

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL**

**NEW DELHI, WESTERN ZONE, BENCH AT PUNE.**

**ORIGINAL APPLICATION No. 29 of 2022**

Mr. Shashikant Vitthal Kamble

... Orig. Applicant

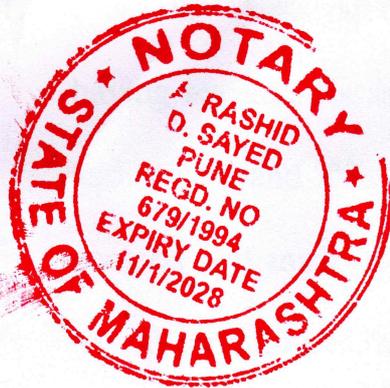
Versus

Ministry of Environment and Forest &  
Climate Change & Ors.

... Respondents

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*Jusab.*

Advocates for Respondent No. 15

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL  
NEW DELHI, WESTERN ZONE, BENCH AT PUNE.  
ORIGINAL APPLICATION No. 29 of 2022**

**In the matter between:**

Mr. Shashikant Vithal Kamble ... Applicant

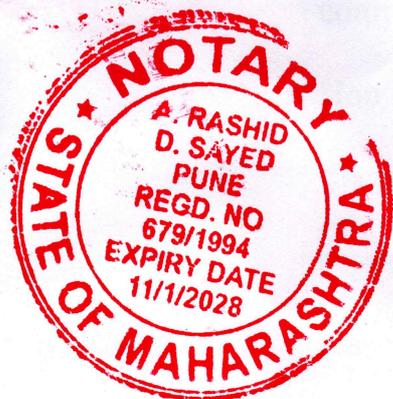
Versus

Ministry of Environment and Forest &  
Climate Change & Ors. ... Respondents

**OBJECTION TO THE FINAL JOINT COMMITTEE  
REPORT ON BEHALF OF RESPONDENT NO. 15**

I, Reji Menon, aged \_\_\_\_\_ years, the Authorised Signatory of the Respondent No.15, having office address at 200, Gera Plaza, Boat Club Road, Koregaon Park, Pune 411 001, do hereby solemnly affirm and state as under:

1. I am the Authorized Signatory of the Respondent No.15, having my address as mentioned above and I am competent, authorized, and able to depose the present Affidavit. I have perused and made myself conversant with the contents and record pertaining to the present Application and I am otherwise aware of the facts and circumstances of the present case from personal knowledge as also office records and thus, competent to depose the same. I say that I am filing the present Affidavit



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to object to the Joint Committee Report filed by the Maharashtra Pollution Control Board ("MPCB") in compliance with Order dated 05.04.2022 passed by this Hon'ble Tribunal in the present proceedings. I crave leave to file a further detailed affidavit/additional affidavit along with supporting documents if the circumstances so warrant. For the reasons stated hereinbelow, the Joint Committee report may not be taken into consideration.

2. **PRELIMINARY OBJECTION TO THE CONSTITUTION OF JOINT COMMITTEE**

2.1 At the outset, without even addressing the merits of the committee report, I say that the same deserves to be quashed and set aside for the following reasons;

2.2 I say that vide Order dated 05.04.2019, the Hon'ble Tribunal constituted a three-member Expert Committee to carry out capacity study of the area for relevant environment parameters, impact on the carrying capacity and analysing the project. However, at no stage of the said analysis by the Committee was the Respondent No. 15 involved, who is the Project Proponent, or was provided an opportunity to submit its say during the assessment of the Project and preparation of the Committee

Report. This is in direct contravention and violation of the Respondent No. 15's right to be represented and heard which flows from the principles of natural justice. The Committee was duty bound to ensure that there was procedural fairness but instead the Committee analysed and prepared the Joint Committee Report on their own without going into any factual parameters in respect of the residential project which in itself is bad in law.

2.3 I say that the constituted Committee consists of one representative from SEIAA, one representative from CPCB and one representative from MPCB, all of whom are arrayed as party Respondents in the captioned Original Application. I say that formation of such a committee is nothing but delegating adjudicating functions to a committee which is in breach of the well settled principles of natural justice as also the judgment of the Hon'ble Supreme Court in *Kanta Vibhag Yuva Koli Samaj Parivartan Trust and Ors. v. State of Gujarat & Ors.* reported in 2022 SCCOnline SC 120 and *Sangahr Zuber Ismail v. MoFE and CC & Ors.* reported in 2021 SCC Online SC 669. It is submitted that a party Respondent cannot be part of the Expert Committee constituted for purpose of analysing the project as

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it will have a direct bearing on the outcome of the proceedings.

In the present case, all the members of the Committee are party Respondents. Hence, for this reason alone, the Joint Committee Report is required to be ignored and set aside.

3. Without prejudice to the aforesaid preliminary objections, I say that on reading the Final Report of the Joint Committee ("**Joint Committee Report**") filed by the MPCB in its entirety, it is clear that the same is misconceived and erroneous for the reasons more particularly set out hereinbelow. In fact, some of the findings and recommendations made by the Joint Committee are not fully in consonance with law and are also contrary to principles laid down by the Hon'ble Bombay High Court as well this Hon'ble Tribunal.

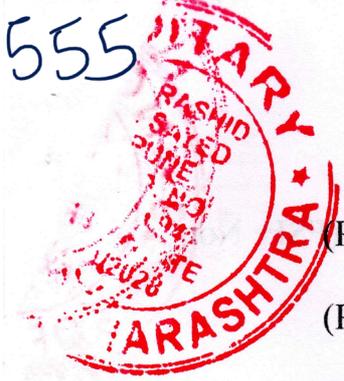
4. I deny each and every finding made in the Joint Committee Report which is contrary to and/or inconsistent with that which is stated in the present Affidavit and humbly submit that nothing contained in the Joint Committee Report shall be deemed to have been admitted by or on behalf of the Respondent No. 15, merely for want of specific traverse. I clarify and submit that the averments made herein are in the alternative and without prejudice to one another. I also repeat,

reiterate and confirm all that is stated in the earlier Affidavit in reply dated 1<sup>st</sup> September, 2022 in the above Original Application and the same be treated as forming part hereof.

5. I say that Suyog Sahakari Gruhrachana Sanstha (“Society”) is the owner of the land bearing survey No. 24/1 to 24/8 admeasuring about 54,900 sq.m respectively Areas situated at Village Bavdhan & Taluka Mulshi Pune (“said land”). The Society vide Development Agreement dated 07.01.2005 appointed the Respondent No.15 to carry out construction on the said land. In furtherance thereof, the Respondent No. 15 envisaged constructing a residential project under the name and style of “Isle Royale” on the said land (“said Project”).

6. The Committee has been selective in its approach while coming to a conclusion and adjudicating upon the penalty without taking into account that commercial matters and transactions suffer an excusable delay that occur mostly due to unforeseeable events in the process of obtaining certain permissions which are beyond the project proponent’s control and the same requires to be considered by the Hon’ble Tribunal in a manner that does not result in imposing a penalty if the project is otherwise found to be in compliance with Water





(Prevention and Control of Pollution) Act, 1974 Air (Prevention and Control of Pollution) Act 1981, Environment (Protection) Act, 1986. The project proponent in the present case has been fully compliant with the requirements and therefore, is not liable to pay the penalty. The Respondent No. 15, being an otherwise environmentally conscious company, shall suffer great harm and prejudice if penalised.

**7. ALLEGATIONS AS REGARDS NO PRIOR ENVIRONMENT CLEARANCE WAS OBTAINED FOR THE PROJECT:**

7.1 The Respondent No.15 states that the allegation with respect to carrying out construction beyond the scope of the environment clearance is false, baseless, misplaced, and contrary to the records. The Respondent No. 15 states that it is carried out construction with respect to the said project, at all times, in terms of the following Environment Clearances:

A. Environment Clearance dated 21<sup>st</sup> October 2011 with respect to the said project for a total built up area of 25109.03 sq. mts (FSI+ Non FSI).

B. Environment Clearance Amendment dated 15<sup>th</sup> May 2014 in the aforesaid EC dated 21<sup>st</sup> October 2011, with respect to the said

project for a total built up area of 25769.49 sq. mts (FSI+ Non FSI).

C. Environment Clearance dated 28<sup>th</sup> June 2016 for the proposed expansion of the said project for total built up area of 51292.63 sq. mts.

D. Environment Clearance Amendment dated 2<sup>nd</sup> February 2017, with respect to the said project for a total built up area of 54605.43 sq. mts. (FSI + Non FSI).

7.2 Respondent No.15 has carried out the construction of the said project strictly as per the latest Environment Clearance dated 02<sup>nd</sup> February 2017 for a total built up of 54605.43 Sq. mts. (FSI + Non FSI) and 163 tenements. Therefore, as on date, there is absolutely no violation committed by the Respondent No.15 with respect to Environment Clearance or ancillary issues thereof and the construction at site was within the Sanction and EC accorded.

7.3 The Respondent No. 15 submits that the construction of the built-up area is within the EC granted. In 2013 and 2014, plinth checking for the area was within the built-up area (25109.03 sq. mts) accorded as per the Environment Clearance dated 21<sup>st</sup> October 2011. In 2016 and 2017, plinth checking for the area was within the built-up area (51292.63 sq. mts.) accorded as per the Environment Clearance dated 28<sup>th</sup> June 2016.



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**8 ALLEGATIONS AS REGARDS CONSENT TO OPERATE AND CONSENT TO ESTABLISH:**

8.1 The Respondent No.15 states that it has obtained three CTE with respect to the said project, each having a validity period of 5 years. The first CTE is dated 3<sup>rd</sup> February 2012, the second CTE is dated 24<sup>th</sup> April 2017 and the latest CTE is dated 31<sup>st</sup> March 2018. A bare perusal of the CTE dated 31<sup>st</sup> March 2018, makes it evident that the Respondent No.15, as on date has a valid and subsisting CTE.

8.2 The Respondent No.15 states that it has, at all times obtained CTO. On 15<sup>th</sup> May 2017, the Respondent No.15 obtained part CTO. On 17<sup>th</sup> May 2019, Respondent No.15 obtained the second part CTO. On 26<sup>th</sup> February 2020, the Respondent No.15 obtained full CTO with respect to the said project. On 31<sup>st</sup> May 2021, Respondent No.15 obtained the full renewed CTO which is valid till 30<sup>th</sup> August 2022. The Respondent No.15 has applied for the renewal of the full CTO on 24.06.2022 for a total build up area of 54605.43 sq. m and the same is accorded on 14/06/2023.

8.3 The Respondent No. 15 states that the area granted in sanction plan is greater than accorded in EC as well as CTE. Although sanctioned, the total built up area constructed was within the

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accorded scope of EC and CTE. It is pertinent to point out at this juncture that the Respondent No.15 has carried construction at site within the built-up area accorded in EC dated 28.06.2016 and as per sanction plan dated 31.03.2016.

8.4 The finding of the Joint Committee report with respect to obtaining CTO's only after obtaining completion certificates is entirely misconceived as, at that given time, obtaining CTO was not mandatory for obtaining completion certificate.

#### **9. ALLEGATIONS AS REGARDS OTHER ENVIRONMENT**

##### **SERVICES:**

9.1 The Respondent No. 15 has used water tankers for water supply during construction activities and since the construction has been completed in 2021, challans of the tankers for past 5 years have been provided. The Respondent No. 15 states that at the time of construction, there were two borewells. However, the said borewells were not active and the Respondent No.15 has used tanker water for the purpose of carrying out construction.

9.2 The Respondent No.15 states that the allegations with respect to non-installation of rainwater harvesting system is on the face of it false, frivolous, and baseless. The Respondent No.15 states that

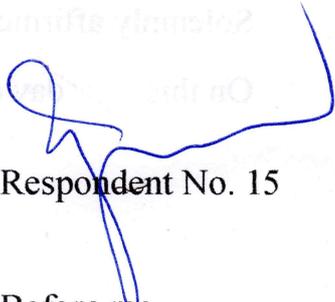
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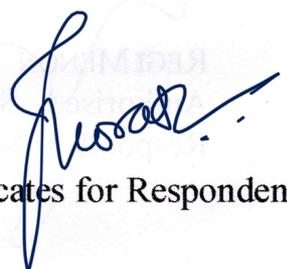


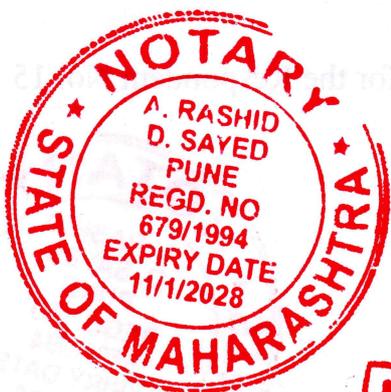
it has installed around 17 rainwater harvesting pits in respect of the said project. The EC dated 02.02.2017 mandates installation of 20 rainwater harvesting pits. The Respondent No. 15 states that the remaining 3 rainwater harvesting pits are in Plot B which is across the road and yet to be developed.

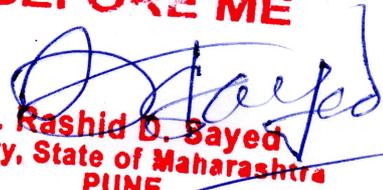
10. In the premises therefore, the Respondent No. 15 submits that the Joint Committee Report filed by the MPCB is entirely misconceived and erroneous and hence, must be set aside.

Solemnly affirmed at )  
Dated this 21 day of July 2023. )

  
Respondent No. 15  
Before me,

  
Advocates for Respondent No. 15



**BEFORE ME**  
  
A. Rashid D. Sayed  
Notary, State of Maharashtra  
PUNE  
21 JUL 2023

**Noted & Registered**  
At Sr. No. B8968/2023



**VERIFICATION**

I, Reji Menon, aged 55 years, the Authorised Signatory of the Respondent No.15, having office address at 200, Gera Plaza, Boat Club Road, Koregaon Park, Pune 411 001 do hereby state on solemn affirmation that whatever stated in the Affidavit herein above is true and correct to the best of my knowledge and I believe the same to be true.

Solemnly affirmed at )

On this 21 day of July 2023 )

*[Handwritten Signature]*  
REJIMENON  
Authorised Signatory &  
Respondent No. 15

*[Handwritten Signature]*

Advocates for the Respondent No. 15

**BEFORE ME**

*[Handwritten Signature]*  
**A. Rashid D. Sayed**  
Notary, State of Maharashtra  
PUNE



**21 JUL 2023**

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**OBJECTION TO THE FINAL JOINT  
COMMITTEE REPORT ON BEHALF OF  
RESPONDENT NO. 15**

Dated this          day of July 2023

Vidhii Partners,  
Advocates for Respondent No.15  
2<sup>ND</sup> Floor, Darabshaw House,  
Ballard Estate, Mumbai 400 001