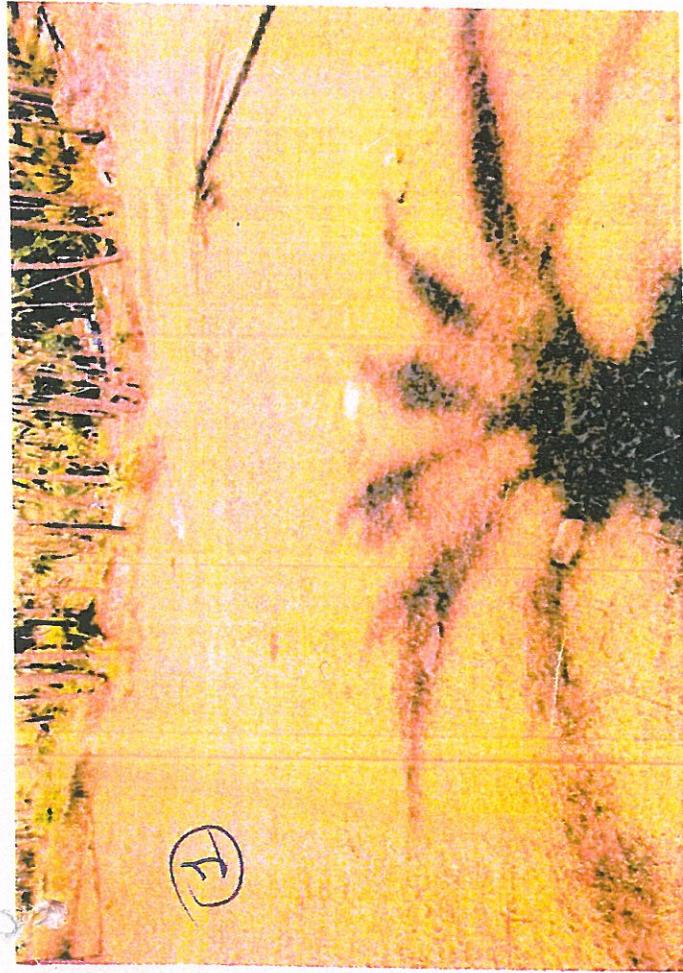
NGT Positive negative area

- Positive
- negative
- Boundary
- Positive
- negative

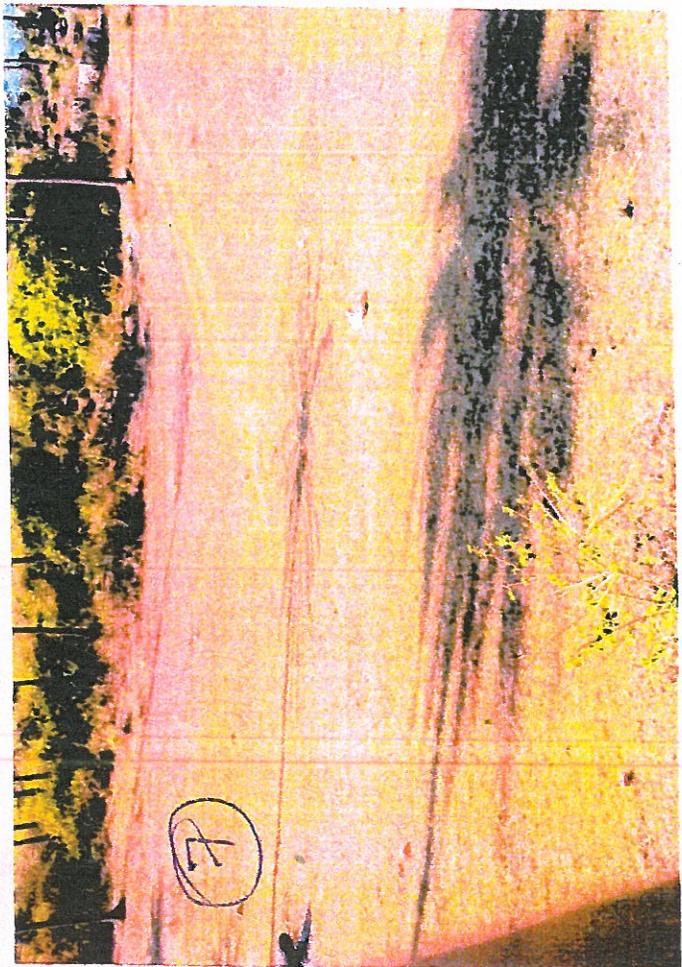
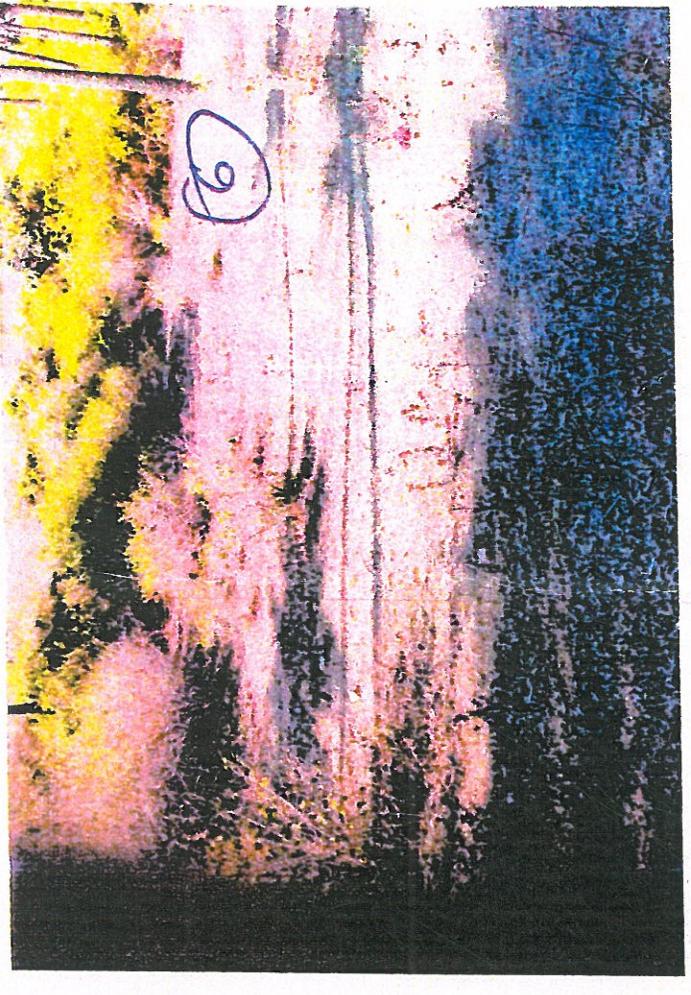
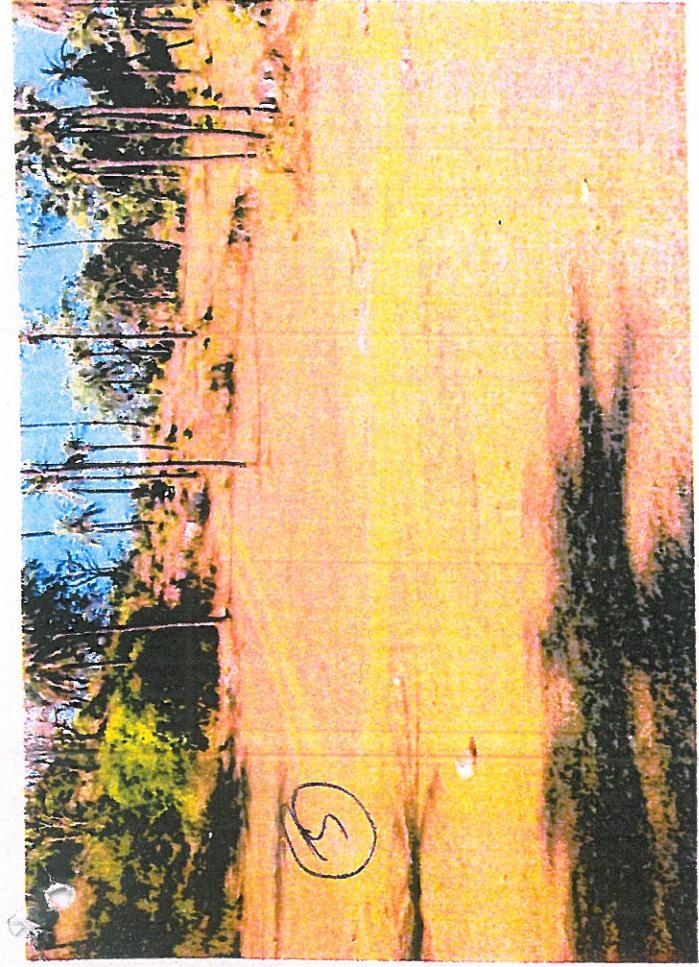
Name	0-20	above 20	% (0-20)	% (above 20)	Positive/Negative
Behind Maganji's Mountain	10.686 (Ha.)	1.871 (Ha.)	85.1	14.9	Positive
Hill Sahil	10.803 (Ha.)	1.738 (Ha.)	86.14	13.86	Negative
Sunrise Housing Society	11.22 (Ha.)	1.342 (Ha.)	89.32	10.68	Positive
Hetam ji	9.616 (Ha.)	2.938 (Ha.)	76.6	23.4	Negative

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Khasra No: 118 (1, 2, 3, 4) Annexure: A/9 50

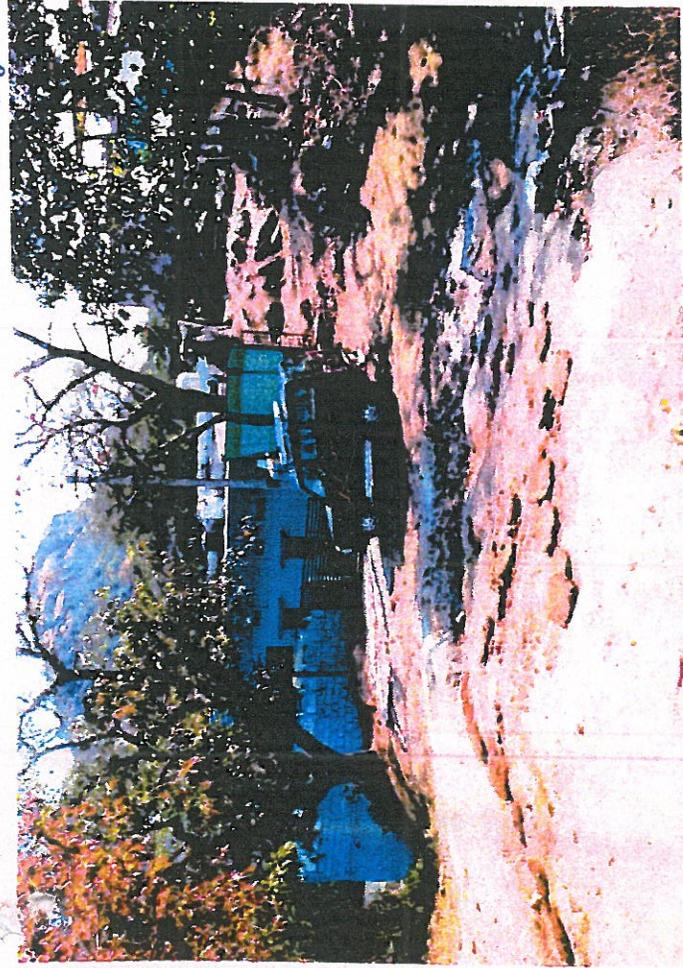


KINGSLEY NO: 110 (S, B, T, D) 51 6

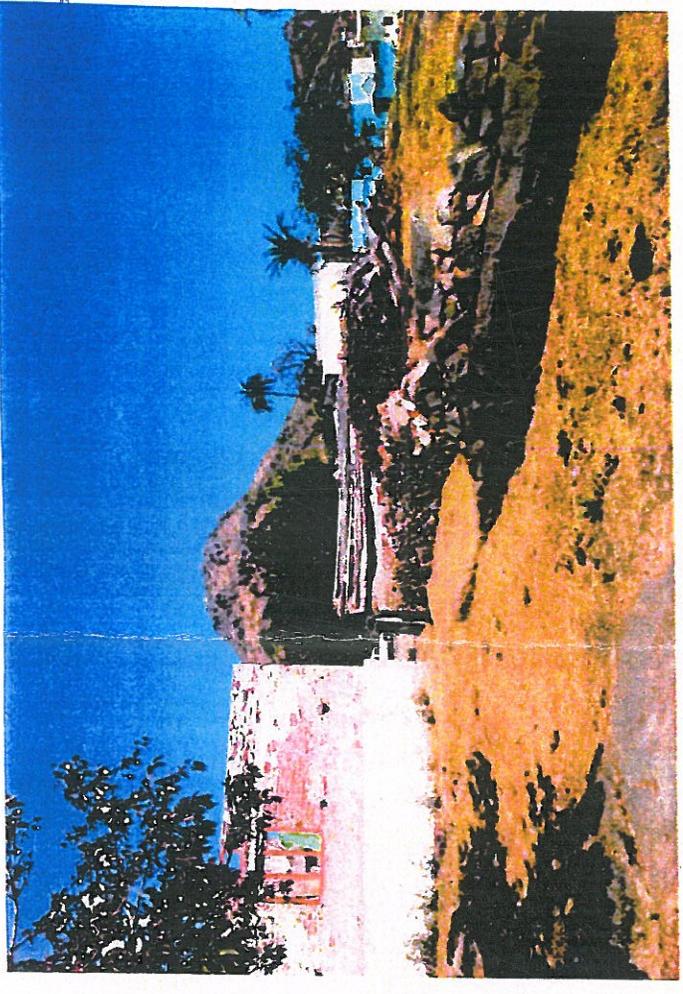


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No. 118 (H. 1951)

Syzyrmedy photos of Khasang



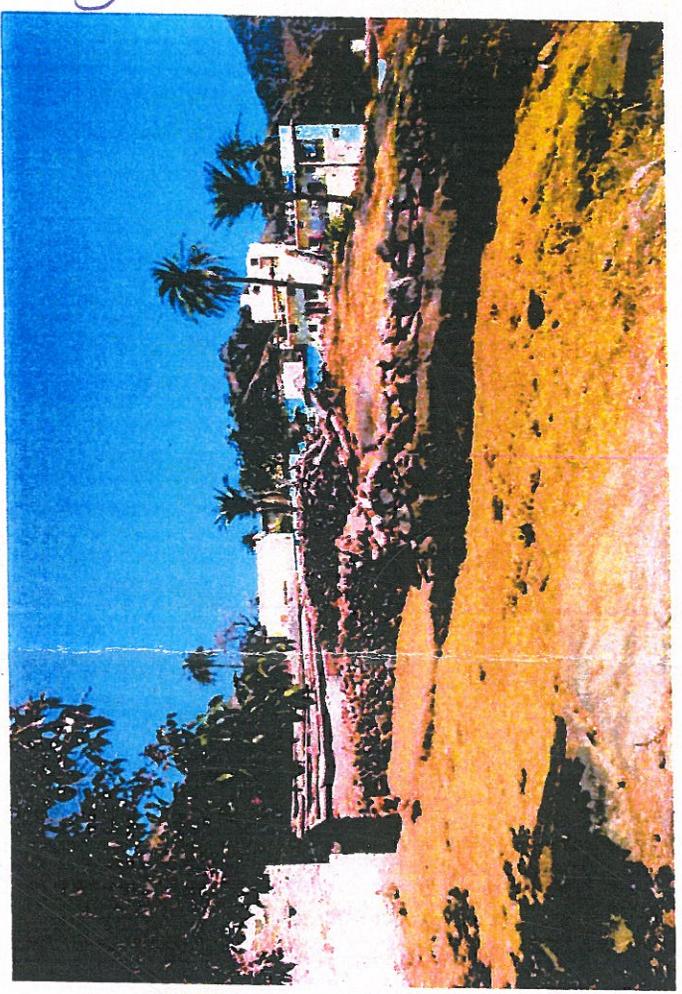
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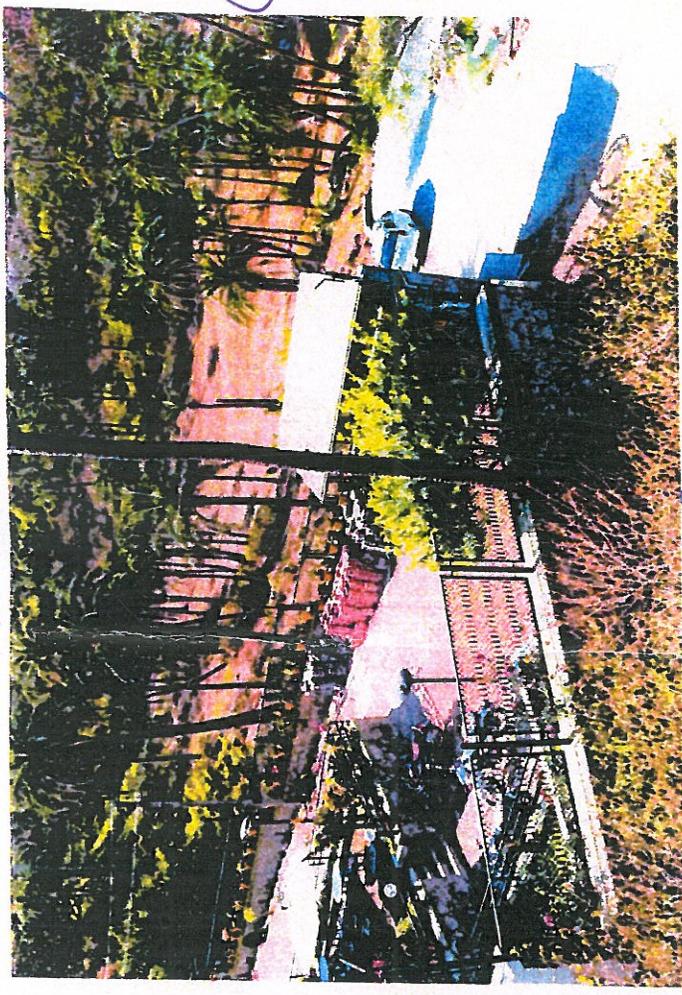


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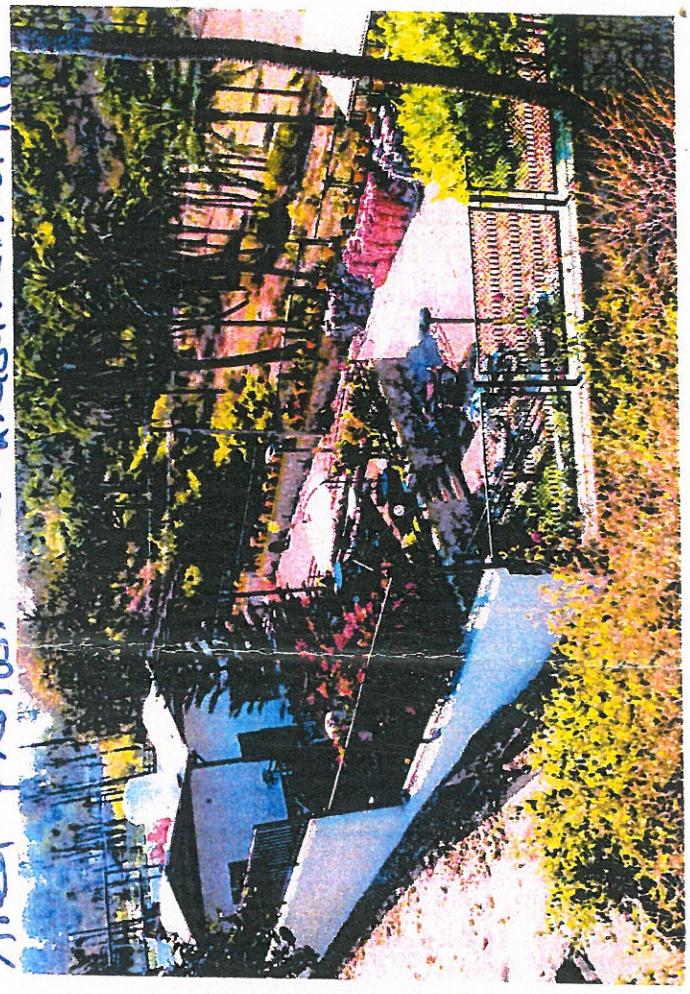
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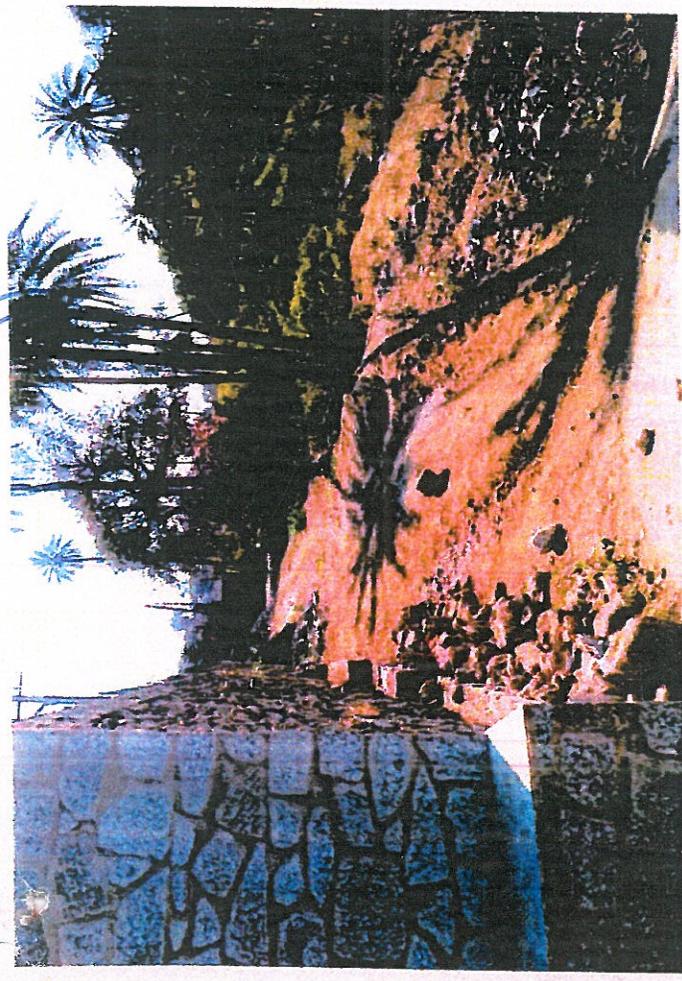
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Area photos. of Khasara. no. 118



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Khasara no. 116



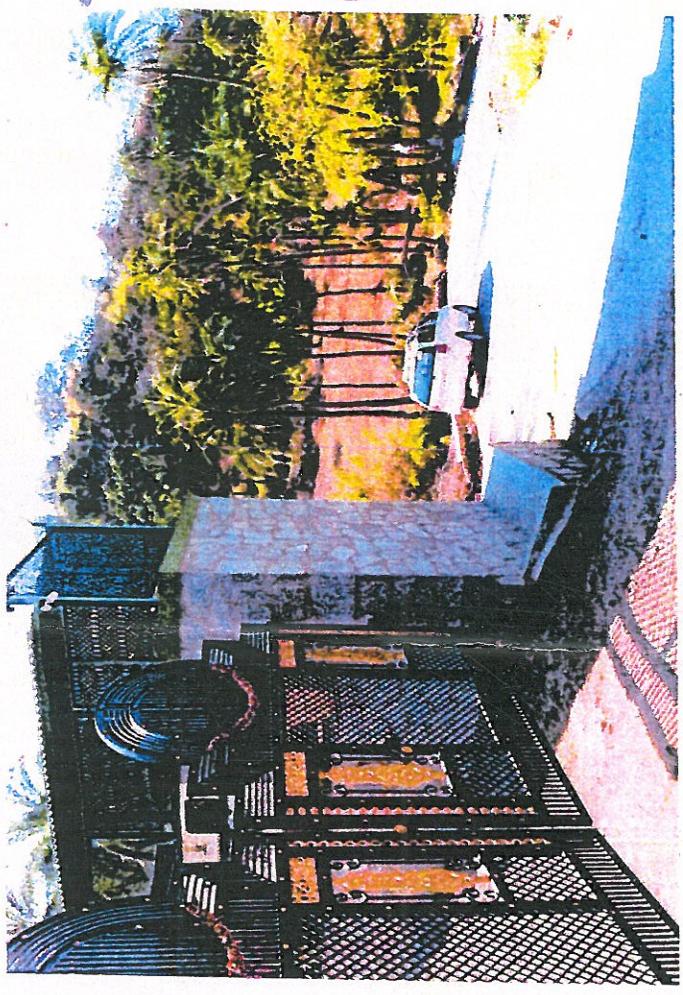
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Surrounding

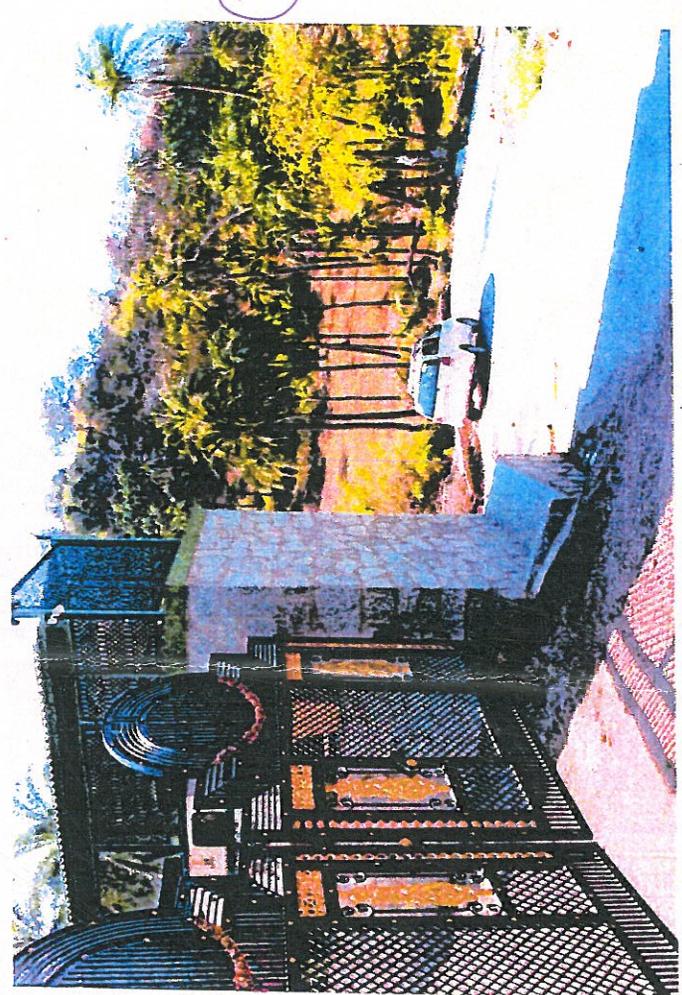


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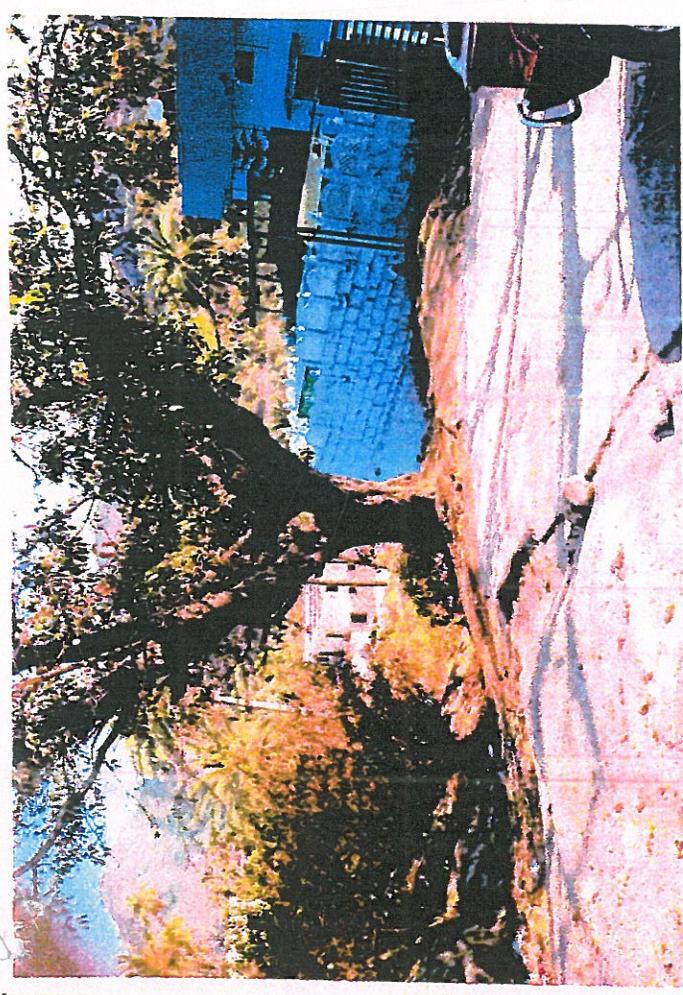
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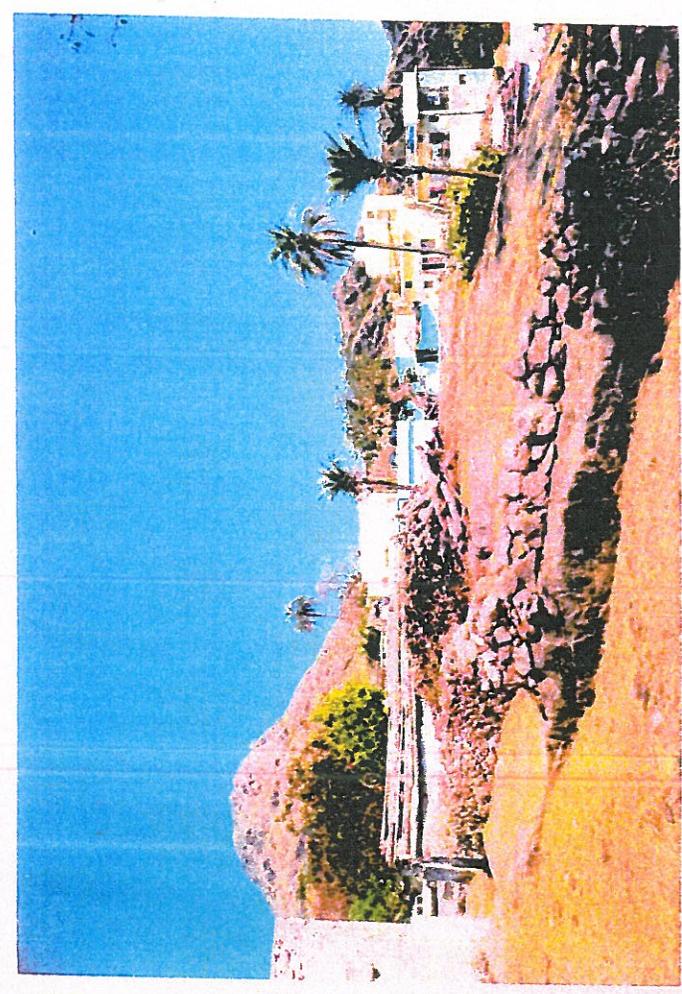
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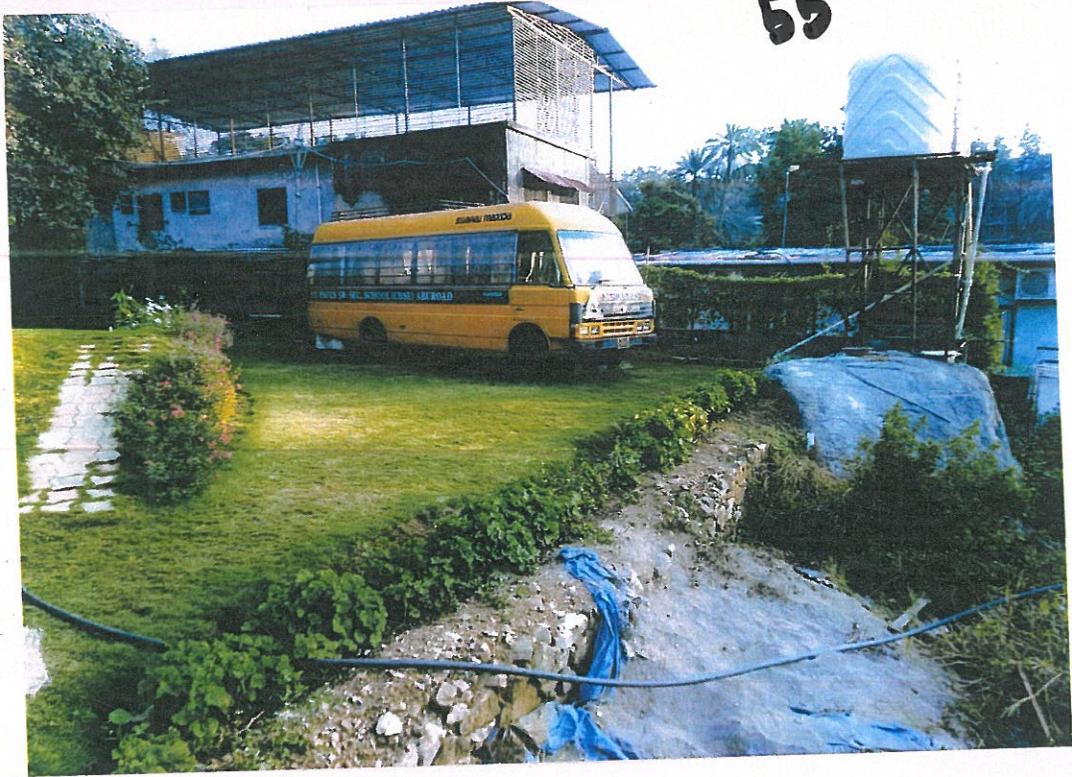
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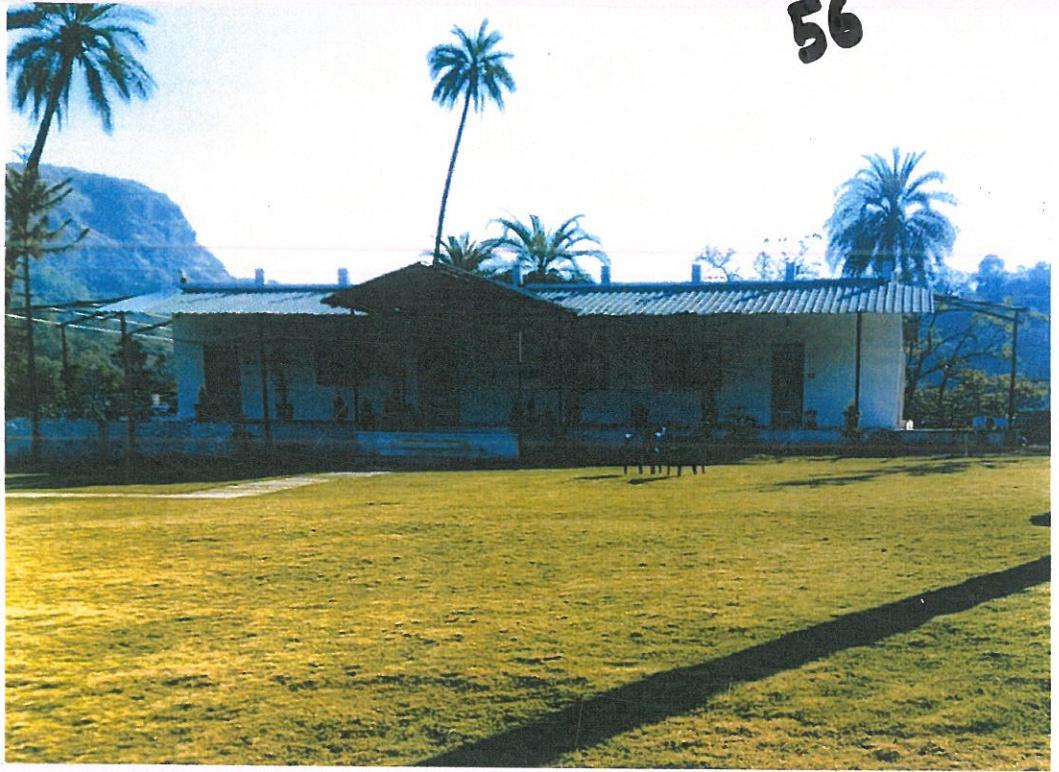
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Development in question no: 12
land

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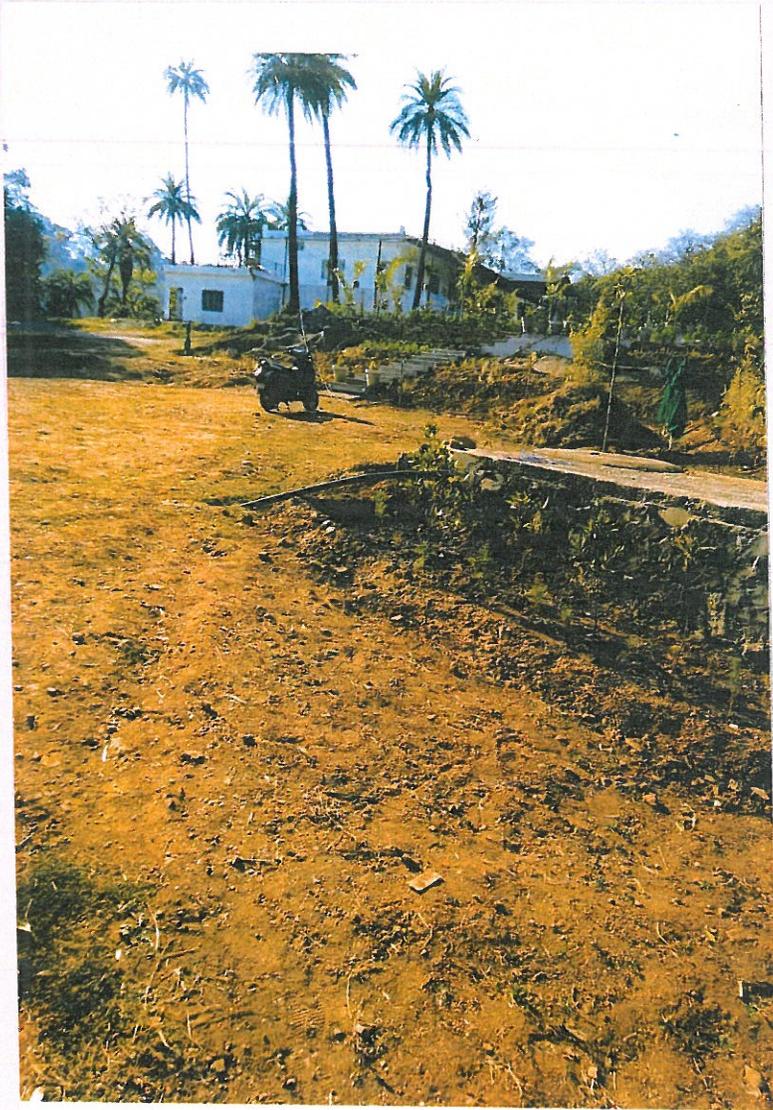
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Development in question no: 12 land

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Development in question no: 12 land

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G.U

कार्यालय, आयुक्त, नगरपालिका-मण्डल, आबूपर्वत-सिरोही

वार्ड-पुर्नगठन एवं वार्ड-परिसीमन-2019

(प्रारूप-क)

वार्ड संख्या	वार्ड संख्या :-12, क्षेत्र का विस्तृत-विवरण
12	हेटम जी गाँव की सम्पूर्ण भाग की आबादी एवं एम.एम. माथूर का मकान से होते हुए महेशराज पुरोहित का मकान, रा.प्रा.विद्यालय, सीतावन, टोपरर्स कॉर्नर, सेन्ट मेरी स्कूल के आसपास के मकान से होते हुए, होटल अराधना तक का समस्त भाग साथ ही वन-विभाग की बाउन्ड्री को छोड़ते हुए।

दिनांक:- 14.08.2019


अयुक्त
नगरपालिका-मण्डल, आबूपर्वत
आबूपर्वत, (जिला-सिरोही)


वरिष्ठ संयुक्त विधि परामर्शी
स्वायत्त शासन विभाग


(T.C)



**OBJECTIONS ON BEHALF OF THE APPLICANT / INTERVENOR (SH. MEHUL SHAH)
TO THE REPORT DATED 08.12.2020 FILED BY THE EXPERT COMMITTEE
APPOINTED VIDE ORDER DATED 07.11.2019**

1 message

arjun singh <arjun.nlsiub@gmail.com>

Sat, Feb 6, 2021 at 2:12 AM

To: nina.r.nariman@gmail.com, balendushekhhar@gmail.com, agrawal.nishit@gmail.com, adhiraj.advocate@gmail.com

Sir(s),

Kindly find attached herewith the OBJECTIONS ON BEHALF OF THE APPLICANT / INTERVENOR (SH. MEHUL SHAH) TO THE REPORT DATED 08.12.2020 FILED BY THE EXPERT COMMITTEE APPOINTED VIDE ORDER DATED 07.11.2019.

 Mehul Shah.pdf

*Arjun Singh, Adv.
(National Law School of India University, Bengaluru.)
A- 431
Defence Colony,
New Delhi - 110024
Mob.: 9538964944*