

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,  
WESTERN ZONE BENCH AT PUNE  
ORIGINAL APPLICATION NO. 64/2019

IN THE MATTER OF:

MR. TANAJI BALASAHEB GAMBHIRE ...APPLICANT

VERSUS

UNION OF INDIA THROUGH  
SECRETARY-MoEF & CC & ORS. ...RESPONDENTS

FILE-A

[VOLUME-IV]

REJOINDER TO PP REPLY AND OBJECTIONS TO JOINT  
COMMITTEE REPORT

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VOLUME-\_\_\_

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Date: 07.03.2022

Bombhise

APPLICANT

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**ORIGINAL APPLICATION NO. 64/2019**

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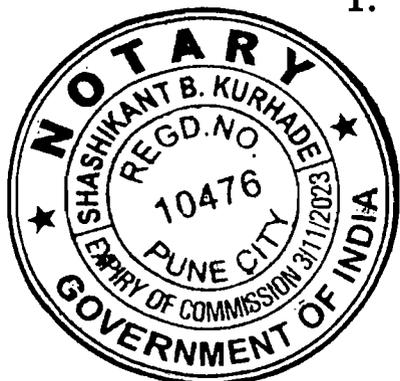
SECRETARY-MoEF & CC & ORS. ... RESPONDENTS

REJOINDER AFFIDAVIT BY ORIGINAL APPLICANT TO THE  
REPLY AFFIDAVITS OF RESPONDENT NO. 13-PP DATED  
21.11.2020 (FILED ON 25.08.2021), RESPONDENT NO. 8-  
SEIAA DATED 28.10.2021, RESPONDENT NO. 9, 10, 11-  
PMC DATED 28.12.2021, RESPONDENT NO. 4-SEIAA  
DATED 28.01.2022 AND RESPONDENT NO. 6 & 7-MPCB  
DATED 28.01.2022 AND OBJECTIONS TO JOINT  
COMMITTEE REPORT DATED 07.01.2020:

I, Mr. Tanaji Gambhire S/o Balasaheb Gambhire, Aged:  
38, Occupation: Service, R/o: CTS No. 296, Shukrawar Peth,  
Laxmi Apartment, Near Shivaji Maratha High School, White  
House Lane, Pune-411002, do hereby solemnly affirm and  
state on oath as follows:

**PART-A: FACTS OF THE CASE**

1. At the outset, I state that, the contents of reply affidavit filed by Respondent No.13-PP M/s. Ekta Housing Private Limited dated 21.11.2020 are totally



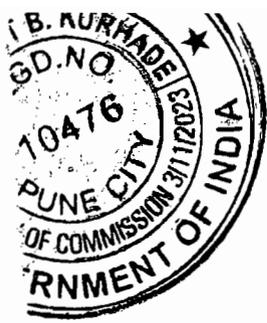


false, baseless, misleading, misconceived, frivolous, vexatious, neither bonafide nor true and same are denied by this Applicant in totality.

**2. PRINCIPAL CONTENTION OF ORIGINAL APPLICANT:**

**2.1** I state that, the Original Application No. 64 of 2019 is filed on 19.08.2019 before the Hon'ble NGT Western Zone Bench Pune under section 15, 18 & 20 of NGT Act, 2010 and the principal contention of Original Applicant is that; "PP have not obtained the prior environment clearance, prior consent to establish, prior consent to operate and carried out the construction of total BUA **38339.60** M<sup>2</sup> and have sought further expansion of **9089.60** M<sup>2</sup> with total BUA of project to the tune of **47429.20** M<sup>2</sup>" and the allegations of Original Applicant are definite and Original Applicant have not approached to this Hon'ble Tribunal with question of requirement of EC for illegal construction for consideration. Therefore, the present application is filed under Section-15, 18 and 20 of NGT Act, 2010 for restitution & restoration of public property, public health and environmental compensation on account of damage caused by PP due to his illegal construction is well maintainable on all legal counts.

**2.2** I state that, apart from the above principal contentions applicant have also raised ancillary violations in support of principal contentions of CGWA



permission for ground water extraction & illegal ground water extraction, Non-installation of STP, unscientific treatment of waste water & direct discharge of sewage water in PMC seaware line, Non-installation of Solid waste treatment & OWCS unit, illegal operation of DG Sets at site, 10% recreational space of is not developed as per norms & provided on podium, no soil preservation, no soil and ground water test, No installation of Solar Water Heaters & Solar Energy Generation for common area lighting, No installation of Rain Water Harvesting (RWH), tree plantation as per the norms and Non-development of green belt as per CPCB norms, swimming tank creating additional burden on the ground water, illegal land use change, careless and reckless attitude towards the environment protection, substantial damage to environment and ecology more than Rs. 425 Crores, scam on account of FSI of internal road, amenity spaces, open spaces etc., illegal construction of basements, no use of eco-friendly building material for construction etc.

3. I state that, the Hon'ble Tribunal passed an Order dated 22.10.2019 appointing Joint Committee of SEIAA & MPCB when the Original Application was actually listed for admission.
4. I state that, the in compliance of the Order dated 22.10.2019 of this Hon'ble Tribunal, this Original Applicant served the copy of entire compilation of



Original Application to SEIAA & MPCB on 02.11.2019 and filed service affidavit dated 04.11.2019.

5. I state that, the MPCB sought time on behalf of Joint Committee for filling of site inspection report in hearing conducted vide dated 10.12.2019 and same was granted by Hon'ble Tribunal.
6. I state that, the Joint Committee comprising Mr. Mukund Athavale a Member of SEIAA and Dr. Y. B. Sontakke a Joint Director of MPCB conducted project site visit on 15.12.2019 and with help of Respondent No. 13-PP's Architect Certificate vide dated 20.12.2019 filed their casual, cursory, unscientific, tentative and misleading report on 07.01.2020 without assessing environment computation before the Hon'ble Tribunal.
7. Therefore, I state that, after service of OA copy, the SEIAA & MPCB were well within the knowledge of this ongoing proceedings of Original Application and after site visit dated 15.12.2019, the Respondent No. 13-PP was well within the knowledge of this ongoing proceedings of Original Application.
8. I state that, this Hon'ble Tribunal after considering the merit of OA and Joint Committee Report dated 07.01.2020, issued notices to all Respondents vide its Order dated 05.02.2020 and in compliance of the said, this Original Applicant served the copy of entire compilation of Original Application to all Respondents including Respondent No. 13-PP on 15.02.2020.



9. I state that, this is admitted case of violation and perfect case for strict action and Also Hon'ble Supreme Court of India vide its Order dated 07.10.2021 made it clear in Para-16.4 of judgment that this Hon'ble Tribunal has powers to take action against the authorities for their inactions, when need be and this is the worst case of intentional wrong actions.

**10. PRINCIPAL CONTENTION OF RESPONDENT NO. 13-PP IN REPLY AFFIDAVIT DATED 21.11.2020 AND IT IS FAIRLY ADMITTED CASE OF VIOLATION BY PP:**

**10.1** I state that, the Respondent No. 13-PP has sworn the affidavit on 21.11.2020 whereas it is filed on 25.08.2021 and till date, PP has not removed the defects from this affidavit and intentionally kept these defects as it is. Further I state that, the Exhibit-C to J are illegible and there is no translation of these Exhibits, also SEIAA show cause notice dated 28.08.2019 is illegible. These are the sub-standard practices adopted by PP with help of professionals.

**10.2** In Para No. 5 of Reply Affidavit, PP have explained the Project Property is purchased on 21.06.2007 & 21.07.2007.

**10.3** In Para No. 6 of Reply Affidavit, PP have explained the Layout & Building Sanctions procured from PMC from 17.03.2007 to 31.03.2017, Occupancy Certificate received from 14.07.2015 to 28.11.2016,



- 10.4** In Para No. 7 of Reply Affidavit, PP have tried to justify the non-compliance towards the EC, on the basis of calculation of FSI & Non-FSI area into total BUA for covered construction with help of EIA Notification-1994, EIA (Amended) Notification-2004, EIA Notification-2006, EIA (Amended) Notification, 2011, Okhla Bird Sanctuary Case, Surendra Waman Dhawale Case, Bombay High Court Order passed in Writ Petition (L) No. 470 of 2013 vide dated 06.03.2013, Order passed in Writ Petition (L) No. 470 of 2013 vide dated 24.03.2014, PS-DoE Circular dated 21.04.2015, Goel Ganga Case (2018) 18 SCC 257, Hon'ble Supreme Court Order dated 12.02.2019 passed in Writ Petition No. 24 of 2019, Bombay High Court Order dated 29.03.2019 passed in Writ Petition (L) No. 954 of 2019, Hon'ble Supreme Court Order dated 03.05.2019 passed in SLP No. 10078 of 2019, Hon'ble Supreme Court Order dated 20.09.2019 passed in SLP (D) No. 32134 of 2019.
- 10.5** In Para No. 8 to 12 of Reply Affidavit, PP have raised the objection for re-opening of issues by way of OA as there is no action by PS-DoE or SEIAA after filing of PP reply date 16.09.2016 to the show cause notice dated 29.08.2019 issued on the complaint dated 25.07.2019 by this Original Applicant.
- 10.6** In Para No. 13 to 15 of Reply Affidavit, PP have tried to justify the non-compliance towards the Consents, on the basis of Hon'ble Delhi High Court Order dated 23.01.2012 passed in LPA No. 895 of 2010 in the



matter of "DPCC Vs. Splendor Landbase" and on other hand, raised false contention, grant of EC is prerequisite for grant of Consents and Application for CTE/CTO shall be made, subject to final outcome of OA.

- 10.7** In Para No. 16 to 32 of Reply Affidavit, PP have tried to justify the non-compliance towards the debris management, tree plantation of 350 trees against 223 trees, reuse & recycle of water, 2274.70 M<sup>2</sup> of 10% RG Area on ground & 1240 M<sup>2</sup> on podium to improve ground water table , energy efficient fixtures, vermin composting, Rain Water Harvesting (RWH) System, Soil Conservation & Soil Test, Ground Water Extraction, STP of 212 KLD, No Basements, DG sets installation for backup of emergency & power failure purpose only, Third Party Rights etc.
- 10.8** In Para No. 33 to 37 of Reply Affidavit, PP have tried to justify the non-maintainability of application on the basis of general grounds.
- 10.9** Also, PP have relied on the Joint Committee Report to counter the OA and this Joint Committee Report is operating against the PP, even though it is casual, cursory and unscientific.

I state that, all the contentions raised by Respondent No. 13-PP are countered by this Original Applicant in as follow;



**11. CONSTRUCTION BEING CARRIED OUT WITHOUT ANY ENVIRONMENTAL CLEARANCE AND CONSENT TO ESTABLISH AND FURTHER ENJOYMENT OF PREMISES WITHOUT CONSENT TO OPERATE IN BLATANT VIOLATION OF THE ENVIRONMENTAL LAWS, POLLUTION CONTROL ACT AND EIA NOTIFICATION-2006.**

- a) I state that, as per the EIA notification 2006 dated 14.09.2006, it is mandatory to obtain the prior environment clearance from SEIAA and consent to establish from MPCB on part of PP at appropriate time. But admittedly, the PP is carrying out the construction without prior EC and CTE and also started operation of premises without prior CTO.
- b) I state that, Respondent No. 13-PP had firstly filed an application on 08.08.2018 [**ANNEXURE-A-2**] before SEIAA Maharashtra seeking ex-post facto Environment Clearance under EIA Notification-2006 under EIA (Violation) Notification dated 14.03.2017. PP himself has admitted the following parameters in the said application.
- c) I state that, PP has carried out the construction of BUA of **38339.60** M<sup>2</sup> out of total BUA **47429.20** M<sup>2</sup> in this project. And PP have further sought expansion of "F" building by **9089.60** M<sup>2</sup>.
- d) I state that, after filling of the Joint Committee Report dated 07.01.2020 and reply affidavit of the PP dated 21.11.2020, the following details of the project are classified for ready reference in brief;



Table No.1: Actual Construction carried out at site without Environmental Clearance and Consent to Establish.

Sr.	Built-up Area (BUA)	Existing	Under Construction	Total
1.	Total BUA (M <sup>2</sup> )	44841.72	1727.49	46569.21
2.	Buildings	5	1	6
3.	Club House	1	0	1
4.	Flats	120	70	190

- e) I state that, the PP himself has admitted the following parameters in his application dated 08.08.2018 for ex-post facto EC.

Sr.	Description	Existing	Proposed	Total
1.	Note on the Initiated Work#13	44841.72 M <sup>2</sup>	1727.49	46569.21 M <sup>2</sup>
2.	Total Plot Area	26000.00 M <sup>2</sup>		25000.00 M <sup>2</sup>
3.	Deductions	3253.10 M <sup>2</sup>		
4.	Net Plot Area	22746.90 M <sup>2</sup>		
5.	Proposed BUA #18(a)			
	a. FSI	24940.54	1727.49	46569.21
	b. Non-FSI	21628.67		
	-----	-----		
	c. Total	46569.21		
6.	Total Ground Coverage#19	7635.00		
7.	Estimated Cost of the Project#21	1374000000		
8.	<b>Buildings:</b>	A to E (Existing/ Completed)	F (Proposed)	Excavation work completed
9.	Floors	Stilt on ground floor + stilt podium + 12 upper Floors	Stilt on ground floor + 12 Floors	
10.	Total Flats	120	70	190



11.	Total residents / Users	1105		
12.	Fresh Water Requirement (CMD)	100		
13.	Recycled Water Flushing (CMD)	50		
14.	Recycled Water Gardening (CMD)	25		
15.	Swimming Pool make up water (CMD)	5		
16.	Total Water Requirement (CMD)	<b>180</b>		
17.	Ground water level	3 - 4 Mtrs.	Ground water depletion due to basements	
18.	Sewage and Waste Water (CMD)	135	Connected to MC sewer line	
19.	STP (CMD)	212	Underground, unscientific & ill ventilated	
20.	Dry Waste (Kg/Day)	306.60	No scientific disposal	
21.	Wet Waste (Kg/Day)	204.40		
22.	Sludge (Kg/Day)	3.20		
23.	RG Area on Ground	2274.70 M <sup>2</sup>	In Actual	Podium
24.	RG Area on Podium	1240.00 M <sup>2</sup>	Construction on RG Area	
25.	No. of trees to be Planted	320 Nos.	No plantation done yet	
26.	Power Requirement	1176 KW		
27.	DG Sets	1 X 140 KVA		
28.	Area of Podium	3375 M <sup>2</sup>		
29.	No. of Podium	1		
30.	Total Parking area	4139.00 M <sup>2</sup>		
31.	Proposed Scooter	387		
32.	Proposed Cycle	350		
33.	Proposed 4-Wheeler	230		

- f) Therefore, it is necessary to impose the exemplary & deterrent environmental compensation on Respondent No. 13-PP.



**12. IMPORTANT DATES & EVENTS IN SUPPORT OF CAUSE OF ACTION AND LIMITATION:**

- a) Following events and dates are important to understand the jugglery of cause of action and limitation issue raised by Respondent No. 13-PP to delay the proceedings and to overcome the violations;

Sr.	Event	Date
1.	First Sanction issued by PMC	21.03.2007
2.	First Occupancy Certificate	14.07.2015
3.	Latest Occupancy Certificate-Club House	28.10.2016
4.	Latest Revised Sanction issued by PMC	31.03.2017
5.	Building Under Construction-F	No PCC/OCC
6.	Application for ex-post facto EC	08.08.2018
7.	Legal Notice / Complaint	25.07.2019
8.	Site Visit by MPCB	07.08.2019
9.	Warning Notice by MPCB	13.08.2019
10.	Filing of Original Application (OA)	19.08.2019
11.	Show cause notice by SEIAA/PS-DoE	28.08.2019
12.	First Order of Hon'ble NGT	22.10.2019
13.	Architect Certificate prepared on	19.11.2019
14.	Joint Committee Report	07.01.2020
15.	Final Directions by MPCB	04.01.2020
16.	Second Order of Hon'ble NGT	10.12.2020
17.	Third Order of Hon'ble NGT	05.02.2020
18.	Fourth Order of Hon'ble NGT	13.07.2020
19.	Reply Affidavit filed by Resp. No. 13-PP (Sworn on 21.11.2020)	25.08.2021
20.	IA No. 66/2021 filed by Resp. No. 13-PP (Sworn on 21.11.2020)	25.08.2021
21.	Fifth Order of Hon'ble NGT	03.09.2021
22.	Sixth Order of Hon'ble NGT	25.10.2021
23.	Reply Affidavit by Resp. No. 8-UDD	28.10.2021
24.	Seventh Order of Hon'ble NGT	06.12.2021
25.	Directions u/s. 33A of Water Act, 1974 & 31A of Air Act, 1981 and for recovery of Environment Compensation of Rs. 159909375/- issued by MPCB	27.01.2022



26.	Reply Affidavit by Resp. No. 9, 10, 11-PMC	28.12.2022
27.	Reply Affidavit by Resp. No. 4-SEIAA	28.01.2022
28.	Reply Affidavit by Resp. No. 6 & 7-MPCB	28.01.2022

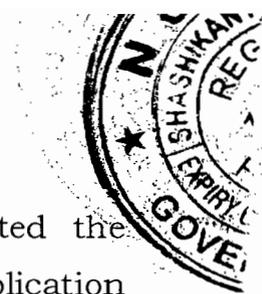
- b)** I state that, it is admitted position that the Respondent No. 13-PP has carried out construction in step by step manner with increase in the capacity of project by Built-up Area from **0 M<sup>2</sup>** to **38339.60 M<sup>2</sup>** and has obtained latest revised sanction dated 31.03.2017 for the expansion of "F" building with Built-up Area of **9089.60 M<sup>2</sup>** and thus, the project is having total Built-up Area (TBA) **47429.20 M<sup>2</sup>** and therefore, this is ongoing construction project without EC, CTE, CTO, CGWA permissions and question of limitation, cause of action, locus, jurisdiction etc. does not arises.
- c)** I state that, the Respondent No. 13-PP has specifically dealt with the date 17.03.2007 or 21.03.2007 for cause of action first arose, only because of procurement of first sanction from PMC for project construction and these are just misleading, false, bald & tentative dates for cause of action and this Hon'ble Tribunal has opined that, mere granting of commencement certificate/ sanction by local authority cannot be treated as cause of action.
- d)** I state that, the construction activity is carried out in three phases a) Permission Phase b) Construction Phase & c) Operation Phase and project under challenge being ongoing activity, PMC has imposed



Condition No. 19 in sanction CC/3774/16 dated 31.03.2017 and carried out excavation for Building 'F' under this sanction and Therefore, PMC after considering the overburden on environmental parameters put Respondent No. 13-PP under obligation of obtaining Environment Clearance & Consents from competent authority.

- e) I state that, the Respondent No. 13-PP has not specifically dealt with any date or event for cause of action that arose for first time in his opinion and just bald & tentative allegations are raised. Moreover, granting of commencement certificate in 2007 or 2008 cannot be considered as cause of action as long as PP is carrying out illegal construction without prior EC and project is ongoing without mandatory permissions.
- f) I state that, the OA is filed on 19.08.2019 for restitution and restoration of environment & ecology under section 15 of NGT Act, 2010 is well within the five years from 31.03.2017, when PMC imposed condition no. 19 in their Commencement Certificate dated 31.03.2017 mandating prior EC. It is necessary to exclude the lockdown period from 13.03.2020 to 28.02.2022 as per Hon'ble Supreme Court Order. It means OA is filed well within the time limit of 5 (five) years under section 15 of NGT Act, 2010.

**13. ADMITTED FACTS BY RESPONDENTS:**



- a) Respondent No. 13-PP himself has admitted the violation committed by himself by filling application dated 08.08.2019 before SEIAA Maharashtra under EIA (Violation) Notification dated 14.03.2017 seeking ex-post facto Environment Clearance.
- b) SEIAA have admitted fact that, the application dated 08.08.2019 before SEIAA for ex-post facto EC is filed after lapse of amnesty period under the notification and it is not tenable in the eyes of law. However, PP has admitted his violation.
- c) Respondent No. 13-PP himself has admitted the parameters causing irreparable damage to the environment in the said application dated 08.08.2019 for ex-post facto Environment Clearance.
- d) PP have admitted that, the total BUA Completed is to the tune of 44841.72 M<sup>2</sup> (FSI Area: 23685.71 M<sup>2</sup> + Non-FSI Area: 21156.01 M<sup>2</sup>) till date and Proposed Expansion of building-F.
- e) PP himself have admitted in item#34 of Consolidated statement dated 08.08.2018 [**ANNEXURE-A-3**] that, the ground water table is at 3 to 4 Mtrs. and Joint Committee in its Report communicated to this Hon'ble Tribunal vide dated 07.01.2020 has observed there is ground water extraction form one bore wells. Therefore PP cannot deny the damaged the ground water level.
- f) PP himself has admitted that, the project is under violation as per his own application dated 08.08.2018



filed before SEIAA under EIA Notification-2017 for ex-post facto EC.

- g) PP have admitted that there was site visit by MPCB on 07.08.2019 [**ANNEXURE-A-13**] and its report is also countersigned by PP & MPCB officials.
- h) SEIAA have admitted that, SEIAA have issued proposed directions dated 28.08.2019 under Section-5 of the Environment (Protection) Act-1986.
- i) MPCB have admitted that, MPCB have issued warning notice dated 13.08.2019 [**ANNEXURE-A-14**] under Water (P&CP) Act-1974 and Air (P&CP) Act, 1981.
- j) SEIAA have admitted that, SEIAA have issued final direction to stop the construction vide dated 04.12.20219 (Ref: PMC stop work direction).
- k) PMC have admitted that, PMC have issued directions to stop construction activity vide dated 11.12.2019.
- l) MPCB have admitted that, MPCB have issued directions to stop construction activity vide dated 04.01.2020 under Section-33A of the Water (P&CP) Act-1974 and Section-31A of Air (P&CP) Act, 1981.
- m) Joint Committee in their Report have admitted that, the Respondent No. 13-PP has carried out construction of 37930.60 M2 and proposed construction of Building-F.
- n) Joint Committee in their Report have admitted that, the excavation is done of Building-F at project site and construction waste is dumped on the PMC plot reserved for Amenity Purposes without any permission from PMC.



- o) Joint Committee in their Report have admitted that, the Respondent No. 13-PP has not obtained prior EC under EIA Notification, 2006 and Consent to Establish & Consent to Operate under Water (P&CP) Act, 1974 & Air (P&CP) Act, 1981 and CGWA Permission for ground water extraction.
- p) Joint Committee in their Report have admitted that, there is one bore well in the premises and Respondent No. 13-PP has not obtained CGWA permission for ground water extraction.
- q) Joint Committee in their Report have admitted that, the Respondent No. 13-PP has provided underground STP of capacity of 212 KLD of MBBR, however same is unscientific & ill ventilated.
- r) Joint Committee in their Report have admitted that, the Respondent No. 13-PP has provided vermicomposting pits pit for the treatment of organic waste. But, I state that same is not in operation.
- s) Joint Committee in their Report have admitted that, the Respondent No. 13-PP has installed on DG Set of 240 KVA capacity without obtaining consent from MPCB.
- t) Joint Committee in their Report have admitted that, the Respondent No. 13-PP has provided 10% open area. However, it is observed that entire reserved open space is on podium. PP has constructed club house and swimming pool in this podium area.



- u) Joint Committee in their Report have admitted that, the Respondent No. 13-PP is unable to give details of soil preservation for the A, B, C, D & E building.
- v) Joint Committee in their Report have admitted that, the Respondent No. 13-PP is unable to produce soil & ground water test report.
- w) Joint Committee in their Report have admitted that, the Respondent No. 13-PP has not provided solar energy system for energy conservation.
- x) Joint Committee has not made any observation for tree plantation in their Report. Therefore, I state that, the Respondent No. 13-PP has not carried out any plantation as per norms.
- y) Respondent No. 13-PP with support of his Architect Certificate dated 19.11.2019 has admitted the 1 (one) original sanction with 9 (Nine) revised sanction obtained from PMC for increasing scope of the project.
- z) Original Applicant has also pointed in Original Application that the total completed construction at site is to the tune of TBA 38339.60 M<sup>2</sup> and further proposed construction of Building-F to the tune of 9089.60 M<sup>2</sup> and therefore, total Built-up area of project is 47429.20 M<sup>2</sup> with specific pleadings of damage to the environment and ecology caused by Respondent No. 13-PP and also ongoing damage from day to day operations.
- aa) Respondent No. 8-UDD vide its reply affidavit dated 28.10.2021 have admitted the violation of PP.



- bb) Respondent No. 9, 10, 11-PMC vide its reply affidavit dated 28.12.2021 have admitted the violation of PP.
- cc) Respondent No. 4-SEIAA vide its reply affidavit dated 28.01.2022 have admitted the violation of PP.
- dd) Respondent No. 6 & 7-MPCB vide its reply affidavit dated 28.01.2022 have admitted the violation of PP and imposed interim penalty of Rs. 15.99 Crores for not obtaining prior EC, CTE & CTO.
- ee) Therefore, it is admitted position that, the above non-compliances on part of Respondent No. 13-PP are causing serious irreparable damage to the environment & ecology from their day to day operations due to non-installations of appropriate pollution control infrastructure & environment protection devises. Therefore, Original Applicant has made out best case for the restitution, restoration, reliefs and environmental compensation and for this reasons, preliminary objections to the maintainability of Original Application will not survive in the eyes of law, it is not the just case of non-compliances toward the law but also the ongoing day to day damage to the environment.

**14. RESPONDENTS ARE GUILTY OF *SUPPRESSIO VERI* AND *SUGGESTIO FALSI*:**

Further I state that, the Respondents are also guilty of *suppressio veri and suggestio falsi* and PP has suppressed many important facts, events, permissions, documents causing irreparable



environmental damage and degradation as listed below;

- a) I state that, the Respondent No. 13-PP has sworn the affidavit on 21.11.2020 and even though PP has not served copy of reply affidavit upon original applicant intentionally till 25.08.2021.
- b) Respondent No. 13-PP has suppressed the documents submitted to SEIAA in Application dated 08.08.2018 for obtaining ex-post facto EC.
- c) Respondent No. 13-PP has admitted the grant of following Commencement certificates (CC) & respective Sanction Plan thereunder in the following manner;

Sr.	CC No.	Date	FSI	Non-FSI	Total BUA	Remark
1.	DPO/10604/6/97	17.03.2007	17499.76	6528.44	24028.2	Layout
2.	CC/4446/06	21.03.2007	17466.76	13020.17	30486.93	Prop. Bldg.
3.	DPO/PLIP/023 5/07/21	02.02.2008	14061.78	5012.79	19074.57	Subdivision
4.	CC/3714/07	05.03.2008	14235.87	17432.80	31668.67	Prop. Bldg.
5.	CC/1300/10/2 52	23.07.2010	17044.21	20307.18	37351.39	Prop. Bldg.
6.	CC/2328/11	04.10.2011	17044.21	20307.18	37351.39	Prop. Bldg.
7.	CC/0963/15	29.06.2015	18194.74	19270.01	37464.75	Prop. Bldg.
8.	CC/2963/15	17.12.2015	18991.82	18597.68	37589.5	Prop. Bldg.
9.	CC/2367/16	25.10.2016	0.0	341.06	341.06	Club House
10.	CC/3774/16	31.03.2017	23685.71	21156.01	44841.72	New F Bldg.

- d) Respondent No. 13-PP & PMC have suppressed the Commencement Certificates as well as sanction plans. Moreover, the TBA calculations provided by the PP are not correct.
- e) Respondent No. 13-PP as well as PMC have suppressed the details of Plinth Check Certificates.



- f) Respondent No. 13-PP has admitted the grant of following Occupancy Certificates;

Sr.	OCC No.	Building	No. of Units	Date
1.	OCC/0465/15	A, B, C, D, E	104	14.07.2015
2.	OCC/1376/16	D	16	26.11.2016
3.	OCC/1416/16	Club House	1	28.10.2016

- g) PMC have intentionally suppressed the total BUA of project in their affidavit dated 28.12.2021.
- h) PMC have intentionally suppressed the illegal construction of 10% RG Area on podium, which is in violation of environmental norms.
- i) PMC has intentionally suppressed the discharge of sewage water to the PMC sewer line.
- j) PMC has intentionally suppressed the directions of MoEF & CC for strict implementation EIA Notification-2006 and its acknowledgment by Respondent No. 9.
- k) Respondent No. 9-PMC, 10-CE-BPD & 11-Prashant M. Waghmare, have intentionally not filed their reply affidavits with specific details of sanctions and the total built-up area completed and under construction.
- l) PP & PMC are intentionally misled on account of Built-up Area and FSI, despite there being clear cut findings of Hon'ble Supreme Court in Civil Appeal No. 10901/2016 distinguishing BUA & FSI, Wherein Hon'ble Tribunal and Hon'ble Supreme Court has passed stricture against PMC officer & Respondent No. 9 and specifically ordered the enquiry and action



with imposition of Rs. 5 lack fine for filling false affidavits.

- m) PMC is intentionally failed to take action against the PP, despite there being clear cut violation and seating in line with the Polluter to protect their vital interests well known to them.
- n) Joint Committee and SEIAA have suppressed the directions dated 04.12.2019 issued by SEIAA for stop work and taking legal action under environment enactments.
- o) PP is suppressing the three phases of project viz. permission phase, construction phase and operation phase. In the present case, project is party completed, party under operation and partly under construction, therefore the cause of action is recurring cause of action in the present case and application is well within the limitation.

#### **PART-B**

#### **15. OBJECTION TO JOINT COMMITTEE REPORT DATED 23.08.2020 ON CERTAIN ISSUES:**

- a) I state that, the Joint Committee constituted by Hon'ble Tribunal vide its Order dated 22.10.2019 comprising SEIAA & MPCB have filed their site inspection report dated 07.01.2020 with adverse observations on principal allegations against the Respondent No. 13-PP. However, Joint Committee is failed to submit the actual site condition on various



other issues and therefore these following objections are raised by this Original Applicant;

- b) I state that, the Joint Committee in their report at Sr. No. 1 has miscalculated the total built-up area of completed construction to the tune of 37930.60 M<sup>2</sup> and relied on the misleading letter dated 19.11.2019 issued by Architect of the PP and However, SEIAA has stated that the completed BUA of the construction is 44841.72 M<sup>2</sup>, Therefore, it can be stated that there is no PMC sanction for an area to the tune of 6911.12 M<sup>2</sup> (44841.72-37930.60).
- c) I state that, the Joint Committee in their report at Sr. No. 2 has recorded ground water extraction from only one bore well and failed to give the total ground water extraction with electricity consumption & electric motor details, pump details, head discharge etc. and also failed to compute the damage on account of ground water extraction.
- d) I state that, the Joint Committee in their report at Sr. No. 3 has recorded the unscientific STP & ill ventilations, but failed to provide the scientific details on inlet & outlet water test report and did not examined its parameters like pH, COD, BOD, turbidity, nitrogen total, phosphorus total, fecal coliform etc. therefore, PP has installed just scrap skeleton in the name of STP and outlet and inlet have same parameters.
- e) I state that, the Joint Committee in their report at **Sr. No. 4** has recorded the availability of vermiculture pits



for organic waste converter and its non-operations. However failed to provide the details of its capacity and total wet waste generation. In fact, Joint Committee intentionally did not provided details of vermin-composting area details i.e. number of pits, photographs of pits, whether in operation or not, location in sanction plan etc. Further I state that, the there is no installation of OWC & waste is directed thrown to the PMC garbage dump yards.

- f) I state that, the Joint Committee in their report at **Sr. No. 5** has recorded the installation of one DG Set of 240 KVA capacity, but failed to provide the details of its operational hours and its fuel consumption, electricity generation details to calculate the air pollution.
- g) I state that, the Joint Committee in their report at **Sr. No. 15** has recorded the construction of podium on 10% RG Area and construction of club house & swimming pool on this podium. In fact, it is mandatory to provide 10% open space on virgin land for tree plantation & recreational purposes as these open spaces are the remedial measures for environmental impact to recover the jerk and Hon'ble Supreme Court has already settled this issue and strictly prohibited the construction on open spaces and providing of open spaces on podium parking complex. Therefore, Joint Committee cannot play with the right to decent life of residents and Podium



construction on 10% Open Spaces on virgin land needs to be demolished.

- h)** I state that, the Joint Committee in their report at **Sr. No. 7** has recorded the storage of excavated material from excavation of footing for F-building on PMC Amenity Plot without PMC permission and failed to provide the total quantity of the excavated material. Further, also not collected the samples of soil and ground water for test. Also observed cursorily, that PP has not provided the Solar Energy System for Energy Conservation and failed give details of percentage of energy conservation that is to be done by PP and illegal excess consumption of energy on these count.
- i)** I state that, the Joint Committee in their report has failed to provide the details of rain water harvesting (RWH) system as there is no RWH system and details of storm water line discharging rain water directly to PMC sewer line.
- j)** I state that, the Joint Committee in their report has failed to provide the details on account of preservation of top layer of fertile soil. In fact, there is no soil preservation of soil and PP has disposed of the huge quantity of fertile soil in unscientific manner.
- k)** I state that, the Joint Committee in their report has failed to provide the details on account of tree plantation as there is no tree plantation at site.
- l)** I state that, the Joint Committee in their report has failed to provide the details on account of fire NOC and fire tender movement. Therefore, Joint Committee



cannot play with the life of residents on account of fire tender movement and all illegal constructions in marginal spaces needs to be demolished.

- m) I state that, the Joint Committee in their Report has failed to provide the details on account of fire and safety system. In fact, Respondent No. 13-PP has not provided number of fire hydrants as per the standards required per buildings at certain floors.
- n) Therefore, Joint Committee has misled on account of above important points in protecting environments, human life and giving them right to decent life and failed to make sustainable development and with these objections I can state that, Joint Committee has misled on account of two different projects against single project, ground water abstraction from four bore wells, illegal construction of basements, ground water test, top layer of fertile soil preservation, solid & dry waste treatment, energy conservation by installing solar panels & solar water heaters, rain water harvesting systems, tree plantation, swimming pool construction giving burden on ground water, non-operation & installation of scientific STP, fire tender movement, Ramp Slope in the ration 1:10, Marginal Spaces around buildings, 10% Open Spaces on virgin land and fire hydrant system etc.

#### **PART-C**

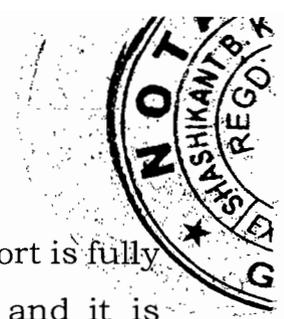
#### **16. GROUNDS FOR ALLOWING ORIGINAL APPLICATION:**



- A. **BECAUSE**, the OA No. 64/2019 is fully admitted case of violation & supported by Joint Committee, SEIAA, MPCB & PMC on one hand and the Respondent No. 13-PP in collusion with the former PS-DoE & PMC Officers is bidding to overcome the illegality adopting abuse of process of law.
- B. **BECAUSE**, the infringements alleged in OA are admitted by the PP and other Respondent Authorities in their own documents. Therefore, this is admitted case of violation in totality.
- C. **BECAUSE**, the PP himself have admitted the total carried out the construction of BUA to the tune of have carried out the construction of BUA **44841.72 M<sup>2</sup>** out of alleged 46569.21 M<sup>2</sup> and PP have further sought expansion Building-F comprising 6 (Six) multistoried Residential Building having 170 total number of flats, causing damage to the Air, Water, Natural Resources and further due to illegal operations, generation of sewage water, solid waste, electricity consumption and these are adverse impact, however PP is mighty and resourceful entity and knowledgeable experts at service. Even though such reply /Counter are filed to circumvent the admitted position of violation by creating nuisance in view to prolong the proceeding by knocking the doors of politicians having access to power corridors.
- D. **BECAUSE**, the PP himself have admitted non-compliance of mandatory prior Environment Clearance and Consent to Establish.



- BECAUSE**, the PP himself have admitted non-compliance of mandatory prior Consent to Operate.
- F. **BECAUSE**, the PP himself have admitted the non-compliance of mandatory prior permission for ground water extraction.
- G. **BECAUSE**, the Hon'ble Supreme Court in Goel Ganga Case has settled the dispute on issue of "Built-up Area (BUA) i.e. total construction (Covered) Area which includes FSI, Non-FSI & other utility areas". However, PP is misleading on account of total BUA by misrepresenting the total BUA as FSI.
- H. **BECAUSE**, the SEIAA Maharashtra & PS-DoE have issued show cause notice dated 29.08.2019 and final directions dated 04.12.2019.
- I. **BECAUSE**, the PMC have issued stop work direction dated 11.12.2019 for further construction of project.
- J. **BECAUSE**, the PP himself has admitted the violations levelled in OA by filing applications dated 08.08.2018 seeking ex-pcst facto EC from SEIAA Maharashtra.
- K. **BECAUSE**, the SEIAA Maharashtra have differed the proposal in its 195<sup>th</sup> meeting held on 14.03.2020 as PP was absent and it show the careless and reckless conduct of PP towards environment.
- L. **BECAUSE**, the MPCB have issued warning notice dated 13.08.2019, show cause notice dated 04.01.2020 and closure direction dated 27.01.2022 for recovery of Environmental compensation from PP.
- M. **BECAUSE**, the even the Joint Committee Report dated 07.01.2020 is even with casual, cursory, unscientific



& without statistical data, But the same report is fully supporting the allegations levelled in OA and it is admitted case of violation.

- N. **BECAUSE**, the PP & Government Authorities cannot go beyond their records showing the present illegal development and they must take serious action against PP.
- O. **BECAUSE**, it is admitted position that the PP has constructed illegal podium damaging ground water level, tree plantation etc.
- P. **BECAUSE**, it is admitted position that the PP has not made any test for ground water contamination and quality of water and there is serious ground water contamination.
- Q. **BECAUSE**, the PP has not provided any energy conservation system for energy saving like Solar Energy System and Solar Water Heater System and joint committee have provided false & misleading information on solar system.
- R. **BECAUSE**, the PP has not provided any rain water harvesting system for ground water recharge and joint committee have provided false & misleading information on RWH.
- S. **BECAUSE**, it is admitted position that the PP has not provided 10% recreational open space on virgin land and open space is provided on the podium along with club house and swimming pool of the building, which is totally illegal in respect of the environmental measures and PMC cannot replace the statutory



provisions & mandate of law by allowing such illegal constructions.

- T. **BECAUSE**, it is admitted position that the PP has not preserved top layer of fertile soil and there is no soil test for contamination.
- U. **BECAUSE**, it is admitted position that the PP has installed 1 DG sets at project site and operation of DG set is causing air pollution.
- V. **BECAUSE**, it is admitted position that the huge quantity of sewage water is generated and there is no scientific treatment of sewage water as PP has installed just scrap skeleton STP, which is not in operation till today. There is direct discharge of sewage water in PMC seaware line.
- W. **BECAUSE**, it is admitted position that the PP is creating huge burden on the environment due to day to day waste generation by consumption of natural resources and it is causing huge burden on the public facilities and services on account of environment damage.
- X. **BECAUSE**, it is admitted position that the PP has committed the illegal activities and given rise to the violation of environmental protection enactments and further caused degradation of environment & ecology intentionally.
- Y. **BECAUSE**, it is admitted position that the PP has not complied the conditions of commencement certificate mandating prior environment clearance and consents from the MPCB.



- Z. **BECAUSE**, it is admitted position that the PP has not complied the conditions of commencement certificate related to installation of environment infrastructure to avoid the degradation.
- AA. **BECAUSE**, the PP has not provided site margin, which is required for easy turning of fire engine and also there is no approach road for fire engine and Joint Committee is misleading on this count.
- BB. **BECAUSE**, it is admitted position that the PP in connivance with PMC officer has violated the provisions of Environment enactment and PMC officers are also equally responsible.
- CC. **BECAUSE**, it is admitted position that the PP has violated the principle of sustainable development by not installing pollution control devices.
- DD. **BECAUSE**, it is admitted position that the PP has not implemented any environment management plan and also have not conducted any impact assessment with remedial measures.
- EE. **BECAUSE**, it is admitted position that there is involvement of bureaucratic nexus in the illegal act to help PP and Misuse of position by Government officers and thus provisions of EIA Notification-2006 r/w Environment Acts-1986, Water (P & CP) Act-1974 and Air (P & CP) Act-1981 are not complied by PP.
- FF. **BECAUSE**, the PP is unapologetic and PP has adopted careless and reckless attitude towards the environment protection.



- G. **BECAUSE**, it is admitted position that the PP has caused substantial damage of more than Rs. **425** Crores to environment and ecology, which shall be recovered from PP.
- HH. **BECAUSE**, it is mandatory to stop the project construction permanently till the compliance / rectification of the above illegal act and removal of the defects from the construction.
- II. **BECAUSE**, the Respondent No. 13-PP & PMC Officers are equally responsible for the careless, reckless & intentional infringement of environmental enactments with non-compliance to the installation of environmental infrastructure causing environment by excess generation wastes and non-treatment of water waste & solid wastes with their unscientific disposal, not adopting conventional energy generation & non-generation of energy from solar system & saving of energy by solar water heater installation, non-installation of rain water harvesting, ground water level extraction in illegal manner, non-providing of Open Space (RG) area on virgin Land, illegal construction of basement etc.
- JJ. **BECAUSE**, the reply of PP dated 21.11.2020 is meritless, casual, cursory, luxury class of litigation, baseless, false, frivolous, misleading and with manipulating the facts deserves to be ignored at the threshold with exemplary cost.
- KK. **BECAUSE**, the preliminary objections of PP have become infructuous in view of judgement passed by



this Hon`ble Supreme Court in the matter of *“Mantri Technoze Pvt. Ltd. Vs. Forward Foundation, Civil Appeal No. 5016/2016”* reported in (2019) 18 SCC 494 has specifically held vide judgement dated 05.03.2019 to and have categorically dealt with the issues raised here also and even the Review petition of the same has been dismissed vide order dated 06.08.2019 and has thus become final and binding;

**“42.** *The Tribunal has also jurisdiction under Section 15(1)(a) of the Act to provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Further, under Section 15(1)(b) and 15(1)(c) the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas as the Tribunal may think fit. It is noteworthy that Section 15(1)(b) & (c) have not been made relatable to Schedule I enactments of the Act. Rightly so, this grants a glimpse into the wide range of powers that the Tribunal has been cloaked with respect to restoration of the environment.*

**43.** *Section 15(1)(c) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under*



the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment.

**44.** The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. (See *Kishore Lal v. Chairman, Employees' State Insurance Corpn.* (2007) 4 SCC 579, para 17). The existence of the Tribunal without its broad restorative powers under Section 15(1)(c) read with Section 20 of the Act, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialized Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with Experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment

**45.** Section 15 of the Act provides power & jurisdiction, independent of Section 14 thereof. Further, Section 14(3) juxtaposed with Section 15(3) of the Act, are separate provisions for filing distinct applications before the Tribunal with distinct periods of limitation, thereby amply demonstrating that jurisdiction of the Tribunal flows from these Sections



(i.e. Sections 14 and 15 of the Act) independently. The limitation provided in Section 14 is a period of 6 months from the date on which the cause of action first arose and whereas in Section 15 it is 5 years. Therefore, the legislative intent is clear to keep Section 14 and 15 as self contained jurisdictions.

**46.** Further, Section 18 of the Act recognizes the right to file applications each under Sections 14 as well as 15. Therefore, it cannot be argued that Section 14 provides jurisdiction to the Tribunal while Section 15 merely supplements the same with powers. As stated *supra*, the typical nature of the Tribunal, its breadth of powers as provided under the statutory provisions of the Act as well as the Scheduled enactments, cumulatively, leaves no manner of doubt that the only tenable interpretation to these provisions would be to read the provisions broadly in favour of cloaking the Tribunal with effective authority. An interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction.

**47.** Section 33 of the Act provides an overriding effect to the provisions of the Act over anything inconsistent contained in any other law or in any instrument having effect by virtue of law other than this Act. This gives the Tribunal overriding powers over anything inconsistent contained in the KIAD Act, Planning Act, Karnataka Municipal Corporations Act, 1976 ("KMC Act"); and the Revised Master Plan of Bengaluru,





49. The OA No. 222 of 2014 was not an application simpliciter under Section 14 of the Act. It was an application where a specific prayer has been made with reference to Lake Development Authority's ("LDA") Report dated 12.06.2013 and the Ministry of Environment, Forest and Climate Change ("MoEF") Monitoring Committee Report dated 14.08.2013 for restoration of ecologically sensitive land and for maintaining the sensitive in its natural condition so that the ecological balance of the area is not disturbed. It is clear from the documentary evidence supported by data, that the project proponents have committed breaches and the implementation of the project is bound to have serious adverse impact on the ecology, hydrology and the environment in the catchment area of Bellandur Lake. The environmental degradation as established from the documents would give rise to an

"50. In fact, in the OA before the Tribunal there was no mention of the provision under which it was being filed. It is well settled principal of law that non-mention of or erroneous mention of the provision of law would not be of any relevance, if the Court had the requisite jurisdiction to pass an order. It would be mere irregularity and would not vitiate the application or the judicial order of the Tribunal"

LL. **BECAUSE**, the access to the information for technical knowledge of the cause is also very important aspect for dealing with the environmental issues, as it is



direct fight between common man having limited resources and mighty & powerful polluters having all means as observed by this Hon'ble Court in "**MCGM Vs Ankita Shinha & Ors., 2021 SCC OnLine SC 897**" in Civil Appeal No. 12122-12123 Of 2018 and have held that;

*"25.8 While discussing the NGT's power and responsibility, it is essential to keep in mind the Principle 10 of the Rio Declaration which speaks of three fundamental rights i.e., access to information, access to public participation and access to justice, as key pillars of environmental governance. Access to justice, may however be curtailed by illiteracy, lack of mobility, poverty or even the lack of technical knowledge on the part of citizens. Another deterrence is the likelihood of polluters/violators being powerful entities with adequate wherewithal to skirt regulations. Thus, it may not always be feasible for individuals to knock on the doors of the Tribunal, and NGT in such exigencies must not be made dysfunctional."*

*"27.4 The law must be interpreted in such a manner as to foster further development of existing legal concepts by incorporating this sense of equity. The issues which this Court has had the occasion to examine have highlighted the limitations of the mechanisms to reach to the heart of environmental concerns. This Court has previously moulded the jurisdictional jurisprudence in favour of larger*



*societal interest, whether that be in the form of 'Public Interest Litigation' or widening the scope of locus standi."*

*"The identification of potential environmental justice issues is very important in determining how our enforcement efforts are working in minority and low-income communities, and whether they are comparable to the enforcement efforts in other communities."*

- MM. **BECAUSE**, the Respondent No. 13-PP have admitted their intentional violations on one hand and in collusion with PMC City Engineer Mr. Prashant M. Waghmare creating jugglery, therefore, Respondent No. 13-PP is wasting valuable time of this Hon'ble Tribunal in luxury reply affidavit being mighty, resourceful, notorious, habitual offenders adopting most careless & baseless tactics.
- NN. **BECAUSE**, it is well settled principle of law that non-mention of or erroneous mention of the provision of law would not be of any relevance, if the Court had the requisite jurisdiction to pass an order and it would be a mere irregularity and would not vitiate the application or the judicial order of the Tribunal.
- OO. **BECAUSE**, the right to healthy environment has been construed as a part of the right to life under Article 21 by way of judicial pronouncements. Therefore, the Tribunal has special jurisdiction for enforcement of environmental rights.



PP.

**BECAUSE,** the doctrine and precedents from the general litigations are no applicable to specialised filed of environmental jurisprudence dealing the environmental issues under special enactment of NGT Act, 2011 and NGT (Practices & Procedures) Rules, 2011. As the birth of NGT replacing the previously Environment Appellant Authority is from the various Order of this Hon'ble Courts, UN treaties signed by India and adoption of principle of sustainable development & polluters pay principal, etc. Therefore, the concepts from the General Litigations are not applicable to the environmental litigations and impugned Order passed by Ld. NGT is tenable in the eyes of law.

QQ.

**BECAUSE,** the Respondent No. 13-PP is affect by the legal injury and also the commonly shared environment damaged by illegal construction as well as operational damage from overburdening natural resources and there is connection between the injury caused by the PP illegal project and Original Applicant. And moreover, Original Applicant is public spirited person encouraged by the fundamental duties to protect the environment and informer to the court of law and have locus to file the OA No. 64/2019 being person aggrieved.

RR.

**BECAUSE,** the issues pertaining to the violations and cause of action are different concepts and any incident, any cause, any action of polluters triggering environmental issue causing damage to the



environment, wild life, forest, lake, natural resource exploitation, coastal zone, bio-diversity & ecology etc. is important for considering the cause of action and limitation has to be counted such incident, cause or action.

- SS. **BECAUSE**, the Original Applicant have not relied upon the alien concept of continuous cause of action to the environmental jurisprudence established in NGT Act, 2010.
- TT. **BECAUSE**, the technical data & important conditions imposed by concern authority while granting the various permission under DC Regulations of PCMC, MR & TP Act, 1963, Non-agricultural permissions granted under MLR Codes have direct relation with the land & illegal construction consuming the natural resources beyond threshold limits and these are state legislations sub-ordinate to central legislation and Therefore, Section-33 of NGT Act, 2010 specifically provides the overriding powers to the NGT over these state legislation to give end of justice and to protect environment. Therefore, any violation agitated under DCR, MRTP, MLRC having direct impact on environmental issues will not take away the jurisdiction of Ld. NGT empowered with special powers under Section-33 of NGT Act, 2010 and Ld. NGT Order is justified.
- UU. **BECAUSE**, the cause of action relied upon by the Original Applicant in OA No. 64/2019 is the single cause of action and no other cause of action is referred



by the Original Applicant. As per the condition precedent under Rule-14 of NGT (Practice & procedures) Rules, 2011, OA shall be based on single cause of action and therefore, there is no breach of Rule-14 of NGT Rules-2011 and OA is based on single cause of action seeking multiple prayers consequential to each other.

- VV. **BECAUSE**, the disclosure of true facts related to case does not constitute multiple causes of action and different limitations.
- WW. **BECAUSE**, the prayers and relief sought by Original Applicant are within jurisdictions & powers of Ld. NGT granted under section-15 & 20 NGT Act, 2010 r/w Rule-24 of NGT Rules, 2011 for end of justice.
- XX. **BECAUSE**, the form-1 & Form-1A from EIA Notification, 2006 have given importance to the land use change while obtaining prior EC.
- YY. **BECAUSE**, both these Applications for ex-post facto EC are filed with ill intention of getting escape from the strict liability casted upon the PP and same are not tenable in the eyes of law. Therefore, such Applications are thrown to the dust bin without wasting valuable time of SEIAA.
- ZZ. **BECAUSE**, the communication/letter dated 16.11.2019 is issued by PS-DOE in violation of principle of natural justice and violating right of this Original Applicant for fair hearing.
- AAA. **BECAUSE**, the PP is trying to correct his illegalities with two or multiple illegalities/ wrongs, in fact, such



illegal act cannot stare in the eyes of law and it is entirely illegal project without any permission them illegal is always illegal no question of limitation arises and illegal cannot become legal just on so called lapse of limitation on manipulated pleadings of polluters.

BBB. **BECAUSE**, the OA is filed on 19.08.2019 is well maintainable U/s. 15 of NGT Act, 2010 and same is well within the limitation of five years from the cause of action first arose on dated 31.03.2017 when PMC imposed condition no. 19 in their sanction issued vide no. CC/3774/17 dated 31.03.2017.

CCC. **BECAUSE**, the OA is well maintainable under section-15 of NGT Act, 2010 as the OA is not the application simpliciter, but damage to the environment & ecology is established as pleaded in OA and same is supported by Joint Committee Report dated 07.01.2020 issued by MPCB, SEIAA & PMC as per their convenience.

DDD. **BECAUSE**, the OA is filed based on the single cause of action and it is well within the Rule 14 of NGT (Practice & Procedure) Rules, 2011.

EEE. **BECAUSE**, the Appendix & forms to the NGT Act, 2010 & NGT Rules, 2011 are the blank formats and OA has satisfied the ingredients required under these forms.

FFF. **BECAUSE**, the OA is dealing with the questions of public importance and their right to decent life, as there is harm caused by PP due to illegal construction without EC & Consents from competent Authority, illegal generation of solid waste & disposal in



unscientific manner without OWC or vermin composting, exploitation of natural resources due to illegal excess construction & operation of project, illegal construction of parking complex on RG area reserved for tree plantation and gardening, dumping of construction waste into Odha, encroachment into Odha, non-installation of solar water heater & solar energy panels, illegal ground water extraction, therefore OA is inequitable to the PIL.

GGG. **BECAUSE**, the notice / complaint dated 25.07.2019 issued by this Original Applicant is unrebutted by Respondents and it is admitted case of violation.

HHH. **BECAUSE**, the project under challenge has undertaken illegal construction & operations causing burden on natural resources and damage to natural resources without holding the prior Environment Clearance & Consents and OA filed on 19.08.2019 U/s.15 of NGT Act, 2010 and therefore, the question of Limitation does not arise as the project is ongoing construction & operation activity under taken in violation of EIA Notification, 2006 and Schedule-I acts along with claiming the damage to the environment.

III. **BECAUSE**, there is no bar on filling of OA U/s. 15 of NGT Act, 2010 in the same application, as Original Applicant has established the case for infringement of enactments from Schedule-I as well as damage cause due to the environment on account of illegal construction.



JJJ. **BECAUSE**, the PP is under obligation to comply with the conditions imposed in Commencement Certificate dated 31.03.2017 issued by PMC for obtaining prior EC & Consents. Therefore, this is the triggered cause of action first arose to file OA and same has been relied by the Original Applicant and accordingly OA is filed on 19.08.2019, which is within limitation of well within limitation of five years U/s. 15 of the NGT Act, 2010.

KKK. **BECAUSE**, the NGT Act, 2010 is came into force to protect & development of environment by establishment of National Green Tribunal with special powers and with liberalization of concept of locus standi under Section-18 (2) (e) of the NGT Act, 2010. However, Respondent No. 13-PP is misleading on the issue of locus by putting this concept under section-18 (2) (a) & (b) of the NGT Act, 2010. Therefore, the concept of Locus standi is very liberal to approach this tribunal reporting the injustice to the environment and ecology.

LLL. **BECAUSE**, the every vigilant citizen of this nation can approach this Hon'ble Tribunal for protection of environment & ecology being informer to the court of law and having access to information, access to public participation and access to justice, as key pillars of environmental governance. This Original Applicant has approached this Hon'ble Tribunal with public cause satisfying the above ingredient. And this



Original Applicant have clear cut locus to file present OA.

MMM. **BECAUSE**, the OA is based on the single cause of action with multiple consequential prayers in OA. it's reliance placed on single cause of action. Therefore, OA is based on the plural remedies as mandated by the Rule No. 14 of NGT (Practice & Procedure Rules), 2011.

NNN. **BECAUSE**, the Original Applicant has not relied upon continuous cause of action and it is not mentioned anywhere in entire OA and PP are misleading on account of continuous cause of action.

OOO. **BECAUSE**, this Hon'ble Tribunal has recognized the recurring cause of action in its judgment dated 07.05.2015 passed in OA No. 222/2014 (PB) and same has been upheld by the Hon'ble Supreme Court in (2019) 18 SCC 494 at Para-49 & 50, Pg. 519.

PPP. **BECAUSE**, the every cause/ action leading to environmental degradation in series/ sequence/ of construction/ commissioning/ operation/ execution of project / activities is independent, separate, self-contained cause of action for such dispute/ cause of such compensation or relief first arose.

QQQ. **BECAUSE**, the RG Area on Podium & non-operations of STP and construction carried out without mandatory prior EC & consents is not "small fact". On the contrary it is serious infringement causing substantial irreparable damage to the environment &



ecology and such acts cannot be ignored or favored or overlooked as small fact.

- RRR. **BECAUSE**, the PP cannot take disadvantage under the garb of flat purchasers money pumped & third party right is installed to make such illegal construction for profit making at the cost of Mother Nature.
- SSS. **BECAUSE**, the PP cannot cover-up his own illegality on the basis of so called unintended & absurd situation.
- TTT. **BECAUSE**, the PP cannot allowed to sleep over his mandatory legal duties towards environmental compliance being supreme, with any favoring to continue his illegal construction.
- UUU. **BECAUSE**, it is not the case of PP that the entire project is completed in all respect on vary same day of starting of its construction and putting to full load. On the contrary, PP admits that the construction is undertaken in stage wise manner or step by step with help of multiple revised building & layout sanctions. Therefore, civil construction is the recurring activity attracting recurring cause of action. In this regard Hon'ble Supreme Court held that the environmental degradation as established from the documents would give rise to an independent cause of action.
- VVV. **BECAUSE**, the practices adopted by Respondent No. 13-PP of obtaining the various permissions in collusion with erring officers from PS-DoE, CGWA, SEIAA, MPCB and PMC officer is the worst case of



blatant illegality on part of state affairs and this conduct clearly shows the carelessness, recklessness, maneuvered attitude towards environment protection and practices adopted by the bureaucracy.

WWW. **BECAUSE**, the Respondents MoEF, CS-GoM, PS-DoE, SEIAA, PMC, MPCB, Collector of Pune, CGWA including PP are habitual offenders by promoting illegal practices of non-actions for favoring polluters in ongoing proceedings.

XXX. **BECAUSE**, this Hon'ble Tribunal as well as Hon'ble Supreme Court in catena of judgment like Vellore Citizen Case, Forward Foundation Case, M. C. Mehta Cases, Goel Ganga case, S. P. Muthuraman, Sterlite Industries have interpreted the concepts of Limitation, Cause of Action, Locus, Jurisdiction, Plural Remedies, quantum of environmental damage etc. in favoring the case of this Original Applicant. And this Original Applicant has proved his case beyond doubt and Respondent No. 13-PP has failed to prove his case against the onus casted upon him. Therefore, this is clear cut case of admitted violation and the errant officers from Government authorities and Respondent No. 13-PP are the habitual offenders.

YYY. **BECAUSE**, the reply affidavit of PP is the pandora of illegalities and encouragement to the sub-standard practices adopted by polluters. Therefore, these Reply Affidavit of PP shall be rejected with heavy cost and by imposing heavy environmental compensation.



ZZZ. **BECAUSE**, the respondents are guilty of *suppressio veri and suggestio falsi*.

AAAA. **BECAUSE**, the damage pleaded in the OA is true and correct and based on the scientific data at site, civil manuals and construction details of project site.

BBBB. **BECAUSE**, the doctrines & principles laid down in laws leading to general civil litigations are not applicable to the special statute leading to special litigations of torts for environmental issues.

CCCC. **BECAUSE**, the NGT Act, 2010 is sub-ordinate to the Constitution of India i.e. law of land and Constitution itself cast fundamental duty upon every citizen of India under Article-51A (g), (h) & (i) for protection & improvement of natural environment, to develop the spirit of inquiry & reform and to safeguard the public property and Section-18 (2) (e) any person aggrieved, is included in every citizen. And therefore, Constitution of India being law of land permits the Original Applicant to file such OA for protection of environment, then Section-18 (2) (e) is not the bar for locus and Original Applicant has locus standi to file OA.

DDDD. **BECAUSE**, the Appellants are again taking contradictory stand on "Knowledge, discovery rule & continuous cause of actions" stating alien concepts are introduced by Applicant to bringing this OA under limitation and said principles are rejected in "Surendra Waman Dhavale and Ors. Vs MoEF in OA No. 95/2014" vide judgment dated 22.05.2017.



Basically OA No. 95/2014, where discovery rule & knowledge & continues cause of action specifically rejected on the basis of application being simplicitor and in the present OA No. 64/2019, application has established case not only for infringement of environmental laws alone but also damage to the environment & ecology has been specifically dealt in OA and here also knowledge & continuous cause of action are not relied.

EEEE. **BECAUSE,** the Ld. NGT has categorically distinguished the judgments passed in “OA No. 33 of 2016 Jai Javan Jai Kisan and Ors. Vs. Vidharbh Cricket Association and Ors.; OA No. 179 of 2016 Graminee Environment Foundation Vs Balaji Infrastructure Ltd. and Ors; OA No. 95 of 2014 Mr. Surendra Waman Dhavale and Ors Vs MOEF and Ors.”. Basically, all these cases was just application for simplicitor without establishing the damage or threat to the environment beyond cause of action. Therefore, ratio laid down in these judgments will not applicable to the present OA.

FFFF. **BECAUSE,** the Ld. NGT has to look into the protection of environment, prevention of treats to the environment and to enforce the law for sustainable development, once the case is reported to them without going into the other aspects of false, baseless, frivolous, misleading allegation made from domain of polluters for nuisance in the proceedings as long as the environmental petitions are inequitable to the PIL



and Ld. NGT has be established from the various Orders of this Hon'ble Court and various Hon'ble High Courts for expeditious, efficacious disposal of green issues to avoid the overburdening of Hon'ble High Courts and this Hon'ble Courts.

GGGG. **BECAUSE**, the PP is looking for appreciation of on the issue of "Locus Standi, Jurisdiction, Cause of Action and Limitation" based on false, baseless, misleading, principal grievances raised in his reply affidavit.

HHHH. **BECAUSE**, the contents of reply affidavit dated 21.11.2020 are false, frivolous, baseless, misleading, misconceived and misinterpretations and denied by Original Applicant in totality and OA is well maintainable in the four corners of NGT Act-2010. Respondent No. 13-PP have raised issue of maintainability to create nuisance in the proceedings with help of non-applicable facts & imaginary theory in his reply affidavits and just to create hurdles in main proceedings dealing with actual issues of environmental degradation and damage caused by PP in reality.

IIII. **BECAUSE**, the signed personnel on behalf of PP have not filed any resolution authoring him and same is not placed on record till today.

#### **PART-D**

#### **PARAWISE REJOINDER TO THE REPLY OF RESPONDENT NO. 13-PP DATED 06.03.2021:**



I have read the reply filed on behalf of Respondent No. 13-PP (M/s. Ekta Housing Pvt. Ltd.) dated 21.11.2020 in reply thereto, I state as under:

17. I state that, the contents of **Para-1** of Respondent No. 13-PP reply dated 21.11.2020 is regarding internal allotting of duties of their office for swearing and authorizing as signatory. It is important to note here that, the Respondent No. 13-PP is the private limited company incorporated under Companies Act-1956 and as per this act alleged authorised person has not submitted any resolution passed by boards of directors of company. Therefore, submission made by the affiant are not legal in the eyes of law.
18. I state that, the contents of **Para-2** of reply affidavit of Respondent No. 13-PP reply dated 21.11.2020 is nothing but paradox statement and the entire reply affidavit of Respondent No. 13-PP is nothing but based on false and baseless theory and apart from the reality & facts.
19. I state that, the contents of **Para-3** of reply affidavit of Respondent No. 13-PP dated 21.11.2020 in respect of the preliminary objections to the maintainability of the original application and Respondent No. 13-PP have filed separate Interlocutory Application No. 66/2021, to which this Original Applicant have filed separate reply.



***a)** Being barred by limitation, both under section 14 and 15 of the National Green Tribunal Act, 2010 (“NGT Act”);*

***b)** Lack of Locus Standi of the Applicant;*

***c)** Non-maintainability of the Application under section 15 of the NGT Act and contrary to the Rule 8 of the National Green Tribunal (Practice & Procedure) Rules, 2011 (“NGT Rules”);*

***d)** Application raises issues beyond the jurisdiction of this Hon’ble Tribunal;*

***e)** The Application is squarely hit by the provisions of Rule 14 of the NGT Rules, which provides an application filed before this Tribunal shall be based upon a single cause of action;*

- 20.** I state that, the contents of **Para-4** of reply affidavit of Respondent No. 13-PP dated 21.11.2020 are partly true, partly false and partly misleading. Further I state that, the Respondent No. 13-PP have undertaken the residential building construction in the name & style “Ekta California & Ekta Florida” situated at Survey Number: 9 of Village-Undri, Taluka-Haveli, District-Pune with in the limit & jurisdiction of Pune Municipal Corporation (PMC) on land admeasuring 26000 M<sup>2</sup> and Original Application deals with true & correct violations and allegations leveled therein in respect of said project. Further I state that, the Respondent No. 13-PP is the private limited company incorporated under Companies Act-1956 and it is mandatory to appoint the authorised person to verify/sworn/affirm



pleadings on behalf of the Respondent No. 13-PP under section 54 of Company Act, 1956 or Under section-21 of Company Act, 2013. However, Respondent No.13-PP has failed to appoint the authorised person with support of resolution passed by boards of directors of company and also the alleged authorised person is not key managerial person. Therefore, no one has allotted the duties for swearing, verification, affirmation in this proceedings and no one is appointed as authorised signatory. Therefore, this Interlocutory Application is not legal, maintainable & tenable in the eyes of law. This Hon'ble Tribunal may kindly dismiss this IA at the threshold of this illegality. Further I state that, the Respondent No. 13-PP have not placed any documents on record to prove that this Respondent No. 13-PP is the part of "Ekta World Group" and to show his well reputation & well respect with successful footprint in number of completed & ongoing residential & commercial real estate projects. Therefore, Respondent No. 13-PP himself has failed to prove his own statements and mandatory compliance on appointment of authorised signatory mandated by law. Therefore, entertaining of such IA will be waste of valuable time of this Hon'ble Tribunal.

21. I state that, the contents of **Para-5, 5.1 to 5.8, 6, 6.1 to 6.8** of reply affidavit of Respondent No. 13-PP dated 21.11.2020 are facts as below;



- a) Project under challenge is comprised of three small properties from Survey No. 9, Hissa No. 1 admeasuring total area of 26001 M<sup>2</sup> viz. Part-1 of 22900 M<sup>2</sup>, Part-2 of 2601 M<sup>2</sup> & Part-3 of 500 M<sup>2</sup>.
- b) Deed of Assignment for Par-1 & 2 is executed on 21.06.2007 and for Part-3 Development Agreement is executed on 21.07.2007 in favour of PP for above mentioned land area.
- c) PP have admitted that, the development of "Ekta California" is completed in phase wise manner comprising 5 wings and further PP admits that the Construction of sixth "F-Wing" is proposed as "F-Wing=Florida" as below;
  - i) A-Wing=Fremont
  - ii) B-Wing=Palmdale
  - iii) C-Wing=Oakland
  - iv) D-Wing=Santa Monica
  - v) E-Wing= Santa Clara
  - vi) F-Wing=Florida
- d) PP admits that the proposed Construction of sixth "F-Wing" is registered with MahaRERA with No. "P52100015426".
- e) PP admits that the Wings-A, B, C, D (Part) & E are completed vide occupancy certificate No. OCC/0465/15 dated 14.07.2015,
- f) PP admits that the Club House is completed vide occupancy certificate No. OCC/1416/16 dated 28.10.2016.



- g) PP admits that the remaining Wings-D (Part) is completed vide occupancy certificate No. OCC/1376/16 dated 26.11.2016,
- h) PP admits that the PMC granted Commencement Certificates (CC) vide dated 17.03.2007, 21.03.2007, 02.02.2008, 05.03.2008, 23.07.2010, 04.10.2011, 29.06.2015, 17.12.2015, 25.10.2016.
- i) PP admits that the PMC granted Commencement Certificates (CC) vide No. CC/3774/16 dated 31.03.2017 for construction of F-wing (Florida).

**22.** I state that, the contents of **Para-6.9** of reply affidavit of Respondent No. 13-PP dated 21.11.2020 are totally false, baseless, misleading and as per the EIA Notification, 2006, PP is under obligation to obtain the mandatory prior EC & Consents and PP cannot blame the PMC for clearing his project without EC & Consents. However, PMC has clearly pointed out the sole duty & responsibility of PP to obtain the EC & Consents in their affidavit dated 28.12.2021 at Para No. 27.

**REJOINDER TO THE REPLY OF ISSUES  
REQUIREMENT OF PRIOR ENVIRONMENT  
CLEARANCE:**

**23.** I state that, the contentions of the **Para-7** of the reply affidavit of Respondent No. 13-PP dated 20.11.2020 are false. Further I state that, the PP has not obtained the prior environment clearance intentionally under the EIA Notification-2006 despite the total proposed BUA of the construction was more than 20000 M<sup>2</sup>.



24. I state that, the contentions of the **Para-7.1** of the reply affidavit of Respondent No. 13-PP dated 20.11.2020 are dealing with the EIA Notification-1994 and this notification does not include the building construction project, therefore this para does not deserve any comments.
25. I state that, the contentions of the **Para-7.2** of the reply affidavit of Respondent No. 13-PP dated 20.11.2020 are dealing with the EIA Notification-2004 and this notification only include the building construction project having discharging sewage of 50000 Ltrs. or investment of Rs. 50 Crores with population of 1000 persons, However the construction of the project under violation is ongoing project till date and therefore this para does not deserve any comments.
26. I state that, the contentions of the **Para-7.3 to 7.22, 7.23, 7.23.1 to 7.23.8** of the reply affidavit of Respondent No. 13-PP dated 20.11.2020 are totally false, baseless and misleading. Further I state that, contention of PP for computing the FSI as Built-up area as per the EIA Notification-2006 is totally false and inclusion of Non-FSI area in Built-up area was only induced by 2011 amendment / clarification to the EIA Notificaiton-2006 is totally false and misleading. In fact, Hon'ble Supreme Court of India has discarded these illegal misrepresentations vide Final Order and Judgment dated 10.08.2018 passed



in Civil Appeal No. 10854/2016 vide (2018) 18 SCC 257 and related paras are provided below:

13. From a bare perusal of the two hash tags (#) in Column 4 and 5 of Item 8(a), it is apparent that what is shown under Column 5 is actually a continuation of Column 4 and basically it describes or defines 'built up area' to mean covered construction and if the facilities are open to the sky, it will be taken to be the activity area. This by itself clearly shows that under the notification of 2006, all constructed area, which is covered and not open to the sky has to be treated as 'built up area'. There is no exception for non-FSI area.

14. Indeed, the concept of FSI or non-FSI has no concern or connection with grant of EC. The same may be relevant for the purposes of building plans under municipal laws and regulations but it has no linkage or connectivity with the grant of EC. When EC is to be granted, the authority which has to grant such clearance is only required to ensure that the project does not violate environmental norms. While projects and activities, as mentioned in the notification, may be allowed to go on, the authority while granting permission should ensure that the adverse impact on the environment is kept to the minimum. Therefore, the authority granting EC may lay down conditions which the project proponent must comply with. While doing so, such authority is not concerned whether the area to be constructed is FSI area or non-FSI area. Both will have an equally deleterious effect on the environment. Construction implies usage of a lot of materials like sand, gravel, steel, glass, marble etc., all of which will impact the environment. Merely because under the municipal laws some of



*this construction is excluded while calculating the FSI is no ground to exclude it while granting the EC. Therefore, when EC is granted for a particular construction it includes both FSI and non-FSI areas. As far as environmental laws are concerned, all covered construction, which is not open to the sky is to be treated as built up area in terms of the EIA Notification dated 14.09.2006.”*

**Notification of 04.04.2011**

15. *Our attention has been drawn to the notification dated 04.04.2011 issued by the Ministry of Environment and Forests. By means of this notification, the words of Column 5 against Item 8(a) have been replaced and substituted as under:*

*“The built up area for the purpose of this Notification is defined as “the built up or covered area on all the floors put together including basement(s) and other service areas, which are proposed in the building/construction projects.”*

*This notification clearly defines built up area as all constructed area including basement and service areas without any exception.*

16. *Learned senior counsel appearing for the project proponent has submitted that this notification is only prospective in nature and, therefore, will not affect the notification of 2006. On the other hand, it has been submitted by the original applicant that this is only a clarificatory notification and as such it will come into force with effect from 2006. In our opinion, it is not at all necessary to decide whether this notification is clarificatory or is in substitution of the original notification of 2006. We say this because as held by us above, there is no ambiguity with regard to*



*the definition of 'built up area' even under the notification of 2006 and it covers all constructed area not open to the sky. The notification of 2011 only provides that the built up area or covered area shall be the area of all floors put together including basement(s) and other service areas. We may again re-emphasize that this definition also is in consonance with the concept of grant of EC for construction as explained above and it is obvious that the concept of FSI or non-FSI area is alien to environmental laws."*

- 27.** I state that, in view of the aforesaid Order and judgment all the exceptions raised by the PP becomes worthless. Further it is submitted that, the PP has completed the construction of total BUA 44841.72 M<sup>2</sup>, which is more than 20000 M<sup>2</sup> and further PP has sought the expansion of Building-F as admitted by PP.
- 28.** I state that, the PP has applied on 08.08.2018 for Environment Clearance under EIA (Violation) Notification-2017 dated 14.03.2017 before SEIAA. It is important to note that, the PP has attached only Application Screenshot at Exhibit-O to his reply affidavit dated 21.11.2020 by suppressing Form-1 & 1A. Therefore, this applicant has provided the information received in respect of EC application with this rejoinder.
- 29.** I state that, the PP have proposed construction of F-Wing from "upto 10<sup>th</sup> Floors". The project is purely residential project with existing 120 No. of Flats and proposed 70 no. of Flats.



- 30.** I state that, SEAC-III considered the proposal in its 102<sup>nd</sup> meeting held on 22.01.2020 [**ANNEXURE-A-23**] and SEAC-III has observed that, the PP have carried out 44841.72 M<sup>2</sup> and I state that, this Construction work of onsite and this amounting to violation of Environment (Protection) Act, 1986 r. w. EIA Notification 2006. Further I state that, SEAC-III has noted that, the PP has not applied within the prescribed period as per the MoEF & CC Notification dated 14.03.2017, 08.03.2018. Therefore SEAC-III decided to refer the proposal to SEIAA for further decision.
- 31.** I state that, the SEIAA has considered the proposal in its 195<sup>th</sup> meeting held on 14.03.2020 [**ANNEXURE-A-25**] and after deliberation SEIAA decided to defer the proposal, as PP was absent.
- 32.** I state that, the DoE and SEIAA has clearly stated in Para-3, 4 & 6 of their reply affidavit dated 28.01.2022 that this is as clear violation case as a project has undertaken construction without obtaining prior EC as per the EIA Notification, 2006.
- 33.** I state that, the PP has carried out the construction of 44841.72 M<sup>2</sup> without obtaining mandatory prior Environment Clearance and further proposed expansion of project by construction of F-Wing.
- 34.** I state that, the provisions 2.13 & 15.4.2 under Development Control Regulation of PMC dealing with concept of FSI & Non-FSI are alien to the EIA Notifications and TBUA is more than 20000 M<sup>2</sup> and



construction of F-Wing Ekta Florida is the expansion to the existing project and illegal substantial excavation for footing is carried out by PP after grant of CC dated 31.03.2017 as admitted by Joint Committee.

- 35.** I state that, the Project of Respondent No. 13-PP himself has admitted that the construction is carried out without mandatory prior EC & Consents and therefore, the question of Interpretation of Built-up area does not arise, but Respondent No. 13-PP unnecessarily connecting his violations with the Goel Ganga Case. However, the Respondent No. 13-PP has intentionally suppressed the pronouncement wrt dispute of interpretation of terms "Built-up area, FSI, Non-FSI" and its applicability wrt to EIA Notification-2006 dated 14.09.2006 & EIA Notification-2011 dated 04.04.2011 has settled by Hon'ble Supreme Court and present violation committed by Respondent No. 13-PP is clear cut violation with his own admission.
- 36.** Further I state that, the Hon'ble Supreme Court while deciding the "Goel Ganga Case" clearly held that the BUA defined in EIA Notification-2006 is nothing but all covered construction having same meaning in clarification given in EIA Notification-2011 and terms FSI & Non-FSI are alien for grant of EC. Further Hon'ble Supreme Court has passed an Order dated 11.09.2019 wherein clearly distinguished the difference between the cases of "Re: Construction of Park at Noida near Okhla Bird Sanctuary" and "Goel





& other activity related to the construction of Dighi Port were started well prior to 2008 and EC has been granted in 2005 and application is filed 2016. Therefore, all these three cases relied by the PP are not applicable to support his false, baseless & misleading contentions. On the contrary, OA clearly establishes the ongoing substantial damage & injury to the Mother Nature on various counts as well as still the project activity is still ongoing without prior EC, CTE & CTO.

**39.** I state that, the judgments & Order dated 06.03.2013 in Writ Petition No. 470/2013, judgments & Order dated 24.03.2014 in Writ Petition No. 655/2014, passed by Hon'ble Bombay High Court are not supporting the contention of Respondent No. 13-PP and on the contrary Hon'ble Bombay High Court has clearly stated that, the if project is going to cross the total BUA of more than 20000 M<sup>2</sup> and its proposed BUA is more than 20000 M<sup>2</sup> then it is mandatory on part of the Project Proponents to obtain prior Environment Clearance.

**40.** I state that, the Respondent No. 3-PS-DoE vide circular dated 17.01.2014 of PS-DoE clearly permits building construction activity only for redevelopment projects wherein rehabilitation of tenants in SRA/Dilapidated/CESS buildings was involved and allowed to carry out construction upto 20000 Sq. Mtrs. considering that it would not be amount of violation of EIA Notification, 2006. Further PS-DoE



issued circular dated 21.04.2015 with respect to the decision of Hon'ble Bombay High Court in W. P. No. 655 of 2014 vide Orders dated 24.03.2014 and in this Order Hon'ble High Court has mentioned that the "environment clearance for the purpose of construction of buildings below 20000 sq. mtrs. is not required" and it is including free sell component. However, actual fact is that the circular dated 21.04.2015 has issued for clarifying that the construction of project wherein project proponent has undertaken total construction below 20000 m2 may not be considered as violation of EIA Notification of 2006 and allowed the construction upto 20000m2 for sell component, even in residential and commercial projects. It is important to note here, that the project must be SRA/Dilapidated/CESS buildings having total construction below 20000 m2. In present case of subject matter project is general residential & commercial project and not concerned with SRA/Dilapidated/CESS buildings and total potential of the project is more than 20000 m2. Further it is important to note that, the Orders dated 24.03.2014 & 18.12.2014 passed by Hon'ble High Court in WP (L) No. 655 of 2014 are per incuriam in view of the Judgments passed by the Hon'ble Supreme Court of India in (2017) 9 SCC 499 Common Cause Vs UoI, (2018) 18 SCC 257 in the case of Goel Ganga Developers India Pvt. Ltd. v UOI, 2020 SCC OnLine SC 347 in the case of Alembic Chemicals v Rohit



Prajapati, (2020) 2 SCC 666 in the case of Keystone developers v. Anil Tharthare.

41. I state that, the Respondent No. 13-PP has not obtained any specific order of Hon'ble Supreme Court, Hon'ble Bombay High Court, or this Hon'ble Tribunal in respect of his project and therefore, the Orders passed by Hon'ble Bombay High Court in the WP No. 655/2015, WP (L) No. 470/2013 are not applicable to this Respondent No. 13-PP and Circular dated 21.04.2015 is not the statute to nullify the force of EIA Notification, 2006.
42. Further I state that, terms "BUA, FSI, Non-FSI, Effect of Clarification Notification-2011 as retrospective or prospective" have no concern with present case, as the Hon'ble Supreme Court has already decided these issues and have become the law of land. But lobby, Gang or in short syndicate of polluter mostly Pune based imposing themselves as well established entrepreneurs on one hand and at other instant these polluters are claiming their illiteracy on account of definition of BUA. Therefore these lame attempts of Respondent No.13-PP should be punished with heavy hands.
43. I state that, syndicate of the polluters & violators with help of lobby of opportunist politicians have made illegal attempts to dilute & water down the effect of Final Order & Judgment dated 10.08.2018 and Builder Association of India (BAI) had filed Writ Petition No. 24/2019 on 02.01.2019 before Hon'ble

Supreme Court under Article 32 of Constitution [ANNEXURE-A-5]. Said Writ Petition was withdrawn with liberty to approach the high court vide Order dated 12.02.2019 [ANNEXURE-A-6].

44. I state that, the Builder Association of India (BAI) had filed Writ Petition (L) No. 954/2019 before Hon'ble High Court Judicature at Bombay and same was dismissed by Hon'ble High Court vide its Order dated 29.03.2019 [ANNEXURE-A-8].
45. I state that, the being aggrieved by Order dated 29.03.2019 passed by Hon'ble High Court Bombay, Builder Association of India (BAI) had filed have filed SLP No. 10078/2019 on 10.04.2019 in Hon'ble Supreme Court [ANNEXURE-A-9]. It is important to note that, the issues raised in this SLP wrt to BUA & Clarification Notification-2011 dated 04.04.2011 are already settled by Hon'ble Supreme Court and the present case has nothing to do with it. However SLP has become infructuous.
46. I state that, the Hon'ble Supreme Court pleased to pass an orders dated 29.04.2019, 03.05.2019 & 08.07.2019 in SLP No. 10078/2019 and same are annexed herewith as ANNEXURE-A-10 to 12 respectively.
47. I state that, thereafter CREDAI Pune Metro intervened in the matter and shown themselves as aggrieved from the Order dated 29.03.2019 passed by Hon'ble High Court Bombay and file SLP No. 23143/2019 dated 03.09.2019 on the basis of Okhla Bird Sanctuary



judgment [**ANNEXURE-A-16**]. However, SLP has become infructuous in view of Order dated 11.09.2019.

48. I state that, the Hon'ble Supreme Court pleased to pass an Orders dated 11.09.2019 in I. A. No. 64665/2019 and dismissed the contentions raised by Goel Ganga Developers (I) Pvt. Ltd. wrt to the definition of BUA in EIA Notificaiton-2006 and its ambiguity from "Re: Construction of Park at Noida near Okhla Bird Sanctuary and therefore both of these both SLP have become infructuous as these both SLP and I. A. No. 64665/2019 have same contentions [**ANNEXURE-A-17**]. Same fact is suppressed by Respondent No. 13-PP from this Hon'ble Tribunal.
49. I state that, the Hon'ble Supreme Court pleased to pass an Orders dated 20.09.2019 in SLP No. 23143/2019 connecting this SLP with BAI SLP No. 10078/2019 [**ANNEXURE-A-18**]. As the CREDAI Pune Metro have obtained this Order by suppressing the Order dated 11.09.2019 passed by Hon'ble Supreme Court in I. A. No. 64665/2019. However, there is no specific protection for Respondent No.13-PP with respect to the subject Project in OA No. 64/2019. Only being the member of CREDAI Pune, Hon'ble Supreme Court Order should not be misused by Respondent No.13-PP Only because the membership of CREDAI, Pune. Moreover the Project under challenge have commenced the construction

only after 04.04.2011 and Respondent No.13-PP is misleading this Hon'ble Tribunal.

50. I state that, the Original Applicant has already filed an Interlocutory Application No. 160684/2019 in SLP No. 10078/2019 & Connected SLP No. 23143/2019 for intervention seeking dismissal of both SLP **[ANNEXURE-A-19]**.
51. I state that, the Hon'ble Registrar of Supreme Court pleased to pass an Orders on various occasion dated 22.10.2019, 08.01.2020 & 02.03.2020 in SLP No. 10078/2019 and SLP No. 23143/2019 for completion of pleading and same are annexed herewith as **ANNEXURE-A-20, A-22 & A-25**.
52. Further I state that, Chief Secretary, State of Maharashtra is not the authority to adjudicate on the judgments of Hon'ble Apex Court of this Nation. It is important to note that, the Chief Secretary were directed to take action against the former Principal Secretary of Environment Department of Maharashtra and filed false report. For that purpose, this Original Applicant has already filed an I. A. before Hon'ble Supreme Court seeking appropriate actions against the Chief Secretary and same is pending. Therefore, the Report filed by chief Secretary having no powers cannot be relied and have no concern with the issues involved in the present case.
53. I state that, mere membership in CREDAI Pune Metro /BAI and CREDAI Pune Metro/ BAI have obtained the Order dated 20.09.2019 in SLP No. 23143/2019 for



no coercive action by misleading the Hon'ble Supreme Court of India, it will not provide any specific protection to Respondent No.13-PP for his violations and said Order cannot restrain this Hon'ble Tribunal from proceeding into the matter. Moreover there is no bar on judicial propriety as this Respondent No. 13-PP is misleading.

54. Therefore, I state that, the jugglery of words contended in **Para-7, 7.1 to 7.23.8** of reply affidavit of Respondent No. 13-PP dated 21.11.2020 are false, baseless, misleading and will not help the PP to get escape from the intentional violation committed by him.

**REJOINDER TO THE ISSUE PERTAINING TO COMPLAINT MADE TO AUTHORITIES:**

55. I state that, the contents in **Para-8 to 12** of reply affidavit of Respondent No. 13-PP dated 21.11.2020 are false, baseless, misleading and denied by this Original Applicant. Further I state that, authorities have not taken further action after filing of reply dated 16.09.2019 by PP to the show cause notice dated 29.08.2019 issued on the complaint of this Original Applicant dated 25.07.2019 is their illegal conduct and non-action by authorities have compelled this Original Applicant to approach this Hon'ble Tribunal. However, this conduct of Authorities for not taking action is the collusion of PP with them by adopting the practices of other means and non-actions by

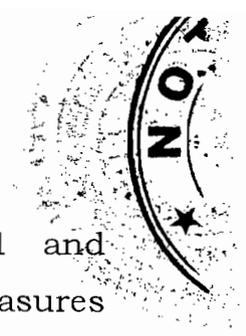
authorities cannot be treated as clean chit to the PP. Moreover, PP cannot act like dictator to this Hon'ble Tribunal as the OA is filed in continuation of the litigation and which have to be adjudicated by this Hon'ble Tribunal for end of justice.

**REJOINDER TO THE ISSUE OF PRIOR CONSENT TO ESTABLISH (CTE) AND CONSENT TO OPERATE (CTO):**

- 56.** I state that, the contentions of the **Para-13 to 15** of the reply affidavit of Respondent No. 13-PP dated 21.11.2020 are totally false and misleading.
- 57.** I state that, the section 25 of the Water (P&CP) Act, 1974 defines that; "25. Restrictions on new outlets and new discharges.—1. Subject to the provisions of this section, no person shall, **without the previous consent of the State Board**, .....". and the section 21 of the Air (P&CP) Act, 1981 defines that; "21. Restrictions on use of certain industrial plants.—(1). Subject to the provisions of this section, **no person shall, without the previous consent of the State Board**, establish or operate any industrial plant in an air pollution control area:.....". in these section words "shall & previous consent" showing previous mandates are occurred.
- 58.** I state that, the Respondent No. 13-PP has carried out the construction of project for BAU of **44841.72** M<sup>2</sup> till today and PP has further sought permission for additional proposed construction of Building-F.

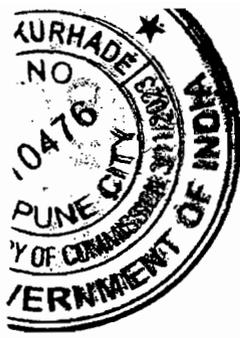


59. It is important to note here that, the Order dated 23.01.2012 passed by Hon'ble Delhi High Court in LPA No. 895/2010 is has not reviewed the central legislation on Air Act & Water Act and the facts of the case are different and not applicable to the present case. Moreover, Respondent No. 13-PP has not given undertaking on challenge to this judgment before Hon'ble Supreme Court.
60. I state that, the contention of Respondent No. 13-PP on account of grant of EC is prerequisite for grant of CTE/CTO is totally false & misleading as the CTE/CTO is issued under Water (P&P) Act, 1974 and Air (P&P) Act, 1981 are independent and separate from the EC obtained under EIA Notification r/w Environment (P) Act, 1986 and Moreover, enforcement of Water (P&P) Act, 1974 and Air (P&P) Act, 1981 is much earlier than Environment (P) Act, 1986.
61. I state that, the Respondent No. 13-PP failed to obtain mandatory prior consents from the MPCB, even the threshold limit of the project was exceeding the total BUA of 20000 M<sup>2</sup> and thereby committed the violation of Water (P&CP) Act, 1974 and Air (P&CP) Act, 1981 and allegations leveled in the Original Application No. 64/2019 are true and correct.
62. I state that, the contentions of the **Para-16 to 29** of the reply affidavit of Respondent No. 13-PP dated 21.11.2020 are totally false and misleading. PP have not produced any mandatory permission under Water



(P&CP) Act, 1974, Air (P&CP) Act, 1981 and Environment (P) Act, 1986 for certifying the measures of debris management, reuse & recycling of material and waste product, dust mitigation measures, reuse and recycling of water, plantation of trees, provision for 10% landscape area on the ground for improving water table, provision for storm water management & detailed EMP. Further I state that, the Joint Committee vide its report dated 07.01.2020 have observed the serious non-compliances of the environmental mitigation measures causing irreparable damages on account of energy saving by installation of solar panels for water heating and common area lighting, non-operation of vermin-composting pits, no plantation of trees, non-installation of RWH, no preservation of top layer of fertile soil, illegal ground water extraction without CGWA permission etc. There is substantial damage ongoing to the environment & ecology due to above non-compliances and PP is not liable for any mercy from these Hon'ble Tribunal. Therefore, allegations leveled in Para-16 to 22 of the Original Application are true and correct.

- 63.** I state that, it is mandatory to obtain prior permission from CGWA for construction of basements as well as for bore well ground water extraction. Illegal construction of Excavation/Podium/Basements have direct impact on ground water level depletion by dewatering & hollowness in the land structure and



boring ground water extraction have also direct impact on ground water level. However, to understand there is requirement of mind which is absence in PP, PMC & SEIAA, PS-DoE, MPCB at the cost of corruption in their blood. In actual OA deals with the damage caused from beginning of construction till compensating it. However, Joint Committee failed to calculate the damage on account of ground water extraction from bore wells, from illegal construction of Excavation/Podium/Basements and dewatering from basement and rain water harvesting for recharge of ground water. In fact, there are three bore wells used for ground water, but Joint Committee has made false observation of use of one bore well for ground water recharge.

64. Further I state that, the contents of Para-16 to 22 of the OA are true & correct and it is Joint Committee has not made actual site visit and report is prepared by seating in the A/C office of PP.

Issue in OA	JC Report	Actual site condition
16. No permission for ground water extraction, no ground water test and no permission for construction of basements	2. There is one bore well in the premises and PP has not obtained CGWA permissions for extraction of ground water.	There are three bore wells on site from which PP is illegally extracting ground water and also there is illegal excavation for basement for F-Building and construction of podium on open space have caused

NOT

		damage to ground water level. PP is using 114750 Liters of fresh water per day
17. No Installation Of Rain Water Harvesting System	Joint Committee have avoided to made any observations	Minimum 10 RWH pits are required, but PP has not provided RWH system at site. Entire plot is concretized and there is no space for rain water percolation into the ground to recover the ground water level.
18. No Soil Preservation And No Soil Test By PP.	PP is unable to give details of soil preservation for the A, B, C, D & E buildings. For proposed Bldg. No. F, Excavation is carried out one year ago. The excavated material is stored on the adjacent amenity plot which is handed over to PMC. For storing excavated material on this plot, PP has not obtained any permission from local body. PP representative unable to produce	PP has made deep excavation of an area admeasuring more than 7000 Sq. Mtrs. against the prosed ground coverage of 4467.53 M <sup>2</sup> up to 9 Mtrs. deep. Earth structure at the project site is 1 Mtrs soil, 5 Mtrs Murum and 3 Mtrs. basalt. PP has made exaction of soil to the tune of 7000 M <sup>2</sup> x 1 Mtrs = 7000 M <sup>3</sup> , excavation of Murum to the tune of 7000 M <sup>2</sup> x 5 Mtrs = 35000 M <sup>3</sup> , and excavation of basalt to the tune of 7000



	soil & ground water test report.	M <sup>2</sup> x 3 Mtrs = 21000 M <sup>3</sup> .
19. Huge Quantity Of Fresh Water Consumption, Huge Quantity Of Waste Water And Solid Waste Generated And there is no treatment of wastes water as there is no installation of sewage treatment plant (STP) at project site & no treatment of solid waste at project.	<p>3. There is One bore well in the premises and PP has not obtained CGWA permission for the excavation of ground water.</p> <p>4. PP has provided vermin-composting pits for the treatment of Organic waste. But same are not in operation.</p> <p>3. PP has provided underground STP of capacity 212 CMD of MBBR. However, same is unscientific and ill ventilated.</p>	<p>Total water consumption is 114750 litres. The waste water generated is the 80% of the total fresh water consumption, therefore the total waste water generated is 91800 litres per day. Total solid waste generated is 382.5 Kg per day. There is ground water extraction to meet the fresh water requirement. STP is just scarp skeleton and not in operation since its installation. There is no installation of vermin-composting pits at site in actual.</p>
20. Illegal installation and operation of DG Sets:	5. PP has installed 1 number of DG Sets of capacity 240 KVA without obtaining consent from MPC Board	3 No. of DG sets having capacity of 1500 KVA are installed. In actual these sets are also used for construction purpose.
21. No energy conservation, no solar	7. PP has not provided solar	In actual there is no solar panel

<p>panels installation and no solar water heater installation.</p>	<p>energy system for energy conservation.</p>	<p>installation on any of the building for energy conservation This project have average energy Consumption per month is more than 40300 KW and there is no energy conservation.</p>
<p>22. No tree plantation and no development of recreational ground as per the norms</p>	<p>6.PP has provided 10% open area. However, it is observed that entire reserved open space is on podium. PP has constructed club house and swimming pool in this podium area.</p>	<p>Total open space for the recreational purpose is shown to the tune of 2274.69. As per the norms laid down by Hon'ble Bombay High Court in respect of the tree plantation, one tree to be planted for every 80 Sq. Mtrs. and in present case total area of the land is 26000 Sq. Mtrs. therefore the total Number of trees to be planted equals to 325. But PP has not planted trees and also there is no plantation in open area and marginal area to consume GHG emitted by the project operation. Therefore PP has violated the norms of</p>

		tree plantation and RG area development causing environment.
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Further I state that, the statement of PP in respect of reply to Para-16 to 22 of OA is totally false and it is compromised statement in collusion with Joint Committee. In actual there is no such visit took place at site.

- 65.** I state that, the contents of the OA are true & correct and PP has deep unholy nexus with the City Engineers of PMC Mr. Prashant M. Waghmare and therefore, PP has committed blatant violations in connivance with him and his subordinates. MoEF issued EIA notification-2006 mandating prior EC for the construction having total BUA of 20000 Sq. Mtrs. but PMC officers has not insisted PP to obtain prior EC and neglected to perform their statutory duties to protect environment and ecology. PP was supposed to obtain prior CTE, but PP has carried out the construction without any CTE, therefore PMC officers have neglected to perform duties as per the norms. PP has not provided the marginal space as per the DC rule i.e. more 7.5 Mtrs., even though the PMC officers has neglect to insist PP to provide the marginal space and allowed to proceed for illegal construction having no access for fire engine around the buildings. Fire engine cannot be reached to the project site as there is no means of access to the project. PP has not



developed the 10% open space as per the DC Rule, but PMC officers have neglected to perform duties as per the norms. There is no plantations at site. PP has provided false information in Area Statement, it was mandatory to correct area statement but PMC officers have neglected to perform duties as per the norms. PMC officers have allowed the PP for commercial development instead of Residential Development in violation of DC Rules and their by PMC officers have neglected to perform duties as per the norms. As per the modified DC rules of PMC it is mandatory for the project having 150 units and more should install the STP at site, but there is no installation of STP at site. Reservation of HDH is removed in illegal manner and this notice Mr. Prashant Waghmare being the DP officer has involved in the matter. PP has not handed over the area of 18 Mtrs DP road wining, 30 Mtrs. DP Road winding and 15% amenity space to the PMC, but PMC officers have neglected towards this act. PMC has caused huge financial loss. PP has manipulated in the water bodies and also PP has made illegal tree cutting without any permission from the concern department. PMC officers have committed many illegal acts to provide undue support to the PP. Therefore, PMC officers including City Engineer of PMC-Mr. Prashant Waghmare are directly responsible for such violations.

- 66.** I state that, the contents of Para-23 of the OA are true & correct and it is admitted position that the PP has carried out illegal construction to the tune of TBA of



more than 44841.72 M<sup>2</sup> and also sought further expansion of F-wing as disclosed in application for EC dated 08.08.2018). Therefore, total BUA of the entire project is going to cross 47429.2 M<sup>2</sup> without prior EC & Consents. Even though the report of joint committee is casual & cursory and prepared to protect the PP, but the report have pointed out substantial damage to the environment and ecology on the basis of non-compliance to the environment norms. This illegal construction is raised by consuming huge quantity of the building material prepared from natural resources like Cement, metal/ aggregates, steel, timber, water, fuel, bricks, sand, aluminium, copper for wirings, marble, stainless steel, PVC etc. for the construction of the project without any impact assessment and caused irreparable damage to the environment and ecology in substantial nature. GHG emission especially carbon from the material process and its use during the construction and operation phase is huge and it has adverse impact on the environment and therefore the prior impact assessment is required for the better protection and improvement of the environment due to the activity of the PP. But PP intentionally failed to prepare such Impact Assessment and further neglected to implement such assessment in his project and caused huge damage to environment. PP has made illegal excavation of two basements and this is one of the major damage to the environment. PP is illegally extracting the ground



water from three (3) number of bore wells. PP is not doing any treatment on the solid waste and it is directly dumped to the PMC dumping location by overburdening the PMC infrastructure. PP has used traditional clay bricks instead of fly ash bricks and PP has not used any scientific construction method. The environmental issues are very complex and its restoration is more difficult than complexity. But PP has callous attitude for environmental protection and adopted careless, reckless, attitude with unapologetic behaviour and manipulated the government authorities. Therefore, exemplary damages having deterrent effect must be imposed on this PP to teach lesson. Therefore considering the serious violations of non-obtaining of Environment Clearance, Consent to Establish, Consent to Operate, CGWA permission, Non-installation of pollution control devices, Non-plantation of tree, Non-installation of STP, Non-installation of Solid waste treatment unit, illegal ground water extraction, illegal operation of DG Sets, construction of two illegal basement damaging ground water level etc., the amount of environmental damage required to be imposed on PP for restoration of this area should be more Rs. 425 Crores. Above conduct of the PP towards intentional environmental compliance shows that, PP is unapologetic and PP have adopted careless and reckless methods in environment protection, as PP has not obtained any EC, not obtained any consent to Establish, not availed



benefits of EIA 14.03.2017, expanded project without obtaining EC & Consents and operated project without CTO. Therefore, PP may kindly be imposed with heavy & exemplary environment compensation as stated above of Rs. 425 Crores to have deterrent effect on him.

**67.** I state that, the this entire illegal activity shows that inherent lack of coordination between the local authority/ sanctioning authority, SEAC, SEIAA, DoE and MPCB and this act cannot be neglected for betterment of environment. The applicant have made out prima-facie case and situation have become unbridle & uncontrolled as stay is not granted by this Hon'ble Tribunal. PP have stared in the eyes of the law to continue his construction activity and occupancy of premises. The applicant have no any personal interest in the project and also there is no any enmity against the respondents in this OA.

**68.** I state that, the contents of Para-29 of the OA are true & correct and all the questions raised in this Para are substantial in nature and PP himself have admitted all the violations and therefore, PP cannot take contrary stand as illegal construction of project is carried out without obtaining Environment Clearance from SEIAA, without Consent to Establish and Consent to Operate obtained from MPCB and committed violation of EIA Notification-2006, will survive in the eyes of law. Also, ground water is extracted for construction & domestic use without



obtaining permission from the appropriate authority, operation of project is not legal without installation of environment protection infrastructure, PP cause irreparable damage to the environment & ecology for his profit making at the cost of "Mother Nature", and therefore, restitution and restoration of the area damaged by PP is necessary.

**REPLY TO THE ISSUE OF THIRD PARTY RIGHTS  
CREATED IN THE PROJECT AND NON JOINDER  
RAISED BY RESPONDENT NO. 13-PP**

69. I state that, the contents of **Para-30 & 31** of Respondent No. 13-PP reply dated 21.11.2020 are false, baseless & misleading and denied by this Applicant. I state that the reply of PP is the abuse of process of law and Original Application is filed for the white collar defaults of the Respondent No. 13-PP and therefore, Respondent No. 13-PP being profit making firm at the cost of Mother Nature will be responsible for any damage to would cause to the flat purchasers. Respondent No. 13-PP is duty bound to disclose the true facts to their customers, but filing of this Application is not disclosed by the Respondent No.13-PP to the flat purchasers and Moreover, this Respondent No. 13-PP can file the intervention application for the worry of flat purchasers to get them protected and it is responsibility of Respondent No. 13-PP to pay the flat purchasers from his own pockets.



70. I state that, the prayers sought in the Original Application are against the Respondent No.13-PP and he will be responsible for any loss that would be occur to the flat purchaser. Contention of PP on account of so called purchasers are not arrayed as party respondent is totally baseless and misleading and this stand is taken only to create the nuisance in the litigation. Therefore, flat purchasers are not important party to the litigation as the stand taken by the Respondent No. 13-PP is that there is no violation committed by PP and such dictatorship of the Respondent No. 13-PP should not be tolerated by this Hon'ble Tribunal.

71. I state that, the contents of **Para-32** of Respondent No. 13-PP reply dated 21.11.2020 are false, baseless & misleading and denied by this Applicant. It is important to note that, the violations related to the DC Regulations of PMC, MRTP Act etc. committed by the PP are important to decide the issue of total BUA, marginal spaces to be used for plantation, fire safety, turning radius for fire tender movement are related to environmental parameters considered during the appraisal & assessment impact. In this application, applicant has informed the violations noticed in the project and issue of violations of DCR & MRTP dealing with environmental aspect are already dealt in reply to IA N. 66/2021 by this Original Applicant and Hon'ble Tribunal have clear jurisdiction to entertain the same;



72. I state that, the contention of **Para-33** of the reply affidavit of Respondent No. 13-PP dated 21.11.2020 are related to issues and grievances raised in the original Application are has fully answered by PP, in fact PP has provided totally false, baseless, misleading replies. It is important to note that, the allegations made in the original application are admitted by PP in his own Application dated 08.08.2018 for ex-post facto EC, SEIAA and MPCB in their replies affidavits. Therefore, Original Applicant have made out a genuine, realistic and true case for grant of all prayers sought. In view of statement of PP in this para, he is not entitle for opportunity to file additional affidavit.

73. I state that, the contention of the **Para-34** of the reply affidavit of Respondent No. 13-PP dated 21.11.2020 are totally false, baseless, misleading. It is important to note that, the PP have rebutted the allegations raised in original application in his reply with false, baseless and misleading answers and deserve no liberty to have an additional opportunity as violations committed by the Project Proponent are admitted by himself in his EC application dated 08.08.2018 filed before SEIAA. In above para of his reply affidavit PP himself has admitted that, he have fully answered the Original Application. Moreover MPCB has taken cognizance of the same by issuing directions under Air (P&CP) Act-1971 and Water (P&CP) Act-1984. Therefore, there should not be sadistic pleasure to the Project Proponent.



I state that, the contention of the **Para-35** of the reply affidavit of Respondent No. 13-PP dated 21.11.2020 are related to IA No. 66/2021, objecting the preliminary issues. It is important to note that, the Interlocutory Application No. 66/2021 filed by PP is totally false, baseless, misleading and this interlocutory applications is filed to create nuisance & hurdles in the smooth proceedings of Original Application in view to prolong the litigation. This habitual Project Proponent being luxurious litigant is playing these illegal tactics to overcome the violations with help of Professionals. Therefore, this Hon'ble NGT may kindly throw such illegal & false interlocutory applications at the threshold.

- 75.** I state that, the contention of the **Para-36** of the reply affidavit of Respondent No. 13-PP dated 21.11.2020 are totally false, baseless, misleading. It is important to note that, the PP have carried out the construction of total BUA of 44841.72 M<sup>2</sup> and have sought further expansion of F-Building. This Total Construction BUA is more than 20000 M<sup>2</sup> mandating prior Environment Clearance as per the EIA Notification-2006. In this case PP has not obtained the mandatory prior Environment Clearance, prior Consent to Establish and Consent to Operate from the Competent Authorities. Further it is submitted that, the allegations in this Original Application are exhaustive, broad with support of documents and well known to PP with his own admitted facts. Moreover PP himself

have admitted the allegation of non-obtaining prior EC and applied for the prior EC, which is rejected by the SEIAA. Therefore Applicant have made out the good case and also case have supported with evidences, annexures and facts admitted by Project Proponent, SEIAA and MPCB etc. Thus, this is the best case for grant of all the prayers sought under this application and it is humble request to Hon'ble NGT for grant of prayers in larger interest of the Environmental Protection.

- 76.** I state that, the contention of the **Para-37** of the reply affidavit of Respondent No. 13-PP dated 21.11.2020 is the prayer, which is not tenable and illegal in the eyes of the law and this Hon'ble NGT may kindly reject the contentions of the Respondent No. 13-PP and payers in Original Application may kindly be granted by demolition of structure or by handing over it to the government for public use along with imposition of exemplary environment compensation for restitution & restoration of environment, ecology, exploitation of natural resources & social infrastructure damaged by Project Proponent in view to have deterrent effect on Project Proponent to send clear & sound message in the society, that the environmental compliance is supreme and no one is above the law.

**PART-E**

**PARAWISE REJOINDER TO THE REPLY OF  
RESPONDENT NO. 8-UDD DATED 28.10.2021:**



I have read the reply affidavits filed on behalf of Respondent No.8-UDD dated 28.10.2021 in reply thereto, I state as under: -

- 77.** I state that, the Respondent No. 8- Secretary of Urban Development Department, Government of Maharashtra being superior to the Respondent No. 9, 10 & 11-PMC & its officials herein have to look into their illegal actions and thereafter, needs to take action. However, reply affidavit dated 28.10.2021 for this Respondent No. 8-UDD shows the callous attitude towards their duties and there is nothing concrete in this affidavit. Entire affidavit is full of paradox statements and irresponsibility towards the society and this type of courageous affidavits are filed only due to failure of all limbs of government system to take strict action in time. Moreover, in Para-1 & 12 of his reply this Respondent states that, there is no allegation against this Respondent in OA and there is no role of Respondent No. 8 in OA. But Respondent No. 8-UDD have conveniently ignored the prayer clause 34 (E) calling his attention towards the illegality of his Subordinate officer Respondent No. 11- Mr. Prashant M. Waghmare i.e. City Engineer of PMC since year 2002 for more than 20 years sitting on the single position and spoiling the development of city by his corruption.
- 78.** Therefore, I would like to request to take serious action against such irresponsible officer.

**PART-F****PARAWISE REJOINDER TO THE REPLY OF  
RESPONDENT NO. 9, 10, 11-PMC DATED  
28.12.2021:**

I have read the reply affidavits filed on behalf of Respondent No.9-PMC-Commissioner, Respondent No. 10-PMC-Building Permission Department and Respondent No. 11-Mr. Prashant Madhukar Waghmare (City Engineer-PMC) dated 28.12.2021 in reply thereto, I state as under: -

- 79.** I state that, the Respondent No. 9, 10 & 11 have filed common affidavit dated 28.12.2021 in reply to the Original Application in very evasive, cursorily, casual, misleading, misconceived, frivolous, vexatious, neither bonafide manner. Even these respondent have not taken efforts to give specific reply to the allegations leveled against them in Original Application for granting of permission and allowing the PP for carrying out construction more than 20000 M<sup>2</sup> without EC & Consents and further illegal operations of project. This callous attitude is gained from the high corruption in these offices and with attitude consideration of them self above the law.
- 80.** I state that, the contents of reply affidavit filed by Respondent No.9 to 11 dated 21.11.2021 shows that the affidavit is prepared by Respondent No. 13-PP and it seems to be returns of pleasure received from PMC & Mr. Prashant Waghmare for supporting illegal



- construction and on account of benefits other than remuneration.
- 81.** I state that the Respondent No. 11-Mr. Prashant Madhukar Waghmare (City Engineer-PMC) is made party Respondent in personal capacity and Affidavit is filed by Mr. Rahul Salunkhe- Incharge Executive Engineer of PMC for this Respondent No. 10 and this is totally illegal procedure adopted by this Respondent No. 11. It is nothing but non-filing of any counter for allegations against him and it is nothing but admission to the allegation made in original application.
- 82.** I state that, the Respondent No. 11-Mr. Prashant Madhukar Waghmare is holding the position of City Engineer at PMC since year 2002, which is very shocking to hold this position at one place for more than 20 years and this period has given high confidence to this respondent to do undue activities at the cost of Mother Nature. This Respondent is the master mind behind this violations and illegal activity in Building Development Department.
- 83.** I state that, the Respondent No. 9- Mr. Prashant Waghmare-City Engineer of PMC have issued the Circulars for strict implementation of EIA Notification-2006 dated 02.11.2006. But this is only paper work to show off, in actual this respondent has shown dustbin to the EIA Notification-2006 and he has spoiled entire Pune City by promoting non-sustainable development on account of Mother Nature

and entire infrastructure of the city is collapsed due to this Respondent and for his ill will goals.

[ANNEXURE-A-1 {Colly.}].

84. I state that, these Respondent No. 9 to 11 are habitual offenders encouraging the environmental violations in their jurisdiction. These Respondents have been charged by Hon'ble NGT vide Order dated 27.09.2016 by imposing penalty of Rs. 500000/- (Five Lacks) for filling false affidavit on account of actual construction status and misleading on account of definition of Built-up Area & FSI to the Hon'ble NGT and further Hon'ble NGT has also passed strictures on these Respondents more specifically Respondent No. 11. Also Hon'ble NGT have directed Respondent No. 9 to initiate enquiry of erring officers and further to take actions according to law.

*35. It will shake the conscious of all concerned when we see a deliberate attempt on the part of DoE, SEAC and SEIAA to confuse the issue virtually falling in line with misleading statements of Respondent No.9-PP and Deputy Engineer, PMC. It is astonishing that both Respondent No.9-PP and Deputy Engineer, PMC refer to BUA as F.S.I. Despite such clear distinction in definitions and interpretations of BUA and FSI, they had attempted to mislead DoE, SEAC and SEIAA in believing that BUA and F.S.I are same. We expect an officer conferred with professional duty as 06 an*



engineer in the Department of Building Permission of PMC to be very meticulous in at least understanding the terms which make lot of difference to the fact of construction. We least expected 06 him as to know the distinction between BUA and FSI, as administration of Corporation would depend upon his professional advice and technical expertise to take action against the erring parties who contravene the mandate of law for safeguarding the interest of citizens which the Corporation is required to protect. We are also constrained to observe that the higher authorities of Building permission department had closed their eyes even when such incorrect affidavits are filed before the Tribunal and such misleading reports are sent to state authorities like DoE, SEAC and SEIAA.

**53.** The Respondent-9 is a defaulting entity which has not complied with law and has adopted a most careless and reckless attitude in relation to protecting the environment. The other Respondents, particularly the PMC and DoE have been the either the mute spectator or have not performed their statutory duties. However, we would note with appreciation that it is only MPCB that has acted on the complaints of the Applicants and have diligently taken legal



actions besides bringing on record the non-compliances by Respondent-9 PP.

**54.** For the aforesaid reasons, the Applicant succeeds in his legal pursuit to challenge the noncompliance of EC conditions by the Respondent-9 and obtain certain directions. Hence the Application is allowed and we issue following directions:

**2.** In view of our finding that there has been manifest, deliberate or otherwise suppression of facts of illegality in the project activity of Respondent No.9-PP by the officer of PMC, we impose fine of Rs.5 Lakhs upon the PMC and direct Commissioner PMC to take appropriate action against the erring officers. The amount of Rs. 5 Lakh shall be paid within one month.

**4.** PMC, DoE and SEIAA are directed to pay cost of Rs. 1 lakh each to the Applicant within 4 weeks.”

**85.** I state that, the Hon’ble Supreme Court of India uphold the above Order of Hon’ble NGT in Civil Appeal No. 10901/2016 and pleased to pass the Final Order and Judgment dated 10.08.2018 reads as follow:

**“Findings and Directions:**

59. We summarise our findings and directions as follows:

(viii) We uphold the original order dated 27.09.2016 holding that the construction raised by the project proponent was in violation of the



*environmental clearance granted to it on 04.04.2008. We uphold the fine imposed upon the PMC and the direction given to the PMC to take appropriate action against the erring officials. We also uphold the direction given to the Chief Secretary to the State of Maharashtra and in addition, direct that the Chief Secretary to the State of Maharashtra shall look into the conduct of the official holding the post of Principal Secretary (Environment) to the Government of Maharashtra on 27.09.2016 and will submit his report to the NGT within three months from today;"*

- 86.** I state that, the Respondent No. 9 to 11 have intentionally not provided the details of total BUA of the completed construction, specific details of sanctions, Commencement Certificate, plinth check certificates, occupancy certificates, total excavation details, tree plantation details, rain water harvesting details, right to access, fire safety details etc. from their own documents and permissions. Therefore these respondents are habitual offenders.
- 87.** I state that, the Respondent No. 9 to 11 have made comments in Parawise reply as "Respondent No. 9, 10 and 11 PMC declines to comment about the same as it falls outside the knowledge of PMC". Basically, these respondent are more responsible for the compliance various permission granted to the project while constructing & operating the project within the legal domain and the ignorance of duties shall not be permissible in the eye of law. These Respondents are more responsible being the local authorities being

informer to the concern authorities for their non-compliance of permissions by PP, but in fact, these respondents being fens, they are wrenching the farm themselves and these for this conduct cannot be tolerated at the issue of public at large concern.

88. These Respondents have decline to comment on the illegal construction of 10% of open space and straight away says, it falls outside the knowledge of PMC.
89. I state that, the PMC is saying that the sanction vide No. CC/3774/16 dated 31.03.2017 is granted conditional sanction on condition no. 19 for obtaining EC & Consents and it is duty of PP to obtain the requisite permission from concern authority and for this reason, PMC have issued stop work notice dated 11.12.2019 as the letter is received from SEIAA vide dated 04.12.2019.
90. Therefore, I state that these Respondents may kindly be saddled with heavy hands.

#### **PART-G**

#### **PARAWISE REJOINDER TO THE REPLY OF RESPONDENT NO. 4-SEIAA DATED 28.02.2022:**

I have read the reply affidavits filed on behalf of Respondent No.4-SEIAA dated 28.02.2022 in reply thereto, I state as under:

91. I state that, the Respondent 4-SEIAA have filed reply affidavit dated 28.02.2022 in reply to the Original Application is cursorily & casual, wherein SEIAA have admitted in Para-3 & 6 of their reply that, the PP have



applied for ex-post facto EC vide its application dated 08.08.2018 and application was considered in 102<sup>nd</sup> meeting of SEAC-III held on 22.01.2020 and note the case is of violation as PP has carried out the construction of 44841.72 M<sup>2</sup> without prior EC. Also, Application filed by PP under amnesty scheme of MOEF vide notification dated 14.03.2017 is not filed within the window period. Further, SEIAA fails to submit the final directions issued vide dated 04.12.2019.

92. I state that, the SEIAA in its para-6 have clearly stated that, "6. This is clear case of violation as PP has undertaken construction without obtaining prior EC as per EIA Notification, 2006."
93. I state that, the Respondent No. 4- SEIAA have failed to imposed penalty for not obtaining prior environmental clearance from 17.03.2007 to till date and environmental compensation for carrying out construction of more than 44841.72 M<sup>2</sup>.
94. Therefore, this is admitted case of violation.

#### **PART-H**

#### **PARAWISE REJOINDER TO THE REPLY OF RESPONDENT NO. 6 & 7-MPCB DATED 28.02.2022:**

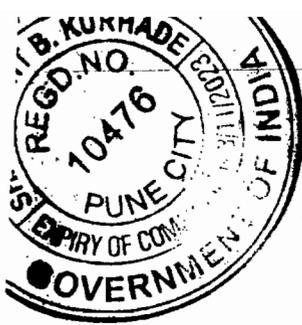
I have read the reply affidavits filed on behalf of Respondent No. 6 & 7-MPCB dated 28.02.2022 in reply thereto, I state as under:

95. I state that, the Respondent 6 & 7-MPCB have filed reply affidavit dated 28.02.2022 in reply to the

NOT

Original Application and concluded that the PP have committed the violation of Water (P&P) Act, 1974 and Air (P&P) Act, 1981 by not obtaining prior consents from MPC board.

- 96.** I state that, the Respondent 6 & 7-MPCB have imposed environmental compensation of Rs. 159909375/- (Rupees Fifteen Crores ninety nine lakhs Nine Thousands Three Hundred Seventy-five only) as stated in Para-4 of their affidavit. However, it cannot be said to be environmental compensation as this is the penalty for not obtaining prior Consents only.
- 97.** I state that, the construction is still ongoing and the period of penalty calculated for not obtaining CTE is more than 3042 days and it is 5200 days and .
- 98.** I state that, the Penalty for not obtaining prior Consents and environmental compensations are two different aspect and environmental compensation must be towards the higher side with exemplary amount to have deterrent effect.
- 99.** I state that, the PP himself have admitted the Domestic effluent discharge is more than 135 CMD and therefore, Pollution Index must be more than PI: 100, days for not obtaining prior CTE shall be counted straight away from 17.03.2007 to 16.03.2022 i.e. 5475 days plus days for not obtaining prior CTO shall be counted straight away from 14.07.2015 to 14.03.2022 i.e. 2430 days and also plus days for not obtaining prior Environment Clearance shall be



counted as CTE i.e. 5475 Days. Therefore, total days for violation of EC, CTE & CTO are  $5475+5475+2430=13380$  days. R-is factor in rupees and it shall be Rs. 500 as large scale industry, S facto shall be 1.5 and LF shall be 1.25 as the PMC population is 49 lakhs.

**100.** I state that, the Environmental compensation shall be  $EC=PI \times N \times R \times S \times LF=100 \times 13380 \times 500 \times 1.5 \times 1.25 =$  Rupees Rs. 1254375000/-, in additions to this non-plantation of 300 trees since 2430 days, also ground water extraction since 5475, unscientific disposal of solid waste since 2430 days, must be imposed on PP in addition to Rs. 125.53 Crores and Therefore, this Hon'ble Tribunal may kindly be charged with Environmental compensation of Rs. 425/- Crores to follow the principles of exemplary compensation to have deterrent effect on PP.

**101.** Therefore, I state that this Hon'ble Tribunal may kindly apply their inherent powers under Section-20 of NGT Act, 2010 and Rule No. 24 of NGT (Practice & Procedure) Rules, 2011 for imposing environmental compensation and penalty for not obtaining prior EC & consents, which shall be more than Rs. 425 Cores as size of project is not important in this project and its period of violation & non-compliances are important.

#### **PART-I**

**102. ORIGINAL APPLICANT IS RELYING ON FOLLOWING CITATIONS FOR ENVIRONMENTAL DAMAGE AND COMPENSATION:**

**70.1** I state that, this is the worst case of environmental damage therefore PP has crossed the principles laid down by the Hon'ble Supreme Court of India and Hon'ble NGT in various case and PP should be charged with very exemplary damages to have deterrent effect on him.

**70.2** In M. C. Mehta and Ors. Vs Union of India, (1987) 1 SCC 395, Hon'ble Supreme Court Observed that;

*"32. We would also like to point out that the measure of compensation in the kind of cases referred to in the preceding paragraph must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the enterprise, greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise".*

**70.3** In Vellore Citizens Welfare Forum Vs. Union Of India & Ors (1996) 5 SCC 647, Hon'ble Supreme Court Observed that;

*"(11) SOME of the salient principles of "Sustainable Development", as culled out from Brundtland Report and other international documents, are Inter-Generational Equity, Use and Conservation of Natural Resources, Environmental Protection, the Precautionary Principle, Polluter Pays Principle, Obligation to Assist and Cooperate,*

*Eradication of Poverty and Financial Assistance to the developing countries. We are, however, of the view that "The Precautionary Principle" and "The Polluter Pays Principle" are essential features of "Sustainable Development". The "Precautionary Principle" - in the context of the municipal law - means:*

(I) *Environmental measures - by the State government and the statutory authorities - must anticipate, prevent and attack the causes of environmental degradation.*

(II) *Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.*

(III) *The "onus of proof is on the actor or the developer/industrialist to show that his action is environmentally benign.*



(12) **"THE Polluter Pays Principle"** has been held to be a sound principle by this court in *Indian council for enviro-legal Action v. Union of India*. The court observed "... we are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country".

**THE court ruled that**

*"... once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on".*

**CONSEQUENTLY** the polluting industries are "absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas". The "Polluter Pays Principle" as interpreted by this court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of "Sustainable Development" and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology.

(13) THE Precautionary Principle and the Polluter Pays Principle have been accepted as part of the law of the land. Article 21 of the Constitution of India guarantees protection of life and personal liberty. Articles 47, 48-A and 51-A(g) of the Constitution are as under:

"47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.-The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

48-A. Protection and improvement of environment and safeguarding of forests and wildlife.-

The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.

51-A.(g) to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures."

Apart from the constitutional mandate to protect and improve the environment there are plenty of post-independence legislations on the subject but more relevant enactments for our purpose are: the Water (Prevention and Control of Pollution) Act, 1974 (the Water Act), the Air (Prevention and Control of Pollution) Act, 1981 (the Air Act) and the Environment (Protection) Act, 1986 (the Environment Act). The Water Act provides for the constitution of the central Pollution Control Board by the central government and the constitution of the State Pollution Control Boards by various State governments in the country. The Boards function under the control of the governments concerned. The Water Act prohibits the use of streams and wells for disposal of polluting matters. It also provides for restrictions on outlets and discharge of effluents without obtaining consent from the Board. Prosecution and penalties have been provided which include sentence of imprisonment. The Air Act provides that the central Pollution Control Board and the State Pollution Control Boards constituted under the Water Act shall also perform the powers and functions under the Air Act. The main function of the Boards, under the Air Act, is to improve the quality of the air and to prevent, control and abate air pollution in the country. We shall deal with the Environment Act in the latter part of this judgment.

(14) IN view of the above-mentioned constitutional and statutory provisions we have no hesitation in holding that the Precautionary Principle and the



*Polluter Pays Principle* are part of the environmental law of the country.

(15) *EVEN* otherwise once these principles are accepted as part of the Customary International Law there would be no difficulty in accepting them as part of the domestic law. It is almost an accepted proposition of law that the rules of Customary International Law which are not contrary to the municipal law shall be deemed to have been incorporated in the domestic law and shall be followed by the courts of law. To support we may refer to Justice H.R. Khannas opinion in *A.D.M. v. Shivakant Shakla, Jolly George Varghese case and Gramophone Co. case.*

(16) *THE* constitutional and statutory provisions protect a persons right to fresh air, clean water and pollution-free environment, but the source of the right is the inalienable common law right of clean environment. It would be useful to quote a paragraph from Blackstones commentaries on the Laws of England (Commentaries on the Laws of England of Sir William Blackstone) Vol. III, fourth edition published in 1876. Ch. XIII, "Of Nuisance" depicts the law on the subject in the following words:

"*ALSO*, if a person keeps his hogs, or other noisome animals, or allows filth to accumulate on his premises, so near the house of another, that the stench incommodes him and makes the air unwholesome, this is an injurious nuisance, as it tends to deprive him of the use and benefit of his house. A like injury is, if ones neighbour sets up and exercises any offensive trade; as a tanners, a tallow-chandlers, or the like; for though these are lawful and necessary trades, yet they should be exercised in remote places; for the rule is, *sic utere tuo, ut alienum non leadas*; this therefore is an



actionable nuisance. And on a similar principle a constant ringing of bells in ones immediate neighbourhood may be a nuisance.

... With regard to other corporeal hereditaments; it is a nuisance to stop or divert water that used to run to anothers meadow or mill; to corrupt or poison a watercourse, by erecting a dye-house or a lime-pit, for the use of trade, in the upper part of the stream; to pollute a pond, from which another is entitled to water his cattle; to obstruct a drain; or in short to do any act in common property, that in its consequences must necessarily tend to the prejudice of ones neighbour. So closely does the law of England enforce that excellent rule of gospel-morality, of doing to others, as we would they should do unto ourselves."

(17) OUR legal system having been founded on the British common law the right of a person to a pollution-free environment is a part of the basic jurisprudence of the land.

(18) THE Statement of Objects and Reasons to the Environment Act, inter alia, states as under:

"THE decline in environmental quality has been evidenced by increasing pollution, loss of vegetal cover and biological diversity, excessive concentrations of harmful chemicals in the ambient atmosphere and in food-chains, growing risks of environmental accidents and threats to life-support systems. The world communitys resolve to protect and enhance the environmental quality found expression in the decisions taken at the United Nations Conference on the Human Environment held in Stockholm in June 1972. The government of India participated in the Conference and strongly voiced the environmental concerns. While several measures have been taken for environmental protection both before and after the



Conference, the need for a general legislation further to implement the decisions of the Conference has become increasingly evident.

*EXISTING* laws generally focus on specific types of pollution or on specific categories of hazardous substances. Some major areas of environmental hazards are not covered. There also exist uncovered gaps in areas of major environmental hazards. There are inadequate linkages in handling matters of industrial and environmental safety. Control mechanisms to guard against slow, insidious build-up of hazardous substances especially new chemicals in the environment, are weak. Because of a multiplicity of regulatory agencies, there is need for an authority which can assume the lead role for studying, planning and implementing long-term requirements of environmental safety and to give direction to, and coordinate a system of speedy and adequate response to emergency situations threatening the environment.

*IN* view of what has been stated above, there is urgent need for the enactment of a general legislation on environmental protection which inter alia, should enable coordination of activities of the various regulatory agencies, creation of an authority or authorities with adequate powers for environmental protection, regulation of discharge of environmental pollutants and handling of hazardous substances, speedy response in the event of accidents threatening the environment and deterrent punishment to those who endanger human environment, **safety and health.**"

**70.4** In *M. I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu & Ors.* 1999 (6) SCC 464, Hon'ble Supreme Court Observed that;

“74. High Court has directed dismantling of the whole project and for restoration of the park to its original condition. This Court in numerous decisions has held that no consideration should be shown to the builder or any other person where construction is unauthorised. This dicta is now almost bordering rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorised construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles. As will be seen in moulding the relief in the present case and allowing one of the blocks meant for parking to stand we have been guided by the obligatory duties of the Mahapalika to construct and maintain parking lots.”

**70.5** In *M. C. Mehta Vs Kamal Nath*, (2002) AIR (SC) 1515,

Hon'ble Supreme Court Observed that;

“9. THE question remaining for further consideration relating to the award of exemplary damages is only as to the quantum. The various laws in force to prevent, control pollution and protect environment and ecology provide for different categories of punishment in the nature of imposition of fine as well as or imprisonment or



either of them, depending upon the nature and extent of violation. The fine that may be imposed alone may extend even to one lakh of rupees. Keeping in view all these and the very object underlying the imposition of imprisonment and fine under the relevant laws to be not only punish the individual concerned but also to serve as a deterrent to others to desist from indulging in such wrongs which we consider to be almost similar to the purpose and aim of awarding exemplary damages, it would be both in public interest as well as in the interests of justice to fix the quantum of exemplary damages payable by Span Motels Pvt. Ltd. at rupees ten lakhs only. This amount we are fixing keeping in view the undertaking given by them to bear a fair share of the project cost of ecological restoration which would be quite separate and apart from their liability for the exemplary damages. The question relating to the said quantum of liability for damages on the principle of "polluter pays", as held by this Court against the Span Motels Pvt. Ltd. and undertaken by them, will be determined separately and left open for the time being. ....".



**70.6** In *Dipak Kumar Mukherjee Vs. Kolkatta Municipal Corporation and Ors-* **2013 (5) SCC 336**, Hon'ble Supreme Court Observed that;

*"8. What needs to be emphasised is that illegal and unauthorised constructions of buildings and other structure not only violate the municipal laws and the concept of planned development of the particular area but also affect various fundamental and constitutional rights of other persons. The common man feels cheated when he finds that those making illegal and unauthorised*

constructions are supported by the people entrusted with the duty of preparing and executing master plan/development plan/zonal plan. The reports of demolition of hutments and jhuggi jhopris belonging to poor and disadvantaged section of the society frequently appear in the print media but one seldom gets to read about demolition of illegally/unauthorisedly constructed multi-storied structure raised by economically affluent people. The failure of the State apparatus to take prompt action to demolish such illegal constructions has convinced the citizens that planning laws are enforced only against poor and all compromises are made by the State machinery when it is required to deal with those who have money power or unholy nexus with the power corridors."



9. We have prefaced disposal of this appeal by taking cognizance of the precedents in which this Court held that there should be no judicial tolerance of illegal and unauthorized constructions by those who treat the law to be their sub-servient, but are happy to note that the functionaries and officers of Kolkata Municipal Corporation (for short, the Corporation) have been extremely vigilant and taken steps for enforcing the provisions of the Kolkata Municipal Corporation Act, 1980 (for short, the 1980 Act) and the rules framed thereunder for demolition of illegal construction raised by respondent No. 7. This has given a ray of hope to the residents of Kolkata that there will be zero tolerance against illegal and unauthorised constructions and those indulging in such activities will not be spared.

**70.7** In Sterlite Industries (I) Ltd. Etc. Vs Union of India & Ors. Etc, 2013 (4) SCC 575, Hon'ble Supreme Court Observed that;

*“(D) Environmental Law-- Damage to Environment by pollution -- Quantum of Compensation -- Running of Copper Smelter Plant -- Damage caused by pollution through emission and discharge of effluents -- Constitution Bench of Supreme Court in M .C. Mehta and Another vs. Union of India and others, (1987) 1 SCC 395, observed that quantum of compensation must be co-related to magnitude and capacity of the enterprises, because such compensation must have a deterrent effect and larger and more prosperous the enterprises, the greater must be the amount of compensation -- As per NERI Reports of 1998, 1999, 2003 and 2005, appellants plant did pollute the environment through emission and discharge of effluents which did not conform to standards laid down by TNPCB under Air Act and Water Act -- For these deficiencies, TNCPB also did not renew its consent for some period, yet, appellant continued to operate its plants without such renewal -- Thus, appellant company is liable to pay compensation by paying damages -- Considering the magnitude, capacity and prosperity of appellant-company, a compensation of Rs. 100 crores for having polluted the environment in the vicinity of the plant and having operated the plant without renewal for a fairly long period -- No less amount would have the desired deterrent effect on appellant -- That amount initially to remain in five years Fix Deposit and interest thereon to be utilized for improving environment in the vicinity of the plant, as directed”.*



"39. ... ."The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part."

The Constitution Bench in the aforesaid case further observed that the quantum of compensation must be co-related to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect and the larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it. ....

"PBDIT for the financial year 2010-11 was Rs. 1,043 Crore, 40% higher than the PBDIT of Rs. 744 Crore for the financial year 2009-10. This was primarily due to higher LME prices and lower unit costs at Copper India and with the improved by-product realization."

**Considering the magnitude, capacity and prosperity of the appellant- company,** we are of the view that the appellant-company should be held liable for a compensation of Rs. 100 crores for having polluted the environment in the vicinity of its plant and for having operated the plant without a renewal of the consents by the TNPCB for a fairly long period and according to us, **any less amount, would not have the desired deterrent effect on the appellant-company.** The aforesaid amount will be deposited with the Collector of Thoothukudi District, who will invest it in a Fixed



*Deposit with a Nationalized Bank for a period of five years. The interest therefrom will be spent for improving the environment, including water and soil, of the vicinity of the plant after consultation with TNPCB and approval of the Secretary, Environment, Government of Tamil Nadu.”*

*41. Before we part with this case, we would like to put on record our appreciation for the writ petitioners before the High Court and the intervener before this Court for having taken up the cause of the environment both before the High Court and this Court and for having assisted this Court on all dates of hearing with utmost sincerity and hard work. In Indian Council for Enviro-Legal Action and Others v. Union of India and Others [(1996) 3 SCC 211], this Court observed that voluntary bodies deserve encouragement wherever their actions are found to be in furtherance of public interest. Very few would venture to litigate for the cause of environment, particularly against the mighty and the resourceful, but the writ petitioners before the High Court and the intervener before this Court not only ventured but also put in their best for the cause of the general public.”*

**70.8** In Goa Foundation Vs Union Of India & Ors, 2014 (6) SCC 590, Hon'ble Supreme Court Observed that;

*“62. Regulatory and monitoring measures enforced by the Departments of Mines and Geology, the Goa State Pollution Control Board and the Regulator appointed by the Central Government under sub-section (3) of Section 3 of the Environment (Protection) Act, 1986 cannot, however, restore entirely the environment that is*

damaged in course of mining operations. The Expert Committee has, therefore, recommended that a permanent fund for inter- generational equity and sustainability of mining for all times to come named as Goan Iron Ore Permanent Fund be created and an expert group may be constituted by the State for working out the details of this fund. Mr. Harish Salve, learned Amicus Curiae, submitted that as the lessees of mining leases earn out of the sale proceeds of the iron ore excavated by them, they should be directed to contribute 10% of the sale proceeds of all iron ore excavated in the State of Goa and sold by them towards the Goan Iron Ore Permanent Fund. He cited the judgment of this Court in Samaj Parivartana Samudaya and Ors. v. State of Karnataka and Ors. (supra) in which this Court has similarly directed for creation of a Special Purpose Vehicle out of 10% of the sale proceeds of the ore sold by e-auction. There is a lot of force in the aforesaid submission of Mr. Salve”.



- 70.9** In *Krushn Kant Singh & Ors. Vs National Ganga River Basin Authority & Ors.* In Application No. 299/2013 Decided on 16.10.2014, Hon'ble NGT (PB) held that;
- “51. It is not possible to assess exact environmental damage and the cost of restoration thereof in view of the long period involved in the present case and the fact that the statutory Boards empowered to prevent and control pollution have not performed their statutory duties in accordance with the spirit and object of the environmental Acts and jurisprudence. This unit is responsible for causing great environmental pollution of different water bodies including Phuldera drain, the Syana Escape canal, the River Ganga and even the

groundwater in and around the area of this industrial unit. Besides scientific data of inspection by the Expert teams, officers of the Pollution Control Board, analysis report and the fact that the water in the Phuldera drain had turned brown, even to the naked eye, demonstrates the extent of pollution caused by this unit. Considering the magnitude of the pollution caused by unit, its capacity and prosperity, responsibility of the unit to pay compensation cannot be disputed on any plausible cause or ground. The Supreme Court in the case of *Sterlite Industries (India) Ltd. v. Union of India & Ors.* (2013) 4 SCC 575, enunciated the principle that a company which has caused the damaged to the environment and for operating the plant without valid renewal of consent for a fairly long period would obviously be liable to compensate by paying damages. while relying upon the judgment of the Constitution Bench of the Supreme Court in the case of *M.C. Mehta v. union of India* (1987) 1 SCC 395, the court further stated that the plea of reasonable care and that the damage to environment occurred without specific negligence on the part of the unit is not a sustainable defence to a direction for payment of compensation for causing environmental damage. The court further held that magnitude, capacity and prosperity of the unit are the relevant considerations for determining the extent of the liability in such case. Applying these principles to the facts of the present case, there can hardly be any dispute that it is a polluting unit. It is also beyond controversy that this unit has operated without consent of the Boards from 1974 till the year 1991, thereafter, it committed default in compliance of the conditions of the consent right up to the year 2000. Even



thereafter, it did not strictly comply with the conditions and directions issued by the respective Boards. This unit is a direct source of polluting River Ganga.

The PP is a profit making unit. No record has been produced before the Tribunal to establish anything to the contrary. Though, it may not be possible to determine with exactitude the exact amount of compensation payable on account of damage to environment because of the long period involved and also for the reason that even scientifically the extent of damage and amounts required for restoration and restitution thereof cannot be determined at this stage now. Cleaning and removal of sludge from Phuldera drain, treatment of other pollutants flowing in the said drain, preventing any discharge into the Syana Escape Canal and making River Ganga pollution free are the basic needs which require attention of the Expert bodies particularly, in the facts and circumstances of this case. We fix a compensation of Rs 5 crores which shall be deposited with the UPPCB and shall be spent for that purpose alone by and joint team of CPCB, UPPCB, MoEF including for removal of sludge and all pollutants in the Syana Escape Canal till it joins river Ganga. This amount shall also be used for preventing ground water pollution.

The unit has caused serious pollution persistently. There is sufficient material before the Tribunal to establish both direct and indirect pollution being caused by this unit. The unit has even intentionally failed to comply with the directions and conditions of the consents order passed by the respective boards. Not even submitting an application to the board for obtaining consent to operate and shows complete disregard towards law and its statutory



obligations by the unit. It is not only case where it is a threat to cause environmental pollution but is a case of causing environmental pollution. Right to carry on business cannot be permitted to be misused or to pollute the environment so as to reduce the quality of life of others. Risk to harm to environment or to human health is to be decided in the public interest according to 'a reasonable person's test'. The man's perception with reference to the facts of this case cannot return a finding any different than the one recorded by us.".....

"59. Reverting to the case of Simbhaoli sugar and distillery unit which has been a serious polluter for all this time and has damaged the ground water as well as polluted the River Ganga through Phuldera Drain, now for years. This unit has failed to take all remedial measures despite service of show cause notices, closure orders and directions issued by the CPCB. The trade effluent discharged by the unit had often been found to be in violation of the prescribed standards. The unit had also failed to dismantle the underground pipeline through which the effluent containing the pollutants was being discharged into the Phuldera drain, despite specific directions issued by the respective Boards. Large extent of sludge which could only be generated from a sugar and distillery unit was found in the Phuldra drain and on its banks. The inspections on different occasions even noticed that the unit was bypassing the ETP and throwing untreated effluent into the drain and/or on the land. This Unit, on the one hand violated the conditions of the consent order from time to time while on the other, it even operated without consent of the Board for short duration subsequent to 1991, till which year it operated totally without





consent. These are the few circumstances which fully establish the fact that this unit is a seriously polluting unit and has been polluting the different water bodies including the groundwater now for a considerable time. There can hardly be any doubt in inspecting the case advanced on behalf of the respective Boards that this unit has continuously failed to comply with the requirements of law and discharge its statutory obligations on the one hand while on the other it has also failed to fulfil its corporate social responsibilities. Therefore, the unit is liable to make good and to restore damage, degradation and pollution of environment caused by its activity particularly, the water bodies and with greater emphasis, the River Ganga. Thus, in our considered view, this unit must be held liable to pay heavy compensation for restitution, restoration, prevention and control of pollution of various water bodies and more emphatically River Ganga. Consequently, in exercise of the powers conferred upon this Tribunal under Section 15 and all other enabling provisions of the NGT Act and the legislative mandate contained under Section 20 of the said Act, 2010.

**70.10** In *Indian Council for Environ Legal Action Vs Union of India and Ors*, (1996) 5 SCC 281, Hon'ble Supreme Court of India Observed that:

*“Enactment of a law, but tolerating its infringement, is worse than not enacting a law at all. The continued infringement of law, over a period of time, is made possible by adoption of such means which are best known to the violators of law. Continued tolerance of such violations of law not only renders legal provisions nugatory but such tolerance by the enforcement authorities*

*encourages lawlessness and adoption of means which cannot, or ought not to, be tolerated in any civilized society. Law should not only be meant for the law-abiding but is meant to be obeyed by all for whom it has been enacted. A law is usually enacted because the legislature feels that it is necessary. It is with a view to protect and preserve the environment and save it for the future generations and to ensure good quality of life that Parliament enacted the anti-pollution laws, namely, the Water Act, Air Act and the Environment (Protection) Act, 1986. These Acts and Rules framed and notification issued thereunder contain provisions which prohibit and/or regulate certain activities with a view to protect and preserve the environment. When a law is enacted containing some provisions which prohibit certain types of activities, then, it is of utmost importance that such legal provisions are effectively enforced. If a law is enacted but is not being voluntarily obeyed, then, it has to be enforced. Otherwise, infringement of law, which is actively or passively condoned for personal gain, will be encouraged which will in turn lead to a lawless society. Violation of antipollution laws not only adversely affects the existing quality of life but the non-enforcement of the legal provisions often results in ecological imbalance and degradation of environment, the adverse effect of which will have to be borne by the future generations."*



**70.11** In Indian Council For Enviro Legal Action Vs Union Of India 1996 (3) SCC 212, Hon'ble Supreme Court Observed that;



*“(71) RESPONDENTS 4 to 8 shall pay a sum of Rupees fifty thousand by way of costs to the petitioner which had to fight this litigation over a period of over six years with its own means. Voluntary bodies, like the petitioner, deserve encouragement wherever their actions are found to be in furtherance of public interest. The said sum shall be deposited in this court within two weeks from today. It shall be paid over to the petitioner.”*

**103. THEREFORE, IT IS PRAYED THAT;**

- a. Hon'ble NGT may kindly grant prayers in Original Application.
- b. Any other prayers in the interest of environmental justice.

Whatever stated above is true and correct to the best of my knowledge, belief and information, hence, to verify the same I have signed hereunder at Pune.

Place: Pune  
Date: 07.03.2022

*Bombhise*  
AFFIANT

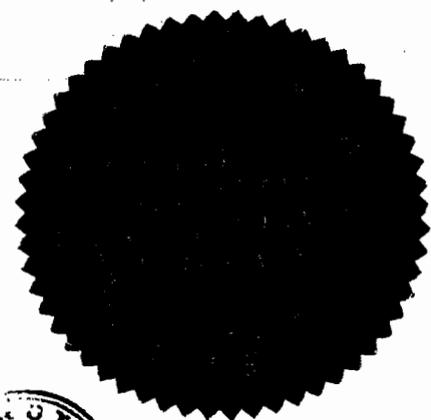
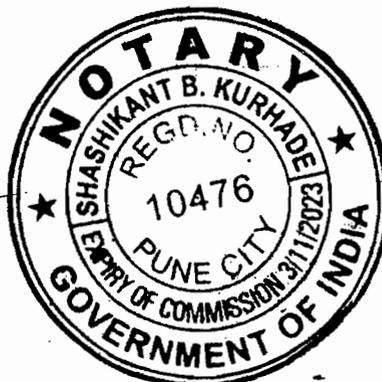
(TANAJI BALASAHEB GAMBHIRE)

Noted and Registered  
at Sr. No. 122/2022  
Date: 07 MAR 2022

BEFORE ME

*S. B. Kurhade*

Shashikant B. Kurhade  
Notary Govt. of India



**ANNEXURE-A-1 {Colly.}**

नगर अभियंता कार्यालय

पुणे महानगरपालिका

जा.क्र. : न/अजा/ज/र/६८

दिनांक : २/११/२००६

मा. महापालिका आयुक्त

पुणे महानगरपालिका

यांजकडेस

विषय : बांधकामास पर्यावरण दाखला बंधनकारक असल्याचा केंद्रशासन निर्णयाची  
अंमलबजावणी करणेबाबत .

संदर्भ : १) परिपत्रक , नगर अभियंता कार्यालय , पुणे म.न.पा. जा.क्र.

DPO/५२८२ , दि. १६/९/२००५ .

२) Regional Officer , Maharashtra Pollution

Control Board , Regional Office Pune यांचे पत्र क्र.

Ref. No. ROP/7476/05 date 19/10/05.

३) Ministry of Environment & Forests Notification ,  
date 14/9/2006.

बांधकामास पर्यावरण दाखला बंधनकारक असल्याचा केंद्रशासन निर्णयाची  
अंमलबजावणी करणेसाठी वरील संदर्भ क्र.१ अन्वये परिपत्रक प्रस्तुत करण्यात आलेले अमून  
त्याप्रमाणे कार्यवाही चालू आहे . महाराष्ट्र पोल्युशन कंट्रोल बोर्डची , रिजनल ऑफीसर यांनी  
वरील संदर्भ क्र.२ चे पत्र पाठविले आहे . त्यामध्ये बांधकामाचे संमतीपत्र देणेपूर्वी पर्यावरणाचा  
दाखला तयार करणे आवश्यक असल्याचे नमूद केलेले आहे . आता वरील संदर्भ क्र.३ चे  
नोटीफिकेशन दाखल झालेले अमून त्याप्रमाणे कार्यवाही करणे करिता सदरचे निवेदन सादर  
केलेले आहे .

वरील नोटीफिकेशन मधील अ.क्र.८ खालीलप्रमाणे आहे .

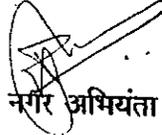
S.r. No.	Project	Category -/८	Conditions if any
४ (ब)	Building & Constuction Project	≥ 20,000 sq.m & < 1,50,000 sq.m of Built up area #	# ( Built up area for covered construction in the case of facilities open to the say , it will be the activity area)
४ (ग)	Townships & Area Development Projects	Covering an area ≥ १० Ha & or built up area ≥ 1,50,000 sq.mts. ++	All projects under item ४(b) shall be appraised on category B1

TRUE COPY

Bombrise

नोटिफिकेशन मध्ये नमूद केलेल्या category B, मधील प्रस्तावांना State Environment Impact Assessment Authority (SEIAA) यांचे पर्यावरणाबाबत ना-हरकतपत्र दाखल करणे आवश्यक आहे. "सदरचे ना-हरकतपत्र जागेवरील काम चालू करणेपूर्वी सादर करावे".

तरी वरील संदर्भ क्र.३ मधील नोटिफिकेशन नुसार सोवत कार्यालयीन परिपत्रक प्रस्तुत करणेस मा.महापालिका आयुक्त यांची मान्यता/मिळणेची विनंती आहे.  
मा.स.कळावे.

  
नगर अभियंता  
पुणे महानगरपालिका

मा.विशेष कार्याधिकारी (दक्षता)

महापालिका आयुक्त कार्यालय

यांचेमार्फत .....

नगर अभियंता कार्यालय  
पुणे महानगरपालिका  
जा.क्र.  
दि.

परिपत्रक

विषय :- बांधकामास पर्यावरण दाखला बंधनकारक असल्याचा केंद्रशासन निर्णयाची अंमलबजावणी करणे बाबत.

संदर्भ :- १) परिपत्रक नगर अभियंता कार्यालय, पुणे म.न.पा. जा.क्र. डी.पी.ओ./५२८२ दि. १६.९.०५  
२) Ministry of Environment and Forests Notification date 14.9.2006

केंद्रशासनच्या पर्यावरण व वन विभाग यांचे अधिसूचने अन्वये नविन बांधकाम विकास प्रकल्पासाठी पर्यावरण दाखला घेणे बंधनकारक असून त्याबाबत अंमलबजावणी करण्याबाबत आदेश दिले आहेत. त्यानुसार वरील संदर्भ क्र. १ अन्वये कार्यालय परिपत्रक प्रस्तुत करण्यात आले आहे.

आता वरील संदर्भ क्र. २ अन्वये Ministry of Environment and forestry Notification date 14.9.2006 अन्वये category B मधील प्रस्तावांना State Environment Impact Assessment Authority (SEIAA) यांचे पर्यावरणाबाबत नाहरकत पत्र दाखल करणे आवश्यक आहे. सदरचे नाहरकत पत्र काम चालू करणेपूर्वी सादर करावे.

Sr. No.	Project	Category	Conditions if any
8(a)	Building and Construction Projects	$\geq 20000$ sq. mtrs. and $< 150000$ sq. mtrs. of built up area #	# (built up area for covered construction in the case of facilities open to the sky, it will be the activity area)
8(b)	Townships and Area Development projects	Covering an area $\geq 50$ ha and or built up area $\geq 150000$ sq. mtrs. ++	++ All projects under Item 8 (b) shall be appraised as category B <sub>1</sub>

तरी सादर बाबत कार्यवाही केल्याची नोंद करावी.

नगर अभियंता  
पुणे महानगरपालिका

## परिपत्रक

विषय : बांधकामास पर्यावरण दाखला बंधनकारक असल्याचा केंद्रशासन निर्णयाची  
अंमलबजावणी करणेबाबत .

संदर्भ : १) परिपत्रक नगर अभियंता कार्यालय , पुणे म.न.पा .

जा.क्र.डीपीओ/५२८२ दि.१६/९/०५ .

२) Ministry of Enviroment & Forest Notification date  
14/9/2006 .

केंद्रशासनाच्या पर्यावरण व वनविभाग यांचे अधिसूचने अन्वये नविन बांधकाम विकास प्रकल्पासाठी पर्यावरण दाखला घेणे बंधनकारक अगून त्याबाबत अंमलबजावणी करण्याबाबत आदेश दिले आहेत . त्यानुसार वरील संदर्भ क्र.१ अन्वये कार्यालय परिपत्रक प्रस्तुत करण्यात आले आहे .

आता वरील संदर्भ क्र.२ अन्वये Ministry of Enviroment & Forest Notification date 14.9.2006 अन्वये Category A & B मधील प्रस्तावांना पर्यावरणाबाबत नाहरकतपत्र दाखल करणे आवश्यक आहे .सदरचे नाहरकतपत्र काम चालू करणेपूर्वी दाखल करणे आवश्यक आहे .

वरील नोटीफिकेशन मधील अ.क्र.७ व ८ खालीलप्रमाणे आहे .

## 7 Physical Infrastructure including Enviroment services

S.N	Project or Activity	Category with threshold limit		Condition if any
		A	B	
1	2	3	4	5
7(c)	Industrial estates /Parks /Complexes /areas , export processing zones (EPZs) special Economics Zones (SEZs) Biotech Parks , Leather Complexes.	It ay least one industry in the proposed industrial estate falls under the category A , entire industrial area shall be treated as category A , irrespective of the area . Industrial estates with area greater than 500 HA & housing at least one category B industry	Industrial estates housing at least one category B industry & area < 500 HA Industrial estates of area > 500 HA & not housing any industry belonging to category A or B	Special condition shall apply Note : - Industrial Estates of area below 500 HA & not housing any industry of category A or B does not require clearance .
	waste treatment storage , & disposal Facilities (TSDFs)	facilities having incineration & land fill or incineration alone	having land fill only .	shall apply .
7 (h)	Common Effluent treatment plants (CETPs)		All Projects	General condition shall apply .

7(i)	Common Municipal solid Waste Management facility (CMSWMP)		All Projects	General condition shall apply.
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**8 Building /Construction projects/Area Development Projects & Townships**

S.N.	Project or Activity	Category with threshold limit		Condition if any
		A	B	
1	2	3	4	5
8 (a)	Building & Construction Project		$\geq 20,000$ sq.m & $< 1,50,000$ sq.m of Built up area #	# ( Built up area for covered construction in the case of facilities open to the sky , it will be the activity area)
8 (b)	Townships & Area Development Projects		Covering an area $\geq 50$ ha & or built up area $\geq 1,50,000$ sq.mts. ++	+ + All Projects under item 8(b) shall be appraised on category B1

The above projects or activities shall require prior environmental clearance from concerned regulatory authority , which shall hereinafter referred to be as the Central Government in the Ministry of Enviroment & Forests for matters falling under caterory 'A' & at State level the State Impact Assessment Authority (SEIAA) for matters falling under Category 'B' before any Construction work , or preparation of Land by the project Management except for securing the land , is started on the project or activity .

- (iii) All new projects or activities listed in the schedule to this Notification .
- (iv) Expansion & Modernization of existing projects or activities listed in the schedule to this Notification with additions of capacity beyond the limits specified for the concerned sector , that is projects or activities which cross the threshold limits given in the schedule , after expansion or modernization .

तरी सदर बाबत कार्यवाही काटेकोरपणे करावी .

नगर अभियंता

पुणे महानगरपालिका

18/11/06  
10/11/06  
10/11/06

**City Engineer Office**  
**Pune Municipal Corporation**  
**Outward No: C.E.O/J/2868**  
**Date: 2/11/2006**

**To,**  
**Honourable Municipal Commissioner,**  
**Pune Municipal Corporation**

**Subject:** Implementation of Decision of Central Gov. about making Environmental Clearance Certificate mandatory for Construction Work

**Reference:**

- 1) Circular, City Engineer Office, Pune Municipal Corporation, Outward No: DPO/5282; dated 16/09/2005
- 2) Letter Ref. No: ROP/7476/05 from Regional Officer, Maharashtra Pollution Control Board, Regional Office, Pune; dated 19/10/05
- 3) Ministry of Environment & Forests Notification, dated 14/9/2006

A Circular pursuant to Reference No. 1 has been submitted in order to implement Decision of Central Government i.e. making Environmental Clearance Certificate a mandatory document for starting Construction work & actions are taken accordingly. Reference Letter 2 is sent by Regional Officer of Maharashtra Pollution Control Board. Therein it is mentioned that it is necessary to obtain Environment Clearance Certificate before issuing Consent Letter for commencing Construction Work. Notification of Reference No. 3 is now submitted & a request is made for taking actions accordingly.

**Serial No. 8 in the Notification is as follows:**

<b>Sr. No</b>	<b>Project</b>	<b>Category – B</b>	<b>Conditions if any</b>
<b>8 (a)</b>	Building & Construction Project	≥ 20,000 Sq.m & < 1,50,000 Sq.m of Built up Area #	# (Built up area for covered construction in the case of facilities open to the say, it will be the activity area)
<b>8 (b)</b>	Townships & Area Development Projects	Covering an area ≥ 50 ha & or built up area ≥ 1,50,000 Sq.m ++	++ All projects under Item 8 (b) shall be appraised as Category B

In case of Proposals mentioned in Category B in the above Notification, it is necessary to submit Environment Clearance Certificate issued by State Environment Impact Assessment Authority (SEIAA). "Such Clearance Certificate should be submitted before commencing Construction Project on Site".

However, according to Notification in Reference No: 3; we hereby request honourable Municipal Commissioner to approve Official Circular enclosed herewith.

**Yours Sincerely,**  
**Sd/-**  
**City Engineer,**  
**Pune Municipal Corporation**

**From,**  
**Honourable Special Officer (Efficiency)**  
**Municipal Commissioner Office**

**City Engineer Office,  
Pune Municipal Corporation,  
Outward No:  
Date:**

## Circular

**Subject: Implementation of Decision of Central Government of making Environmental Clearance Certificate a mandatory document for Construction Work**

**Reference:**

- 1) Circular from City Engineer Office, Pune Municipal Corporation, Outward No: D.P.O/5282, dated 16/9/05
- 2) Ministry of Environment & Forests Notification date 14.9.2006

According to the Notification of Environment & Forests Department of Central Government, it is obligatory to obtain Environmental Clearance Certificate for new Construction & Development Projects & an order has been issued to implement the same. Pursuant to this an official Circular is submitted as per Reference No: 1.

Now, according to Ministry of Environment & Forestry Notification date 14.9.2006 mentioned in Reference No: 2; Submission of Environmental Clearance Certificate issued by State Environment Impact Assessment Authority (SEIAA) is mandatory in case of Proposals in Category B.

Sr. No	Project	Category	Conditions if any
8 (a)	Building & Construction Projects	≥20,000 Sq.m & < 1,50,000 Sq.m of built up area #	# (built up area for covered construction in the case of facilities open to the sky, it will be the activity area)
8 (b)	Townships & Area Development Projects	Covering an area ≥ 50 ha & or built up area ≥ 1,50,000 Sq.m ++	++ All projects under Item 8 (b) shall be appraised as Category B

However strict actions should be taken accordingly.

**Sd/-  
City Engineer,  
Pune Municipal Corporation**

Pune Municipal Corporation

Outward No: \_\_\_\_\_

Date: \_\_\_\_\_

### Circular

**Subject: Implementation of Decision of Central Government of making Environmental Clearance Certificate a mandatory document for Construction Work.**

**Reference:**

**1) Circular from City Engineer Office, Pune Municipal Corporation, Outward No: DPO/5282 dated 16/9/05**

**2) Ministry of Environment & Forest Notification date 14/9/2006**

According to the Notification of Environment & Forestry Department of Central Government, it is obligatory to obtain Environment Clearance Certificate for new Construction & Development Projects & an order has been issued to implement the same. Pursuant to this Official Circular as per Reference No: 1 has been submitted accordingly.

Now, according to Ministry of Environment & Forest Notification date 14.9.2006 as mentioned in Reference No: 2, Proposals in Category A, & B need to submit Environmental Clearance Certificate. The said NOC should be submitted before commencing Work.

Serial No. 7 & 8 in the above Notification is as follows:

#### 7 Physical Infrastructure including Environment Services

S. N	Project / Activity	Category with threshold limit		Condition if any
		A	B	
1	2	3	4	5
7 (c)	Industrial estates/ Parks / Complexes / areas, export processing zones, (EPZs) Special Economic Zones (SEZs), Biotech Parks, Leather Complexes	It may at least one industry in the proposed industrial estate falls under category A, entire industrial area shall be treated as category A, irrespective of the area. Industrial estates with area greater than 500 HA & housing at least one category B industry	Industrial estates housing at least one category B industry & area < 500 HA. Industrial estates of area > 500 HA & not housing, any industry belonging to category A or B	Special condition shall apply Note: Industrial Estates of area below 500 HA & not housing any industry of category A or B does not require clearance.
7(d)	Common hazardous waste treatment, storage and disposal facilities (TSDFs)	All integrated facilities having incineration & landfill or incineration alone	All facilities having land fill only	General Condition shall apply
7 (h)	Common Effluent treatment plants (CETPs)		All Projects	General condition shall apply
7 (i)	Common Municipal solid Waste Management Facility (CMSWMP)		All Projects	General condition shall apply

#### 8 Building / Construction projects / Area Development Projects & Townships

S. N.	Project / Activity	Category with threshold limit		Condition if any
		A	B	
1	2	3	4	5
8 (a)	Building & Construction Project		≥ 20,000 Sq.m & ≤ 1,50,000 Sq.m of Built up Area #	# (Built up area for covered construction in the case of facilities open to the sky, it will be the activity area)
8 (b)	Townships & Area Development Projects		Covering an area ≥ 50 ha & or built up area ≥ 1,50,000 Sq.m ++	++ All projects under item 8 (b) shall be appraised on category B 1

The above projects or activities shall require prior environmental clearance from concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment & Forests for matters falling under category A & at State level, the State Impact Assessment Authority (SEIAA) for matters falling under category B before any Construction Work, or preparation of Land by the project Management except for securing the land, is started on the project or activity.

- (iii) All new projects or activities listed in the schedule to this Notification.
- (iv) Expansion & Modernization of existing projects or activities listed in the schedule to this Notification with additions of capacity beyond the limits specified for the concerned sector, that is projects or activities which cross the threshold limits given in the schedule, after expansion or modernization.

However, strict Action needs to be taken.

**Sd/-**  
**City Engineer,**  
**Pune Municipal Corporation**

// TRUE TRANSLATION //

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**ANNEXURE-A-2**

<b>CONSOLIDATED STATEMENT</b>			
<b>Subject:</b> Environment Clearance for Proposed residential Building "Ekta California and Florida" development at S. No. 9/1(P), Undri, Pune.			
<b>Is a Violation Case: Yes</b>			
<b>1. Name of Project</b>	Ekta California and Florida		
<b>2. Type of institution</b>	Private		
<b>3. Name of Project Proponent</b>	Ekta Housing Private Limited		
<b>4. Name of Consultant</b>	K Srinivasan		
<b>5. Type of project</b>	Residential Building Project		
<b>6. New project/expansion in existing project/modernization/diversification in existing project</b>	Expansion in existing project		
<b>7. If expansion/diversification, whether environmental clearance has been obtained for existing project</b>	No		
<b>8. Location of the project</b>	S. No. 9/1(P), Undri, Pune		
<b>9. Village</b>	--		
<b>10. Taluka</b>	Pune		
<b>11. District</b>	Pune		
<b>Correspondence Name:</b>	Ashok Mohanani		
<b>Room Number:</b>	401,		
<b>Floor:</b>	4 <sup>th</sup> Floor		
<b>Building Name:</b>	Hallmark Business Plaza		
<b>Road/Street Name:</b>	Off. W.E. Highway,		
<b>Locality:</b>	Kalanagar, Bandra -East		
<b>City:</b>	Mumbai- 400051		
<b>12. Area of the project</b>	Pune Municipal Corporation		
<b>13. IOD/IOA/Concession/Plan Approval Number</b>	Part Commencement Certificate received		
	Plan Approval Number: CC/3774/16		
	Total Approved BUA: 24940.54 Sq. Mt.		
<b>14. Note on the initiated work (If applicable)</b>	Construction work initiated and total constructed area: 44841.72 Sq. Mt.		
<b>15. LOI / NOC / IOD from MHADA/ Other approvals (If applicable)</b>	Commencement Certificate		
<b>16. Total Plot Area</b>	26000.00 Sq. Mt.		
<b>17. Deductions</b>	11108.22 Sq. Mt.		
<b>18. Net Plot area</b>	14891.78 Sq. Mt.		
<b>19. (a) Proposed Built-up Area (FSI &amp; Non-FSI)</b>	FSI area (sq. m.): 24940.54		
	Non FSI area (sq. m.): 27461.90		
	Total BUA area (sq. m.): 52402.44		
<b>20. (b)Approved Built up area as per DCR</b>	Approved FSI area (sq. m.): 24940.54		
	Approved Non FSI area (sq. m.): 27461.90		
	Date of Approval: 31/03/2017		
<b>21. Total ground coverage (m2)</b>	4260.00 Sq. Mt.		
<b>22. Ground-coverage Percentage (%) (Note: Percentage of plot not open to sky)</b>	28.61 %		
<b>23. Estimated cost of the project</b>	137.40 Crs.		
<b>24. Number of buildings &amp; its configuration</b>			
<b>Serial number</b>	<b>Building Name &amp; number</b>	<b>Number of floors</b>	<b>Height of the building (Mtrs)</b>
1.	Building A (existing)	Stilt on ground floor + stilt	36.00

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		podium + 12 upper Floors + 24 Flats		
2.	Building B (existing)	Stilt on ground floor + Stilt Podium + 12 upper Floors + 24 Flats	36.00	
3.	Building C (existing)	Stilt on ground floor + Stilt Podium + 12 upper Floors + 24 Flats	36.00	
4.	Building D (existing)	Stilt on ground floor + 12 Floors + 24 Flats	36.00	
5.	Building E (existing)	Stilt on ground floor + 12 Floors + 24 Flats	36.00	
6.	Building F (proposed)	Stilt on ground floor + 12 Floors + 70 Flats	39.20	
<b>25. Number of tenants and shops</b>		Residential: 190 Nos.		
<b>26. Number of expected residents / users</b>		Residential: 1105 Nos.		
<b>27. Tenant density per hectare</b>		83.50		
<b>28. Right of way (Width of the road from the nearest fire station to the proposed building(s))</b>		Proposed 60 Meter wide road 24 Meter existing road		
<b>29. Turning radius for easy access of fire tender movement from all around the building excluding the width for the plantation</b>		9.00 Meters		
<b>30. Existing structure (s) if any</b>		Existing 5 wings		
<b>31. Details of the demolition with disposal (If applicable)</b>		NA		
<b>32. Production Details</b>				
Serial Number	Product	Existing (MT/M)	Proposed (MT/M)	Total (MT/M)
1.	Not Applicable	Not Applicable	Not Applicable	Not Applicable
<b>33. Total Water Requirement</b>				
<b>Dry Season</b>	<b>Source of water</b>	Pune Municipal Corporation + treated sewage from STP		
	<b>Fresh water (CMD):</b>	100.00		
	<b>Recycled water - Flushing (CMD):</b>	50.00		
	<b>Recycled water - Gardening (CMD):</b>	25.00		
	<b>Swimming pool make up (Cum):</b>	5.00		
	<b>Total Water Requirement (CMD) :</b>	180.00		
	<b>Fire fighting - Underground water tank(CMD):</b>	200.00 (A to E building as per CFO) 50.00 (F building as per CFO)		
	<b>Fire fighting - Overhead water tank(CMD):</b>	20.00 (for each building)		
	<b>Excess treated water</b>	33.00 (Treated water will be also used in Car washing (4.00) & STP backwash (10.00))		

<b>Wet Season</b>	<b>Source of water</b>	Pune Municipal Corporation + treated sewage from STP + RWH							
	<b>Fresh water (CMD):</b>	100.00							
	<b>Recycled water - Flushing (CMD):</b>	50.00							
	<b>Recycled water - Gardening (CMD):</b>	00.00							
	<b>Swimming pool make up (Cum):</b>	5.00							
	<b>Total Water Requirement (CMD) :</b>	180.00							
	<b>Fire fighting - Underground water tank(CMD):</b>	200.00 (A to E building as per CFO) 50.00 (F building as per CFO)							
	<b>Fire fighting - Overhead water tank(CMD):</b>	20.00 (for each building)							
	<b>Excess treated water</b>	58.00 (Treated water will be also used in Car washing (4.00) & STP backwash (10.00))							
<b>Details of Swimming pool (If any)</b>	Swimming pool area: 425 Sq. Mt.								
<b>34. Details of Total water consumed</b>									
<b>Particulars</b>	<b>Consumption (CMD)</b>			<b>Loss (CMD)</b>			<b>Effluent (CMD)</b>		
<b>Water Requirement</b>	<b>Existing</b>	<b>Proposed</b>	<b>Total</b>	<b>Existing</b>	<b>Proposed</b>	<b>Total</b>	<b>Existing</b>	<b>Proposed</b>	<b>Total</b>
<b>Domestic</b>	NA	NA	NA	NA	NA	NA	NA	NA	NA
<b>35. Rain water Harvesting (RWH)</b>	<b>Level of the Ground water table:</b>	3- 4 Meters							
	<b>Size and no of RWH tank(s) and Quantity:</b>	1 RWH Tank of 130 KLD							
	<b>Location of the RWH tank(s):</b>	On ground							
	<b>Quantity of recharge pits:</b>	NA							
	<b>Size of recharge pits:</b>	NA							
	<b>Budgetary allocation (Capital cost) :</b>	21.00 Lacs							
	<b>Budgetary allocation (O &amp; M cost) :</b>	0.84 Lacs/ annum							
<b>Details of UGT tanks if any : --</b>	Domestic UG tank: 150 KLD Flushing UG tank: 75 KLD Fire Tank: 200 KLD								
<b>36. Storm water drainage</b>	<p>The storm drainage above ground will essentially cater for the seasonal rains. The major part of discharge will be from the roof. Rain water outlets will be provided at the edges from where it will be carried down by UPVC agriculture pipes to discharge water into storm water entrance chambers below ground. Run- off from the ground and terrace will be finally discharged into rain water harvesting</p> <p><b>Natural water drainage pattern:</b></p>								

		tank below ground. The overflow from rain water harvesting tank will be discharged into storm water channel outside the plot. Invert level of this channel will be determined. Thus ground water will be recharged.			
	<b>Quantity of stormwater:</b>	3.60 M <sup>3</sup> / Min			
	<b>Size of SWD:</b>	750 mmØ pipe			
<b>37. Sewage and waste water</b>	<b>Sewage generation in KLD:</b>	135 KLD			
	<b>STP Capacity &amp; technology:</b>	212 KLD STP based on technology MBBR			
	<b>Location &amp; area of the STP:</b>	On ground and area 118.50 Sq. Mtrs.			
	<b>Budgetary allocation (Capital cost):</b>	45.00 Lacs			
	<b>Budgetary allocation (O &amp; M cost):</b>	3.00 Lacs/year			
<b>38. Solid Waste Management</b>					
<b>Waste generation in the Pre Construction and Construction phase:</b>	<b>Waste generation:</b>	Excavated soil will be used in land leveling purpose & construction debris will be handed over to authorized agency.			
	<b>Disposal of the construction waste debris:</b>	Construction debris will be handed over to Authorized agency.			
<b>Waste generation in the operation phase:</b>	<b>Dry waste:</b>	306.60			
	<b>Wet waste:</b>	204.40			
	<b>Hazardous waste:</b>	NA			
	<b>Biomedical waste (If applicable):</b>	NA			
	<b>STP Sludge (Dry sludge):</b>	3.20			
	<b>Others if any:</b>	NA			
<b>Mode of disposal</b>	<b>Dry waste:</b>	Handed over to authorize agency.			
	<b>Wet waste:</b>	Vermicomposting & used at site as manure.			
	<b>Hazardous waste:</b>	NA			
	<b>Biomedical waste(If applicable):</b>	NA			
	<b>STP Sludge (Dry sludge):</b>	Used as manure within the premises for plants. Excess shall be sold /handover to outside parties or gardens.			
	<b>Others if any:</b>	NA			
<b>Area requirement</b>	<b>Location(s):</b>	On ground			
	<b>Area for the storage of waste &amp; other material:</b>	Vericulture pit ( 8 *1.5 Meters)			
	<b>Area for machinery:</b>	--			
	<b>Capital cost:</b>	4.00 Lacs			
	<b>O &amp; M cost:</b>	0.40 Lacs/year			
<b>39. Effluent characteristics</b>					
<b>Serial Number</b>	<b>Parameters</b>	<b>Unit</b>	<b>Inlet Effluent Characteristics</b>	<b>Outlet Effluent Characteristics</b>	<b>Effluent discharge standards (MPCB)</b>
1.	NA	NA	NA	NA	NA
<b>Amount of effluent generation (CMD):</b>			NA		
<b>Capacity of the ETP:</b>			NA		
<b>Amount of treated effluent recycled</b>			NA		
<b>Amount of water send to the CETP:</b>			NA		
<b>Membership of CETP (if require):</b>			NA		
<b>Note on ETP technology to be used</b>			NA		

Disposal of the ETP sludge				NA			
<b>40. Hazardous Waste Details</b>							
Serial Number	Description	Cat	UOM	Existing	Proposed	Total	Method of Disposal
1	NA	NA	NA	NA	NA	NA	NA
<b>41. Stacks emission Details</b>							
Serial Number	Section & units	Fuel Used with Quantity	Stack No.	Height from ground level (m)	Internal Diameter (m)	Temp. of Exhaust Gases	of
1	--	--	--	--	--	--	--
<b>42. Details of Fuel to be used</b>							
Serial Number	Type of Fuel	Existing	Proposed	Total			
1	NA	NA	NA	NA			
<b>43. Source of Fuel</b>		NA					
<b>44. Mode of Transportation of fuel to site</b>		NA					
<b>45. Green Belt development</b>	<b>Total RG area :</b>			Green area on Ground: 2274.70 Sq. Mt. Green area on podium: 1240.00 Sq. Mt.			
	<b>No of trees to be cut:</b>			NA			
	<b>Number of trees to be planted:</b>			Required: 223 Nos. Proposed on site: 320 Nos.			
	<b>List of proposed native trees :</b>			As mentioned below			
	<b>Timeline for completion of plantation :</b>			Trees already planted on site			
<b>46. Number and list of trees species to be planted in the ground</b>							
Serial Number	Name of the plant	Common Name	Quantity	Characteristics & ecological importance			
1.	<i>Mimusops elengi</i>	Bakul	75	Butterfly host plant having high Air Pollution Index Tolerance (APIT) tree, small white fragrant flowers.			
2.	<i>Couroupita guianensis</i>	cannonball	75	Medicinal uses for the plant.			
3.	<i>Swietenia mahagoni</i>	Cuban mahogany	75	There has been some research into the acaricidal effects of its leaves and bark for control of the honey bee pest.			
4.	<i>Elaeocarpus sphaericus</i>	Rudraki	50	Fruits have properties such as anti-convulsive, anti-epileptic and anti-hypertensive properties, used in the treatment of epilepsy and heart problems.			
5.	<i>Alstonia scholaris</i>	blackboard tree	25	It has proved a valuable remedy in chronic diarrhoea and the advanced stages of dysentery.			
6.	<i>Purple bauhinia</i>	Purple Orchid Tree	20	evergreen small tree or shrub up to 4 - 10 m tall and 2 m across			
<b>47. Total quantity of plants on ground</b>			320				
<b>48. Number and list of shrubs and bushes species to be planted in the podium RG:</b>							
Serial Number	Name	C/C Distance	Area m2				
--	---	-	--				
<b>49. Energy</b>							
<b>50.</b>							
<b>Power requirements</b>	<b>Source of power supply :</b>			MSEDCL			
	<b>During Construction Phase:</b>			100 kW			

	<b>(Demand Load)</b>			
	<b>DG set as Power back-up during construction phase</b>	As per requirement		
	<b>During Operation phase (Connected load):</b>	3340 KW		
	<b>During Operation phase (Demand load):</b>	1176 KW		
	<b>Transformer:</b>	630 KVA- 1 NO. & 1000 KVA -1 No.		
	<b>DG set as Power back-up during operation phase:</b>	1 No. of 160 kVA DG		
	<b>Fuel used:</b>	Diesel		
	<b>Details of high tension line passing through the plot if any:</b>	NA		
<b>51. Energy Saving by Non- conventional method:</b>				
Reduction in consumption by using Energy Saving Measure:				
1. Use of LED lamps for common area (Landscape)				
2. Stair-case, Lift lobby, Passage parking Lightings				
3. Use of Solar Panels for Hot water				
4. Street Lights				
<b>52. Detail calculations &amp; % of saving:</b>				
<b>Serial Number</b>	<b>Energy Conservation Measures</b>	<b>Saving %</b>		
1.	Annual Saving only by Solar	--		
2.	Total Annual Saving	--		
<b>53. Details of Pollution Control Systems</b>				
<b>Source</b>	<b>Existing pollution control system</b>	<b>Proposed to be installed</b>		
NA	NA	NA		
<b>Budgetary allocation (Capital cost and O&amp;M cost):</b>	<b>Capital Cost:</b>	NA		
	<b>O &amp; M Cost:</b>	NA		
<b>54. Environmental Management plan Budgetary Allocation</b>				
<b>a) Construction phase (with Break-up):</b>				
<b>Serial Number</b>	<b>Attributes</b>	<b>Parameter</b>	<b>Total Cost per annum (Rs. In Lacs)</b>	
1.	PPE	--	5.00	
2.	Site Sanitation Facility	--	4.00	
3.	Drinking water Facility	--	2.00	
4.	Solid Waste Management	--	2.50	
5.	Safety railing, platform, ladder, crane, hoist etc.	--	6.00	
6.	House Keeping	--	2.00	
7.	Health check	--	1.00	
8.	Environmental Monitoring	--	1.50	
9.	Anti rust coating on foundation steel bars	--	5.00	
<b>b) Operation phase (with Break-up):</b>				
<b>Serial Number</b>	<b>Component</b>	<b>Description</b>	<b>Capital cost Rs. In Lacs</b>	<b>Operational and Maintenance cost (Rs. in Lacs/yr.)</b>
1.	Rain water harvesting (RWH)	--	21.00	0.84
2.	Sewage Treatment Plant(STP)	--	45.00	3.00

3.	Solid waste Management	--	4.00	0.40			
4.	Landscaping	--	15.00	0.50			
<b>52. Storage of chemicals (inflammable/explosive/hazardous/toxic substances)</b>							
Description	Status	Location	Storage Capacity in MT	Maximum Quantity Of Storage at any point of time in MT	Consumption / Month in MT	Source of Supply	Means of transportation
NA	NA	NA	NA	NA	NA	NA	NA
<b>55. Any other information</b>							
No Information Available							
<b>56. Traffic Management</b>							
	Nos. of the junction to the main road & design of confluence:	2					
	Number and area of basement:	NA					
	Number and area of podia:	1 podium and area 3375 Sq. Mt.					
	Total Parking area:	4139.00 Sq. Mt.					
	Area per car:	12.50 Sq. Mt.					
	No. of 2 wheelers as approved by competent authority:	Scooter Required: 387 Nos. Scooter Proposed: 387 Nos.  Cycle Required: 350 Nos. Cycle Proposed: 350 Nos.					
	Number of 4-Wheelers as approved by competent authority:	Required: 230 Nos. Proposed: 230 Nos.					
	Public Transport:						
	Width of all Internal roads (m):	7.5 & 12 Meters					
	CRZ/ RRZ clearance obtain, if any:	NA					
	Distance from Protected Areas / Critically Polluted areas / Eco-sensitive areas/ inter-State boundaries	NA					
	Category as per schedule of EIA Notification sheet	8 (a) B2					
	Court cases pending if any	NA					
	Other Relevant Information's	NA					
	Have you previously submitted Application online	No					

	<b>on MOEF Website</b>	
	<b>Date of online submission</b>	--

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**ANNEXURE-A-3****CONSOLIDATED STATEMENT: SEIAA-STATEMENT-0000001604**

**Subject:** Environment Clearance for Proposed residential Building "Ekta California" development at S. No. 9/1(P), Undri, Pune.

**Is a Violation Case:** Yes

<b>1.Name of Project</b>	Ekta California
<b>2.Type of institution</b>	Private
<b>3.Name of Project Proponent</b>	Ekta Housing Private Limited
<b>4.Name of Consultant</b>	K Srinivasan
<b>5.Type of project</b>	Housing Project
<b>6.New project/expansion in existing project/modernization/diversification in existing project</b>	Expansion in existing project
<b>7.If expansion/diversification, whether environmental clearance has been obtained for existing project</b>	No
<b>8.Location of the project</b>	S. No. 9/1(P), Undri
<b>9.Taluka</b>	Pune
<b>10.Village</b>	--
<b>Correspondence Name:</b>	Ashok Mohanani
<b>Room Number:</b>	Office No. 401,
<b>Floor:</b>	4th Floor,
<b>Building Name:</b>	Hallmark Business Plaza,
<b>Road/Street Name:</b>	Off. W.E. Highway,
<b>Locality:</b>	Kalanagar, Bandra -East
<b>City:</b>	Mumbai- 400051
<b>11.Whether in Corporation / Municipal / other area</b>	Pune Municipal Corporation
<b>12.IOD/IOA/Concession/Plan Approval Number</b>	Commencement Certificate <b>IOD/IOA/Concession/Plan Approval Number:</b> Commencement Certificate: CC/3774/16, Dated-31/03/2017 <b>Approved Built-up Area:</b> 46569.21
<b>13.Note on the initiated work (If applicable)</b>	Construction work initiated and total constructed area: 44841.72 Sq. Mt.
<b>14.LOI / NOC / IOD from MHADA/ Other approvals (If applicable)</b>	Commencement Certificate: CC/3774/16, Dated-31/03/2017
<b>15.Total Plot Area (sq. m.)</b>	26000.00 Sq. Mt.
<b>16.Deductions</b>	3253.10 Sq. Mt. (Land under 60 Meter wide DP road: 1713.10 Sq. Mt. + Land under 24 Meter wide DP road: 144.00 Sq. Mt. + Area Under reservation MH-26: 998.00 Sq. Mt. & PC-31: 398 Sq. Mt.)
<b>17.Net Plot area</b>	22746.90 Sq. Mt.
<b>18 (a).Proposed Built-up Area (FSI &amp; Non-FSI)</b>	<b>a) FSI area (sq. m.):</b> 24940.54 <b>b) Non FSI area (sq. m.):</b> 21628.67 <b>c) Total BUA area (sq. m.):</b> 46569.21
<b>18 (b).Approved Built up area as per DCR</b>	<b>Approved FSI area (sq. m.):</b> 24940.54 <b>Approved Non FSI area (sq. m.):</b> 21628.67 <b>Date of Approval:</b> 31-03-2017
<b>19.Total ground coverage (m2)</b>	7635.00
<b>20.Ground-coverage Percentage (%) (Note: Percentage of plot not open to sky)</b>	33.56 %
<b>21.Estimated cost of the project</b>	1374000000

**22.Number of buildings & its configuration**

Serial number	Building Name & number	Number of floors	Height of the building (Mtrs)
---------------	------------------------	------------------	-------------------------------

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1	Building A	Stilt on ground floor + stilt podium + 12 upper Floors + 24 Flats	36.00
2	Building B	Stilt on ground floor + stilt podium + 12 upper Floors + 24 Flats	36.00
3	Building C	Stilt on ground floor + stilt podium + 12 upper Floors + 24 Flats	36.00
4	Building D	Stilt on ground floor + 12 Floors + 24 Flats	36.00
5	Building E	Stilt on ground floor + 12 Floors + 24 Flats	36.00
6	Building F	Stilt on ground floor + 12 Floors + 70 Flats	39.20

<b>23.Number of tenants and shops</b>	Residential 190 Flats
<b>24.Number of expected residents / users</b>	1105 Nos.
<b>25.Tenant density per hectare</b>	83.50
<b>26.Height of the building(s)</b>	
<b>27.Right of way (Width of the road from the nearest fire station to the proposed building(s))</b>	Proposed 60 Meter wide road and 24 Meter existing road
<b>28.Turning radius for easy access of fire tender movement from all around the building excluding the width for the plantation</b>	9 .00 Meters
<b>29.Existing structure (s) if any</b>	Existing 5 Buildings (A to E)
<b>30.Details of the demolition with disposal (If applicable)</b>	NA

### 31.Production Details

Serial Number	Product	Existing (MT/M)	Proposed (MT/M)	Total (MT/M)
1	Not applicable	Not applicable	Not applicable	Not applicable

### 32.Total Water Requirement

<b>Dry season:</b>	<b>Source of water</b>	Pune Municipal Corporation + treated sewage from STP
	<b>Fresh water (CMD):</b>	100.00
	<b>Recycled water - Flushing (CMD):</b>	50.00
	<b>Recycled water - Gardening (CMD):</b>	25.00
	<b>Swimming pool make up (Cum):</b>	5.00
	<b>Total Water Requirement (CMD) :</b>	180.00
	<b>Fire fighting - Underground water tank(CMD):</b>	200.00 (A to E building as per CFO) and 50.00 (F building as per CFO)
	<b>Fire fighting - Overhead water tank(CMD):</b>	20.00 (for each building)
	<b>Excess treated water</b>	33.00 (Treated water also used in Car washing (4.00) and STP backwash (10.00))
<b>Wet season:</b>	<b>Source of water</b>	Pune Municipal Corporation + treated sewage from STP + RWH
	<b>Fresh water (CMD):</b>	100.00
	<b>Recycled water - Flushing (CMD):</b>	50.00
	<b>Recycled water - Gardening (CMD):</b>	0.00
	<b>Swimming pool make up (Cum):</b>	5.00
	<b>Total Water Requirement (CMD) :</b>	155.00
	<b>Fire fighting - Underground water tank(CMD):</b>	200.00 (A to E building as per CFO) and 50.00 (F building as per CFO)
	<b>Fire fighting - Overhead water tank(CMD):</b>	20.00 (for each building)
	<b>Excess treated water</b>	58.00 (Treated water also used in Car washing (4.00) and STP backwash (10.00))
<b>Details of Swimming pool (If any)</b>	Swimming pool area: 425 Sq. Mt.	

33.Details of Total water consumed									
Particulars	Consumption (CMD)			Loss (CMD)			Effluent (CMD)		
	Existing	Proposed	Total	Existing	Proposed	Total	Existing	Proposed	Total
Domestic	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
34.Rain Water Harvesting (RWH)	Level of the Ground water table:		3- 4 Meters						
	Size and no of RWH tank(s) and Quantity:		1 RWH Tank of 130 KLD						
	Location of the RWH tank(s):		On Ground						
	Quantity of recharge pits:		NA						
	Size of recharge pits :		NA						
	Budgetary allocation (Capital cost) :		21.00 Lacs						
	Budgetary allocation (O & M cost) :		0.84 Lacs/year						
	Details of UGT tanks if any :		Domestic UG tank: 150 KLD Flushing UG tank: 75 KLD Fire Tank: 200 KLD						
35.Storm water drainage	Natural water drainage pattern:		The storm drainage above ground will essentially cater for the seasonal rains. The major part of discharge will be from the roof. Rain water outlets will be provided at the edges from where it will be carried down by UPVC agriculture pipes to discharge water into storm water entrance chambers below ground. Run- off from the ground and terrace will be finally discharged into rain water harvesting tank below ground. The overflow from rain water harvesting tank will be discharged into storm water c						
	Quantity of storm water:		3.60 M3/ Min						
	Size of SWD:		750 mmØ pipe						
Sewage and Waste water	Sewage generation in KLD:		135 KLD						
	STP technology:		MBBR						
	Capacity of STP (CMD):		212 KLD STP						
	Location & area of the STP:		On ground and area 118.50 Sq. Mtrs.						
	Budgetary allocation (Capital cost):		45.00 Lacs						
	Budgetary allocation (O & M cost):		3.00 Lacs/year						

### 36.Solid waste Management

<b>Waste generation in the Pre Construction and Construction phase:</b>	<b>Waste generation:</b>	Excavated soil will be used in land leveling purpose & construction debris will be handed over to authorized agency.
	<b>Disposal of the construction waste debris:</b>	Construction debris will be handed over to Authorized agency.
<b>Waste generation in the operation Phase:</b>	<b>Dry waste:</b>	306.60 Kg/day
	<b>Wet waste:</b>	204.40 Kg/day
	<b>Hazardous waste:</b>	NA
	<b>Biomedical waste (If applicable):</b>	NA
	<b>STP Sludge (Dry sludge):</b>	3.20 kg/day
	<b>Others if any:</b>	NA
<b>Mode of Disposal of waste:</b>	<b>Dry waste:</b>	Handed over to authorized agency.
	<b>Wet waste:</b>	Composting through OWC & used at site/as manure.
	<b>Hazardous waste:</b>	NA
	<b>Biomedical waste (If applicable):</b>	NA
	<b>STP Sludge (Dry sludge):</b>	Used as manure within the premises for plants. Excess shall be sold /handover to outside parties or gardens.
	<b>Others if any:</b>	NA
<b>Area requirement:</b>	<b>Location(s):</b>	On Ground
	<b>Area for the storage of waste &amp; other material:</b>	30 Sq. Mt. including machinery
	<b>Area for machinery:</b>	--
<b>Budgetary allocation (Capital cost and O&amp;M cost):</b>	<b>Capital cost:</b>	4.00 Lacs
	<b>O &amp; M cost:</b>	0.40 Lacs/year

### 37.Effluent Charecterestics

Serial Number	Parameters	Unit	Inlet Effluent Charecterestics	Outlet Effluent Charecterestics	Effluent discharge standards (MPCB)
1	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
Amount of effluent generation (CMD):		Not applicable			
Capacity of the ETP:		Not applicable			
Amount of treated effluent recycled :		Not applicable			
Amount of water send to the CETP:		Not applicable			
Membership of CETP (if require):		Not applicable			
Note on ETP technology to be used		Not applicable			
Disposal of the ETP sludge		Not applicable			

38.Hazardous Waste Details							
Serial Number	Description	Cat	UOM	Existing	Proposed	Total	Method of Disposal
1	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
39.Stacks emission Details							
Serial Number	Section & units	Fuel Used with Quantity	Stack No.	Height from ground level (m)	Internal diameter (m)	Temp. of Exhaust Gases	
1	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	
40.Details of Fuel to be used							
Serial Number	Type of Fuel	Existing	Proposed	Total			
1	Not applicable	Not applicable	Not applicable	Not applicable			
41.Source of Fuel		Not applicable					
42.Mode of Transportation of fuel to site		Not applicable					
43.Green Belt Development							
		<b>Total RG area :</b>	Green area on Ground: 2274.70 Sq. Mt. and Green area on podium: 1240.00 Sq. Mt.				
		<b>No of trees to be cut :</b>	NA				
		<b>Number of trees to be planted :</b>	Required: 223 Nos. and Proposed on site: 320 Nos.				
		<b>List of proposed native trees :</b>	As mentioned below.				
		<b>Timeline for completion of plantation :</b>	Trees already planted on site				
44.Number and list of trees species to be planted in the ground							
Serial Number	Name of the plant	Common Name	Quantity	Characteristics & ecological importance			
1	Mimusops elengi	Bakul	75	Butterfly host plant having high Air Pollution Index Tolerance (APIT) tree, small white fragrant flowers.			
2	Couroupita guianensis	cannonball	75	medicinal uses for the plant.			
3	Swietenia mahagoni	Cuban mahogany	75	There has been some research into the acaricidal effects of its leaves and bark for control of the honey bee pest.			
4	Elaeocarpus sphaericus	Rudraki	50	Fruits have properties such as sedative, hypnotic, tranquillizing, anti-convulsive, anti-epileptic and anti-hypertensive properties, used in the treatment of epilepsy and heart problems.			
5	Alstonia scholaris	blackboard tree	25	It has proved a valuable remedy in chronic diarrhoea and the advanced stages of dysentery.			
6	Purple bauhinia	Purple Orchid Tree	20	evergreen small tree or shrub up to 4 - 10 m tall and 2 m across			
7	--	--	--	--			
8	--	--	--	--			

45.Total quantity of plants on ground			
46.Number and list of shrubs and bushes species to be planted in the podium RG:			
Serial Number	Name	C/C Distance	Area m2
1	--	--	1240.00

### 47. Energy

<b>Power requirement:</b>	<b>Source of power supply :</b>	MSEDCL
	<b>During Construction Phase: (Demand Load)</b>	100 kVA
	<b>DG set as Power back-up during construction phase</b>	as per requirement
	<b>During Operation phase (Connected load):</b>	3340 KW
	<b>During Operation phase (Demand load):</b>	1176 KW
	<b>Transformer:</b>	630 KVA- 1 NO. & 1000 KVA -1 No.
	<b>DG set as Power back-up during operation phase:</b>	1 No. of 140 kVA DG
	<b>Fuel used:</b>	HSD
	<b>Details of high tension line passing through the plot if any:</b>	NA

### 48. Energy saving by non-conventional method:

Reduction in consumption by using Energy Saving Measure:

1. Use of LED lamps for common area (Landscape)
2. Stair-case, Lift lobby, Passage parking Lightings

### 49. Detail calculations & % of saving:

Serial Number	Energy Conservation Measures	Saving %
1	AVERAGE ANNUAL ENERGY SAVINGS	--
2	SAVINGS ON ONLY SOLAR PANELS	--
3	ADDITIONAL AVERAGE ANNUAL ENERGY SAVINGS WITH SOLAR WATER HEATING	--

### 50. Details of pollution control Systems

Source	Existing pollution control system	Proposed to be installed
Not applicable	Not applicable	Not applicable

<b>Budgetary allocation (Capital cost and O&amp;M cost):</b>	<b>Capital cost:</b>	--
	<b>O &amp; M cost:</b>	--

### 51. Environmental Management plan Budgetary Allocation

#### a) Construction phase (with Break-up):

Serial Number	Attributes	Parameter	Total Cost per annum (Rs. In Lacs)
1	PPE	--	5.00
2	Site Sanitation Facility	--	4.00
3	Drinking water facility	--	2.00
4	Solid Waste Management	--	2.50

5	Safety railing, platform, ladder, hoist, Cranes etc.	--	6.00
6	House keeping	--	2.00
7	Health Check	--	1.00
8	Environmental Monitoring	--	1.50
9	Anti-rusting coating on foundation steel bars	--	5.00

<b>b) Operation Phase (with Break-up):</b>				
<b>Serial Number</b>	<b>Component</b>	<b>Description</b>	<b>Capital cost Rs. In Lacs</b>	<b>Operational and Maintenance cost (Rs. in Lacs/yr)</b>
1	Rain water Harvesting	--	21.00	0.84
2	Sewage Treatment Plant	--	45.00	3.00
3	Solid Waste Management	--	4.00	0.40
4	Landscaping	--	15.00	0.50

### **51.Storage of chemicals (inflamable/explosive/hazardous/toxic substances)**

<b>Description</b>	<b>Status</b>	<b>Location</b>	<b>Storage Capacity in MT</b>	<b>Maximum Quantity of Storage at any point of time in MT</b>	<b>Consumption / Month in MT</b>	<b>Source of Supply</b>	<b>Means of transportation</b>
Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable

### **52.Any Other Information**

No Information Available

### **53.Traffic Management**

	<b>Nos. of the junction to the main road &amp; design of confluence:</b>	2
<b>Parking details:</b>	<b>Number and area of basement:</b>	NA
	<b>Number and area of podia:</b>	1 podium and area 3375 Sq. Mt.
	<b>Total Parking area:</b>	4139.00 Sq. Mt.
	<b>Area per car:</b>	12.50 Sq. Mt.
	<b>Area per car:</b>	12.50 Sq. Mt.
	<b>Number of 2-Wheelers as approved by competent authority:</b>	Scooter Required: 387 Nos. and Scooter Proposed: 387 Nos. ; Cycle Required: 350 Nos. and Cycle Proposed: 350 Nos.
	<b>Number of 4-Wheelers as approved by competent authority:</b>	Required: 230 Nos. and Proposed: 230 Nos.
	<b>Public Transport:</b>	--
	<b>Width of all Internal roads (m):</b>	7.5 & 12 Meters

	<b>CRZ/ RRZ clearance obtain, if any:</b>	NA
	<b>Distance from Protected Areas / Critically Polluted areas / Eco-sensitive areas/ inter-State boundaries</b>	NA
	<b>Category as per schedule of EIA Notification sheet</b>	8 (a) B2
	<b>Court cases pending if any</b>	NA
	<b>Other Relevant Informations</b>	NA
	<b>Have you previously submitted Application online on MOEF Website.</b>	No
	<b>Date of online submission</b>	-

### DISCUSSION HISTORY

**Minutes Number:** SEAC-MINUTES-0000005315 (**Meeting Title:** 102 SEAC-3 meeting day 01 **Meeting Number:** 102 dated 22-01-2020)

### Brief Information of the project by SEAC

PP had submitted application for prior Environmental clearance for total plot area of 26000 m<sup>2</sup>, FSI area of 24940.54 m<sup>2</sup>, Non FSI area of 21628.67 m<sup>2</sup> and total BUA of 46,569.21 m<sup>2</sup>.

The building configuration of the proposal is as below:

1 Building A Stilt on ground floor + stilt podium + 12 upper Floors + 24 Flats m	Height 36.00
2 Building B Stilt on ground floor + stilt podium + 12 upper Floors + 24 Flats m	Height 36.00
3 Building C Stilt on ground floor + stilt podium + 12 upper Floors + 24 Flats m	Height 36.00
4 Building D Stilt on ground floor + 12 Floors + 24 Flats	Height 36.00 m
5 Building E Stilt on ground floor + 12 Floors + 24 Flats	Height 36.00 m
6 Building F Stilt on ground floor + 12 Floors + 70 Flats m	Height 39.20

PP informed that the total constructed area on site is: 44841.72 m<sup>2</sup> till date.

#### SEAC DECISION

The Committee noted that PP has NOT applied within the within the stipulated amenity period as per the MoEF&CC Notification dated 14/03/2017 and 8/03/2018.

The Committee decided to **refer the proposal to SEIAA** for further needful action.

**Specific Conditions by SEAC:**

#### FINAL REMARKS

**Minutes Number:** SEIAA-MINUTES-0000003163 (**Meeting Title:** 195 th Meeting of SEIAA **Meeting Number:** 195 dated 14-03-2020)

#### Brief Information of the project by SEAC

PP had submitted application for prior Environmental clearance for total plot area of 26000 m<sup>2</sup>, FSI area of 24940.54 m<sup>2</sup>, Non FSI area of 21628.67 m<sup>2</sup> and total BUA of 46,569.21 m<sup>2</sup>.

The building configuration of the proposal is as below:

1 Building A Stilt on ground floor + stilt podium + 12 upper Floors + 24 Flats m	Height 36.00
2 Building B Stilt on ground floor + stilt podium + 12 upper Floors + 24 Flats m	Height 36.00
3 Building C Stilt on ground floor + stilt podium + 12 upper Floors + 24 Flats m	Height 36.00
4 Building D Stilt on ground floor + 12 Floors + 24 Flats	Height 36.00 m
5 Building E Stilt on ground floor + 12 Floors + 24 Flats	Height 36.00 m
6 Building F Stilt on ground floor + 12 Floors + 70 Flats m	Height 39.20

PP informed that the total constructed area on site is: 44841.72 m<sup>2</sup> till date.

#### SEAC DECISION

The Committee noted that PP has NOT applied within the within the stipulated amenity period as per the MoEF&CC Notification dated 14/03/2017 and 8/03/2018.

The Committee decided to **refer the proposal to SEIAA** for further needful action.

**Specific Conditions by SEAC:**

#### SEIAA DECISION

As PP was absent, SEIAA decided to defer the proposal.

**Specific Conditions by SEIAA:**

#### FINAL REMARKS

SEIAA have decided to defer the proposal till PP submits the additional information as per above conditions within 30 days

**TRUE COPY**

*Bombhise*

**ANNEXURE-A-4****REPORTABLE**

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

**CIVIL APPEAL NO. 10854 OF 2016**

M/S. GOEL GANGA DEVELOPERS  
INDIA PVT. LTD.

... Appellant (s)

Versus

UNION OF INDIA THROUGH SECRETARY  
MINISTRY OF ENVIRONMENT  
AND FORESTS & ORS.

...Respondent(s)

With

**CIVIL APPEAL NO. 10901 OF 2016****CIVIL APPEAL NO. 5157-5158 OF 2018****J U D G M E N T**

**Deepak Gupta, J.**

Applications for intervention/impleadment are allowed.

Application for amendment of grounds of appeal in Civil Appeal

No.10854 of 2016 allowed.

Signature Not Verified  
Digitally signed by  
SANJAY KUMAR  
Date: 2018.08.10  
16:23:45 IST  
Reason: 

**TRUE COPY**

*Bombhise*

2. These matters are being decided by one judgment since they all arise out of one original application filed by Shri Tanaji Balasaheb Gambhire (hereinafter referred to as 'the original applicant') before the National Green Tribunal ('the NGT' for short) being Application No. 184 of 2015.

3. The original applicant filed an application before the NGT claiming that the project proponent i.e. M/s. Goel Ganga Developers India Pvt. Ltd., had raised construction in violation of the Environmental Clearance ('EC' for short) granted for the project and also in violation of the various municipal laws. It was prayed that the illegal structures be demolished; the State Level Environment Impact Assessment Authority (SEIAA) and the Maharashtra State Pollution Control Board be directed to initiate appropriate action against the project proponent for violation of the Environment Impact Assessment (EIA) Notification, 2006; the Union of India be directed to take action against the SEIAA; and lastly it was prayed that the project proponent be directed to pay/deposit a heavy amount of compensation in the environment relief fund. The NGT

vide its order dated 27.09.2016 allowed the application in the following terms:

“54. For the aforesaid reasons, the Applicant succeeds in his legal pursuit to challenge the noncompliance of EC conditions by the Respondent-9 and obtain certain directions. Hence the Application is allowed and we issue following directions:

1. The Respondent No.9-PP shall pay environmental compensation cost of Rs. 100 crores or 5% (Five percent) of the total cost of project to be assessed by SEAC whichever is less for restoration and restitution of environment damages and degradation caused by the project proponent by carrying out the construction activities without the necessary prior environmental clearance within a period of one month. In addition to this, it shall also pay a sum of Rs. 5 crores for contravening mandatory provision of several Environmental Laws in carrying out the construction activities in addition to and exceeding limit of the available environment clearance and for not obtaining the consent from the Board.
2. In view of our finding that there has been manifest, deliberate or otherwise suppression of facts of illegality in the project activity of Respondent No. 9-PP by the officer of PMC, we impose fine of Rs. 5 Lakhs upon the PMC and direct Commissioner PMC to take appropriate action against the erring officers. The amount of Rs. 5 Lakh shall be paid within one month.
3. We direct the Chief Secretary, State of Maharashtra and the competent authority to take notice of the conduct of the officers concerned who have misled the Department of Environment in the matter relating to interpretation of F.S.I and BUA in terms of which order dated 31<sup>st</sup> May, 2016 has been issued in particular the Principal Secretary, Department of Environment who has authored the order dated 31<sup>st</sup> May, 2016.
4. PMC, DoE and SEIAA are directed to pay cost of Rs. 1 lakh each to the Applicant within 4 weeks.”

4. Aggrieved by the aforesaid order of the NGT, the project proponent filed Civil Appeal No. 10854 of 2016. The Pune Municipal Corporation ('PMC' for short) also challenged the said order in so far as it adversely affects the PMC by filing Civil Appeal No. 10901 of 2016.

5. Review application being Application No. 35 of 2016 was filed by the original applicant before the NGT. This application was partly allowed on 08.01.2018 and direction No. 1 in the original order dated 27.09.2016 was modified and substituted as under:

“1. The Respondent No.9-PP shall pay environmental compensation cost of Rs.190 crores or 5% (Five percent) of the total cost of project to be assessed by SEAC, whichever is more, for restoration and restitution of environment damage and degradation caused by the project proponent by carrying out the construction activities without the necessary prior environmental clearance within a period of one month. In addition to this, it shall also pay a sum of Rs. 5 crores for contravening mandatory provision of several Environment Laws in carrying out the construction activities in addition to and exceeding limit of the available environment clearance and for not obtaining the consent from the Board.”

6. Thereafter, the project proponent filed I.A. No. 8000 of 2018 for permission to amend its appeal permitting it to challenge the

order passed in review application dated 08.01.2018, which we have allowed.

7. Appeal being Diary No. 3911 of 2018 was filed by the original applicant challenging the original order dated 27.09.2016 as well as the order dated 08.01.2018 passed in review application praying that demolition of the illegal structures be ordered and the compensation be enhanced to Rs.500 crores.

### **The Factual Matrix**

8. The facts briefly stated are that the project proponent purchased 79,100 sq. mtrs. or 7.91 hectare of land comprised in six Survey Nos. 35, 36, 37, 38 39 and 40 in Vadgaon, Pune. These survey numbers were amalgamated in accordance with the rules and the plot became one plot of 79,100 sq. mtrs. From the documents placed on record it is apparent that as per the Development Control Plan for the city of Pune, 3 roads of the width of 36 mtrs., 30 mtrs. and 18 mtrs. bisected this plot into two which for the sake of convenience were referred to as Plot No. 1 and Plot No. 2. As per the Development Plan, there are certain statutory

reservations in addition to the roads and some land has to be left out or reserved for schools, cultural centres, open areas etc.. The remaining area is referred to as the 'Balance Plot Area' which in this case works out to 46,993.79 sq. mtrs.. Out of this 'Balance Plot Area' 15% is to be reserved for amenity space and another 10% area is to be compulsorily left out as open space leaving 'Net Plot Area' of 41,455.21 sq. mtrs.. *Prima facie* these calculations do not appear to be correct. However, this will not impact the merits of the case. Be that as it may, the undisputed fact is that FSI has to be calculated on the 'Net Plot Area'. We may, at this stage, point out that the aforesaid figures are based on the written submissions submitted on behalf of the Union of India by the learned Additional Solicitor General and these figures have not been disputed before us.

9. On 12.03.2007, the project proponent applied for sanction of lay out and building proposal plan on an area of 15,141.70 sq. mtrs., originally depicted as Plot No. 3 and the sanctioned FSI was 15313.16 sq. mtrs.. Thereafter, on 05.09.2007, revised lay out plan was submitted for an area measuring 28,233.23 sq. mtrs. and the

sanctioned FSI was 39,526.54 sq. mtrs.. The project proponent applied for EC for the project and in the proposal dated 27.06.2007, he had shown that he would be erecting/constructing 12 buildings having 552 flats, 50 shops and 34 offices. The 12 buildings were to have stilts with basement and 11 floors. The total built up area was indicated as 57,658.42 sq. mtrs.. The EC was granted to the project proponent on 04.04.2008. Paras 2 and 3 of the communication granting EC read as under:

“2. The project proponent is proposing for construction of group housing project at S.No.35 to 40, village Vadgaon Budruk, Singhad Road, Pune, Maharashtra at a cost of Rs. 10,737.14 lakh. The project involves construction of 12 Building with Stilt, Basement plus 11 floors for 552 flats, 50 shops and 34 offices. The total plot area is 79,100.00 sq. m. Total built up area as indicated is 57,658.42 sq. m. Total water requirement will be 745 KLD and 400 KLD of waste water will be generated from the buildings which will be treated in sewage treatment plant. The treated waste water will be used for landscaping, DG set cooling and Horticulture purpose. The solid waste generated from the buildings will be 1500 Kg/day and disposed as per the MSW Rules, 2000. The parking space is proposed for parking of 1072 cars.

“3. The EAC after due consideration of the relevant documents submitted by the project proponent and additional clarifications furnished in response to its observations have recommended the grant of environmental clearance for the project mentioned above subject to compliance with the EMP and other stipulated conditions. Accordingly, the Ministry hereby accords necessary environmental clearance for the project under category 8 (a)

of EIA Notification 2006 subject to the strict compliance with the specific and general conditions mentioned below:”

10. The EC was granted subject to certain conditions. We may refer to certain relevant conditions which read as under:

“PART A- SPECIFIC CONDITIONS

I. Construction Phase

xxx                      xxx                      xxx

v. Permission to draw and use ground water for construction work shall be obtained from competent authority prior to construction/operation of the project.”

“5. In the case of any change(s) in the scope of the project, the project would require a fresh appraisal by this Ministry.”

**Concept of ‘Built up Area’ under the notification dated 14.09.2006:**

11. It is not disputed that the EC was granted for built up area of 57,658.42 sq. mtrs.. The main dispute is with regard to the interpretation of the term ‘built-up area’. The case of the project proponent is that the term ‘built up area’ is synonymous with ‘Floor Space Index’ or FSI and that the constructed area, which is exempted from FSI area or is a non-FSI area is not a part of the ‘built up area’. On the other hand, the submission made by the

original applicant as well as by the learned Additional Solicitor General appearing for the Ministry of Environment, Forest and Climate Change is that the built up area will cover all constructed area and the concept of FSI area or non-FSI area is totally alien to environmental laws. Learned senior counsel for the project proponent has drawn our attention to the Development Control Rules for Pune Municipal Corporation, Pune, 1982 ('DCR' for short). Under the DCR, no building can be constructed without grant of building permission/commencement certificate by the Pune Municipal Corporation. There is a detailed procedure for obtaining the building permission/commencement certificate wherein lay out plans, building plans etc. have to be submitted. The main emphasis was on Rule 2.13 of the DCR, which defines built up area as follows:-

“2.13 **Built-up Area** – Area covered immediately above the plinth level by the building or external area of any upper floor whichever is more excepting the areas covered by Rule No. 15.4.2.”

Rule 2.39 defines Floor Area Ratio as follows:-

“2.39 **Floor Area Ratio (F.A.R.)** – The quotient obtained by dividing the total covered area (plinth area) on all floors excluding exempted areas as given in Rule No. 15.4.2 by the area of the plot.

$$\text{F.A.R.} = \frac{\text{Total covered area on all floors}}{\text{Plot Area}}$$

**NOTE** – The term F.A.R. is synonymous with Floor Space Index (F.S.I.)”

Strong reliance is placed on Rule 15.4.2 which reads as under:-

“15.4.2 In addition to Rule No. 15.4.1.1 (a) (b) and (c) and 17.7.3 the following shall not be included in covered area or F.A.R. and Built-up Area calculations.”

- (a) A basement or cellar space under a building constructed on stilts and used as parking space, and air-conditioning plant rooms used as accessory to the principal use;
- (b) Electric cabin or substation, watchman’s booth of maximum size of 1.6 sq.m. with minimum width or diameter of 1.2 m, pump house, garage shaft, space required for location of fire hydrants, electric fittings and water tanks;
- (c) Projections as specifically exempted under these rules.
- (d) Stair case room and/or lift rooms above the top most storey, architectural features, chimneys, elevated tanks of dimensions as permissible under these rules.

Note: The shaft provided for lift shall be taken for covered area calculations only on one floor upto the minimum required as per these rules.

- (e) One room admeasuring 2m x 3m on the ground floor of co-operative housing societies or apartment owners/co-operative societies buildings and other multistoreyed building as office-cum-letter box room.

- (f) Rockery, well and well structures, plant, nursery, water-pool, swimming pool, (if uncovered) platform round a tree, tank fountain, bench, chabutra with open top and unenclosed sides by walls, ramps, compound wall, gate, slide, swing, overhead water tank on top buildings;
- (g) Deleted.
- (h) Sanitary block subject to provision of rules no. 15.4.1 (a) and Built-up area not more than 4 sq. m.”

12. The contention of learned senior counsel appearing for the project proponent is that while calculating the built up area the constructions mentioned in Rules 15.4.1.1 (a), (b) and (c) and Rule 17.7.3 in addition to the areas specifically exempted under Rule 15.4.2 are to be excluded. He submits that if the built up area is calculated in accordance with the DCR then the project proponent has till date not constructed the built up area of 57,658.42 sq. mtrs., which it was permitted to construct under the EC granted to it on 04.04.2008. On the other hand, the stand of the Union of India and the original applicant is that built up area means all area which is covered regardless of the area being FSI or non FSI in terms of the EIA Notification of 2006. The Building/Construction projects are covered by Item No. 8 of the Schedule to the EIA Notification dated 14.09.2006. Construction of a project which is

covered under the schedule can be commenced only after obtaining EC in terms of Para 2 of the said notification. The schedule itself categorises the various projects and activities into two categories being 'Category A' and 'Category B'. 'Category A' projects require clearance by the Central Government in the Ministry of Environment, Forest and Climate Change on the recommendation of the Expert Appraisal Committee to be constituted by the Central Government whereas those activities which form 'Category B' of the schedule including modernization and expansion of such projects require EC from the State/Union Territory Environment Impact Assessment Authority (SEIAA) and such authority is required to base its decision on the recommendation of the State/Union Territory Level Expert Appraisal Committee (SEAC). There is further division of 'Category B' into B1 and B2. B1 projects require Environmental Impact Assessment (EIA) report to be prepared and scoping to be done whereas B2 projects do not require any Environmental Impact Assessment report. Item No. 8 of the Schedule, with which we are concerned, reads as follows:

(1)	(2)	(3)	(4)	(5)
<b>8</b>		<b>Building/Construction projects/Area Development projects and Townships</b>		

<b>8(a)</b>	Building and Construction projects		≥20000 sq. mtrs. And <1,50,000 sq. mtrs. Of built-up area#	#(built up area for covered construction; in the case of facilities open to the sky, it will be the activity area)
<b>8(b)</b>	Townships and Area Development projects		Covering an area ≥50 ha and or built up area ≥1,50,000 sq. mtrs. ++	++All projects under Item 8(b) shall be appraised as Category B1.

13. From a bare perusal of the two hash tags (#) in Column 4 and 5 of Item 8(a), it is apparent that what is shown under Column 5 is actually a continuation of Column 4 and basically it describes or defines 'built up area' to mean covered construction and if the facilities are open to the sky, it will be taken to be the activity area. This by itself clearly shows that under the notification of 2006, all constructed area, which is covered and not open to the sky has to be treated as 'built up area'. There is no exception for non-FSI area.

14. Indeed, the concept of FSI or non-FSI has no concern or connection with grant of EC. The same may be relevant for the purposes of building plans under municipal laws and regulations but it has no linkage or connectivity with the grant of EC. When EC

is to be granted, the authority which has to grant such clearance is only required to ensure that the project does not violate environmental norms. While projects and activities, as mentioned in the notification, may be allowed to go on, the authority while granting permission should ensure that the adverse impact on the environment is kept to the minimum. Therefore, the authority granting EC may lay down conditions which the project proponent must comply with. While doing so, such authority is not concerned whether the area to be constructed is FSI area or non-FSI area. Both will have an equally deleterious effect on the environment. Construction implies usage of a lot of materials like sand, gravel, steel, glass, marble etc., all of which will impact the environment. Merely because under the municipal laws some of this construction is excluded while calculating the FSI is no ground to exclude it while granting the EC. Therefore, when EC is granted for a particular construction it includes both FSI and non-FSI areas. As far as environmental laws are concerned, all covered construction, which is not open to the sky is to be treated as built up area in terms of the EIA Notification dated 14.09.2006.

**Notification of 04.04.2011**

15. Our attention has been drawn to the notification dated 04.04.2011 issued by the Ministry of Environment and Forests. By means of this notification, the words of Column 5 against Item 8(a) have been replaced and substituted as under:

“The built up area for the purpose of this Notification is defined as “the built up or covered area on all the floors put together including basement(s) and other service areas, which are proposed in the building/construction projects”.”

This notification clearly defines built up area as all constructed area including basement and service areas without any exception.

16. Learned senior counsel appearing for the project proponent has submitted that this notification is only prospective in nature and, therefore, will not affect the notification of 2006. On the other hand, it has been submitted by the original applicant that this is only a clarificatory notification and as such it will come into force with effect from 2006. In our opinion, it is not at all necessary to decide whether this notification is clarificatory or is in substitution of the original notification of 2006. We say this because as held by us above, there is no ambiguity with regard to the definition of ‘built up area’ even under the notification of 2006 and it covers all

constructed area not open to the sky. The notification of 2011 only provides that the built up area or covered area shall be the area of all floors put together including basement(s) and other service areas. We may again re-emphasize that this definition also is in consonance with the concept of grant of EC for construction as explained above and it is obvious that the concept of FSI or non-FSI area is alien to environmental laws.

**Clarification dated 07.07.2017**

17. Strong reliance has been placed by the project proponent on the office memorandum dated 07.07.2017 issued by Dr. Ashish Kumar, Joint Director, Ministry of Environment, Forest and Climate Change. The said office memorandum reads as follows:-

F.No. 22-35/2017-IA.III  
Government of India  
Ministry of Environment, Forest and Climate Change  
(Impact Assessment Division)

\*\*\*\*\*

Indira Paryavaran Bhawan  
Jor Bag Road, Aliganj,  
New Delhi-110 003

Dated 7<sup>th</sup> July, 2017

**OFFICE MEMORANDUM**

**Sub: Clarification on the date of applicability of notification  
S.O.(E) 695 dated 04.04.2011 issued by MoEF & CC defining  
'Built Up Area' of the project**

The Ministry is in receipt of a reference dated 03.04.2017 from Confederation of Real Estate Developers Association of India (CREDAI) seeking clarification on above mentioned subject. The CREDAI has requested that the definition of Built Up Area (BUA) given vide notification S.O.695(E) dated 04.04.2011 should have prospective effect.

2. The matter has been examined in the Ministry. The BUA defined in the notification S.O. 1533 (E) dated 14<sup>th</sup> September, 2006 mentions at Item 8 (a) columns 4 and 5 “built up area for covered construction, in the case of facilities open to sky, it will be the activity area”.

3. The Ministry has further defined BUA vide its notification S.O.695 (E) dated 04.04.2011 which reads as, “the built up or covered area on all the floors put together including its basement and other service areas, which are proposed in the building or construction project.”

4. The definition provided in the Ministry’s notification will have its effect from the prospective date of the notification only. The projects which are not covered in the period of above notifications should be assessed as per the definition of built up area provided in the building bye-laws or Development Control Regulation (DCR) of the local authorities in the States.

5. This issues with approval of Competent Authority.

Sd/-  
(Dr. Ashish Kumar)  
Joint Director  
Ph:011-24695474  
Email:ashish.k@nic.in

All States/UTs/SIEAAs/MoEF & CC Divisions

It is urged on the basis of the aforesaid memorandum that prior to the notification dated 04.04.2011, the built up area had to be calculated and assessed as per the building bye-laws or the Development Control Regulations of the local authorities in the States. On behalf of the original applicant it has been urged that

this memorandum is meaningless and that it has been issued when the matter was pending before the NGT, at the instance of one of the Directors of the project proponent, Shri Atul Goel, who was Joint Secretary of Confederation of Real Estate Developers Association of India (CREDAI), Pune.

18. Without going into this aspect of the matter, we are clearly of the view that such an office memorandum could not and should not have been issued. The notification dated 14.09.2006 is a statutory notification issued in terms of Rule 5(3) of the Environment (Protection) Rules, 1986 which provides that before such a notification is issued the Central Government has to give notice of its intention of issuing a notification and objections to the same are invited. No doubt the Central Government is empowered in public interest to dispense with the requirement of notice but this obviously has to be done in exceptional cases. The notification dated 14.09.2006 was issued by the Central Government and published in the gazette after inviting objections from the public. The first clarification with regard to this notification was issued on 04.04.2011 to which we have adverted above. These two decisions

of the Central Government which were notified as per the provisions of law could not have been set at naught by the Joint Director even if it was issued with the approval of a higher authority. We are of the view that since such decision has not been notified in the gazette the statutory notification dated 14.09.2006 and its subsequent clarification dated 04.04.2011 could not have been virtually set aside by this office memorandum.

19. We are also of the view that the so called office memorandum is not at all clarificatory in nature. As held by us above the notification of 2006 with regard to 'built up area' was absolutely clear and needed no clarification. We fail to understand how the concept of built up area as understood in the building bye-laws or DCR could be introduced into the notification of 2006 by this office memorandum which virtually made the notification of 2006 totally redundant. Therefore, we quash the office memorandum dated 07.07.2017.

20. This is not the first time that we have noticed such clarificatory communications being issued by the officials of the Ministry of Environment, Forest and Climate Change, which

virtually have the effect of nullifying the statutory provisions and notifications. We have adverted to some of these communications in our judgment in ***Common Cause vs. Union of India***<sup>1</sup>. We expect the officials of the Ministry of Environment, Forest and Climate Change to take a stand which prevents the environment and ecology from being damaged, rather than issuing clarifications which actually help the project proponents to flout the law and harm the environment.

21. In view of the above, we are clearly of the view that the EC granted to the project proponent on 04.04.2008 was for constructing a total built up area of 57,658.42 sq.mtrs. and this would include all covered construction not open to the sky. No artificial division on the basis of FSI and non-FSI area can be made. Therefore, the NGT was fully justified in coming to the conclusion that the construction raised by the project proponent was in total violation of the EC granted to it.

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<sup>1</sup> (2017) 9 SCC 499

**Environmental Clearance dated 20.11.2017**

22. The project proponent has drawn our attention to the EC for expansion of the project in question granted to it by the State Level Environment Impact Assessment Authority (SEIAA) on 20.11.2017. We may note that this clearance indicates that the existing construction comprises of 738 flats and 115 shops which have been completed, 69 flats and 2 shops which are under construction, meaning thereby that 807 flats and 117 shops are already in existence and in addition thereto 454 more flats and cultural centre are sought to be constructed. This will take the total number of flats to 1261 and number of shops to 117. We may also notice that the SEIAA has laid down general conditions for pre-construction phase and the first condition is as follows :-

“(1) This environmental clearance (EC) is issued for total built up area of 147219.45 m<sup>2</sup> as approved by local planning authority. It is noted that the total proposed construction area is 147219.45 m<sup>2</sup> which includes the area of previous EC (dated 04.04.2008) 57,658.42 m<sup>2</sup> and the proposed expansion area of 89,561.03 sq.m. However the above area of 147219.45 sq.m. is notional as the NON FSI area component of the previous EC is not included in 1,47,219.45 m<sup>2</sup>. After considering the NON FSI area of the previous EC the total built up area becomes 1,81,230.94 m<sup>2</sup>. SEIAA has also taken note of the clarification issued by MOEF and CC vide office memorandum dated 7<sup>th</sup> July, 2017, stating the definition of built up area will be assessed as per the building bye-laws or DCR of the local authorities in the states.”

The aforementioned condition itself clearly shows that the non-FSI area constructed by the project proponent under first EC of 04.04.2008 has not been taken into consideration. The project proponent has raised construction in Plot No. 1 of an FSI area measuring 48,424.66 sq. mtrs., and non-FSI area measuring 46,088.47 sq. mtrs.. Therefore, the total construction raised in Plot No. 1 is 94,513.13 sq. mtrs.. In Plot No. 2 the construction raised on an FSI area is 630.55 sq. mtrs. and on the non-FSI area is 4,858.57 sq. mtrs. and, therefore, the total construction already raised in Plot No. 2 is 5,489.12 sq. mtrs.. The total construction raised by the project proponent is 1,00,002.25 sq. mtrs. against the built up area of 57,658.42 sq. mtrs. mentioned in the EC of 04.04.2008. This could not have been ignored by the SEIAA.

23. In case the total construction raised by the project proponent is taken as 1,00,002.25 sq. mtrs. and if the area of the proposed construction is added then the project will fall in B1 category and, therefore, the SEIAA had no authority to grant EC by treating the project as falling under Category B2. Furthermore, the EC dated

20.11.2017 is also illegal as the same has been granted on the presumption of the order dated 31.05.2016 passed by the Principal Secretary, Environment Department, State of Maharashtra holding that the construction of 18 buildings instead of 12 buildings is permissible. The EC completely lost sight of the fact that the order dated 31.05.2016 was quashed and set aside by the NGT in its order dated 27.09.2016. We may note that the official who passed the order on 31.05.2016 was the same official, who held the office of Member Secretary of SEIAA, which granted environmental clearance on 20.11.2017. Therefore, the EC dated 20.11.2017 was beyond the authority of SEIAA and was granted under a totally false assumption and the same is therefore quashed and set aside.

**Allegations made by the original applicant against various officials**

24. The NGT in its order dated 27.09.2016, has found that there was suppression of facts by the officers of PMC. The NGT also directed the Chief Secretary to the State of Maharashtra to take notice of the conduct of the officers who were misleading the Department of Environment. Costs were imposed on the PMC,

Department of Environment and the SEIAA. This has been challenged before us by the PMC.

25. The original applicant both in his original application filed before the NGT and in appeal filed before us as well as in other proceedings has made serious allegations against individual officers of the PMC as well as the SEIAA and specially the Principal Secretary, Environment Department, Govt. of Maharashtra. However, for reasons best known to the original applicant none of these individuals has been made a party in personal capacity in these proceedings. The law is well settled that no person can be condemned unheard. It would, therefore, not be fair on our part, to deal with allegations made against individuals who are not parties to the petition and who have had no chance to reply to the allegations levelled against them. Therefore, we refrain from commenting on the conduct of the officials in their individual capacity.

26. However, as far as their official capacity is concerned, we are of the view that the NGT was fully justified in coming to the conclusion that certain officials of PMC were going out of their way

to help the project proponent and we, therefore, uphold the directions given by the NGT in its order dated 27.09.2016 in this regard. In view of what we have discussed above, it is more than apparent that despite notifications of 2006 and 2011 being clear and unambiguous, the officials of PMC have given an interpretation which was tailor-made to suit the project proponent. This was being done even before the clarification of 07.07.2017 was issued. This clearly indicates that some officials of the PMC were espousing the case of the project proponent at the cost of the environment.

27. We may also observe that *prima facie* we are of the view that the Principal Secretary, Environment Department, Govt. of Maharashtra has not acted in a fair and transparent manner. The allegations made by the original applicant cannot be lightly brushed aside. In the original order dated 27.09.2016, the NGT held as follows :-

**“42.** From the extracted portion of the order dated 31<sup>st</sup> May, 2016 of Principal Secretary, Environment Department, it is seen that he has declared construction of 18 buildings on the site instead of 12 buildings is permissible which, according to him, only a changes on configuration of buildings. This opinion undoubtedly is based on his erroneous conclusion that total BUA which is nothing but F.S.I. consumed i.e. 48617.14 sq.mts which is within the EC limit as against the actual construction activity which has

exceeded over 100000 sq.mtrs BUA. Hence we set aside that order/communication dated 31<sup>st</sup> May, 2016.”

The official holding the post of Principal Secretary must have been aware of these directions because he was a party to the proceedings before the NGT. Despite that, while granting fresh EC on 20.11.2017, this official noticed that reference to the Environment Department for verification of files was withdrawn vide letter dated 31.05.2016 and the matter has been considered afresh. When the letter dated 31.05.2016 had been quashed the obvious result would be that action had to be taken in accordance with the earlier directions in the 27<sup>th</sup> meeting of SEAC III (Non-MMR) held from 10<sup>th</sup> to 13<sup>th</sup> March, 2015 and the 87<sup>th</sup> meeting of SEIAA held on 10<sup>th</sup> to 12<sup>th</sup> August, 2015. This was not done. His actions need to be looked into and, therefore, we uphold the direction given by the NGT directing the Chief Secretary to the State of Maharashtra to take notice of the conduct of the concerned officers. We further direct the Chief Secretary to file detailed report in respect of the conduct of the then Principal Secretary, Department of Environment to the NGT within 3 months which will thereafter pass appropriate directions in the matter.

**Challenge to the order dated 08.01.2018 passed in Review Application No.35 of 2016:**

28. This order has been challenged both by the project proponent by amending the appeal and by the original applicant by filing a separate appeal.

29. Section 19(4)(f) of the National Green Tribunal Act, 2010 provides that the Tribunal shall have the same powers as are vested in Civil Courts while trying a suit in respect of matters relating to review of its decisions. Therefore, the power of review vested with the NGT is akin to the power vested with the Civil Court. As such, the principles which govern the exercise of review jurisdiction before a Civil Court will apply with equal force to the NGT.

30. Rule 22(2) of the National Green Tribunal (Practices and Procedure) Rules, 2011 provides that a review application shall ordinarily be heard by the Tribunal at the same place of sitting which has passed the order unless the Chairperson may, for reasons to be recorded in writing, direct it to be heard by the Tribunal sitting at any other place. Sub-rule(3) of Rule 22 provides

that ordinarily review application shall be disposed of by circulation.

31. Since the powers of review which the NGT exercises are akin to those of a Civil Court it would be pertinent to refer to relevant portions of ***Order XLVII of Civil Procedure Code, 1908***, which read as follows:-

**“1. Application for review of judgment.-** (1) Any person considering himself aggrieved—

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes,

and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order.

(2) A party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review.

**5. Application for review in court consisting of two or more Judges.-** Where the Judge or Judges, or any one of the Judges, who passed the decree or made the order, a review of which is applied for, continues or continue attached to the court at the time when the application for a review is presented, and is not or are not precluded by absence or other cause for a period of six months next after the application from considering the decree or order to which the application refers, such Judge or Judges or any of them shall hear the application, and no other Judge or Judges of the Court shall hear the same.”

32. The project proponent has urged various grounds to challenge the order passed in the review application. The first ground is that whereas the original order was passed by a Bench comprising of Dr. Justice Jawad Rahim and Dr. Ajay A. Deshpande, the review application was heard and decided by a Bench comprising of Justice U.D. Salvi and Dr. Nagin Nanda. It has been urged that Dr. Justice Jawad Rahim continues to be a Judicial Member of the NGT and, in fact, was sitting in the Western Bench at Pune on 08.01.2018 when the impugned judgment in review was pronounced by the NGT.

33. We are clearly of the view that a review petition should normally be heard by the same Bench which originally decided the matter. A review petition should not be heard by any other Bench

unless it is impossible or totally impracticable for the earlier Bench to hear the matter. In a review petition, like in the present case, where the review petitioner contends that certain arguments raised by him have not been considered then it is only the judges who originally heard the matter who can decide whether such point was urged or not. In the present case the review application was based mainly on the contention that the affidavit dated 18.05.2016 was not taken into consideration by the Bench.

34. It is well known that parties raise various contentions in their pleadings or in their evidence. On many occasions when arguments are heard many of the pleas are not urged. Any judicial authority including the NGT which is presided over by a judicial member who may be a retired judge of this Court or of a High Court is expected to deal with all contentions raised before it. There is a presumption that judicial authorities must have dealt with all the contentions raised before them. If a party urges that some of the contentions urged by it have not been taken into consideration then it has to file a review application and it is but obvious that such review

application should be heard by the same Bench which had originally heard the matter.

35. Sub-rule (3) of Rule 22 of the National Green Tribunal (Practices and Procedure) Rules, 2011 clearly lays down that a review application shall be disposed of by circulation. If the review application is to be disposed of by circulation then there is no problem in the matter being circulated before the very same Bench which had earlier heard the matter. This can be done even at a place which may be different from the original place of hearing. It is only if the Bench decides to give oral hearing in the review application and notice is issued to the opposite party that sub-rule(2) of Rule 22 will come into operation. According to sub-rule(2) the matter should ordinarily be heard at the same place of sitting where it was originally decided. However, this is not a mandatory direction because sub-rule(2) itself contemplates that the matter shall 'ordinarily' be heard at the same place. In tribunals like the NGT where members may be transferred from one Bench to another or may be attending a Bench on circuit then problems can sometimes arise. These issues can be easily resolved by resorting to

the latest technology and if necessary the arguments in such cases can be heard by video conferencing. The normal rule that the same Bench should hear the review application should not be disturbed unless it is virtually impossible for the original Bench to hear the matter or the members of the Bench themselves opt not to hear the matter.

36. In this behalf, we must remind ourselves that the power of review is a power to be sparingly used. As pithily put by Justice V.R. Krishna Iyer, J., “A plea for review, unless the first judicial view is manifestly distorted, is like asking for the moon”<sup>2</sup>. The power of review is not like appellate power. It is to be exercised only when there is an error apparent on the face of the record. Therefore, judicial discipline requires that a review application should be heard by the same Bench. Otherwise, it will become an intra court appeal to another Bench before the same court or tribunal. This would totally undermine judicial discipline and judicial consistency.

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<sup>2</sup> (1980) 2 SCC 167

37. We may refer to the judgment of this Court in ***Malthesh Gudda Pooja vs. State of Karnataka and Ors.***<sup>3</sup>. In that case a writ appeal was disposed of by a Division Bench comprising of Hon. V. Gopala Gowda and L. Narayana Swamy, JJ., at the Dharwad Circuit Bench of the Karnataka High Court. Thereafter, a review petition was filed before a Bench comprising of Hon. K. Sreedhar Rao and Ravi Malimath, JJ.. An objection was raised that the review petition should be heard by the same judges who had originally heard the matter but this objection was overruled and the review petition was allowed and the appeal was ordered to be listed afresh before the Division Bench. This appeal was listed before the Dharwad Circuit Bench consisting of Hon. D.V. Shailendra Kumar and N. Ananda, JJ.. This Bench held that the order of review passed was a nullity since the judges who had heard the review should not have heard the same especially when the judges of the original Bench were available. The matter came to this Court and this Court after referring to Order XLVII Rule 5 of CPC and Rule 5 of High Court of Karnataka Rules, 1959 and taking note of the fact that the Chief Justice of the Karnataka High

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<sup>3</sup> (2011) 15 SCC 330

Court had passed an order that the review petition be listed as per roster held as follows :-

**“18.** Order 47 Rule 5 of the Code and Chapter 3 Rule 5 of the High Court Rules require, and in fact mandate that if the Judges who made the order in regard to which review is sought continue to be the Judges of the Court, they should hear the application for review and not any other Judges unless precluded by death, retirement or absence from the Court for a period of six months from the date of the application. An application for review is not an appeal or a revision to a superior court but a request to the same court to recall or reconsider its decision on the limited grounds prescribed for review. The reason for requiring the same Judges to hear the application for review is simple. Judges who decided the matter would have heard it at length, applied their mind and would know best, the facts and legal position in the context of which the decision was rendered. They will be able to appreciate the point in issue, when the grounds for review are raised. If the matter should go before another Bench, the Judges constituting that Bench will be looking at the matter for the first time and will have to familiarise themselves about the entire case to know whether the grounds for review exist. Further, when it goes before some other Bench, there is always a chance that the members of the new Bench may be influenced by their own perspectives, which need not necessarily be that of the Bench which decided the case.

**19.** Benjamin Cardozo’s celebrated statement in *The Nature of Judicial Process*, (pp. 12-13) is relevant in this context:

“There is in each of us a stream of tendency, whether you choose to call it philosophy or not, which gives coherence to thought and action. Judges cannot escape that current any more than other mortals. All their lives, forces which they do not recognise and cannot name, have been tugging at them— inherited instincts, traditional beliefs, acquired convictions; ... In this mental background every problem finds its setting. We may try to see things as objectively as we please. Nonetheless, we can never see them with any eye except our own.”

**20.** Necessarily therefore, when a Bench other than the Bench which rendered the judgment, is required to consider

an application for review, there is every likelihood of some tendency on the part of a different Bench to look at the matter slightly differently from the manner in which the authors of the judgment looked at it. Therefore the rule of consistency and finality of decisions, makes it necessary that subject to circumstances which may make it impossible or impractical for the original Bench to hear it, the review applications should be considered by the Judge or Judges who heard and decided the matter or if one of them is not available, at least by a Bench consisting of the other Judge. It is only where both Judges are not available (due to the reasons mentioned above) the applications for review will have to be placed before some other Bench as there is no alternative. But when the Judges or at least one of them, who rendered the judgment, continues to be members or member of the court and available to perform normal duties, all efforts should be made to place it before them. The said requirement should not be routinely dispensed with.”

38. A perusal of the above judgment leaves no manner of doubt that this Court has held that in terms of Order XLVII Rule 5 of CPC, a review should normally be heard by the same Bench which passed the original order. We may reiterate the reasons given by this Court. These are :-

- 1) The judges who heard the matter originally have applied their mind and would know best the facts and legal position;
- 2) They will be in the best position to appreciate the matter in issue when a review is filed;
- 3) If the matter goes before another Bench that Bench will have to virtually hear the matter afresh;

4) Most importantly, when the matter goes to a new Bench the members of the new Bench may go by their own perspective and philosophy which may be totally different to that of the Bench which originally heard the matter.

We may again re-emphasize that judicial discipline, judicial traditions and consistency in pronouncements require that the Bench which heard the matter originally should hear the review petition unless it is virtually impractical for the original Bench to hear the matter, or where the members of the original Bench recuse.

39. Another ground raised is that the statutory appeal was already pending in this Court against the original order when the review application was taken up for hearing. It is contended, on the basis of Order XLVII Rule 1(2) of CPC, that review application should not have been taken up for hearing because the original applicant could have before this Court taken up all the points which he had taken in his review application. It is also contended that this is not a case where there is an error apparent on record and as such the power of review could not have been exercised. As far as the facts of this

case are concerned we are clearly of the view that the original applicant could have raised all issues which he raised in review application even by filing a counter affidavit in the appeal filed by the project proponent or by challenging the original order in this Court as he has done now. In this context, once this Court was seized of the matter and all issues were being urged, the NGT should not have proceeded to hear the review application.

40. We may add that on 21.12.2016, the review application itself was listed before the Bench of Dr. Justice Jawad Rahim and Dr. Ajay A. Deshpande, which adjourned the matter to 25.01.2017 to hear it regarding maintainability of the review application in view of the statutory appeal provided under the National Green Tribunal Act, 2010. However, the matter got listed before the other Bench and on 25.07.2017, the said Bench considered this objection raised by the project proponent in terms of Order XLVII Rule 1 of the CPC and the Bench held as follows:

“Having perused the record, we find that the Appellant is seeking quashing of the order of compensation in totality and the Review Applicant is seeking enhancement of the compensation granted by the Tribunal. We do not see any commonality in the grounds resorted to by the Applicant and Appellant in the said Appeal. Exception to Sub-clause 2 of Order 47 Rule 1 of Code of Civil Procedure, therefore, does

not come to the help of Respondent No.9. We are, therefore, of the considered opinion that the Review Application is maintainable. Plea of non-maintainability of the Review Application is rejected.”

41. We are of the view that the aforesaid finding is incorrect. The project proponent had not only challenged the original order of the NGT on the ground that he had not violated the EC but also on the ground that the damages awarded were highly excessive. Therefore, the question that what should be the extent of damages was specifically before this Court. We are therefore, clearly of the opinion that the Bench hearing the review application erred in holding that the review application was maintainable despite the appeal pending before this Court.

42. We may also note that the Bench which heard the review has rejected all other grounds of review mainly on the ground that there is no error apparent on the face of the record but has only dealt with the issue of enhancement of damages to be imposed on the basis of ‘Carbon Footprint’ relying on the affidavit dated 18.05.2016. The Bench noted that this affidavit had not been taken into consideration by the earlier Bench. How could the latter Bench

hearing the review application know whether any reference was made to this affidavit at the time of original hearing or not? In fact, the project proponent urges that this affidavit was never filed on 18.05.2016.

43. Here, it would be pertinent to mention that according to the original applicant he was given oral permission by the Bench to file such an affidavit on 23.02.2016. We have perused the order dated 23.02.2016 and find that it makes no mention of any such request being made. If there is no such request then the question of issuing an oral direction to file such an affidavit does not arise. We may also add that after 23.02.2016, the matter was listed on numerous occasions i.e. 16.03.2016, 05.04.2016, 18.04.2016, 22.04.2016, 02.05.2016 and 05.05.2016 before the NGT. In none of the orders there is any reference to Carbon Footprint or to any affidavit to be filed by the original applicant. If an oral permission had been given, obviously the original applicant would have either filed an application or would have made a request that he wants to file such an affidavit.

44. The affidavit in question is dated 18.05.2016 and it is alleged that it was filed on 18.05.2016. The matter was listed for hearing on 19.05.2016 on which date also there is no reference to any such affidavit. It would be pertinent to note that in between the project proponent had filed an M.A. No. 389 of 2016 before the Principal Bench stating that an interim order dated 23.12.2015 had been passed against it and the matter was not being heard and, therefore, it may be heard by a Bench presided over by Dr. Justice Jawad Rahim, who apparently was holding Court in the Pune Bench at that time and the Principal Bench allowed the same on 02.05.2016 directing that the matter be listed before the Bench presided over by Dr. Justice Jawad Rahim. On 19.05.2016, the original applicant sought time stating that he had filed review application against the order dated 02.05.2016 before the Principal Bench praying that the matter should be heard by the earlier Bench presided over by Justice U.D. Salvi and, therefore, the matter could not be heard by Dr. Justice Jawad Rahim on that day and was further adjourned to 23.05.2016. There is no reference to Carbon Footprint in the order dated 19.05.2016. On 23.05.2016, the matter was heard by the Bench presided over by Dr. Justice Jawad

Rahim and the orders reserved. In this order also there is no reference to the affidavit with regard to Carbon Footprint. If the filing of the affidavit would have been brought to the notice of the Bench, it would have recorded in the order that some fresh affidavit had been filed. Subsequently, the project proponent, who is the contesting respondent, filed an application on 20.07.2016 praying that in the meantime he had obtained permission of the Environment Department and the SEIAA to which we have adverted hereinabove.

45. The original applicant sought time to file counter affidavit. The matter was adjourned to 28.07.2016 for re-hearing deleting the same from reserved list since there were subsequent developments. On 28.07.2016 the matter was got adjourned to 02.08.2016 on which date some execution application for implementation of the interim orders was taken up and direction was issued to the PMC. The matter was again taken up on 08.08.2016, 19.08.2016 and 24.08.2016 when the hearing was closed and judgment was pronounced through video conferencing on 27.09.2016. In none of these orders any mention was made for Carbon Footprint or to the

affidavit on the basis of which the review application was filed. On 23.05.2016 the project proponent filed reply to the affidavit dated 18.05.2016 filed by the original applicant in which they raised objections that such affidavit was not filed on 18.05.2016 and the copy of the same was handed over to them on 20.05.2016 and the original applicant had no permission to file such an affidavit. All these disputed issues as to whether such an affidavit was filed with the permission of the Court or it was referred to in the first hearing or in the second hearing could only be decided by the Bench which had heard the matter on 23.05.2016 or on 24.08.2016 on which dates the original application was reserved for orders.

46. We are of the considered view that the review application should have been heard by a Bench headed by Dr. Justice Jawad Rahim who was admittedly available and in fact continues to be a member of the NGT. Therefore, we are constrained to set aside the order passed in Review Application No.35 of 2016 dated 08.01.2018

**Is Demolition the only answer?:**

47. The next issue which arises is that what we should do with the construction. A large number of flats are already occupied and a large number of persons have paid money for occupying these flats. Learned counsel appearing for those persons who have purchased the flats urged that the flats should not be demolished otherwise they shall be put to great monetary loss. As pointed out above now there are 807 flats and 117 shops which are either constructed or under construction. These flats are 1, 1.5 and 2 BHK flats and small shops and offices. The project proponent has already taken money from these persons and a large number of flats and shops have already been occupied and even where the remaining flats and shops are not occupied, persons belonging to the middle class have invested their life's earnings in this project. Keeping in view the interest of these third parties who were not parties before the NGT, we are of the view that in the peculiar facts and circumstances of the case, demolition is not the answer. This would put innocent people at loss. Normally, this Court is loathe to legalize illegal constructions but in the present case we have no option but to do so.

48. We hasten to clarify that the project proponent cannot be permitted to build any more flats. What we are permitting him to do is to only complete construction of 807 flats, 117 shops/offices and cultural centre including the club house. We make it clear that he shall not be allowed to build the two buildings in which he was to construct 454 tenements, and will obviously have to return the money with interest at the rate of 9% per annum to the individual(s) who have invested in the same. There is no equity in favour of these persons since the plan to raise this construction was submitted only after 2014 when the validity of the earlier EC had already ended. Therefore, though we uphold the order of the NGT dated 27.09.2016 that demolition is not the answer in the peculiar facts of the case, we also make it clear that the project proponent cannot be permitted to build nothing more than 807 flats, 117 shops/offices, cultural centre and club house.

**Whether the Original Applicant is entitled to Special Damages:**

49. On behalf of the original applicant various issues were raised before us which had not been raised before the NGT and find no

mention either in the original order or even in the order under review. We are not considering those issues. It was urged that the project proponent has reduced the area of Cultural Centre. This averment is not correct as pointed by senior counsel appearing for the Union of India. The development plan is not only for the area under the project but covers a much larger area where more than one builder and projects may be involved. It is not the responsibility of only one builder to provide the entire community services and these have to be provided pro rata by all developers of projects in the area. It was also alleged that the builder had built 3 basements which are illegal. On the other hand it was contended by the learned senior counsel for the project proponent that one of the basements has already been blocked and the other two basements shall also not be put in use and would be completely blocked off. We make it clear that PMC and SEIAA will ensure that the project proponent blocks the basements in such a manner that they can never be put to any use. Another argument raised by the original applicant was that the project proponent had stated that though he would not use any ground water, however it has utilized the ground water and violated the condition of the EC. Reliance is

placed on certain photographs showing water being pumped. On the other hand on behalf of the project proponent it has been urged that this water was being pumped out from the excavated area when the building was built and the water level had risen. We cannot decide this disputed question of fact in these proceedings.

50. We may also point out that in this case the original applicant has tried to project the case as if he is filing the case in the public interest and has prayed for certain general directions. He has also claimed special damages for himself. The main grievance of the original applicant is with regard to the violation of the EC and according to him these violations started in the year 2009. The original applicant had applied for a flat in the project in question and had issued notice to the project proponent on 21.10.2011 about deficiency in service. This notice was replied to on 17.11.2011. Thereafter, the original applicant filed Consumer Complaint No. 95 of 2012 on 22.02.2012. This complaint was decided on 20.11.2014. Thereafter, the order of the District Consumer Disputes Redressal Forum was challenged before the State Consumer Redressal Commission both by the project

proponent and original applicant in February, 2015. It appears that thereafter there were complaints and counter complaints filed by the parties against each other and the project proponent filed a civil suit for defamation against the original applicant on 02.12.2015 and it was only thereafter on 07.12.2015 an application was filed in the NGT by the original applicant. We are highlighting these facts only to emphasize the fact that this litigation is obviously not a Public Interest Litigation. Therefore, the claim of the original applicant to award him special damages cannot be accepted.

**Quantification of damages:**

51. We need to decide and re-assess the issue of damages since the original applicant has also challenged the original order of the NGT. While assessing the damages we may note certain facts:-

1) The EC was granted on 04.04.2008 but construction commenced after issuance of consent to establish dated 20.06.2009 and the EC would be valid for a period of 5 years from the date of such consent, i.e. upto 19.06.2014;

2) The EC dated 04.04.2008 was granted for construction of built up area 57,658.42 sq.mtrs., whereas admittedly, as of now the constructed built up area is 1,00,002.25 sq. mtrs.. Therefore, there is clear-cut violation of the terms of the EC;

3) Any construction raised after 19.06.2014 is without any EC especially since we have held that EC granted on 20.11.2017 is invalid.

**Carbon Footprint:**

52. The main case of the original applicant is that the damages should be assessed on a scientific basis by calculating the damage caused to the environment by the project proponent on the basis of 'Carbon Footprint'. In the absence of detailed submissions, we find ourselves totally unequipped to go into this aspect of the matter.

53. In the original application filed by the original applicant before the NGT, there is no reference to Carbon Footprint. Even when evidence was initially led, no reference was made to the same. The concept of Carbon Footprint was introduced by the original

applicant only in his affidavit dated 18.05.2016. In fact, according to the project proponent this affidavit was not even filed on 18.05.2016. It appears to us that there is no order of the NGT specifically permitting the original applicant to file such an affidavit. The submission of original applicant is that he was orally permitted to file the same. These disputed questions would have been only decided by the Original Bench and, therefore, we have already set aside the order passed in the review application dated 08.01.2018.

54. Courts cannot introduce a new concept of assessing and levying damages unless expert evidence in this behalf is led or there are some well established principles. We find that no such principles have been accepted or established in the present case. When there are no pleadings in this regard we fail to understand how the concept of Carbon Footprint can be introduced after evidence has been closed, at the stage of arguments. We cannot assess the impact in actual terms and, therefore, we can only impose damages or costs on principles which have been well settled by law.

55. We may also note that the method to which the original applicant referred to is not part of any law, rule or executive instructions. This method is no doubt used to compensate and impose damages on nations but we cannot apply this method while imposing damages on a person who violates the EC. We may also add that the calculation made by the original applicant in his affidavit dated 18.05.2016 filed before the NGT are based on assumptions some of which we have not found to be correct namely – (1) use of ground water; (2) reduction of Cultural Centre space; (3) construction of basements etc..

56. We may make it clear that we are not laying down the law that damages cannot be assessed on the basis of Carbon Footprint. In a case where expert evidence in this behalf is led or on the basis of empirical data it is established that by applying the principles of Carbon Footprint damages can be assessed, the Court may, in the facts and circumstances of the case, rely upon such data but, in the present case, there is no such reliable material.

57. Having held so we are definitely of the view that the project proponent who has violated law with impunity cannot be allowed to go scot-free. This Court has in a number of cases awarded 5% of the project cost as damages. This is the general law. However, in the present case we feel that damages should be higher keeping in view the totally intransigent and unapologetic behaviour of the project proponent. He has maneuvered and manipulated officials and authorities. Instead of 12 buildings, he has constructed 18; from 552 flats the number of flats has gone upto 807 and now two more buildings having 454 flats are proposed. The project proponent contends that he has made smaller flats and, therefore, the number of flats has increased. He could not have done this without getting fresh EC. With the increase in the number of flats the number of persons, residing therein is bound to increase. This will impact the amount of water requirement, the amount of parking space, the amount of open area etc.. Therefore, in the present case, we are clearly of the view that the project proponent should be and is directed to pay damages of Rs.100 crores or 10% of the project cost whichever is more. We also make it clear that while calculating the project cost the entire cost of the land based

on the circle rate of the area in the year 2014 shall be added. The cost of construction shall be calculated on the basis of the schedule of rates approved by the Public Works Department (PWD) of the State of Maharashtra for the year 2014. In case the PWD of Maharashtra has not approved any such rates then the Central Public Works Department rates for similar construction shall be applicable. We have fixed the base year as 2014 since the original EC expired in 2014 and most of the illegal construction took place after 2014. In addition thereto, if the project proponent has taken advantage of Transfer of Development Rights (for short 'TDR') with reference to this project or is entitled to any TDR, the benefit of the same shall be forfeited and if he has already taken the benefit then the same shall either be recovered from him or be adjusted against its future projects. The project proponent shall also pay a sum of Rs. 5 crores as damages, in addition to the above for contravening mandatory provisions of environmental laws.

58. Normally, this Court is not inclined to grant *ex post facto* EC. However, in the peculiar facts of this case we direct that once the project proponent deposits the amount of damages as directed by

us then the project proponent may approach the appropriate authority for grant of EC. The authority may impose such conditions for grant of EC as it deems necessary.

**Findings and Directions:**

59. We summarise our findings and directions as follows:

(i) That built up area under the notification of 14.09.2006 means all constructed area which is not open to the sky;

(ii) Built up area under the notification of 04.04.2011 means all covered area including basement and service areas;

(iii) The communication dated 07.07.2017 is totally illegal and accordingly quashed;

(iv) The original application cannot be treated as a public interest litigation;

(v) We are not taking note of the allegations levelled against the individuals who have not been arrayed as parties;

(vi) That the order dated 27.09.2016 of the NGT is upheld except in so far as Direction No. 1 is concerned;

(vii) The order in review application passed by the NGT on 08.01.2018 is held to be totally illegal and is accordingly set aside;

(viii) We uphold the original order dated 27.09.2016 holding that the construction raised by the project proponent was in violation of the environmental clearance granted to it on 04.04.2008. We uphold the fine imposed upon the PMC and the direction given to the PMC to take appropriate action against the erring officials. We also uphold the direction given to the Chief Secretary to the State of Maharashtra and in addition, direct that the Chief Secretary to the State of Maharashtra shall look into the conduct of the official holding the post of Principal Secretary (Environment) to the Government of Maharashtra on 27.09.2016 and will submit his report to the NGT within three months from today;

(ix) We impose damages of Rs.100 crores or 10% of the project cost, whichever is higher on the project proponent and in addition thereto, project proponent will pay Rs.5 crores as levied by the NGT in its order dated 27.09.2016;

(x) Project proponent shall not be permitted to raise construction of two buildings having 454 tenements;

(xi) We direct that the project proponent shall only be permitted to complete construction of a total 807 flats, 117 shops/offices and cultural centre including club house;

(xii) The project proponent will only be permitted to seek environmental clearance for completion of the project subject to payment of costs in the aforesaid terms and it may be granted *ex post facto* environmental clearance in the peculiar facts of the case, on such terms and conditions as the environmental authority deems fit and proper;

(xiii) The project proponent is granted six months' time to deposit the amount of damages imposed in terms of

direction no. (ix) *supra* in the Registry of this Court. In case the project proponent does not deposit the amount within six months then all the assets of the project proponent i.e. M/s. Goel Ganga Developers India Pvt. Ltd. as well as its Directors shall be attached and the amount of damages shall be recovered by sale of those assets. It is further directed that in case this amount is not deposited within the period of six months then the licence/registration/permission granted to M/s. Goel Ganga Developers India Pvt. Ltd. to develop any “real estate project” within the meaning of the Real Estate (Regulation and Development) Act, 2016 shall be cancelled and the project proponent i.e. M/s. Goel Ganga Developers India Pvt. Ltd. and its Directors shall not be granted permission to develop any “real estate project” under the Real Estate (Regulation and Development) Act, 2016 without permission of this Court.

(xiv) The matter be listed on 22.10.2018 for issuing appropriate directions as to how the amount of damages are to be utilised;

60. All the appeals are disposed of in the aforesaid terms. Pending application(s) if any, shall also stand disposed of.

.....**J.**  
**(Madan B. Lokur)**

.....**J.**  
**(Deepak Gupta)**

New Delhi  
August 10, 2018

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Bombhise

**ANNEXURE-A-5****IN THE SUPREME COURT OF INDIA****CIVIL ORIGINAL JURISDICTION****WRIT PETITION (CIVIL) NO. \_\_\_\_\_ OF 2019****(Under Article 32 of the Constitution of India)****IN THE MATTER OF:**

Builders' Association of India (BAI)  
 G-1/G-20, 7<sup>th</sup> Floor, Commerce Centre,  
 J. Dadajee Road, Tardeo,  
 Mumbai - 400 034  
 Maharashtra  
 Through the authorized representative  
 Mr. Rajendra @ Nirmal Kumar

**...PETITIONER****VERSUS**

Union of India  
 Through the Secretary,  
 Ministry of Environment, Forest and Climate Change  
 Shastri Bhawan  
 New Delhi-110001

**... RESPONDENT****WRIT PETITION UNDER ARTICLE 32**  
**OF THE CONSTITUTION OF INDIA**

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA AND  
 HIS HON'BLE COMPANION JUDGES OF  
 HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF THE  
 PETITIONER ABOVE NAMED

**MOST RESPECTFULLY SHOWETH:**

1. The present Writ Petition under Article 32 of the Constitution of India is filed to impugn the definition of the term "built up area" under item 8 of the Schedule to the original/unamended Environment Impact Assessment Notification, 2006 (hereinafter

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referred to as "*EIA Notification 2006*") issued by the Ministry of Environment, Forest and Climate Change (hereinafter referred to as "*MoEF*") under Rule 5(3) of the Environment Protection Rules, 1986 under the Environment Protection Act, 1986 as being violative of Articles 14 and 19(1)(g) of the Constitution of India. Undoubtedly, the application of the 2011 Notification to projects granted ECs between 14.09.2006 - 04.04.2011 or to those projects which were exempted from an EC prior to the 2011 Notification; shall oppress the vested rights of such project proponents, create new disabilities or obligations or impose new duties in respect of constructions already completed. Therefore, the Petitioners requires equal protection of law with respect to their right practice the business of construction.

- 1A. The Petitioner has not approached any concerned authority for similar relief.
2. The Petitioner is an all India Apex Association and Representative of various Civil Engineering Construction Companies across the Country having registration No. BOM14/834DBSS1 dated 11.01.1983 under the Societies of Registration Act, 1860 and the Board Resolution dated 21.12.2018 authorizing Mr. Rajendra @ Nirmal Kumar for filing the present Writ Petition. Petitioner was established in the year 1941 and has 148 plus centers spread over the length and breadth of the country, with its headquarters in Mumbai. It has more than 15,000 direct members. Its role inter alia includes acting as a spokesman for the Indian construction industry.

3. It is submitted that the Respondent is the Union of India, through the Secretary, Ministry of Environment, Forest and Climate Change. That the Respondent falls within the definition of Article 12 of the Constitution of India and is hence amenable to the writ jurisdiction of this Hon'ble Court.
4. The facts leading to the present petition are as follows:

#### **PRIOR TO 2006- A BRIEF BACKGROUND**

5. One of the foremost steps taken by the Government towards the formulation of an environmental protection scheme to curb the rising environmental pollution was, perhaps, the issuance of notification in 1994 which required environmental clearances to be obtained by parties for undertaking certain projects. On 27<sup>th</sup> January, 1994, in exercise of the powers conferred on it by sub-section (1) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government through MoEF published a notification S.O.60 (E) (hereinafter referred to as "**1994 Notification**"), whereby it was directed that certain activities can be undertaken only after environmental clearance has been accorded by the Central Government. The requirements and procedure for seeking environmental clearance of projects were also enumerated in the aforesaid notification. Construction projects were excluded from the purview of the 1994 notification and no environmental clearance was required to be sought from the

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Central Government for undertaking the same. Ten years later, further substantial amendments were made by the Central Government to the 1994 notification by publishing notification S.O.801(E), dated 7<sup>th</sup> July, 2004 whereby, in the list of projects requiring environmental clearance from the Central Government appearing in Schedule 1, 'new construction projects' were added as entry 31. Amendments were also brought in para 3(g) of the notification to the effect that any construction project falling under entry 31 of Schedule-I for 1000 (one thousand) persons or below or with an investment of Rs.50,00,00,000/- (Rupees fifty crores) or below were not required to obtain an environmental clearance. By way of insertion of an Explanation to para 3, new construction projects which were undertaken without obtaining the clearance, and where construction work had not come up to the plinth level, were required to obtain environmental clearance with effect from the 7<sup>th</sup> July, 2004. It may be necessary to note that there was no mention of 'built-up area' in either the original 1994 notification or the 2004 amendment notification possibly because the projects were measured on the yardstick of involvement of 1000 (one thousand) persons or above in the project or involving an investment of Rs.50,00,00,000/- (Rupees fifty crores):

A copy of notification dated 27.01.1994 issued by the Ministry of Environment and Forests is annexed hereto and marked as ANNEXURE P-1 (At page 46 to 66).

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A copy of notification dated 07.07.2004 issued by the Ministry of Environment and Forests is annexed hereto and marked as **ANNEXURE P-2** (At page 67 to 69).

6. On 14th September, 2006, the MoEF introduced massive changes to the 1994 notification by way of introduction of EIA Notification 2006 to align the factors relating to the grant of environmental clearances with the objectives of National Environment Policy as approved by the Union Cabinet on 18th May, 2006. The EIA Notification 2006, in supersession of the 1994 Notification, directed that the construction of new projects or the expansion of existing projects entailing capacity addition shall be undertaken only after the prior environmental clearance obtained from the Central Government or as the case may be, by the State Level Environment Impact Assessment Authority (hereinafter referred to as "SEIAA").

a copy of notification dated 14.09.2006 issued by the Ministry of Environment and Forests is annexed hereto and marked as **ANNEXURE P-3** (At page 70 to 111).

7. In substance the EIA Notification 2006 provided that all projects and activities enumerated in its schedule would require prior environmental clearance before any construction work or preparation of land for the project is started on the project or activity. The projects and activities depending on various factors such as the potential hazard to the environment, location, the extent of the area involved, etc. are categorized in Category A or

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B. For projects or activities falling in Category A, the competent authority to grant prior environmental clearance is the MoEF and for projects or activities falling in Category B, SEIAA.

8. As per the EIA Notification 2006, SEIAA was to be constituted by the Central Government under sub-section (3) of section 3 of the Environment (Protection) Act, 1986 comprising of three Members including a Chairman and a Member – Secretary to be nominated by the State Government or the Union territory Administration concerned. Para 3 of the notification provided, in detail, for the composition of the SEIAA. All projects and activities were categorized into Category A or Category B, based on the spatial extent of potential impacts and potential impacts on human health and natural and man-made resources. All projects or activities included as Category 'A' in the Schedule, were mandatorily required to obtain prior environmental clearance from the MoEF on the recommendations of an Expert Appraisal Committee (hereinafter referred to as 'EAC'). All projects or activities included as Category 'B' in the Schedule were required to obtain prior environmental clearance from the State/Union territory Environment Impact Assessment Authority (SEIAA) based on the recommendations of a State or Union territory level Expert Appraisal Committee (hereinafter referred to as 'SEAC'). If a project or activity attracts the general condition, the competent authority to grant prior environmental clearance in that case would be the Central Government, even though, the

project or activity may figure in the schedule in Category B. It is submitted that for the purpose of this Petition MoEF and SEIAA is collectively referred to as '**Appropriate Authorities**'.

9. In the schedule to the notification consisting of the list of projects requiring environmental clearance, serial number 8 dealt with building/construction projects/ area development projects and townships. The relevant portion is extracted below:

Project or activity		Category with A	Threshold limit B	Conditions, if any
1	2	3	4	5
8		Building /Construction projects/Area Development projects and Township		
8(a)	Building and Construction projects		>20,000 Sq. metres and <1,50,000 sq.mtrs. of built-up area#	#('built up area' for covered construction; in the case of facilities open to the sky, it will be the activity area)
8(b)	Townships and Area Development projects.		Covering an area $\geq$ 50 ha and or 'built up area' $\geq$ 1,50,000sq .mtrs ++	++All projects under Item 8(b) shall be appraised as Category B1

10. For the first time in the history of EIA, 2006 Notification and amendments made thereto made a mention of 'built up area' and it appears in column 5 of the schedule, under the main heading of 'conditions if any', as extracted above. As per the Schedule to the EIA 2006 Notification, any project having more than 20,000 square meters 'built up area' is required to obtain an

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environmental clearance (hereinafter referred to as "EC") from the MOEF. That 'built up area' is the criterion on which the EIA 2006 Notification is attracted in the first place insofar as building/construction projects were concerned. It is of utmost importance to note that although the EC was a necessity if the 'built up area' of the building/construction project concerned came within the bracket of 20,000 sq. mtrs. and 1,50,000 sq. mtrs, the term 'built up area' was not defined anywhere in the notification. Column 5 of item at serial number 8 simply stated that 'built up area' for construction; in the case of facilities open to the sky, it will be the activity area.

11. That a plain reading of the expression in column no.5 appearing under the head of 'conditions' in the EIA Notification 2006 i.e., "*built up area' for covered construction; in the case of facilities open to the sky it will be the activity area*" would make it clear that the term 'built up area' has not been defined. This is especially so in light of the fact that the terms 'covered construction' and 'activity area' are not defined in the EIA Notification 2006 nor in the parent rules or statute. The use of the word 'for' in the aforesaid expression cannot be read to mean that the term includes covered constructions. In this context, the below mentioned paragraph of the judgment in *Okhla Bird Sanctuary* would be of much significance:

*"47. Item 8(a) deals with Building and Construction projects and the threshold mark that would bring the project within the ambit of the Notification is equal to or*

*more than 20,000 square meters and less than 1,50,000 square meters of "built up area". It is further clarified that the aforementioned figures relate to built-up area for covered construction; in case of facilities open to the sky, the built-up area would be the activity area. Item 8(b) deal with Townships and Area Development projects and the threshold mark for the project to come within the ambit of the Notification is an area equal or more to or more than 1,50,000 square meters."*

It is submitted that the para extracted above supports the Petitioner's contentions that the term 'built up area for covered construction' in column 5 of item 8 (a) merely provides for the manner for ascertaining the threshold limit in column 4.

12. That the definition of 'built-up area' in the Schedule to the EIA Notification 2006 is mentioned in the column "conditions if any". This seems to imply that in case of building and construction projects which has 'built up area' of more than 20,000 sq. mtrs. and less than 1,50,000 sq. mtrs., the 'built up area' relates to covered construction and that if it has facilities open to sky, 'built up area' would be the activity area. Simply put, the 'covered construction' and 'facilities open to sky' are two different categories of which, 'built up area' will have to be calculated.

#### **PERIOD FROM 2006-2011**

13. Since the term "built up area" was not defined in the EIA Notification 2006, the MoEF and various SEIAAs throughout different states relied upon local building bye laws to grant

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environmental clearances to various project proponents. The term "built up area" has been defined under various state bye laws, where it is calculated on the basis of Floor Space Index (hereinafter referred to as 'FSI'). That since 2006, the Appropriate Authorities have granted ECs to projects while defining 'built up area' on the basis of state bye laws. Thus, as per the customary practice adopted by the Appropriate Authorities, the terms 'built up area' and 'FAR/FSI' were used interchangeable. That even insofar as the terms 'built up area' and 'covered area' in different state bye laws is concerned; differing definitions are given. At this point, the Petitioner submits, that it may also be relevant to look at some of the definitions of 'built up area' and 'covered area' contained in various state bye laws:

A copy of relevant extracts of the various Development Control Rules dated Nil Annexed hereto and marked as ANNEXURE P-4 (At page 112 to 176).

It is evident that there was no uniformity in the definition of the term 'built up area' or 'covered area' and the areas required to be excluded from the built up/covered area have been defined with great detail in some states, while in others they have been described in a generic manner. For instance, the areas excluded from the built up area for construction projects in the state of Gujarat has been defined with measurements for certain portions of the building whereas in the state of Bihar the excluded areas include certain local terms such as chajja and chabutra to define

the non-built up area portions in a construction project. Further in the state of Kerala, the excluded areas are very limited and in the state of Madhya Pradesh, the covered area beyond the ground floor is extremely vague and unclear.

14. It is submitted that many of the ECs granted from 2006 -2011 in fact used the term 'built up area' and 'FAR' interchangeably. The relevant portions of some of these ECs granted by the MoEF are extracted below:

Project proponent	Relevant portion of the EC
M/s Chandigarh Housing Board	<i>"construction of General Housing Scheme at Sector-63, Chandigarh by M/s Chandigarh Housing Board".....It is inter alia noted that the project involves construction of a general housing scheme at Sector 63, Chandigarh. The total plot area is 1,71,9990.1 sq.m. The total built up (FAR) area proposed is 1,94,045.3 sq.m."</i>
M/s Ascot Hotels & Resorts Ltd. for construction of outlet Mall and Service Apartment complex at R-75, Sector-1, IMT, Manesar, Gurgaon, Haryana	<i>"The project proponent is proposing to construct outlet Mall R-75, Sector-1 IMT Manesar, Gurgaon, Haryana at cost of Rs. 12900 Lakh. The project will comprise construction of building with 2 basement, ground floor, plus seven floors. Total plot area is 16,000.0 sq. m. The total permissible FSI as indicated is 24,120.0 sq m."</i>

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<p>M/s Triveni Infrastructure Development Company Ltd.</p>	<p>"For construction of group housing project at Triveni Galaxy at Sector 78, Faridabad, Haryana- -...The project proponent is proposing to construct a group housing project Triveni Galaxy at sector-78, Faridabad, Haryana at cost of Rs. 312.5 crore. The project will comprise construction of 2372 flats and 423 EWS units. Total plot area is 1,51,125.57 sq.m. The total 'built up area' (permissible FSI) as indicated in 2,64,469.74 sq.m."</p>
<p>M/s Espire Infrastructure Corporation Ltd.:</p>	<p>"The project proponent is proposing to construct a group housing colony at sector 37, village Palla, Faridabad, Haryana at a cost of Rs. 55.0 crore. The project will comprise construction of 4 towers (G+17 Floors &amp; G+14 Floors) with 224 residential units and 44 EWS units. Total plot area is 19396.17sq.m. The total 'built up area' (permissible FAR) as indicated in 33943.30 sq. m."</p>
<p>M/s Ultra Home Construction Pvt. Ltd</p>	<p>"The project proponent is proposing to construct a commercial complex at Tower J. IMT Manesar, Gurgaon, Haryana at a cost of Rs. 180 crore. The group housing project will comprise construction of commercial complex with ground plus seven floors. Total plot area is 6804 sqm. The total 'built up area' (permissible FAR) as indicated in 27216 sqm."</p>
<p>M/s Nirmal Lifestyle (India) Pvt. Ltd. For</p>	<p>"...The Total Plot area is 80371.9 sqm. Total 'built up area' as per FSI is 1,52,710.0 sq.m</p>

<p>proposed project at City of Joya at CTS Nos. 661/1 &amp; 661/15 (pt) and village Mulund(W), Mumbai, Maharashtra</p>	
<p>M/s Kakade Construction Co. Pvt. Ltd. for proposed Township project at Kakade City at Karvenagar, Hingane, Taluqa Haveli, Distt. Pune, Maharashtra</p>	<p><i>"...the total plot area is 95,022 sq.m. The total permissible 'built up area' (FSI) as indicated is 1,20,078 sq.m."</i></p>

15. Thus, it is clear that 'built up area', as a matter of general practice, was calculated on the basis of FAR/FSI for the purpose of granting environmental clearance by the appropriate authority. In fact, as extracted above, in a large number of cases, the term 'permissible FAR' and the term "built up area" was used interchangeably. The rationale behind this practice emerges from the fact that the EIA Notification 2006 and subsequent amendments thereto failed to define the term "built up area" and the measure of 'built up area' was basis upon which the appropriate authorities would determine whether the notification

"84. Before putting down the records of the case, a few observations may not be out of place. The EIA notification dated September 14, 2016 urgently calls for a close second look by the concerned authorities. The projects/activities under items 8(a) and 8(b) of the schedule to the notification need to be described with greater precision and clarity and the definition of 'built up area' with facilities open to the sky needs to be freed from its present ambiguity and vagueness. The question of application of the general condition to the projects/activities listed in the schedule also needs to be put beyond debate or dispute."

**"2010 judgment":**

17. On 3<sup>rd</sup> December, 2010 a three judge bench of this Hon'ble Court passed a judgment in I.A. No. 2609-2610 of 2009 in Writ Petition (Civil) No. 202 of 1995 titled 'In Re: construction of park at Greater Noida near Okhla Bird Sanctuary' (2011) 1 SCC 744 stating at para 79 of the judgment that (hereinafter referred to as

**2010 JUDGMENT - ITS EFFECT THEREOF**

16. That over 5000 projects all over India, have been given ECs by the MOEF, SEIAA and other municipal authorities on the basis of 'built up area' calculated on the basis of state bye laws from the period 2006-2011.

bye laws of the particular state concerned.  
turned to the definition of "built up area" contained in building appropriate authorities for more than half a decade, i.e. till 2011 was attracted to the parties concerned. Therefore, the

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18. The facts of the case in the 2010 judgment pertained to the development of a park by the Govt. of Uttar Pradesh where environmental clearance was not obtained and work had already started without obtaining EC. The reason stated by the Govt. of Uttar Pradesh through the SEIAA of Uttar Pradesh was that they were exempted from obtaining EC even though the work involved the cutting of a large number of trees. The Govt. of Uttar Pradesh clearly stated that the project had built-up area of less than 20,000 square meters and 'built up area' is calculated on the basis of building bye-laws hence the project does not require environmental clearance. (*para 36 & 37 of the judgment*). The facts emerging from the 2010 judgment evidence that the MOEF, SEIAA UP and all other SEIAA's of the country were practicing and had adopted the definition of built-up area from their local bye laws.
19. The observation extracted above triggered the need the need to have clear, unambiguous definition of the term "built up area". In view of the same, the EIA Notification 2006 needed to be re-looked and necessary modification was required.
20. That the aforesaid decision was discussed at various levels within the Ministry and ultimately a decision was passed to introduce a notification to provide a better definition to the term "built up area" appearing in the EIA Notification 2006.

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A copy of documents received by the Petitioner under the Right to Information Act, 2006 dated Nil is annexed hereto and marked as ANNEXURE P-5 (At page 179 to 210).

### 2011 NOTIFICATION

21. In view of the 2010 judgment of the Hon'ble Supreme Court in *Re: construction of park at Greater Noida near Okhla Bird Sanctuary*, the provisions of EIA Notification 2006 relating to 'built up area' needed to be re-looked. In order to cure the ambiguity in the EIA Notification 2006, the MoEF substituted the original entry of 'built up area for covered area' with "built up area' or covered area on all floors put together including basements and other service areas, which are proposed in the building/construction project."
22. A bare perusal of the internal communication of the MoEF corroborate that the 2011 Notification was issued as a follow up to the Judgment in *Okhla Bird Sanctuary*. Relevant extracts of the internal communication are herein-below:

*"On this file, we are dealing with the proposal regarding amendment to EIA Notification, 2006 as a follow up of the above cited order dated 3.12.2010 of the Hon'ble Supreme Court in the matter related to Noida Park. Notings from page 1-5/n-ante in this regard may kindly be seen. As may be seen that the Hon'ble Supreme Court in the said order have observed as under:*

...

2. *From the above, it may be concluded that the clarifications need to be built into the EIA Notification*

*with respect to the following:*

*(i) Clarification about built up area / built up area for covered constructions;*

*(ii) Clarification regarding activity area in case of facilities open to the sky;*

..."

23. It is most pertinent to note that the 2011 Notification did not state that the changes made to the definition of the term 'built up area' will have retrospective effect. As such, it can safely be assumed that the Respondent No.1 MoEF intended to give prospective effect to the notification.

A copy of notification dated 04.04.2011 issued by the Ministry of Environment and Forests is annexed hereto and marked as ANNEXURE P-6 (At page 211 to 214).

24. On 07.07.2017 the MoEF issued a clarification Notification (hereinafter referred to as "**2017 Notification**"). This clarification was issued in response to a reference dated 03.04.2017 filed by Confederation of Real Estates Developers Association of India (hereinafter referred to as "**CREDAI**") seeking clarification on the date of applicability of the 2011 Notification as far as definition of 'built up area' was concerned. By way of issuance of a clarificatory notification, the MoEF made it clear that the definition of "built up area" provided in 2011 Notification shall apply prospectively. The 2017 Notification also stated that the projects, which were not covered in the period of the said notifications should be assessed as per the definition of 'built up

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area' provided in the building bye-laws or Development Control Regulation (hereinafter referred to as '**DCR**') of the local authorities in the States.

A copy of the office memorandum dated 07.07.2011 issued by the MoEF is annexed hereto and marked as **ANNEXURE P-7** (At page 25 to —).

### **2018 JUDGMENT IN GOEL GANGA**

25. That in August 2018 in Civil Appeal No. 10854 of 2016 titled Goel Ganga Developers India Pvt Limited v. Union of India, a two judge Bench of this Hon'ble Court observed that the definition given to "built up area" under the EIA Notification 2006 referred to all constructed area which is covered and not open to the sky (hereinafter referred to as "**2018 Judgment**"). It was further stated that the 2011 Notification clearly defined 'built up area' as all constructed area including basement and service area without any exception. It was also held that the definition of "built up area" in the EIA Notification 2006 was absolutely clear and needed no clarification. It was further held and stated that the concept of 'built up area' as understood in building bye laws or DCR could not be introduced into the EIA Notification 2006. That the clarification issued by the MoEF vide its 2017 Notification, which provided that the notification of 2011 will be effective only prospectively, was struck down. The Hon'ble Court pointed out that the concept of built-up area as defined in the building bye laws or development control rules could not be introduced into

the EIA Notification 2006, and thus quashed the Office Memorandum dated 07.07.2017. It is further submitted that the Union of India represented by the MoEF, failed to impress upon this Hon'ble Court, the prevalent practice during 2006-2011, of adopting the definition of 'built up area' from local building bye laws by the appropriate authorities.

26. That the 2018 judgment has caused an anomalous situation for the project developer community. This is pertaining to the deemed violation as a result of the judgment in respect of ECs for under construction projects granted prior to 2011 Notification, given that
- a) any such deemed violations were neither intended nor highlighted in course of implementation of various projects
  - b) details regarding FSI as well as Non FSI have been disclosed as part of the application for grant of EC, even prior to 2011
  - c) details of environmental impact has been fully disclosed and remains the same of the project irrespective of the manner of calculation of BUA
  - d) there is no mala fide intent on the part of the project developers to withhold any information in respect of environmental impact of the project.
27. It is most humbly submitted that the basis on which Goel Ganga judgment proceeds is completely different from the observation rendered by a three judge bench of this Hon'ble Court in *Re: Okhla Bird Sanctuary*. It was only in wake of the observation that

the term 'built up area' is urgently called for a close second look by the concerned authorities, did the MoEF act to bring necessary insertion of the definition of 'built up area' as it stands today. Infact, a bare perusal of the internal notes of the MoEF makes it abundantly clear that the said addition was necessitated by the aforesaid observation. Hence, it is most humbly submitted that the 2018 judgment proceeds on an erroneous premise that the term "built up area" was absolutely clear and did not require a clarification.

28. That although the judgment in Goel Ganga records that the project proponent argued that 2011 notification is prospective in nature, no concrete finding has been rendered on it. For the sake of clarity, the Petitioner has reproduced the paragraph dealing with the aforesaid issue:

*"19. Learned senior counsel appearing for the project proponent has submitted that this notification is only prospective in nature and, therefore, will not affect the notification of 2006. On the other hand, it has been submitted by the original applicant that this is only a clarificatory notification and as such it will come into force with effect from 2006. In our opinion, it is not necessary to decide whether this notification is clarificatory or is in substitution to the original notification of 2006."*

Thus, as on today, the question still remains open as to whether the 2011 notification is prospective or not. It is humbly submitted that the MoEF had intended it to be prospective. It was for this reason that MoEF had issued clarificatory notification dated

07.07.2017 in response to a query put forth by CREDAL. However, the judgment in Goel Ganga has quashed the said notification even though the same was not under challenge. Be that as it may, this Hon'ble Court has laid down in a score of judgments that notifications/circulars issued by the Government are prospective in nature.

29. Insofar as applicability of the 2018 judgment to those project proponents who were granted EC on the basis of state bye laws are considered, the Petitioner submits that the principle laid down by Hon'ble Court in (2010) 5 SCC 388 ought to be followed. Relevant paragraphs are extracted below:

*"34. It is pertinent to note that while interpreting the judgment, public interest should be taken into consideration. In Managing Director, ECIL, Hyderabad & Ors. v. B. Karunakar & Ors. (1993) 4 SCC 727, this Court considered the factors which are to be taken into consideration while giving prospective operation to a judgment. When judicial discretion has been exercised to establish a new norm, the question emerges whether it would be applied retrospectively to the past transactions or prospectively to the transactions in future only. This process is limited not only to common law traditions, but exists in all jurisdictions. It is, therefore, for the Court to decide, on a balance of all relevant considerations, whether a decision which unsettles the previous position of law should be applied retrospectively or not. The Court would look into the justifiable reliance on the previous position by the Administration; ability to effectuate the new rule adopted in the overruling case without doing injustice, whether its operation is likely to burden the administration*

*of justice substantially or would retard the purpose. All these factors are to be taken into account while determining whether a judgment is prospective or otherwise.*

*35. The Court would adopt either the retroactive or non-retroactive effect of a decision after evaluating the merits and demerits of a particular case by looking to the prior history of the rule in question, its purpose and effect and whether retroactive operation will accelerate or retard the object of the judgment. The purpose of the old rule, the mischief sought to be prevented by the judgment and the public interest are equally germane and should be taken into account in deciding whether the judgment has prospective or retrospective operation.*

*36. It is well known that the courts do make the law to prevent administrative chaos and to meet ends of justice. Taking into consideration all these factors, this Court refuses to interpret the 1996 judgment in a manner which would give it a retrospective effect. ..."*

30. It is submitted that there are more than 5000 cases in India which have been granted EC on the basis of the definition of 'built up area' under the state bye laws. All these projects will now be in violation of the EIA Notification 2006. It is a known fact that construction projects generate a lot of work for unskilled labour and the entire business of the industry will come to a screeching halt if it has to pay the price of Respondent's callous approach when issuing executive instructions.

31. That owing to the aforesaid ambiguity, the MoEF has been taking an inconsistent and contradictory stand regarding the term "built up area" while granting EC to various projects across India under the EIA Notification 2006, thereby leading to uncertainty and prejudicing the fundamental right of the Petitioners to carry out their trade and business guaranteed under Article 19 of the Constitution of India. Furthermore, the inherently vague and ambiguous phraseology of the term "built up area" has caused the authorities to apply the law inconsistently, thereby falling foul of Articles 14 of the Constitution of India.
32. It is in this conspectus that the Petitioners herein approach this Hon'ble Court under its extraordinary jurisdiction under Article 32 of the Constitution of India.
33. It is submitted that the entire construction industry is already suffering owing to unpredictable market conditions. That the arbitrary and inconsistent interpretation given to the term "built up area" by the appropriate authorities will spell a death knell for the Indian construction industry with the consumer bearing the eventual brunt.
34. The Petitioner prefers the present Petition on the following grounds which are taken without prejudice to each other:

**GROUND**

- A. Because the term 'built-up area' has not been defined under the EIA Notification 2006. A phrase having been introduced

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by virtue of a Notification/statute ought to be defined and the definition *prima facie* must determine the application of the phrase. It is most respectfully submitted that Column 5 of item 8(a) of the EIA Notification 2006 only states 'built-up area for covered construction; in the case of facilities open to the sky, it will be the activity area'. A plain and literal reading of the said sentence leads to ambiguity and uncertainty with regard to actual meaning and/scope of the term 'built-up area'. The ambiguity in the definition arises since the word *for* is not a compelling word to show that the intention of the original EIA Notification, 2006 was to include the entire construction area at the time of referring to 'built-up area'. It is noteworthy that on the basis of the built up area, the projects listed under item 8 of the schedule to the 2006 notification were given exemption from obligation to conduct public consultation and scoping.

- B. Because in the case of *Kartar Singh v. State of Punjab*, (1994) 3 SCC 569, the Supreme Court explained that,

*"130. It is the basic principle of legal jurisprudence that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. It is insisted or emphasized that laws should give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning."*

- C. Because owing to the passage of time the term 'built up

area' have come to be understood in terms of the state bye laws. It is most respectfully submitted that in absence of a definition of the term 'built-up area' in the EIA Notification 2006, the same was calculated and/interpreted in consonance with the state bye-laws to fill in the vacuum until the 2011 Notification came into effect. This was how the whole construction industry and the Appropriate Authorities including MoEF had understood and proceeded with respect to granting ECs'. Therefore, in view of its usage over a considerable period of time, the term 'built-up area' started taking the shape of customary practice in the entire construction industry. Such practice has stood the test of time and has led to no environmental damage thus far. Any other interpretation will defeat the very purpose of building and construction projects and render it ineffective, leading to grave injustice to legitimate acts of the project proponents and to complete uncertainty and financial losses..

- D. Because prior to the 2011 Notification, the description of 'built up area' under the original EIA Notification 2006 was limited to covered construction, while in cases of facilities open to the sky it would be the activity area. However, there was guidance available as to the meaning of the term 'built up area' under the relevant state bye laws, and the practice adopted by the appropriate authorities was to interpret 'built up area' for the purpose of granting ECs in consonance with

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the applicable state bye laws. That most of the state-byelaws calculate 'built up area' on the basis of Floor Space Index (FSI). It is submitted that the appropriate authorities were granting ECs on the basis of FSI. The relevant portions of some of these ECs granted by the MoEF are extracted below:

Project proponent	Relevant portion of the EC
M/s Chandigarh Housing Board	<i>"construction of General Housing Scheme at Sector-63, Chandigarh by M/s Chandigarh Housing Board"-.....It is inter alia noted that the project involves construction of a general housing scheme at Sector 63 Chandigarh. The total plot area is 1,71,9990.1 sq.m. The total built up (FAR) area proposed is 1,94,045.3 sq.m."</i>
M/s Ascot Hotels & Resorts Ltd. for construction of outlet Mall and Service Apartment complex at R-75, Sector-1, IMT Manesar, Gurgaon, Haryana	<i>"The project proponent is proposing to construct outlet Mall R-75, Sector-1 IMT Manesar, Gurgaon, Haryana at cost of Rs. 12900 Lakh. The project will comprise construction of building with 2 basement, ground floor, plus seven floors. Total plot area is 16,000.0 sq. m. The total permissible FSI as indicated is 24,120.0 sq m."</i>
M/s Triveni Infrastructure	<i>"For construction of group housing project at Triveni Galaxy at Sector 78, Faridabad Haryana- -....The project proponent is</i>

<p>Development Company Ltd.</p>	<p>proposing to construct a group housing project Triveni Galaxy at sector-78, Faridabad, Haryana at cost of Rs. 312.5 crore. The project will comprise construction of 2372 flats and 423 EWS units. Total plot area is 1,51,125.57 sq.m. The total 'built up area' (permissible FSI) as indicated in 2,64,469.74 sq.m."</p>
<p>M/s Espire Infrastructure Corporation Ltd.:</p>	<p>"The project proponent is proposing to construct a group housing colony at sector-37, village Palla, Faridabad, Haryana at a cost of Rs. 55.0 crore. The project will comprise construction of 4 towers (G+17 Floors &amp; G+14Floors) with 224 residential units and 44 EWS units. Total plot area is 19396.17sq.m. The total 'built up area' (permissible FAR) as indicated in 33943.30 sq. m."</p>
<p>M/s Ultra Home Construction Pvt. Ltd</p>	<p>"The project proponent is proposing to construct a commercial complex at Tower IMT Manesar, Gurgaon, Haryana at a cost of Rs. 180 crore. The group housing project will comprise construction of commercial complex with ground plus seven floors. Total plot area is 6804 sqm. The total 'built up area' (permissible FAR) as indicated in 27216 sqm."</p>
<p>M/s Nirmal Lifestyle (India) Pvt. Ltd. For proposed project at City of Joya at CTS</p>	<p>"...The Total Plot area is 80371.9 sqm. Total 'built up area' as per FSI is 1,52,710.0 sq.m.</p>

Nos. 661/1 & 661/15 (pt) and village Mulund(W), Mumbai, Maharashtra	
M/s Kakade Construction Co. Pvt. Ltd. for proposed Township project at Kakade City at Karvenagar, Hingane, Taluqa Haveli, Distt. Pune, Maharashtra	<i>"... the total plot area is 95,022 sq.m. The total permissible 'built up area' (FSI) as indicated is 1,20,078 sq.m."</i>

Therefore, from 14.09.2006 till 04.04.2011, the term 'permissible FSI/FAR' was used interchangeably with the term 'built up area' by the appropriate authorities and it was on this basis that the ECs were granted to project proponents all over India.

- E. Because the 2010 Judgment observed the ambiguity in the term 'built-up area' in the EIA Notification 2006 and expressed the need for defining the same thereby holding *'The EIA notification dated September 14, 2006 urgently calls for a close second look by the concerned authorities.'*

*The projects/activities under items 8(a) and 8(b) of the schedule to the notification need to be described with greater precision and clarity and the definition of built-up area with facilities open to the sky needs to be freed from its present ambiguity and vagueness.* It is submitted that in compliance with the direction given by the Hon'ble Supreme Court in the 2010 Judgment the MoEF brought into effect the 2011 Notification which contained a clear definition of the term 'built-up area' stating that *"the built-up area for the purpose of this Notification is defined as the built up area or covered area on all floors put together including basements and other service areas, which are proposed in the building/construction project."*

- F. Because even the facts recorded in the 2010 Judgment reflect the general practice adopted by the appropriate authorities of interpreting 'built up area' in consonance with the state bye laws. The 2010 Judgment pertained to a project undertaken by the Govt. of Uttar Pradesh to develop a recreational park at NOIDA. The project involved massive construction inter alia including dedicatory columns, commemorative plaza, national memorial, plinth with sculptures, larger than life statues etc., and was undertaken without any prior environmental clearance as required under the EIA Notification 2006. When an issue was raised with respect to the project being undertaken without prior

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environmental clearance, the stand taken by the SEIAA UP was that the built up area was less than 20,000 square meters and the EIA Notification 2006 would not be applicable. In submitting so, the SEIAA UP had calculated the 'built up area' on the basis of state bye-laws. Furthermore, during the course of the proceedings of the 2010 Judgment, the MoEF also took the unequivocal stand that the project in question did not require prior environmental clearance (*paras 38-49*). As was noted in para 42 of the 2010 Judgment:

*'The built-up area has been calculated by the state of Uttar Pradesh on the basis of its building bye-laws.'*

*"...The MoEF, however reiterated its stand in very definite and unequivocal terms that the project in question did not fall within the ambit of the EIA Notification 2006 and no environmental clearance was required for such kind of projects. The stand of the MoEF was based on the premise that the area of the project (33.43ha) was less than 50ha and its built up area (9542sq m) was less than 20,000 sq m....."*

The aforesaid is an example of the manner in which the different states' SEIAA, as well as the MoEF, were routinely calculating 'built up area' in consonance with state bye laws while granted environmental clearance prior to 04.04.2011.

- G. Because the EIA Notification 2011 was introduced by the MoEF specifically because the 2010 Judgment had urged the MoEF to take a close second look at the term "*built up*

area' with facilities open to the sky' appearing in the EIA Notification, 2006 and to free it from its ambiguity and vagueness. A bare perusal of the internal communication of the Respondent MoEF clearly shows that in view of the 2010 judgment of the Hon'ble Supreme Court in *Re: construction of park at Greater Noida near Okhla Bird Sanctuary*, the provisions of EIA Notification 2006 relating to 'built up area' needed to be re-looked. Relevant extracts of the internal communication are herein-below:

*"On this file, we are dealing with the proposal regarding amendment to EIA Notification, 2006 as a follow up of the above cited order dated 3.12.2010 of the Hon'ble Supreme Court in the matter related to Noida Park. Notings from page 1-5/n-ante in this regard may kindly be seen. As may be seen that the Hon'ble Supreme Court in the said order have observed as under:*

**2. From the above, it may be concluded that the clarifications need to be built into the EIA Notification with respect to the following:**

- (i) Clarification about built up area / built up area for covered constructions;*
- (ii) Clarification regarding activity area in case of facilities open to the sky;*

H. Because the 2010 Judgment was made earlier in time and was delivered by a Bench comprising of three judges. It contained the following crucial observation in para 79:

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*"Before putting down the records of the case a few observations may not be out of place. The EIA notification dated September 14, 2016 urgently calls for a close second look by the concerned authorities. The projects/ activities under items 8(a) and 8(b) of the schedule to the notification need to be described with greater precision and clarity and the definition of 'built up area' with facilities open to the sky needs to be freed from its present ambiguity and vagueness. The question of application of the general condition to the projects/activities listed in the schedule also needs to be put beyond debate or dispute."*

As opposed thereto, the judgment in Goel Ganga was rendered by a two judge Bench, eight years later, only in 2018. The primary finding of the 2018 judgment was contained in para 19 stated '*as held by us above the notification of 2006 with regard to "built up area" was absolutely clear and needed no clarification.*' That such a finding could not have been made without taking into consideration the observations contained in the 2010 Judgment. The 2018 judgment does not even refer to the 2010 Judgment and the observations contained therein.

- I. Because in *Okhla Bird Sanctuary* this Hon'ble Court had adjudicated upon rival contentions regarding the computation of built up area and arrived at the conclusion that the term required greater precision and clarity. In the

case of *CIT v. Trilok Nath Mehrotra*, (1998) 2 SCC 289 it was held that,

"4. We do not find any conflict in the law laid down in the case of *R.M. Chidambaram Pillai* [(1977) 1 SCC 431 : 1977 SCC (Tax) 188 : (1977) 106 ITR 292] with the law laid down in the earlier two cases. The decision in the case of *Raj Kumar Singh Hukam Chandji* [(1970) 2 SCC 436 : (1970) 78 ITR 33] was rendered by a Bench of three Judges. Therefore, even assuming that there was a conflict between that decision and the decision rendered in *Chidambaram Pillai* case [(1977) 1 SCC 431 : 1977 SCC (Tax) 188 : (1977) 106 ITR 292] which was rendered by a Bench of two Judges, the decision of the larger Bench will prevail."

This Hon'ble Court has further ruled in the case of *Tribhuvandas Purshottamdas Thakur v. Ratilal Motilal Patel*, (1968) 1 SCR 455,

"We may refer to the observations made by Venkatarama Aiyar, J., in *Jaisri Sahu v. Rajdewan Dubey* [(1962) 2 SCR 558 at pp. 567-69] and the cases referred to therein. If decisions of the same or a superior court are ignored, even though directly applicable, by a Judge in deciding a case arising before him, on the view that every Judge is entitled to take such view as he chooses of the question of law arising before him as Venkatarama Aiyar, J., observed, the "law will be bereft of all its utility if it should be thrown into a state of uncertainty by reason of conflicting decisions"

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- J. Because the definition of the term 'built-up area' ought to be construed prospectively under the doctrine of "prospective overruling". It is most respectfully submitted that the application of the 2011 Notification to projects granted ECs between 14.09.2006 - 04.04.2011 or to those projects which were exempted from an EC prior to the 2011 Notification; shall oppress the vested rights of such project proponents, create new disabilities or obligations or impose new duties in respect of constructions already completed. The same shall cause chaos, disruption and disarray in the entire construction industry.
- K. Because the 2011 Notification was issued by way of amendment to the EIA Notification 2006 and would only apply prospectively. This is clear from para 5 of the 2011 Notification which reads as follows: "*Now therefore in exercise of the powers conferred by sub section (1) and clause (v) of sub-section 2 of section 3 of the said Environment (Protection) Act read with clause (d) of sub-rule (3) of rule 5 of the said Environment (Protection) Rules, the Central Government hereby makes the following amendments in the said Notification, namely-....*"
- L. FOR THAT it is settled law that unless there is a contrary intention, a legislation must not applied prospectively. In the case of *CIT v. Vatika Township (P) Ltd.*, (2015) 1 SCC 1, ("Vatika Township") the Apex Court had noted that a

retrospective law contravenes the principle that a legislation which governs the conduct of an individual should be regulated by existing law and that every human being is entitled to arrange his affairs by relying on the current law and should not find that his plans have been retrospectively upset. The prohibition on retrospectivity is based on the cardinal principle of fairness and equity. In *Vatika Township* it was also held that,

*"legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation."*

It is submitted that in the present case, the 2011 Notification was a result of the judgment passed by this Hon'ble Court in Okhla, and thus the same cannot have anything but prospective application.

M. Because insofar as the term 'built up area' is concerned there are differing definitions given by various state bye laws. Some state bye laws do not define 'built up area', but instead contain a definition of 'covered area'. This in turn was used to calculate the 'built up area' by the Appropriate Authorities for the purpose of granting ECs. Even the definition given to 'covered area' under different state bye

laws are inconsistent. There is no definition of 'built up area' in the state bye laws which has pan India applicability. Herein extracted below are some of the definitions given to 'built up area' and covered under various state bye laws:

- (i). **Gujarat: Built up area** means the area covered by a building on all floors including cantilevered portion, if any, but except the areas specifically excluded as under:
  - (a). Parking spaces without any enclosures and partitions of any kind, with clear height of 2.4 metres, and in case of slabs with beams height should not exceed 2.8 metres
  - (b). Spaces of hollow plinth with maximum clear height of 2.8 metres in addition to depth of beams as per structural requirements in residential buildings only (not even in mixed development) at ground level without any enclosures/walls and partitions in any form excluding shear walls as per structural requirements
  - (c). Interior open spaces and ducts required under these Regulations subject to maximum 4 % of the built up area. Canopy and architectural projections not to be used for any other purpose
  - (d). Basement exclusively used for required parking with maximum clear height of 2.6 metres excluding beams
  - (e). Security cabin upto 4 square metres

- (f). Weather shed upto 0.60 metre width
- (g). Stair case with maximum intermediate landing width equal to the width of stair, maximum landing width at floor level shall be twice the width of stair
- (h). Lift, lift well with lift cabin, stair cabin, lift landing of lift well and water tank
- (i). Open air space/ chowk required under this regulation in walled city and gamtal
- (j). Electric room as specified by S.E.C or G.E.B

(ii). **Madhya Pradesh: Covered Area** means the area of land covered by the plinth of the building at the ground floor level and shall be counted as the ground coverage. This shall exclude the area covered by projections at slab level and area of the plinth not covered by roof at top. Cantilevered projection up to an extend of one third of the Marginal Open Space shall be permissible on the upper slab level with a clear height for vehicular/pedestrian movement. These projections cannot be made at height below 2.5 metres from the ground level. This projection shall not construe to be covered area. Areas covered on the second and third floor levels as cantilever projection with at least 5.5 metres clear space below for movement, but not within the setback/marginal open space, shall not be counted in covered area. All areas in the building shall be counted in covered areas

except for service ducts, garage on ground floor and lift wells.

(iii). **Bihar: Covered area** means ground area covered immediately above the plinth level covered by the building but does not include the space covered by

- (a) Garden, rockery, well and well structures, plant, nursery, waterproof, surface water tanks, swimming pool (if uncovered) platform round a tree, tank, fountain, bench, chabutra with open top and unenclosed on sides by walls and the like
- (b) Drainage, culvert, conduit, catch pit, gully pit, chamber, gutter and the like; and
- (c) Compound wall, gate, slide, swing areas, covered by chhajja and the like

(iv). **Kerala: Built up area** means the covered area at any floor, covered by roof other than cornice, roof or weather shades permissible;

Furthermore, it can be clearly seen that all of the afore-mentioned definitions only take into account the FSI area, while specifically excluding the non FSI area. Therefore, the Appropriate Authorities used the terms built up area and FSI/FAR area interchangeably until the introduction of the 2011 Notification.

N. Because prior to 04.04.2011, the widely followed practice was for the project proponents/ applicants to specify the FSI area as the built-up area, and for the appropriate authority to grant the EC after noting such FSI area as the built-up area in the EC. It is pertinent to note that even though most of the applications made prior to the 2011 notification specified 'built up area' to be the same as FSI, due to the practice followed, the applications submitted nonetheless contained:

- a) disclosures, details and or designs and drawings of non FSI area to the relevant authority
- b) Details of the entire usable area to the relevant authority
- c) disclosures and details of environmental impact of the project such as water consumption, sewage, energy consumption, pollution generated etc.

All these factors would be independent of the manner in which 'built up area' was considered, and remained the same. However, notwithstanding the disclosure of the entire area, ECs were routinely granted by the appropriate authorities with reference only to the FSI area specified in the application as the built-up area.

O. It is submitted that the 2011 Notification was an amendment of the EIA Notification 2006 and substituted the term "*built up for covered area*" with "*built up area or covered area on all floors put together including basements and other service*

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areas, which are proposed in the building/construction project."

In the 2018 Judgment, the two judge Bench of this Hon'ble Court did not go into the question of whether the 2011 Notification is a clarification or a substitution of the EIA Notification 2006. The relevant paragraph – is extracted below:

*"it is not at all necessary to decide whether this notification is clarificatory or is in substitution of the original notification of 2006. We say this because as held by us above, there is no ambiguity with regard to the definition of "built up area" even under the notification of 2006 and it covers all constructed area open to the sky."*

However, the question whether the 2011 notification is to be construed as a substitution of the original entry or is merely a clarification would have to be considered by this Hon'ble Court. The said question, though raised in the 2018 case, this Hon'ble Court refrained to answer the same on the ground that the EIA Notification 2006 itself contained the definition of the term built up area. As such, the issue of whether the 2011 Notification was a clarification or a substitution has been left open. This has caused confusion for all stakeholders in the Indian construction sector. In view of the same, it is requested that this Hon'ble Court settles this question in order to end the confusion.

P. Because even though the ECs may have been granted by the appropriate authorities for the projects on the basis of 'FSI Area' for the purpose of calculating 'built up area' for the period between 2006-2011; the overall impact on the environment caused by the construction, including crucial factors such as water consumption, sewerage facilities, energy consumption, welfare of the people, road requirements, pollution generated etc., remains unchanged. This is notwithstanding the use of non-FSI Area of the projects for the calculation of the built up area. Therefore, so long as the overall environmental impact remains unchanged, merely due to the fact that non-FSI area while being disclosed, was not taken as a part of 'built up area' by the appropriate authorities while granting ECs prior to 2011, (due to the then general market understanding of the provisions of the 2006 notification), ought not to by itself trigger a violation of the EIA Notifications 2006 and ECs issued thereunder.

Q. Because from the years 2006-2011; i.e. prior to the introduction of the 2011 Notification, it was a common practice of the appropriate authorities to grant EC to project proponents on the basis of 'built up area' as defined in the state bye laws. That most of the state bye laws equated the terms 'built up area' and 'FSI' and many of the ECs granted used the terms 'built up area' and 'FSI' interchangeably.

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- R. Because the MoEF itself has itself issued various ECs while using the terms FSI and 'built up area' interchangeably. That prior to 2011, the authorities were not taking non-FSI area into account while calculating the 'built up area'.
- S. Because the rights granted to the Petitioners under Article 14 and 19(1)(g) of the Constitution of India have been infringed. It is most respectfully submitted that the application of the 2011 Notification to projects granted ECs between 14.09.2006 - 04.04.2011 or to those projects which were exempted from an EC prior to the 2011 Notification; shall oppress the vested rights of such project proponents, create new disabilities or obligations or impose new duties in respect of constructions already completed. Therefore, the Petitioners require equal protection of law with respect to their right practice the business of construction.
35. That the Petitioner has not approached any other court for the same or similar reliefs. The present Writ Petition is being filed bonafide and in the interest of justice.
36. Further, the Petitioner does not have any alternative and / or equal efficacious remedy in the circumstances explained above and is thus constrained to approach this Hon'ble Court under Article 32 of the Constitution of India.

PRAYER

It is, therefore, respectfully prayed that this Hon'ble Court may be pleased to:

- A. Issue writ in nature of mandamus and/or any writ declaring that definition of 'built up area' in the notification S.O. 695(E) dated 04.04.2011 issued by the MoEF shall be prospectively applicable only from 04.04.2011;
- B. Issue writ in nature of mandamus and/or any writ declaring that ECs'/Permissions granted under item 8 of the EIA Notification for the period 14.09.2006-04.04.2011 are legal and valid in so far as the reliance placed by the Appropriate Authorities on the state bye-laws for interpretation and calculation of built-up area is concerned;
- C. Issue writ in nature of mandamus and/or any writ declaring that the term 'built up area' in the EIA Notification dated 14.09.2006 is to be interpreted in accordance with state bye laws for the period 14.09.2006-04.04. 2011;
- D. Pass such other order or orders as are deemed fit and proper in the facts and circumstances of the case.

AND FOR THIS ACT OF KINDNESS THE PETITIONER AS IN DUTY BOUND SHALL EVER PRAY.

FILED BY

(E.C. AGRAWALA)  
ADVOCATE FOR THE PETITIONER

Drawn on: 22.12.2018  
Filed on: 02.01.2019  
New Delhi

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IN THE SUPREME COURT OF INDIA  
(CIVIL ORIGINAL JURISDICTION)

WRIT PETITION (C) NO. OF 2018.

IN THE MATTER OF:-

Builders' Association of India ... Petitioner

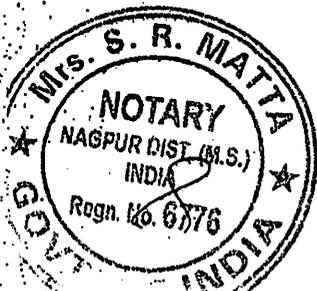
VERSUS

Union of India ... Respondent

AFFIDAVIT

I, Rajendra @ Nirmal Kumar S/o. Shankarrao Athawle aged about 59 years, having office at Milk Scheme Co-op Society GPO Square, Civil Lines, Nagpur- 440001 do hereby solemnly affirm and state as under:-

1. That I am the authorized representative of the Petitioner above named. I state that I am well conversant with the facts and circumstances of the case and as such I am fully competent to swear this affidavit.
2. That I have read and understood the contents of accompanying Synopsis and List of Dates consisting of 12 Pages (B to M) and Writ Petition consisting of Pages (1 to 43) and say that the facts stated therein are true and correct to best of my knowledge and belief.



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3. I state that the copies of the documents annexed to the Petition are true copies of their respective originals and correct to the best of the knowledge of the Petitioner.

Builder's Association of India

*Chhansu*

DEPONENT

VERIFICATION:

I the abovenamed deponent do hereby solemnly verify that the contents of the aforesaid affidavit are true and correct to the best of my knowledge and belief and nothing has been concealed there from.

Verified at Nagpur on this 22 day of December, 2018.

Builder's Association of India

*Chhansu*

DEPONENT

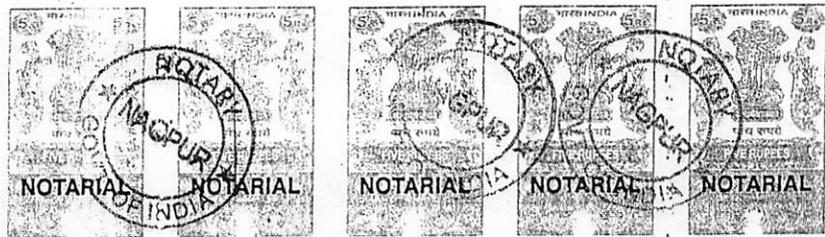
NOTARIAL REG.  
ENTRY NO. 10933  
DATE 22/12/18

Mrs. S. R. MATTA  
NOTARY  
NAGPUR DIST. (M.S.)  
INDIA  
Regn. No. 6776  
GOVT. OF INDIA

SWORN BEFORE ME ON THIS 22<sup>nd</sup> DAY OF Dec 2018  
BY SHRI Rajendra @ Nisamalkuma  
ADVOCATE  
Self

*S. R. Matta*

Advocate & Notary  
918-B, Clerk Town, Nagpur-4.



M.S.  
Regn. No. 6776  
GOVT. OF INDIA

TRUE COPY

*Bombhise*

ITEM NO.10

COURT NO.3

SECTION X

**S U P R E M E C O U R T O F I N D I A**  
**RECORD OF PROCEEDINGS**

Writ Petition(s)(Civil) No(s).24/2019

BUILDERS ASSOCIATION OF INDIA

Petitioner(s)

VERSUS

UNION OF INDIA

Respondent(s)

Date : 12-02-2019 This petition was called on for hearing today.

CORAM :

**HON'BLE MR. JUSTICE S.A. BOBDE**  
**HON'BLE MR. JUSTICE SANJAY KISHAN KAUL**  
**HON'BLE MR. JUSTICE DEEPAK GUPTA****For Petitioner(s)** Mr. Mukul Rohatgi, Sr. Adv.  
Mr. Mahesh Agarwal, Adv.  
Mr. Abhinav Agrawal, Adv.  
Mr. Himanshu Satija, Adv.  
Mr. E. C. Agrawala, AOR**For Respondent(s)****UPON hearing the counsel the Court made the following**  
**O R D E R**

The learned counsel appearing for the  
Petitioner seeks permission to withdraw this  
petition with liberty to avail appropriate remedy  
before the High Court.

The writ Petition is accordingly, dismissed as  
withdrawn with liberty as aforesaid.

Signature Not Verified  
Digitally signed by  
BALA PARVATHI  
Date: 2019.02.13  
11:15:31 IST  
Reason: 

**(B.Parvathi)**  
**Court Master****(Indu Kumari Pokhriyal)**  
**Assistant Registrar****TRUE COPY**

**ANNEXURE-A-7****REPORTABLE**

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
CIVIL APPEAL NO. 5016 OF 2016**

**MANTRI TECHZONE PVT. LTD.****... APPELLANTS****VERSUS****FORWARD FOUNDATION AND ORS.****... RESPONDENTS****WITH****CIVIL APPEAL NOS.8002-8003 OF 2016****CIVIL APPEAL NO.12326 OF 2016****CIVIL APPEAL NO.9227 OF 2016****CIVIL APPEAL NO.1343 OF 2017****CIVIL APPEAL NO.10995 OF 2016****CIVIL APPEAL NO.10993 OF 2016****CIVIL APPEAL NO.10994 OF 2016****CIVIL APPEAL NO.2246 OF 2018****CIVIL APPEAL NO.10992 OF 2016****CIVIL APPEAL NO.12157 OF 2016****CIVIL APPEAL NO.12152 OF 2016****CIVIL APPEAL NO.12156 OF 2016****CIVIL APPEAL NO.12158 OF 2016****CIVIL APPEAL NO.12160 OF 2016****CIVIL APPEAL NO.12159 OF 2016****TRUE COPY***Bombhise*

**CIVIL APPEAL NOS.4923-4924 OF 2017****CIVIL APPEAL NO.14966 OF 2017****J U D G M E N T****S.ABDUL NAZEER, J.**

1. These appeals have been preferred under Section 22 of the National Green Tribunal Act, 2010 (for brevity 'NGT Act') challenging the judgment and order dated 07.05.2015 and 04.05.2016 respectively passed by the Principal Bench of the National Green Tribunal, New Delhi (for short 'the Tribunal').

2. The appellants in Civil Appeal Nos. 5016 of 2016 and 8002-8003 of 2016 are respondent Nos. 9 and 10 in the Original Application No. 222 of 2014 (hereinafter referred to as 'the respondent Nos. 9 and 10'). The said Application was filed by respondent Nos.1 to 3 herein (hereinafter referred to as 'the applicants'). Respondent Nos. 4 to 7 in these appeals are the State of Karnataka and other authorities. They were arrayed as respondent Nos. 1 to 4 in the application. Respondent Nos. 12 and

13 herein were subsequently impleaded in the application (for short 'the impleaded respondents').

**3.** The State of Karnataka has filed Civil Appeal Nos. 4923-4924 of 2017, challenging the general condition and direction No.(1) contained in the order of the Tribunal dated 04.05.2016. The other appeals have been filed by different entities, who were not parties before the Tribunal challenging the order of the Tribunal dated 04.05.2016 insofar as it directs a buffer/green zone of 75 meters in respect of lakes, 50 meters in respect of primary Rajakaluves, 35 meters in case of secondary Rajakaluves and 25 meters in case of tertiary Rajakaluves with retrospective effect. According to them, they are adversely affected by the aforesaid condition in the impugned order.

**4.** The applicants filed O.A. No.222 of 2014 by contending that ecologically sensitive land was allotted by the Karnataka Industrial Area Development Board (for short 'the KIADB') to respondent Nos. 9 and 10 vide Notifications dated 23.04.2004 and 07.05.2004 respectively for setting up of Software Technology Park, Commercial and Residential complex, hotel and Multi Level Car Parks. The Master Plan formulated by the Bangalore Development Authority

(for short the 'BDA'), identifies the allotted land as 'Residential Sensitive', though the same land was identified in the Draft Master Plan as 'Protected Zone'. It was further contended that the Revenue Map in respect of properties as referred in the Land Lease Agreements has multiple Rajakaluves (Storm Water Drains). The development projects in question sit right on the catchment and wetland area which feeds the Rajakaluves, which in turn drains rain water into Bellandur Lake. The project will thus encroach two Rajakaluves of 1.38 acres and 1.23 acres each.

**5.** The Satellite Digital Images of the area from the year 2000 to 2012 show encroachment upon these Rajakaluves, as well as the manner in which they are covered by the construction. The State Level Expert Appraisal Committee (for short 'SEAC'), which was to assist the State Level Environment Impact Assessment Authority (for short 'SEIAA'), held its meetings on various dates to examine the project. It had required the appellant No.9 to submit a revised NOC from the Bangalore Water Supply and Sewerage Board (for short 'BWSSB') for the project in question. It was also observed that the project lies between the Bellandur Lake and the Agara Lake. Respondent No.9 was also directed to take protective

measures to spare the buffer zone around Rajakaluves and also to commit that no construction would be carried out in the buffer zone. In the meeting of 11.11.2011, it was recorded that the project proposes car parking facility for 14,438 cars in that environmentally sensitive area.

**6.** It was alleged that NOC was issued covering an area of 17,404 sq. mtrs. whereas the built up area, as noted by SEAC, is 13,50,454.98 sq. mtrs. Respondent No.9 obtained NOC from BWSSB by concealing material facts and by misrepresenting that NOC is required only for residential units which form a very minuscule part of the total project. Respondent No.9 had approached the Karnataka State Pollution Control Board (for short 'the KSPCB') for obtaining clearance, which was granted on 04.09.2012 subject to the fulfillment of the conditions stated in the consent order which included leaving the buffer zone all along the valley and towards the lake. It is further contended that the grant of consent by the KSPCB to respondent No.9 also contained a condition with regard to obtaining Environmental Clearance from the Competent Authority and no construction was to commence until such clearance was granted.

7. Applicants further contended that respondent No.9 violated the conditions and commenced construction of the project. There was also violation of the stipulations stated in the approval of SEAC in relation to buffer zone and construction over Rajakaluves. The construction had been commenced over the ecologically sensitive area of the lake catchment area and valley, with utter disregard to the statutory compliances. Referring to these blatant irregularities, the applicant submitted that the conversion of land from 'Protected Zone' to 'Residential Sensitive Area' is violative of the law. The project is right in the midst of a fragile wetland area which ought not to have been disturbed by the development activity. The fragile environment of the catchment area has been exposed to grave and irreparable damage. It has severely disturbed and damaged the Rajakaluves. Respondent Nos. 9 and 10 started to level the land by filling it with debris, thus causing damage to the drains. The conditions with regard to no-disturbance to the Storm Water Drains, natural valleys and buffer area in and around the Rajakaluves have been violated. It has in turn, affected the ground water table and bore wells which are the only source of water for thousands of households. Fishing and agriculture which depends

on Bellandur Lake are also severely affected. The construction over the wetland between the two lakes is in violation of Wetlands (Conservation of Management) Rules, 2010 (for short 'Rules of 2010').

**8.** It was submitted that SEIAA in its meeting dated 29.09.2012, decided to close the file pertaining to respondent No. 10 due to non-submission of requisite information and the application thereof was rejected in November, 2012. Despite the rejection, respondent No.10 commenced construction on the project in full swing.

**9.** The applicants also relied upon the findings of the Joint Legislative Committee, constituted under the Chairmanship of Shri A.T. Ramaswamy in the month of July 2005, which stated that there were 262 water bodies in the Bangalore city in 1961 which drastically came down because of trespass and encroachments. It was also affirmed that about 840 kms. of Rajakaluves have been encroached upon in several places and have become sewage channels. The applicants also relied on the Report of the Committee under the Chairmanship of Hon'ble Mr. Justice N.K. Patil suggesting immediate remedial action in order to remove encroachments on the lake area and the Rajakaluves and

preservation of the lakes in and around Bangalore city. It was further contended that other Expert Committees, including Lakshman Rau Expert Committee had also submitted proposals for preservation, restoration or otherwise of the existing tanks in Bangalore Metropolitan Area which recommended to maintain good water surface in Bellandur tank and to ensure that the water in the tank is not polluted. The Central Government in August 2013 had issued an advisory on conservation and restoration of water bodies in the urban areas. The applicants claim to have obtained monitoring report of the project by respondent No.5, Ministry of Environment and Forests, through RTI on 21.08.2013. The report dated 14.08.2013 revealed that the project proponents are in clear breach of their undertaking to carry out all precautionary measures to ensure that the Bellandur lake is not affected by the construction and operational phase of the project. This approach is particularly with regard to the major alteration in natural sloping pattern of the project site and natural hydrology of the area.

**10.** The Lake Development Authority (for short 'the LDA'), after inspection in the catchment area of the Bellandur Lake submitted its report dated 12.06.2013 which confirms that the project will

have disastrous impact, including deleterious effect on the Bellandur Lake. This report was brought to the notice of KIADB. The LDA has also opined that the land should be classified and maintained as sensitive area. The KIADB called upon respondent No. 9 to comply with the rules of Ecology and Environment Department and to obtain necessary approval from KSPCB and LDA. Despite all this, respondent Nos. 9 and 10 have continued with their illegal constructions and have caused damage to the ecology and the environment by irreparably jeopardizing the ecological balance in this sensitive area. The applicants rely upon the Revised Master Plan, 2013 issued by BDA which specifically provides that 30 meters buffer zone is to be created around the lakes and 50 meters buffer zone to be created on either side of the Rajakaluves. It was also pleaded that respondent No. 9 had obtained the NOC from BWSSB only with regard to residential units and not for the entire project and that the Environmental Clearance obtained by respondent No.9 is based upon the partial NOC issued by BWSSB which itself is a misrepresentation. It was contended that the projects are bound to create water scarcity as the requirement of the project of respondent No. 9 alone is

approximately 4.5 million liters per day, i.e. 135 million liters per month, which is more than what the BWSSB supplies to the entire Agaram Ward. The construction of respective projects by respondent Nos.9 and 10 respectively, besides having commenced without permission from the authorities and being in violation of the conditions imposed for grant of permission/consent, is bound to damage the environment, resulting in change in the topography of the area, posing potential threat of extinction of the Bellandur lake, causing traffic congestion, shortening and wiping out the wetlands, extinction of Rajakaluves and causing serious and potential threat of flooding and massive scarcity of water in the city of Bangalore, particularly the areas located near the water bodies.

**11.** Respondent No.9 in its objections contended that it was incorporated with the objective of establishing an Information Technology Park and R & D Centre with facilities such as residential complexes, parks, education centres and other allied infrastructure within a single compound. It had submitted the proposal to establish such Information Technology Park and other facilities to the State Government and requested for allotment of land for the project. Its proposal was considered in 78<sup>th</sup> High Level

Committee meeting held on 21.06.2000 and after examining the proposal, it was approved by the Government on 06.07.2000. Before the State High Level Committee, it had informed that its requirement was 110 acres of land, 25 MW of power from the Karnataka Power Transmission Corporation Limited (for short the 'KPTCL'), and four lakh litres of water per day from BWSSB. The lands for the project were initially notified vide Notification dated 10.02.2004. Subsequently, the lands were allotted vide letter dated 28.06.2007 for which Lease-cum-Sale Agreement was signed on 30.06.2007. Considering the overall development of the State of Bangalore, this respondent proposed a Mixed Use Development Project consisting of an Information Technology Park, residential apartments, retail, hotel and office buildings with a total built up area of 13,50,454.98 sq mtrs. The Project was conceived as a zero waste discharge project. The project is located one and a half kms. away from the southern-side of the Bellandur Lake. Towards the North, adjacent to the Project, lies vast stretches of lands belonging to the Defence and towards the East, lies the Project of respondent No. 10 and another developer is also developing a project on the

western side. It has obtained sanction plan on 04.07.2007 which was renewed from time to time.

**12.** Respondent No. 9 claims that it has obtained NOC from Airport Authority of India on 09.04.2010. Bharat Sanchar Nigam Ltd, vide its communication dated 16.04.2010, granted clearance for the project construction. BWSSB, vide its communication dated 26.04.2011 issued NOC for portion of the proposed construction to be built. The Bangalore Electricity Supply Company Ltd. also granted NOC for arranging power supply to the proposed residential and commercial building in its favour. Environmental Clearance was granted by SEIAA vide communication dated 17.04.2012. The Director General of Police has issued NOC and KSPCB vide order dated 04.09.2012 accorded its consent for construction of the said project subject to the conditions stated therein. It was further stated that after grant of the Environmental Clearance on 17.09.2012, the same was published in the leading newspapers "Kannada Prabha" and "The Indian Express" on 12.03.2012 and 14.03.2014 respectively.

**13.** It submitted a modified the building plan which was approved by KIADB vide its letter dated 30.08.2012, which was valid up to

10.08.2014. It started the construction of the project in November 2012, taking all precautions as per terms and conditions of the orders issued by the competent authorities. It was also submitted that it has raised the constructions in accordance with the plans and conditions of the Environmental Clearance and consent orders and that it has not violated any of the conditions and has not caused any adverse impact on the ecology and environment of the area. It has denied the contention that its construction activity has blocked the Rajakaluves and has adversely affected the lake. It has already spent a sum of Rs 306.73 crores on the project towards procurement of men and materials, machinery, infrastructure, medical and sanitary facilities, etc. and that it has availed financial assistance from various banks and financial institutions towards the construction and execution of the project and that various contracts have been signed with the third parties. It is specifically pleaded that the petition is barred by time and suffers from defects and laches.

**14.** Respondent No.10 pleaded that the applicants raised multifarious proceedings against it which is an abuse of the process of law and *mala fide*. It had submitted a revised proposal in respect

of its project in question and to obtain fresh clearance on 31.08.2007 with an investment of Rs. 179.22 crores. The State High Level Committee had cleared the project which was communicated to it on 25.01.2008. Its properties are located in between Bellandur Lake and Agara Lake but there are no primary storm water drains and secondary storm water drains that exist in its properties. It has clearances from various authorities, including Environmental Clearance and consent for establishment.

**15.** KIADB stated that after possession of the land was handed over to respondent Nos. 9 and 10, one year time was granted for the implementation of the project which was extended from time to time. The building drawings were approved on 04.07.2007, and the modified building drawings were approved on 26.04.2011 and 30.08.2012 with specific conditions. In its meeting held on 16.07.2013, it was resolved to inform respondent No. 9 to fully comply with the Ecology and Environment Rules and to obtain approvals from the LDA and KSPCB. LDA vide its letter dated 24.09.2013, had informed KIADB that the construction activity in the catchment area in the Bellandur Lake could drastically impact the Lake with deleterious effects and asked it to stop construction

activity of respondent Nos. 9 and 10. However, the validity of the building drawings was again extended up to 10.08.2014. The Lokayukta on 17.12.2013 had written a letter in respect of complaint filed by the South East Forum for Sustainable Development where it had been averred that the decision had been taken by the Board on 21.12.2013 to keep in abeyance the approval accorded and even the re-validations of plans. This was also informed to respondent No.9. The Board took a decision which was communicated to respondent No.9 on 02.01.2014, wherein it asked the respondent No.9 to stop all construction activities on the allotted lands. The said communication was challenged by respondent No. 9 and on the stop-work notice, stay was granted by the High Court of Karnataka. The stop-work notice dated 23.12.2013 issued by Bruhat Bengaluru Mahanagara Palike (for short 'BBMP') was also stayed vide order dated 21.01.2014. The proposal submitted by respondent Nos. 9 and 10 had been approved by the State Government. The land allotted to respondent Nos. 9 and 10 does not consist of any Rajakaluves.

**16.** The LDA took a stand that it was not at all aware of the project initiated by KIADB. It came to know about the entire project only

when certain newspaper reports surfaced during the month of June, 2013 and till that time it was in the dark. After the complaints, it inspected the Bellandur Lake and the Agara Lake on 12.06.2013 and prepared an inspection report. In the report, it was noticed that large scale construction activities were going on in the catchment area of Bellandur Lake and that there was a change in the land use, which in turn has directly affected the catchment of Bellandur Lake. The wetland area of Agara Lake had also shrunk, which originally formed the irrigation area for the adjoining agricultural lands. Therefore, it had questioned the decision of KIADB vide letter dated 06.07.2013 and even requested it to stop the construction activity and to re-classify the land as non-SEZ area. It was thereafter on 31.08.2013, that respondent No. 9 wrote a letter for according approval for the proposed development projects. However, vide its letter dated 23.09.2013, LDA informed KIADB that it had no authority to grant or deny construction projects, but it also communicated its objections to KIADB mentioning that construction activity would be in contravention of the directions of the Supreme Court. Despite these warnings, KIADB granted approval to the extension of the building drawings of

the project in favour of the project proponents with certain conditions, like ensuring that all natural valleys, valley zone, irrigation tanks and existing roads leading to villages in the said land should not be disturbed. Further, the natural sloping pattern of the project site was not to be altered and the lakes and other water bodies within and/or at the vicinity of the project area should be protected and conserved. Despite the objections, the plans were approved and approvals were extended from time to time. It has taken a categorical stand that the projects as approved by the KIADB would have adverse impact on Bellandur and Agara Lakes.

**17.** On the basis of the pleadings of the parties, the Tribunal framed the following questions for consideration and determination:

1. Whether the application filed by the applicants and supported by respondent Nos. 11 and 12, is barred by time and thus, not maintainable?
2. Whether the petition as framed and reliefs claimed therein, disclose a cause of action over which this Tribunal has jurisdiction to entertain and decide the application under the provisions of the NGT Act, 2010?
3. Whether the present application is barred by the principle of *res judicata* and/or constructive *res judicata*?

4. Whether the application filed by the applicants should not be entertained or it is not maintainable before the Tribunal, in view of the pendency of the Writ Petitions 36567-74 of 2013, before the Hon'ble High Court of Karnataka? and
5. What relief, if any, are the applicants entitled to? Should or not the Tribunal, in the interest of environment and ecology issue any directions and if so, to what effect?

**18.** The Tribunal by its order dated 07.05.2015 at Annexure A-2, disposed of the applications with the following directions:

- 1) We decline to pass any direction or order to stop further progress and/or demolition of the project or any part thereof at this stage. However, we constitute the following Committee to inspect the projects in question and submit a report to the Tribunal *inter alia* but specifically on the issues stated hereinafter:
  - a) Advisor in the Ministry of Environment and Forest dealing with the subject of wetlands.
  - b) CEO of the Lake Development Authority, Karnataka State.
  - c) Chief Town Planner of BBMP, Bangalore.
  - d) Chairman of SEAC which recommended the grant of Environmental Clearance to the projects in question.

- e) Sr. Scientist (Ecology) from the Indian Institute of Sciences, Bangalore.
  - f) Dr. Siddharth Kaul, former Advisor to MoEF.
  - g) A Senior Officer from the National Institute of Hydrology, Roorkee.
- 2) Member Secretary of the Karnataka State Pollution Control Board shall act as the Convener of the Committee and would submit the final report to the Tribunal.
- 3) The Committee shall inspect not only the sites where the projects in question are located but even other areas of Bangalore which the Committee in its wisdom may consider appropriate, in order to examine the interconnectivity of lakes and impact of such activities upon the water bodies with particular reference to lakes.
- 4) The Committee shall submit whether the projects in question have encroached upon or are constructed on the wetlands and Rajakaluves. If so, are there any adverse environmental and ecological impact of these projects on the lake, particularly Bellandur Lake and Agara Lake, as well the Rajakaluves. The report should specify, if any Rajakaluves have been covered by the construction activities of respondent Nos. 9 and 10 or by any of the projects in the area in question.
- 5) Committee should submit in its report, if these projects have any adverse impacts upon the surrounding

ecology and environment, with particular reference to lakes and wetlands. If yes, then whether any part of the project is required to be demolished. If so, details thereof along with reasons.

6) The Committee shall substantially notice if any of the conditions of the Environmental Clearance order in each case of respondent Nos. 9 and 10 have been violated. If so, to what extent and suggest remedial measures in that behalf to restore the ecology of the area.

7) The Committee would also recommend what should be the buffer zone around the lake(s) and interconnecting passages and wetlands. The Committee shall also report, whether activities of multipurpose projects which have serious repercussions on traffic, air pollution, environment and allied subjects should be permitted any further or not, particularly, in wetlands and catchment areas of water bodies.

8) Recommendations should be made with regard to the steps and measures that should be taken for restoration of lakes, particularly in the city of Bangalore.

9) The Committee shall also find out that whether the construction of the projects is in accordance with the sanctioned drawings and bye-laws in accordance with the letters dated 4<sup>th</sup> July, 2007 and 22<sup>nd</sup> April, 2008 respectively. Further, the Committee would also report whether both respondent Nos. 9 and 10 have installed

ETP/STP and have taken full measures for recycling of used water for washing and flushing, etc. in terms of letters dated 11<sup>th</sup> October, 2013 and 3<sup>rd</sup> January, 2013, issued by the Karnataka Industrial Area Development Board to respondent Nos. 9 and 10 respectively.

10) In the event, the Committee is of the opinion that the adverse impacts noticed are redeemable, then what directions need to be issued in that behalf and the cost involved for achieving the said conservation and restoration of lakes and water bodies.

11) Till the submission of the report by the Committee and directions passed by the Tribunal in that regard, both respondent Nos. 9 and 10 are hereby restrained from creating any 3<sup>rd</sup> party interests or part with the possession of the property in question or any part thereof, in favour of any person.

12) The Committee shall submit its report to MoEF and to this Tribunal as expeditiously as possible and in any case not later than three months from today. During that period we restrain MoEF, SEIAA and/or any public authority from sanctioning any construction project on the wetlands and catchment areas of the water bodies in the city of Bangalore.

13) The Committee shall report if the project proponents are proposing to discharge their trade or domestic

effluents into the lake or any of the water bodies in and around of the area in question.

14) For the reasons stated in the judgment, respondent No. 9 is liable and shall pay a sum of Rs. 117.35 crores, while respondent No. 10 shall pay a sum of Rs. 22.5 crores respectively being 5 per cent of the project value, within two weeks from today. The said amount would be paid to the KSPCB, which shall maintain a separate account for the same and would spend this amount for environmental and ecological restoration, restitution and other measures to be taken to rectify the damage resulting from default and non-compliance to law by the Project Proponent in that area, after taking approval of the Tribunal.

15) We make it clear that the said respondents would not be entitled to pass on the amount in terms of direction 14, on to the purchasers because this liability accrues as a result of their own intentional defaults, disobedience of law in force and carrying on project activities and construction illegally and unauthorizedly.

**19.** Feeling aggrieved by the said order, respondent Nos. 9 and 10 filed Civil Appeal Nos. 4829 and 4823 of 2015 before this Court. This Court by its Order dated 20<sup>th</sup> May, 2015 passed the following order:

"One of the main contentions raised by the Appellants in these Appeals is that though the Tribunal had heard the matter only on preliminary issues and no arguments on merit were advanced, final judgment decides the merits of the disputes as well and above all a penalty of Rs.117.35 crores against the original Respondent No.9 (the Appellant in C.A. No. 4832 of 2015) and Rs. 22.5 crores against Original Respondent No. 10 (the appellant in C.A. No. 4829/2015) is imposed.

On the aforesaid averment, we feel that it would be more appropriate for the appellant to file an application before the Tribunal with the prayer to recall the order on merits and decide the matter afresh after hearing the counsel for the parties, as the Tribunal knows better as to what transpired at the time of hearing.

With the aforesaid liberty granted to the petitioners, the appeals are disposed of. Certain preliminary issues are decided against the appellants which are also the subject matter of challenge. However, it is not necessary to deal with the same this stage. We make it clear that in case the said application is decided against the appellants or if

ultimately on merits, it would be open to the appellants to challenge those orders by filing the appeal and in that appeal all the issues which are decided in the impugned judgment can also be raised.

The counsel for the appellants state that they would file the requisite application within one week. Till the said application is decided by the Tribunal, there shall be stay of the direction pertaining the payment of aforesaid penalty. Mr. Raj Panjwani points out that the Tribunal has allowed the appellants to proceed with the construction only on the payment of the aforesaid fine/penalty. We leave it to the Tribunal to pass whatever orders it deems fit in this behalf, after hearing the parties."

**20.** In relation to Issue No.5, an opportunity of hearing was granted to the respondents. The Tribunal passed order dated 06.04.2016 on these applications as under:

**"M.A. No. 603 of 2015 and M.A. No. 596 of 2015"**

These Applications have been filed on behalf of the Respondent 9 & 10 respectively. It is not necessary for us to refer to any details

in view of the directions that we propose to issue in this case.

Without prejudice to the rights and contentions of the parties and subject to just exception we would hear the parties in terms of the order of the Hon'ble Supreme Court of India primarily on the question of imposition of Environmental Compensation and merits attached in relation thereto. Parties are given liberty to address their submissions on that behalf.

With the above directions the M.A. No. 603 of 2015 and M.A. No. 596 of 2015 stand disposed of without any order as to cost."

**21.** It is evident from the above orders that the Tribunal had granted opportunity to the parties to address it "limited question", as aforementioned. The Tribunal after hearing the parties passed an order dated 04.05.2016 as under:

**“General Conditions or directions:**

1. In view of our discussion in the main Judgment, we are of the considered view that the fixation of distance from water bodies (lakes and Rajkalewas) suffers from the inbuilt

contradiction, legal infirmity and is without any scientific justification. The RMP – 2015 provides 50m from middle of the Rajkalewas as buffer zone in the case of primary Rajkalewas, 25m in the case of secondary Rajkulewas and 15m in the tertiary Rajkulewas in contradiction to the 30m in the case of lake which is certainly much bigger water body and its utility as a water body/wetland is well known certainly part of wet land. Thus, we direct that the distance in the case of Respondents Nos. 9 and 10 from Rajkulewas, Waterbodies and wetlands shall be maintained as below:-

- (i) In the case of Lakes, 75m from the periphery of water body to be maintained as green belt and buffer zone for all the existing water bodies i.e. lakes/wetlands.
- (ii) 50m from the edge of the primary Rajkulewas.
- (iii) 35m from the edges in the case of secondary Rajkulewas
- (iv) 25m from the edges in the case of tertiary Rajkulewas

This buffer/green zone would be treated as no construction zone for all intent and

purposes. This is absolutely essential for the purposes of sustainable development particularly keeping in mind the ecology and environment of the areas in question.

All the offending constructions raised by Respondents Nos. 9 and 10 of any kind including boundary wall shall be demolished which falls within such areas. Wherever necessary dredging operations are required, the same should be carried out to restore the original capacity of the water spread area and/or wetlands. Not only the existing construction would be removed but also none of these Respondents - Project Proponent would be permitted to raise any construction in this zone.

All authorities particularly Lake development Authority shall carry out this operation in respect of all the water bodies/lakes of Bangalore.

2. The capacity of the existing STPs to treat sewage is 729 MLD, whereas another 500 MLD sewage is proposed to be treated in 10 upcoming STPs. In this context, all the STPs operating in the area whether Government or

privately owned, should meet the revised standards notified by CPCB/MoEF.

3. Bangalore city receives treated potable water of 1360 MLD from river Cauvery whereas the requirement is for another 750 MLD and the entire area falls in critical zone in terms of ground water exploitation. Information reveals that only one million litre per month of STP treated water is used by builders for construction purposes. For this reason, the BWSSB issues partial NOC to various residential and commercial projects in respect of supply of potable water. In this context, following directions need to be issued:

- i. At the time of grant of EC, the water requirement for the construction phase and operation phase should be considered separately. Due consideration should also be given for identification of source of supply of water and this should be a pre-requisite for grant of EC.
- ii. All the project proponents should necessarily use only treated sewage water for construction purpose and

this should be reflected in EC as a condition for construction phase.

- iii. Wherever the quality of treated sewage water does not conform to the quality needed for construction, necessary upgradation in STP should be undertaken immediately.

**Specific Conditions/ Directions for Respondent 9;**

In addition to the above directions which should be equally part of EC condition in respect of respondents nos. 9 & 10, following specific conditions shall apply to respondent no. 9:

- i. Reclaimed area of the lake to the extent of 3 acres 10 guntas in survey No. 43 should be restored to its original condition at the cost of project proponent. The possession of this area should be restored by Respondent No. 9 to the concerned Authorities immediately. In addition, a buffer zone of 75 m should be provided between the lake and the project area and this should be maintained as green area.

- ii. In the remaining area, where primary Rajkalewa is abutting the project area, 50 m buffer zone on the side of the project area from the edge of the rajkalewa should be maintained as green belt.
- iii. Several irrigation canals or tertiary rajkalewas taking off from the Agara tank were passing through the area of respondent No. 9, and serve the dual purpose of irrigating paddy fields and disposal of surface run off (storm water drains) during rainy season. However on account of the activities of the project, these drains have been totally obliterated. For the purpose of proper disposal of storm runoff from the entire area falling between the Agara lake and the Belandur Lake, respondent No. 9 must provide required number of storm water drains based on proper hydrological study. These storm drains should have a buffer zone of 15 m on either bank maintained as green belt.

- iv. The cumulative quantity of earth excavated for the construction of project is around 4 lakhs cubic meters in the depth range of 0 to 9 meters. This has created huge hillock like structure obstructing the natural flow pattern of surface runoff from Agara Lake side to Balendur Lake side or primary Rajkalewas. For this purpose, during construction phase garland drain should be constructed around the existing dumping site for safe disposal of runoff to the Rajkalewas. For the disposal of excavated material, a proper muck disposal plan duly approved by SIEAA shall be prepared. In any case the plan should ensure that no muck/sediment flows into Rajkalewas and/or Belandur lake.
- v. The Kharab land identified by Revenue Dept. admeasuring 1 acre 2 guntas should be demarcated and maintained separately as green belt.

- vi. The entire green belt created under the directions of this Tribunal should not to be considered as part of green belt of the project as part of EC condition and will be over and above the green belt as indicated in the EC.
- vii. In view of the heavy traffic load in the adjoining Sarjapur road, a proper study on the basis of traffic density, foot falls expected, etc., a proper plan needs to be prepared and the concept of service road exclusively for the project needs to be worked out and additional parking space created within the project area and incorporated as a part of the overall project layout, within a period of 3 months.

10. Though, at the time of hearing prior to passing the Judgment, we had heard the parties on all aspects but still we have provided re-hearing to the parties on all issues with emphasis on imposition of environmental compensation including the quantum. Upon hearing, we are of the considered view that

environmental compensation imposed upon Respondent No. 9 calls for no variation and the Respondent No. 9 should be called upon to pay the said amount of Rs. 117.35 Crores determined under the Judgment prior to commencement of any project activity at the site. Respondent No. 10 has not commenced any actual construction activity but has carried out various preparatory steps including excavation and deposition of huge earth by creating a hillock at the premises in question and a site office.

Thus, considering cumulative effect on environment and ecology due to various breaches in that behalf by Respondent No. 10 and the fact that the remedial measures can more effectively be taken by the Respondent No.10, we reduce environmental compensation payable by Respondent No. 10 to Rs. 13.5 crores (3% of the stated project cost instead of 5% as imposed in the original judgment).

**General Directions:**

1. We direct SEIAA, Karnataka to issue amended order granting Environmental Clearance within four weeks from today incorporating all the conditions stated in this

judgement and such other conditions as it may deem appropriate in light of this judgment and Inspection Note of the Expert Members. The Project Proponents would be permitted to commence activity only after issuance of amended Environmental Clearance order.

2. SEIAA Karnataka and MoEF shall ensure regular supervision and monitoring of the project and during the construction and even upon completion to ensure that activity is carried out strictly in accordance with the conditions of the order granting Environmental Clearance, this Judgment, Notification of 2006 and other laws in force.

3. The distances in respect of buffer zone specified in this judgment shall be made applicable to all the projects and all the Authorities concerned are directed to incorporate such conditions in the projects to whom Environmental Clearance and other permissions are now granted not only around Belandur Lake, Rajkulewas, Agara Lake, but also all other Lakes/wetlands in the city of Bengaluru.

4. We hereby direct the State of Karnataka to submit a proposal to the MoEF for

demarcating wetlands in terms of Wetland Rules 2010 as revised from time to time. Such proposal shall be submitted by the State within four weeks from today and the MoEF shall consider the same in accordance with law and grant its approval or otherwise within four weeks thereafter. After such approval is granted by MoEF, the State would issue notification notifying such areas immediately thereafter in accordance with Rules and law.

5. Both the Respondents Nos. 9 and 10 shall ensure that debris or any construction material that has been dumped into the Rajkulewas, or on their Banks and on the buffer zone of wetlands should be removed within four weeks from today. In the event they fail to do so, the same shall be removed by the Lake Development Authority along with the State Administration and recover charges thereof from the said Respondents.

6. There is a serious discrepancy even in regard to the measurement of land as far as Respondent No. 9 is concerned. Admittedly the Respondent has been allotted and is in possession of land admeasuring 63.94 acres, though Environmental Clearance has been

granted for 2,92,636.03 Sq. Meters which is equivalent to 72.22 acres. For this reason alone, Environmental Clearance cannot be given effect to. While issuing the amended Environmental Clearance, SEIAA Karnataka shall take into consideration all these aspects and, if necessary, would require Respondent No. 9 to submit a fresh layout plan and the entire project may be revised in accordance with law.

7. Both the Respondents (Project Proponents) shall submit an appropriate plan in view of the conditions imposed in this judgment and the amended Environmental Clearance that would be issued.

8. The amount of environmental compensation will be deposited prior to issuance of amended Environmental Clearance.

With the above directions, the Original Application No. 222 of 2014 and Misc. Applications Nos. 596/2016 and 603/2016 are finally disposed of while leaving the parties to bear their own costs."

**22.** Appearing for the appellants in C.A. No.5016 of 2016, Shri Mukul Rohatgi, learned senior counsel, has submitted that the

State Government in exercise of the power conferred under the Karnataka Industrial Areas Development Act (for short 'KIAD Act') declared the land in question as an industrial area. Thereafter, the land in question has been acquired by the State Government in the year 2004. Following the acquisition, on 28.06.2007, the land was allotted to the appellant by the KIADB. The SEIAA granted environmental clearance which was followed by public notice concerning clearance on 14.03.2012. Neither the allotment of land nor the environmental clearance was challenged before the Tribunal. Thus, none of the statutory decisions or processes, are the cause of action for the purpose of the application. The averments made in the original application does not satisfy or meet the requirements of Section 14(1) and (3) of the NGT Act and the original application does not spell out the cause of action relevant for the purpose of said provision. Since the statutory processes and clearances could not have been challenged for being hit by Section 14(3), the construction activities which were the alleged cause of action could not have been challenged. Therefore, the Tribunal ought to have held that the application was not maintainable.

**23.** Further the application is barred by limitation. Though environmental clearance was granted on 17.02.2012 and it was published in two leading newspapers on 12.03.2012 and 14.03.2012, modified plan was approved by the KIADB on 30.08.2012, the application ought to have been filed within six months from the date on which cause of action for the dispute first arose in terms of Section 14 of the NGT Act. The present application has been filed in March, 2014 which was much beyond the prescribed period of limitation. No application seeking condonation of delay has been filed accompanying the application. Hence, the Tribunal ought to have dismissed the application on the ground that as it is barred by time.

**24.** It was also argued that buffer zone laid down by the NGT is substantially higher as compared to buffer zone which is required to be maintained as per the Revised Master Plan, 2015 issued on 22.06.2007. This is contrary to the Karnataka Town and Country Planning Act, 1961 (for short 'the Planning Act').

**25.** Shri Neeraj Kishan Kaul and Shri R.Venkataramani, learned senior counsel appearing for the appellants, in this case have also made similar submissions. It was argued that the direction

imposing penalty/compensation is illegal on the ground that the applicants did not allege that the construction work of the project has caused environmental wrong. No wrong or injury either to Bellandur lake water body or to Bellandur lake area, has been alleged and established. As such, there is no question of any enquiry relating to imposition of penalty or any compensation.

**26.** Shri Maninder Singh, learned senior counsel appearing for the appellants, in C.A. Nos.5016 and 10995 of 2016, while supporting the submissions made by Shri Rohatgi, has submitted that the appellant has obtained sanction and approvals for the project from the competent authorities. It could not start construction despite grant of all the permissions, including environmental clearance as early as possible i.e. 30.09.2013. Hence, imposing penalty/compensation is entirely unsustainable.

**27.** Learned Advocate General, Shri Udaya Holla, appearing for the appellant-State of Karnataka in C.A.Nos.4923-4924 of 2017, has submitted that the State of Karnataka is also aggrieved by the order of the NGT to the extent of setting aside the buffer zone in respect of water bodies and drains specified in the Revised Master Plan, 2015, and enlargement of the buffer zone in respect of lakes and

Rajakaluves. It is also aggrieved by the order of the NGT directing the authorities to demolish all the offending constructions raised/built in the buffer zone, which will result in demolition of 95% of the buildings in Bengaluru. It is submitted that the Revised Master Plan is statutory in nature and NGT has no power, competence or jurisdiction to consider the validity or *vires* of any statutory provision/regulation. Therefore, the order of the NGT to that extent is liable to be set aside.

**28.** Learned senior counsel appearing for the appellants in other cases, have also supported the arguments of the learned Advocate General. It was contended that the Revised Master Plan provides for a 30 meters buffer zone around the lakes and a buffer zone of 50 meters, 25 meters and 15 meters from the primary, secondary and tertiary drains, respectively to be measured from the centre of the drain. Vide the impugned judgment, the NGT has revised these buffer zones and has directed that the buffer zone be maintained for 75 meters around the lake and 50, 35 and 25 meters respectively from the primary, secondary and tertiary drain, respectively. Variation of buffer zone, as directed by the NGT is without any legal and scientific basis and has the effect of amending the Revised

Master Plan, 2015, without there being any challenge to the same or any relief sought with respect to the said Revised Master Plan.

**29.** On the other hand, Shri Sajan Poovayya, learned senior counsel, appearing for the applicants, has fairly submitted that the applications were filed only against the appellants in C.A Nos. 5016 of 2016 and 8002-8003 of 2016 (respondent Nos. 9 & 10). He has no objection to set aside the order in so far as the appellants in other appeals including the State of Karnataka are concerned. He has also no objection to set aside the general conditions and directions of the NGT in paragraph (1) of the order dated 04.05.2016 except the directions issued against respondent Nos. 9 and 10. In view of the above, it is not necessary to examine the contentions of the learned Advocate General in Civil Appeal Nos. 4923-4924 of 2017. It is also not necessary to consider the contentions urged in the other civil appeals except the appeals filed by respondents Nos. 9 and 10.

**30.** Shri Poovayya has strongly opposed the submissions made by the learned senior counsel appearing for the appellants in C.A. No. 5016 of 2016 and C.A. Nos. 8002-8003 of 2016. It is submitted that the Tribunal is a specialized body for effective and expeditious

disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment. The jurisdiction of the Tribunal is provided under Sections 14, 15 and 16 of the NGT Act. Section 14 provides for the jurisdiction over all civil cases where a substantial question relating to environment is involved. However, such question should arise out of implementation of the enactments specified in Schedule I. The Tribunal has the jurisdiction under Section 15(1)(a) of the NGT Act to provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Under Sections 15(1)(b) and 15(1)(c), the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas, as the Tribunal may think fit. Sections 15(1)(b) and 15(1)(c) have not been made relatable to enactment specified in Schedule I of the Act. Section 15(1)(c) is an entire island of power and jurisdiction read with Section 21 of the Act. He submits that whenever ecology is being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of environment. The

limitation provided in Section 14 is period of six months from the date on which cause of action first arose whereas in Section 15 it is five years. Therefore, the petition is not barred by time.

**31.** He has further submitted that the provisions of Section 33 shall have the effect notwithstanding anything inconsistent contained in any other law for the time being in force. This gives the Tribunal overriding powers over anything inconsistently contained in KIAD Act, Planning Act, Revised Master Plan of Bangalore, 2015 and Karnataka Municipal Corporation Act, 1976 (for short 'KMC Act'). Therefore, the Tribunal while providing for restoration of environment in an area can specify buffer zone around specific lakes and water bodies in contravention with zoning regulation.

**32.** Regarding limitation, he has submitted that the application filed by respondents 1 to 3 was not an application simplicitor under Section 14 of the Act. It was an application where a specific prayer has been made with reference to Lake Development Authority's report dated 12.06.2013 and the Ministry of Environment Forest and Climate Change Monitoring Committee report dated 14.08.2013 for restoration of ecologically sensitive land and for

maintaining sensitive area in its natural condition so that ecological balance of the area is not disturbed. Therefore, the petition was under Section 15 of the Act and it can be filed within five years from the date on which the cause for such compensation or relief first arose.

**33.** It was further submitted that right to appeal under Section 22 is not a vested right unless provided by statute. Exercise of Appellate Jurisdiction without the fulfillment of statutory mandate would be without jurisdiction. Section 22 of the Act provides for an appeal on the ground specified in Section 100 of the Code of Civil Procedure, 1908 (for short 'the CPC'). Under Section 100 of the CPC, an appeal can be filed only on the ground that the case involves a substantial question of law as may be framed by the Appellate Court. In the instant case, the appeal does not involve any substantial question of law hence it has to be dismissed *in limine*. He has taken us through various materials placed on record in order to substantiate that the direction passed and penalty imposed by the Tribunal upon to project proponents are sustainable. He prays for dismissal of the appeals.

**34.** We have carefully considered the submissions of the learned counsel of the parties and perused the materials placed on record.

**35.** Before considering the other contentions of the learned counsel for the parties, let us first consider the scope of enquiry in appeals filed under Section 22, which is as under:

**"22. Appeal to Supreme Court.-** Any person aggrieved by any award, decision or order of the tribunal, may, file an appeal to the Supreme Court, within ninety days from the date of communication of the award, decision or order of the Tribunal, to him, on any one or more of the grounds specified in section 100 of the Code of Civil Procedure, 1908 (5 of 1908):

Provided that the Supreme Court may, entertain any appeal after the expiry of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from preferring the appeal."

**36.** It is settled that there is no vested right of appeal unless the statute so provides. Further, if a statute provides for a condition subject to which the appropriate Appellate Court can exercise jurisdiction, the Court is under an obligation to satisfy itself

whether the condition prescribed is fulfilled. Exercise of appellate jurisdiction without the fulfillment of statutory mandate would be without jurisdiction. Therefore, the right of appeal provided under Section 22 is to be read subject to the conditions provided therein.

**37.** Section 22 provides for an appeal to the Supreme Court on the grounds specified in Section 100 of the CPC. Under Section 100 CPC, an appeal can be filed only on the ground that the case involves a substantial question of law as may be framed by the Appellate Court. The scope of appeal under Section 22, therefore, is restricted to substantial question of law arising from the judgment of the Tribunal. The test to determine whether the question is substantial question of law or not was laid down by a Constitution Bench of this Court in **Sir Chunilal V. Mehta and Sons, Ltd. v. Century Spinning and Manufacturing**, 1962 Supp. (3) SCR 549.

This Court has laid down the test as under:

"The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative

views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law."

**38.** It is equally settled that merely because the remedy of appeal is provided against the decision of the Tribunal on a substantial question of law alone, that does not *ipso facto* permit the appellants to agitate their appeal to seek re-appreciation of the factual matrix of the entire matter. The appellants cannot seek to re-argue their entire case to seek wholesale re-appreciation of evidence and the factual matrix that has been considered by the Tribunal is *ex facie* impermissible under Section 22. There cannot be fresh appreciation or re-appreciation of facts and evidence in a statutory appeal under this provision.

**39.** The first question raised by the learned counsel is in relation to the maintainability of the application before the Tribunal.

**40.** The Tribunal has been established under a constitutional mandate provided in Schedule VII List I Entry 13 of the Constitution of India, to implement the decision taken at the United Nations Conference on Environment and Development. The

Tribunal is a specialized judicial body for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment. The right to healthy environment has been construed as a part of the right to life under Article 21 by way of judicial pronouncements. Therefore, the Tribunal has special jurisdiction for enforcement of environmental rights.

**41.** The jurisdiction of the Tribunal is provided under Sections 14, 15 and 16 of the Act. Section 14 provides the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment) is involved. However, such question should arise out of implementation of the enactments specified in Schedule I.

**42.** The Tribunal has also jurisdiction under Section 15(1)(a) of the Act to provide relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I. Further, under Section 15(1)(b) and 15(1)(c) the Tribunal can provide for restitution of property damaged and for restitution of the environment for such area or areas as the

Tribunal may think fit. It is noteworthy that Section 15(1)(b) & (c) have not been made relatable to Schedule I enactments of the Act. Rightly so, this grants a glimpse into the wide range of powers that the Tribunal has been cloaked with respect to restoration of the environment.

**43.** Section 15(1)(c) of the Act is an entire island of power and jurisdiction read with Section 20 of the Act. The principles of sustainable development, precautionary principle and polluter pays, propounded by this Court by way of multiple judicial pronouncements, have now been embedded as a bedrock of environmental jurisprudence under the NGT Act. Therefore, wherever the environment and ecology are being compromised and jeopardized, the Tribunal can apply Section 20 for taking restorative measures in the interest of the environment.

**44.** The NGT Act being a beneficial legislation, the power bestowed upon the Tribunal would not be read narrowly. An interpretation which furthers the interests of environment must be given a broader reading. (See **Kishore Lal v. Chairman, Employees' State Insurance Corpn.** (2007) 4 SCC 579, para 17). The existence of the Tribunal without its broad restorative powers under Section 15(1)(c)

read with Section 20 of the Act, would render it ineffective and toothless, and shall betray the legislative intent in setting up a specialized Tribunal specifically to address environmental concerns. The Tribunal, specially constituted with Judicial Members as well as with Experts in the field of environment, has a legal obligation to provide for preventive and restorative measures in the interest of the environment.

**45.** Section 15 of the Act provides power & jurisdiction, independent of Section 14 thereof. Further, Section 14(3) juxtaposed with Section 15(3) of the Act, are separate provisions for filing distinct applications before the Tribunal with distinct periods of limitation, thereby amply demonstrating that jurisdiction of the Tribunal flows from these Sections (i.e. Sections 14 and 15 of the Act) independently. The limitation provided in Section 14 is a period of 6 months from the date on which the cause of action first arose and whereas in Section 15 it is 5 years. Therefore, the legislative intent is clear to keep Section 14 and 15 as self contained jurisdictions.

**46.** Further, Section 18 of the Act recognizes the right to file applications each under Sections 14 as well as 15. Therefore, it

cannot be argued that Section 14 provides jurisdiction to the Tribunal while Section 15 merely supplements the same with powers. As stated *supra*, the typical nature of the Tribunal, its breadth of powers as provided under the statutory provisions of the Act as well as the Scheduled enactments, cumulatively, leaves no manner of doubt that the only tenable interpretation to these provisions would be to read the provisions broadly in favour of cloaking the Tribunal with effective authority. An interpretation that is in favour of conferring jurisdiction should be preferred rather than one taking away jurisdiction.

**47.** Section 33 of the Act provides an overriding effect to the provisions of the Act over anything inconsistent contained in any other law or in any instrument having effect by virtue of law other than this Act. This gives the Tribunal overriding powers over anything inconsistent contained in the KIAD Act, Planning Act, Karnataka Municipal Corporations Act, 1976 (“KMC Act”); and the Revised Master Plan of Bengaluru, 2015 (“RMP”). A Central legislation enacted under Entry 13 of List I Schedule VII of the Constitution of India will have the overriding effect over State legislations. The corollary is that the Tribunal while providing for

restoration of environment in an area, can specify buffer zones around specific lakes & water bodies in contradiction with zoning regulations under these statutes or the RMP.

**48.** The second question raised by the appellants is that the petition is barred by time. According to appellants, environmental clearance was granted to the respondent No. 9 on 17.02.2012 for which notice was published in the leading newspaper on 12.03.2012 and 14.03.2012. Modified building plan was approved on 30.08.2012, which was followed up to 10.08.2014. Similar events had taken place in regard to the project of respondent No. 10 who had been granted environmental clearance on 30.09.2013. The application had to be filed within a period of six months from the date on which cause of action for such dispute has first arisen in terms of Section 14 of the NGT Act. Admittedly, the present application has been filed in March, 2014 and according to them, it is much beyond the prescribed period of limitation. Also, there is no application for condonation of delay accompanying the main application. Therefore, the Tribunal will not have jurisdiction to condone the delay.

**49.** The OA No. 222 of 2014 was not an application *simpliciter* under Section 14 of the Act. It was an application where a specific prayer has been made with reference to Lake Development Authority's ("LDA") Report dated 12.06.2013 and the Ministry of Environment, Forest and Climate Change ("MoEF") Monitoring Committee Report dated 14.08.2013 for restoration of ecologically sensitive land and for maintaining the sensitive in its natural condition so that the ecological balance of the area is not disturbed. It is clear from the documentary evidence supported by data, that the project proponents have committed breaches and the implementation of the project is bound to have serious adverse impact on the ecology, hydrology and the environment in the catchment area of Bellandur Lake. The environmental degradation as established from the documents would give rise to an independent cause of action. Therefore, this was a petition under Section 15 of the Act and thus it could be filed within 5 years from the date on which the cause for such compensation or relief first arose.

**50.** In fact, in the original application before the Tribunal there was no mention of the provision under which it was being filed. It is

well settled principle of law that non-mention of or erroneous mention of the provision of law would not be of any relevance, if the Court had the requisite jurisdiction to pass an order. It would be a mere irregularity and would not vitiate the application or the judicial order of the Tribunal.

**51.** Shri R. Venkataramani, learned senior counsel, appearing for the appellant in CA No.5016 of 2016 has submitted that the constructions had not commenced before the grant of environment clearance. The inspection report dated 11.01.2012 of the Chairman of the KSPCB observes that "no construction" had commenced on the date of inspection. This report cannot be overlooked on the basis of some dumping of debris which could not be attributed to the appellant. He has pointed out the report of the Committee appointed by the Tribunal in the month of August 2015, wherein it was stated that "it started construction after obtaining clearance". In this regard he has also taken us through various documents placed on record and submits that there is absolutely no justification in imposing monitoring penalty/compensation without assessment of impact.

**52.** The Tribunal has pointed out on the basis of the Committee report of August 2015, that the appellant had encroached 3 acres 10 guntas of Bellandur Lake and a boundary wall has been raised around the said land. The Tribunal has also found that the project proponents have violated the Master Plan. They have not obtained the mandatory clearance from the Sensitive Zone Committee constituted by the Government of Karnataka. It is also clear from the materials on record that there are several other violations by the project proponents. The Tribunal has discussed all these issues from para 52 onwards. It is also clear from the materials on record that there is a definite possibility of environment, ecology, lakes, and wetland being adversely affected by these projects. That is why, the Tribunal has observed as under:

"72. In light of the above scope of the project and records before the Tribunal and the defaults on the part of the Project Proponents, the cumulative adverse effects of the activities undertaken by the respondents before us can be summed up as under:

1) The construction of both the projects had started prior to the grant to Environmental Clearance.

- 2) The EIA Notification of 2006 requires that without grant of Environmental Clearance, no project can commence its activity. This restriction applies not only to operationalization of the project but even for the purposes of establishment.
- 3) Revenue Map images shows multiple Rajakaluves flowing through the project(s) in question. The images further show encroachment on Rajakaluves.
- 4) Digital images of the land available on Google satellite images showing encroachment on two major Rajakaluves.
- 5) Google Satellite images retrieved from Google archives clearly reflect two distinct features. Firstly, change in the wetland area between the period of 13<sup>th</sup> November, 2000 and 23<sup>rd</sup> November, 2010. Secondly, it reveals the excavation work carried out by Respondent Nos. 9 and 10 commenced prior to obtaining Environmental Clearance.
- 6) Restriction in regard to extraction of ground water was not strictly complied with as permission of Central Ground Water Authority was not obtained before construction.

7) The conditions with regard to the natural slopping pattern of the project site to remain unaltered and natural hydrology of the area to be maintained as it is, to ensure natural flow of storm water as well as in relation to Lakes and other water bodies within and/or at the vicinity of the project area to be protected and conserved: The inspection report by the MoEF clearly notes that condition nos. (xxxix) and (xl) in the Environmental Clearance of respondent no. 9 cannot be complied with as it will necessarily result in some alteration of the natural slopping pattern of the project site and the natural hydrology of the area. It noted that the project area is located in the catchment area of the Bellandur Lake and the project authorities have informed that they will take all precautionary measures to ensure that the lake will not be affected by project activities either during construction or operation phase."

**53.** In paragraph 81, the Tribunal has observed as under:

"81. ....Another very important aspect which cannot be overlooked by the Tribunal is with regard to the respondent nos. 9 & 10 carrying on their project activity

fully knowing that they were incapable of or it was not possible for them to comply with condition no. xxxix and xl (or alike conditions) in the order granting the Environmental Clearance. This has even been noticed by the MoEF in its monitoring report dated 14th August, 2013. These respondents never applied for variation or amendment of these conditions and continued with their construction activities. This renders these respondents entirely liable for environmental and ecological damage and the restoration and restitution thereof."

**54.** In our view, the findings arrived at by the Tribunal are not only based on the documents that were available on record but also on the pleadings that were made by the parties buttressed by the Committee's report and the inspection note of the Expert Members. Therefore, the directions passed and the penalty imposed by the Tribunal on both project proponents are valid and sustainable and do not suffer from any perversity.

**55.** We are also of the view that it is impermissible for the appellants to seek a factual review through the methodology of re-

appreciation of factual matrix by this Court under Section 22 of the NGT Act.

**56.** Shri R.Venkataramani, learned senior counsel has also raised a subsidiary issue relating to *res judicata*. According to him, respondent Nos. 12 and 13 filed Writ Petition Nos.3656-57/2013 seeking similar reliefs in a representative capacity. The issues raised therein are same as those canvassed in the application before the Tribunal. The reliefs sought for are essentially the same. Hence, the applications are barred by the principle of *res judicata*.

**57.** The Tribunal has answered this issue in paragraphs 47 to 51 of the order. There was no dispute in so far as filing of the writ petitions is concerned. However, the parties are not common nor the issues in application and the writ petitions are directly and substantially the same. After examination of the pleadings, the Tribunal has recorded a finding of fact that there is no commonality of a cause of action or likelihood of a conflict between the judgments. The prayers and the geneses of the respective proceedings are entirely distinct and different in their scope and relief. The issues before the Tribunal would essentially relate to environment ecology and its restoration while the proceedings

before the High Court relate to entirely different issues with acquisition of land, its allotment and transfer to the third party. These issues in both the proceedings are neither substantial nor materially identical.

**58.** After elaborately considering this question, the Tribunal has concluded as under:

"51.....For these reasons, we find no merit in this contention of respondent Nos. 9 and 10. The purpose of the doctrine of res judicata is to provide finality and conclusiveness to the judicial decisions as well as to avoid multiplicity of litigation. In the present case, the question of re-agitating the issues or agitating similar issues in two different proceedings does not arise. The ambit and scope of jurisdiction is clearly decipherable. The jurisdictions of the Hon'ble High Court of Karnataka and this Tribunal are operating in distinct fields and have no commonality in so far as the issues which are raised directly and substantially in these petitions, as well as the reliefs that have been prayed for before the Hon'ble High Court and the Tribunal are concerned.

There is no commonality in parties before the Tribunal and the High Court. The 'cause of action' in both proceedings is different and distinct. The matters substantially and materially in issue in one proceedings are not the same in the other proceeding. There is hardly any likelihood of conflicting judgments being pronounced by the Tribunal on the one hand and the High Court on the other. Therefore, we are of the considered view that the present applications are neither hit by the principles of *res judicata* nor constructive *res judicata*. We also hold that culmination of proceedings before the Tribunal into a final judgment would not offend the principle of 'judicial propriety', because of the Writ Petitions pending before the Hon'ble High Court of Karnataka."

**59.** We do not find any error in the aforesaid conclusion of the Tribunal. We are of the view that the Tribunal was justified in holding that the objections taken by the respondent Nos. 9 and 10 do not satisfy the basic ingredients to attract the application of *res judicata* or *constructive res judicata*.

**60.** The State of Karnataka is aggrieved by the following offending portion of the order dated 04.05.2016:

"1. In view of our discussion in the main Judgment, we are of the considered view that the fixation of distance from water bodies (lakes and Rajkalewas) suffers from the inbuilt contradiction, legal infirmity and is without any scientific justification. The RMP – 2015 provides 50m from middle of the Rajkalewas as buffer zone in the case of primary Rajkalewas, 25m in the case of secondary Rajkulewas and 15m in the tertiary Rajkulewas in contradiction to the 30m in the case of lake which is certainly much bigger water body and its utility as a water body/wetland is well known certainly part of wet land. Thus, we direct that the distance in the case of Respondents Nos. 9 and 10 from Rajkulewas, Waterbodies and wetlands shall be maintained as below:-

(i) In the case of Lakes, 75m from the periphery of water body to be maintained as green belt and buffer zone for all the existing water bodies i.e. lakes/wetlands.

(ii) 50m from the edge of the primary Rajkulewas.

(iii) 35m from the edges in the case of secondary Rajkulewas

(iv) 25m from the edges in the case of tertiary Rajkulewas

This buffer/green zone would be treated as no construction zone for all intent and purposes. This is absolutely essential for the purposes of sustainable development particularly keeping in mind the ecology and environment of the areas in question.

All the offending constructions raised by Respondents Nos. 9 and 10 of any kind including boundary wall shall be demolished which falls within such areas. Wherever necessary dredging operations are required, the same should be carried out to restore the original capacity of the water spread area and/or wetlands. Not only the existing construction would be removed but also none of these Respondents - Project Proponent would be permitted to raise any construction in this zone.

All authorities particularly Lake development Authority shall carry out this

operation in respect of all the water bodies/  
lakes of Bangalore."

**61.** We have already noticed that Shri Poovayya has no objection to set aside the aforesaid impugned portion of the order in so far as the appellants in all the appeals except the appeals filed by respondent Nos.9 and 10. The aforesaid portion of the order contains not only general directions but also certain directions against respondent Nos. 9 and 10. Therefore, only that portion of the order which does not pertain to respondent Nos. 9 and 10 needs to be quashed.

**62.** In the light of the above discussion, we pass the following order:

- i) Civil Appeal No. 5016 of 2016 and Civil Appeal Nos. 8002-8003 of 2016 filed by the appellants/respondent nos. 9 and 10 are hereby dismissed. The impugned judgment and order in so far as appellants/respondent Nos. 9 and 10 are concerned is sustained.
- ii) All the other appeals are hereby allowed and the direction/condition No. (1) in the order

dated 4.5.2016 is hereby set aside except the direction issued against respondent Nos. 9 and 10.

**63.** There will be no order as to costs.

.....**J.**  
**(A.K. SIKRI)**

.....**J.**  
**(S. ABDUL NAZEER)**

.....**J.**  
**(M.R. SHAH)**

**New Delhi;**  
**March 5, 2019.**

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION (L) NO.954 OF 2019**

Builders' Association of India (BAI) ..Petitioner  
Versus  
Union of India ..Respondent

Mr. Anshuman Srivastava I/by Mr. Rushabh M. Sheth, Advocate for the Petitioner.

Mr. R. S. Apte, Senior Advocate a/w Mr. Girish Paryani, Advocate for the Respondent.

**CORAM : B. R. GAVAI &  
DAMA SESHADRI NAIDU, JJ.  
DATE : 29<sup>th</sup> MARCH, 2019**

**P.C.**

1] It is the contention of the Petitioner that in the Notification dated 14<sup>th</sup> September 2006, issued by the sole Respondent, the term 'Building and Construction projects area' was not defined and it was vague.

2] It is submitted that the said notification came up for consideration before the Hon'ble Supreme Court in the case of Anand Arya and another Vs. Union of India and others reported in 2011 (1) SCC 744. A reliance is placed on the following observations of the Hon'ble Apex Court in para 84, which are as under :-

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“84. Before putting down the records of the case a few observations may not be out of place. The EIA Notification dated 14-9-2006 urgently calls for a close second look by the authorities concerned. The projects/activities under Items 8(a) and 8(b) of the schedule to the notification need to be described with greater precision and clarity and the definition of built-up area with facilities open to the sky needs to be freed from its present ambiguity and vagueness.”

3] It is submitted that after the aforesaid observations were made by the Hon'ble Apex Court, sole Respondent issued a further notification dated 4<sup>th</sup> April 2011, vide which for the first time, the term 'build up area' is defined.

4] It is the contention of the learned counsel for the Petitioner that between 2006-2011, the local authorities as well as the sole Respondent granted clearances to the projects on the basis of the local Development Control Rules, since the definition of built up area was not there.

5] It is submitted that however, the Hon'ble Supreme Court in the case of M/s. Goel Ganga Developers India Pvt. Ltd. Vs. Union of India and others with connected matters decided on 10<sup>th</sup> August 2018 has observed thus :-

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“13. From a bare perusal of the two hash tags (#) in Column 4 and 5 of Item 8(a), it is apparent that what is shown under Column 5 is actually a continuation of Column 4 and basically it describes or defines 'built up area' to mean covered construction and if the facilities are open to the sky, it will be taken to be the activity area. This by itself clearly shows that under the notification of 2006, all constructed area, which is covered and not open to the sky has to be treated as 'built up area'. There is no exception for non-FSI area.”

6] It is the contention of the Petitioner that due to the aforesaid observations of the Hon'ble Apex Court all the projects which were executed by the members of the Petitioner's Association during 2006-2011, which were otherwise legal, are now capable of being termed as illegal with retrospective effect.

7] It is the contention of the Petitioner that the Petition under Article 32 was also filed by the Petitioner before the Hon'ble Apex Court, which Petition came to be withdrawn vide order dated 12<sup>th</sup> February 2019, with liberty to approach this Court.

8] In effect, in our considered view, what the Petitioner seeks from this Court is a clarification that the observations made by the Hon'ble Apex Court in the case of *M/s. Goel Ganga Developers India Pvt. Ltd. (supra)* by a Bench consisting of two Hon'ble Judges

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of the Hon'ble Supreme Court are *per-incuriam* the observations of the Hon'ble Apex Court in the case of *Anand Arya and another (supra)*.

9] With great respect, the judicial propriety would not permit us to venture into such an exercise. The Writ Petition is therefore rejected.

[DAMA SESHADRI NAIDU, J.]

[B. R. GAVAI, J.]

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**ANNEXURE-A-9**

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IN THE SUPREME COURT OF INDIA  
ORDER XXI RULE 3(1)(a) OF SCR, 2013  
CIVIL APPELLATE JURISDICTION  
SPECIAL LEAVE PETITION

(Under Article 136 of the Constitution of India)

**SPECIAL LEAVE PETITION (CIVIL) NO. \_\_\_\_\_ OF 2019**

**WITH PRAYER FOR INTERIM RELIEF**

**IN THE MATTER OF:-****POSITION OF PARTIES**

	Before the High Court	This Hon'ble Court
Builders' Association of India (BAI) G-1/G-20, 7 <sup>th</sup> Floor, Commerce Centre, J. Dadajee Road, Tardeo, Mumbai-400 034 Through the authorised representative Mr. Rajendra @ Nirmal Kumar	Petitioner	Petitioner

**VERSUS**

Union of India Through the Secretary, Ministry of Environment, Forest and Climate Change, Shastri Bhawan, New Delhi-110001	Respondent	Contesting Respondent
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TO,

THE HONOURABLE CHIEF JUSTICE OF INDIA  
AND HIS COMPANION JUSTICES OF THE  
HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF  
PETITIONER ABOVE NAMED

**MOST RESPECTFULLY SHEWETH:**

1. This petition seeking Special Leave to Appeal under Article 136 of the Constitution of India is filed against the impugned final order dated 29.03.2019 passed by the High Court of Judicature

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at Bombay in Writ Petition (L) No. 954 of 2019, whereby the Hon'ble High Court has dismissed the Writ Petition filed by the Petitioner while observing that the judicial propriety would not permit the High Court to decide a conflict between the two judgments passed by this Hon'ble Court.

2. **QUESTIONS OF LAW**

The present Special Leave Petition raises, inter alia, the following questions of law:

- A. Whether the Hon'ble High Court erred in not deciding the case on merits despite of this Hon'ble Court allowing the Petitioner herein to approach the High Court for proper adjudication of the matter?
- B. Whether the term 'built up area' as appearing in the 2006 Notification was clear and the reliance of the members of the project proponents and the appropriate authorities on the built up area as provided in the local / municipal laws as per FSI / FAR incorrect?
- C. Whether the Notification dated 04.04.2011 which defined the term built up area qua the environmental clearances for the first time in 2011 can be applied retrospectively on projects which had been granted environmental clearances as per the prevailing law?
- D. Whether there was a regime change from the 2006

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notification to the 2011 notification, especially when the said 2011 notification was issued pursuant to the judgment passed by this Hon'ble Court in *Okhla Bird Sanctuary (supra)*?

- E. Whether the view taken by a two judge bench of this Hon'ble Court in *Goel Ganga (supra)* is *per incuriam* the view taken by a three judge bench of this Hon'ble Court in *Okhla Bird Sanctuary (supra)* on the same issue?
- F. Whether the multiple Environmental Clearances granted to the members of the Petitioner association by the appropriate authorities between 2006 to 2011 can be faulted with from a retrospective date when the same were legally issued at the relevant time?
- G. Whether the projects which have been long completed with requisite permissions and without any objections from the authorities be now considered in violation of the 2006 notification from a retrospective date?
- H. Whether the rights of the members of the Petitioner association enshrined under Articles 14 and 19 of the Constitution of India stand violated in the facts of the present case?

3. **DECLARATION IN TERMS OF RULE 3(2):**

The Petitioner states that no other petition seeking leave to appeal has been filed by them against the impugned final

order dated 29.03.2019 passed by the High Court of Judicature at Bombay in Writ Petition (L) No. 954 of 2019 before this Hon'ble Court.

4. **DECLARATION IN TERMS OF RULE 5:**

That the Annexure P-1 to P-9 produced along with the Special Leave Petition are the true copies of the pleadings/documents which form part of the records of the case in Court below against whose order the leave to appeal is sought for in the Petition. Annexure P-10 is an additional document and did not form part of the record of the court below for which separate application for placing additional documents is being filed.

5. **GROUND**

The Petitioner has preferred the present Petition on the following grounds which are taken without prejudice to each other:

- A. Because the Hon'ble High Court ought to have decided the matter on merits in view of the specific liberty granted by this Hon'ble Court vide order dated 12.02.2019 to approach the High Court. It is submitted that this Hon'ble Court was well aware of the facts and circumstances leading to the present case including the fact regarding the conflict of the two aforementioned judgments passed by this Hon'ble Court. That thus, if this Hon'ble Court accorded liberty to the Petitioner to approach the High Court even in such circumstances, the High Court ought to have decided the

present matter on merits.

- B. Because the term 'built-up area' has not been defined under the EIA Notification 2006. A phrase having been introduced by virtue of a Notification/statute ought to be defined and the definition *prima facie* must determine the application of the phrase. It is most respectfully submitted that Column 5 of item 8(a) of the EIA Notification 2006 only states 'built-up area for covered construction; in the case of facilities open to the sky, it will be the activity area'. A plain and literal reading of the said sentence leads to ambiguity and uncertainty with regard to actual meaning and/scope of the term 'built-up area'. The ambiguity in the definition arises since the word *for* is not a compelling word to show that the intention of the original EIA Notification 2006 was to include the entire construction area at the time of referring to 'built-up area'. It is noteworthy that on the basis of the built up area, the projects listed under item 8 of the schedule to the 2006 notification were even given exemption from obligation to conduct public consultation and scoping.

- C. Because in the case of *Kartar Singh v. State of Punjab*, (1994) 3 SCC 569, the Supreme Court explained that,

*"130. It is the basic principle of legal jurisprudence that an enactment is void for vagueness if its prohibitions are not clearly defined. Vague laws offend several important values. It is*

*insisted or emphasized that laws should give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning."*

- D. Because owing to the above the term 'built up area' came to be understood in terms of the state / municipal bye laws at least till the issuance of the 2011 notification even for the purposes of grant of environmental clearance. It is most respectfully submitted that in absence of a definition of the term 'built-up area' in the EIA Notification 2006, the same was calculated and/interpreted in consonance with the state bye-laws to fill in the vacuum until the 2011 Notification came into effect. That the construction industry as well as the Appropriate Authorities including MoEF had understood and proceeded the term built up area with respect to granting ECs'.
- E. Because prior to the 2011 Notification, the description of 'built up area' under the original EIA Notification 2006 was limited to covered construction, while in cases of facilities open to the sky it would be the activity area. However, there was guidance available as to the meaning of the term 'built up area' under the relevant state bye laws, and the practice adopted by the appropriate authorities was to interpret 'built up area' for the purpose of granting ECs in consonance with

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the applicable state bye laws. That most of the state-bye laws calculate 'built up area' on the basis of Floor Space Index (FSI). It is submitted that the appropriate authorities were granting ECs on the basis of FSI. The relevant portions of some of these ECs granted by the MoEF are extracted below:

Project Proponent	Relevant portion of the EC
M/s Chandigarh Housing Board	<i>"construction of General Housing Scheme at Sector-63, Chandigarh by M/s Chandigarh Housing Board"- .....It is inter alia noted that the project involves construction of a general housing scheme at Sector 63 Chandigarh. The total plot area is 1,71,9990.1 sq.m. The total built up (FAR) area proposed is 1,94, 045.3 sq.m."</i>
M/s Ascot Hotels & Resorts Ltd. for construction of outlet Mall and Service Apartment complex at R-75, Sector-1, IMT Manesar, Gurgaon, Haryana	<i>"The project proponent is proposing to construct outlet Mall R-75, Sector-1 IMT Manesar, Gurgaon, Haryana at cost of Rs. 12900 Lakh. The project will comprise construction of building with 2 basement, ground floor, plus seven floors. Total plot area is 16,000.0 sq. m. The total permissible FSI as indicated is 24,120.0 sq m."</i>
M/s Triveni Infrastructure Development Company Ltd.	<i>"For construction of group housing project at Triveni Galaxy at Sector 78, Faridabad, Haryana- -....The project proponent is proposing to construct a group housing project Triveni Galaxy at sector-78, Faridabad, Haryana at cost of Rs. 312.5 crore. The project will comprise construction of 2372 flats and 423 EWS units. Total plot area is 1,51,125.57 sq.m. The total 'built up area' (permissible FSI) as indicated in 2,64,469.74 sq.m."</i>

M/s Espire Infrastructure Corporation Ltd.:	"The project proponent is proposing to construct a group housing colony at sector 37, village Palla, Faridabad, Haryana at a cost of Rs. 55.0 crore. The project will comprise construction of 4 towers (G+17 Floors & G+14 Floors) with 224 residential units and 44 EWS units. Total plot area is 19396.17sq.m. The total 'built up area' (permissible FAR) as indicated in 33943.30 sq. m."
M/s Ultra Home Construction Pvt. Ltd	"The project proponent is proposing to construct a commercial complex at Tower J. IMT Manesar, Gurgaon, Haryana at a cost of Rs. 180 crore. The group housing project will comprise construction of commercial complex with ground plus seven floors. Total plot area is 6804 sqm. The total 'built up area' (permissible FAR) as indicated in 27216 sqm."
M/s Nirmal Lifestyle (India) Pvt. Ltd. For proposed project at City of Joya at CTS Nos. 661/1 & 661/15 (pt) and village Mulund(W), Mumbai, Maharashtra	"... The Total Plot area is 80371.9 sqm. Total 'built up area' as per FSI is 1,52,710.0 sq.m
M/s Kakade Construction Co. Pvt. Ltd. for proposed Township project at Kakade City at Karvenagar, Hingane, Taluqa Haveli, Distt. Pune, Maharashtra	"...the total plot area is 95,022 sq.m. The total permissible 'built up area' (FSI) as indicated is 1,20,078 sq.m."

Therefore, from 14.09.2006 till 04.04.2011, the term 'permissible FSI/FAR' was used interchangeably with the term 'built up area' by the appropriate authorities and it was

on this basis that the ECs were granted to project proponents all over India.

F. Because this Hon'ble Court observed the ambiguity in the term 'built-up area' in the EIA Notification 2006 in the Okhla Bird Sanctuary Judgment (*supra*) and expressed the need for redefining the same in the following words:

*"The EIA notification dated September 14, 2006 urgently calls for a close second look by the concerned authorities. The projects/activities under items 8(a) and 8(b) of the schedule to the notification need to be described with greater precision and clarity and the definition of built-up area with facilities open to the sky needs to be freed from its present ambiguity and vagueness."*

It is submitted that in compliance with the direction given by this Hon'ble Court in the aforementioned judgment, the MoEF brought into effect the 2011 Notification which contained a clear definition of the term 'built-up area' stating that *"the built-up area for the purpose of this Notification is defined as the built up area or covered area on all floors put together including basements and other service areas, which are proposed in the building/construction project."*

G. Because even the facts recorded in the 2010 judgment reflect the general practice adopted by the appropriate authorities of interpreting 'built up area' in consonance with the state bye

laws. The 2010 Judgment pertained to a project undertaken by the Govt. of Uttar Pradesh to develop a recreational park at NOIDA. The project involved massive construction inter alia including dedicatory columns, commemorative plaza, national memorial, plinth with sculptures, larger than life statues etc.; and was undertaken without any prior environmental clearance as required under the EIA Notification 2006. When an issue was raised with respect to the project being undertaken without prior environmental clearance, the stand taken by the SEIAA UP was that the built up area was less than 20,000 square meters and the EIA Notification 2006 would not be applicable. In submitting so, the SEIAA UP had calculated the 'built up area' on the basis of state bye-laws. Furthermore, during the course of the proceedings of the 2010 Judgment, the MoEF also took the unequivocal stand that the project in question did not require prior environmental clearance (*paras 38-49*). As was noted in para 42 of the 2010 Judgment:

*'The built-up area has been calculated by the state of Uttar Pradesh on the basis of its building bye-laws.'*

*"...The MoEF, however reiterated its stand in very definite and unequivocal terms that the project in question did not fall within the ambit of the EIA Notification 2006 and no environmental clearance was required for such kind of projects. The stand of the MoEF was based on the premise that the area of*

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the project (33.43ha) was less than 50ha and its built up area (9542sq m) was less than 20,000 sq m....."

The aforesaid is an example of the manner in which the different states' SEIAA, as well as the MoEF, were routinely calculating "built up area" in consonance with state bye laws while granted environmental clearance prior to 04.04.2011.

H. Because the EIA Notification 2011 was introduced by the MoEF specifically because this Hon'ble Court had urged the MoEF to take a close second look at the term "built up area" appearing in the EIA Notification 2006 and to free it from its ambiguity and vagueness. A bare perusal of the internal communication of the Respondent MoEF clearly shows that the 2011 notification was necessitated in view of the said judgment:

*"On this file, we are dealing with the proposal regarding amendment to EIA Notification, 2006 as a follow up of the above cited order dated 3.12.2010 of the Hon'ble Supreme Court in the matter related to Noida Park. Notings from page 1-5/n-ante in this regard may kindly be seen. As may be seen that the Hon'ble Supreme Court in the said order have observed as under:*

...

2. From the above, it may be concluded that the clarifications need to be built into the EIA Notification with respect to the following:

(i) Clarification about built up area / built up area for covered constructions;

(ii) Clarification regarding activity area in case of facilities open to the sky;

..."

- I. Because the judgment in Okhla Bird Sanctuary (*supra*) was made earlier in time and was delivered by a Bench comprising of three judges. It contained the following crucial observation in para 79:

*"Before putting down the records of the case a few observations may not be out of place. The EIA notification dated September 14, 2016 urgently calls for a close second look by the concerned authorities. The projects/ activities under items 8(a) and 8(b) of the schedule to the notification need to be described with greater precision and clarity and the definition of 'built up area' with facilities open to the sky needs to be freed from its present ambiguity and vagueness. The question of application of the general condition to the projects/activities listed in the schedule also needs to be put beyond debate or dispute."*

As opposed thereto, the judgment in Goel Ganga (*supra*) was rendered by a two judge Bench, eight years later, only in 2018. The primary finding of the said judgment was contained in para 19 stating: *'as held by us above the notification of 2006 with regard to "built up area" was absolutely clear and needed no clarification.*' With utmost respect it is submitted that such a finding could not have been made without taking into

consideration the observations contained in the  
aforementioned judgment passed in Okhla Bird Sanctuary.

J. Because the applicability of a decision rendered by a larger bench is no more *res integra*. In the case of *CIT v. Trilok Nath Mehrotra*, (1998) 2 SCC 289 this Hon'ble Court held that,

*"4. We do not find any conflict in the law laid down in the case of R.M. Chidambaram Pillai [(1977) 1 SCC 431 : 1977 SCC (Tax) 188 : (1977) 106 ITR 292] with the law laid down in the earlier two cases. The decision in the case of Raj Kumar Singh Hukam Chandji [(1970) 2 SCC 436 : (1970) 78 ITR 33] was rendered by a Bench of three Judges. Therefore, even assuming that there was a conflict between that decision and the decision rendered in Chidambaram Pillai case [(1977) 1 SCC 431 : 1977 SCC (Tax) 188 : (1977) 106 ITR 292] which was rendered by a Bench of two Judges, the decision of the larger Bench will prevail."*

This Hon'ble Court has further ruled in the case of *Tribhuvandas Rurshottamdas Thakur v. Ratilal Motilal Patel*, (1968) 1 SCR 455,

*"We may refer to the observations made by Venkatarama Aiyar, J., in Jaisri Sahu v. Rajdewan Dubey [(1962) 2 SCR 558 at pp. 567-69] and the cases referred to therein. If decisions of the same or a superior court are ignored, even though directly applicable, by a Judge in deciding a case arising before him, on the view that every Judge is entitled to take such view as he chooses of the question of*

*law arising before him as Venkatarama Aiyar, J., observed, the "law will be bereft of all its utility if it should be thrown into a state of uncertainty by reason of conflicting decisions"*

K. Because the definition of the term 'built-up area' as provided under 2011 notification ought to be construed prospectively. It is most respectfully submitted that the application of the 2011 Notification to projects granted ECs between 14.09.2006 - 04.04.2011 or to those projects which were exempted from an EC prior to the 2011 Notification shall oppress the vested rights of such project proponents, create new disabilities or obligations or impose new duties in respect of constructions already completed. The same shall cause chaos, disruption and disarray in the entire construction industry.

L. Because the 2011 Notification was issued by way of amendment to the EIA Notification 2006 and would only apply prospectively. This is clear from para 5 of the 2011 Notification which reads as follows: "*Now therefore in exercise of the powers conferred by sub section (1) and clause (v) of sub-section 2 of section 3 of the said Environment (Protection) Act read with clause (d) of sub-rule (3) of rule 5 of the said Environment (Protection) Rules, the Central Government hereby makes the following amendments in the said Notification, namely-....*"

M. Because this Hon'ble Court held in the case of *CIT v. Vatika Township (P) Ltd.*, (2015) 1 SCC 1 that a retrospective law contravenes the principle that a legislation which governs the conduct of an individual should be regulated by existing law and that every human being is entitled to arrange his affairs by relying on the current law and should not find that his plans have been retrospectively upset. The prohibition on retrospectivity is based on the cardinal principle of fairness and equity. In *Vatika Township* it was also held that,

*"legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation."*

It is submitted that in the present case, the 2011 Notification was a result of the judgment passed by this Hon'ble Court in Okhla Bird Sanctuary and thus the same cannot have anything but prospective application.

N. Because insofar as the term 'built up area' is concerned there are differing definitions given by various state bye laws. Some state bye laws do not define 'built up area', but instead contain a definition of 'covered area'. This in turn was used to

calculate the 'built up area' by the Appropriate Authorities for the purpose of granting ECs. Even the definition given to 'covered area' under different state bye laws are inconsistent. There is no definition of 'built up area' in the state bye laws which has pan India applicability. Herein extracted below are some of the definitions given to 'built up area' and covered under various state bye laws:

(i). **Gujarat:** Built up area means the area covered by a building on all floors including cantilevered portion, if any, but except the areas specifically excluded as under:

- (a). Parking spaces without any enclosures and partitions of any kind, with clear height of 2.4 metres, and in case of slabs with beams height should not exceed 2.8 metres
- (b). Spaces of hollow plinth with maximum clear height of 2.8 metres in addition to depth of beams as per structural requirements in residential buildings only (not even in mixed development) at ground level without any enclosures/walls and partitions in any form excluding shear walls as per structural requirements
- (c). Interior open spaces and ducts required under these Regulations subject to maximum 4 % of

- the built up area. Canopy and architectural projections not to be used for any other purpose
- (d). Basement exclusively used for required parking with maximum clear height of 2.6 metres excluding beams
  - (e). Security cabin upto 4 square metres
  - (f). Weather shed upto 0.60 metre width
  - (g). Stair case with maximum intermediate landing width equal to the width of stair, maximum landing width at floor level shall be twice the width of stair
  - (h). Lift, lift well with lift cabin, stair cabin, lift landing of lift well and water tank
  - (i). Open air space/ chowk required under this regulation in walled city and gamtal
  - (j). Electric room as specified by S.E.C or G.E.B

**(ii). Madhya Pradesh: Covered Area** means the area of land covered by the plinth of the building at the ground floor level and shall be counted as the ground coverage. This shall exclude the area covered by projections at slab level and area of the plinth not covered by roof at top. Cantilevered projection up to an extend of one third of the Marginal Open Space shall be permissible on

the upper slab level with a clear height for vehicular/pedestrian movement. These projections cannot be made at height below 2.5 metres from the ground level. This projection shall not construe to be covered area. Areas covered on the second and third floor levels as cantilever projection with at least 5.5 metres clear space below for movement, but not within the setback/marginal open space, shall not be counted in covered area. All areas in the building shall be counted in covered areas except for service ducts, garage on ground floor and lift wells.

(iii). **Bihar:** Covered area means ground area covered immediately above the plinth level covered by the building but does not include the space covered by

- (a) Garden, rockery, well and well structures, plant, nursery, waterproof, surface water tanks, swimming pool (if uncovered) platform round a tree, tank, fountain, bench, chabutra with open top and unenclosed on sides by walls and the like
- (b) Drainage, culvert, conduit, catch pit, gully pit, chamber, gutter and the like; and
- (c) Compound wall, gate, slide, swing areas, covered by chhajja and the like

(iv). Kerala: Built up area means the covered area at any floor, covered by roof other than cornice, roof or weather shades permissible;

Furthermore, it can be clearly seen that all of the aforementioned definitions only take into account the FSI area, while specifically excluding the non FSI area. Therefore, the Appropriate Authorities used the terms built up area and FSI/FAR area interchangeably until the introduction of the 2011 Notification.

O. Because prior to 04.04.2011, the widely followed practice for the project proponents was to specify the FSI area as the built-up area, and for the appropriate authority to grant the EC after noting such FSI area as the built-up area in the EC. It is pertinent to note that even though most of the applications made prior to the 2011 notification specified 'built up area' to be the same as FSI, due to the practice followed, the applications submitted nonetheless contained:

- a) disclosures, details and or designs and drawings of non FSI area to the relevant authority
- b) Details of the entire usable area to the relevant authority
- c) disclosures and details of environmental impact of the project such as water consumption, sewage, energy consumption, pollution generated etc.

All these factors would be independent of the manner in which 'built up area' was considered, and remained the same. However, notwithstanding the disclosure of the entire area, ECs were routinely granted by the appropriate authorities with reference only to the FSI area specified in the application as the built-up area.

P. It is submitted that the 2011 Notification was an amendment of the EIA Notification 2006 and substituted the term "*built up for covered area*" with "*built up area or covered area on all floors put together including basements and other service areas, which are proposed in the building/construction project.*" That however this Hon'ble Court while passing the *Goel Ganga* judgment did not go into the question of whether the 2011 Notification is a clarification or a substitution of the EIA Notification 2006. The relevant paragraph – is extracted below:

*"it is not at all necessary to decide whether this notification is clarificatory or is in substitution of the original notification of 2006. We say this because as held by us above, there is no ambiguity with regard to the definition of "built up area" even under the notification of 2006 and it covers all constructed area open to the sky."*

However, the question whether the 2011 notification is to be construed as a substitution of the original entry or is merely a clarification would have to be considered by this Hon'ble

Court. The said question, though was raised in the *Goel Ganga* case, this Hon'ble Court refrained to answer the same on the basis that the EIA Notification 2006 was clear and unambiguous. As such, the issue of whether the 2011 Notification was a clarification or a substitution has been left open. This has caused confusion for all stakeholders in the Indian construction sector. In view of the same, it is of utmost importance that this Hon'ble Court settles this question in order to end the confusion.

Q. Because even though the ECs may have been granted by the appropriate authorities for the projects on the basis of 'FSI Area' for the purpose of calculating 'built up area' for the period between 2006-2011; the overall impact on the environment caused by the construction, including crucial factors such as water consumption, sewerage facilities, energy consumption, welfare of the people, road requirements, pollution generated etc., remains unchanged. This is notwithstanding the use of non-FSI Area of the projects for the calculation of the built up area. Therefore, so long as the overall environmental impact remains unchanged, merely due to the fact that non-FSI area while being disclosed, was not taken as a part of 'built up area' by the appropriate authorities while granting ECs prior to 2011, (due to the then general understanding of the provisions of the 2006 notification), ought not to by itself trigger a violation of the EIA

Notifications 2006 and ECs issued thereunder.

- R. Because from the years 2006-2011; i.e. prior to the introduction of the 2011 Notification, it was a common practice of the appropriate authorities to grant EC to project proponents on the basis of 'built up area' as defined in the state bye laws. That most of the state bye laws equated the terms 'built up area' and 'FSI' and many of the ECs granted used the terms 'built up area' and 'FSI' interchangeably.
- S. Because the MoEF itself has itself issued various ECs while using the terms FSI and 'built up area' interchangeably. That prior to 2011, the authorities were not taking non-FSI area into account while calculating the 'built up area'.
- T. Because the rights granted to the Petitioners under Article 14 and 19(1)(g) of the Constitution of India have been infringed. It is most respectfully submitted that the application of the 2011 Notification to projects granted ECs between 14.09.2006 - 04.04.2011 or to those projects which were exempted from an EC prior to the 2011 Notification; shall oppress the vested rights of such project proponents, create new disabilities or obligations or impose new duties in respect of constructions already completed. Therefore, the Petitioners require equal protection of law with respect to their right practice the business of construction.

6. **GROUND FOR INTERIM RELIEF**

That pursuant to the aforementioned Judgment passed by this Hon'ble Court in *Goel Ganga (supra)*, the members of the Petitioner Association have been facing continuous threat inasmuch as the said judgment has the effect of nullifying the valid ECs granted to them by the appropriate authorities and render them as deemed violators from a retrospective date.

That in fact various opportunists and busy bodies have started to threaten the members of the Petitioner association in order to extract illegal ransom.

It is further pertinent to mention here that in fact a PIL being Writ Petition (C) No. 118/2019 has already been filed before this Hon'ble Court seeking penal action against all projects across the country in terms of the judgment rendered by this Hon'ble Court in *Goel Ganga (supra)*.

It is thus submitted that the members of the Petitioner association ought to be granted temporary protection at least till the present case is conclusively decided by this Hon'ble Court. That no prejudice would be caused to the Respondent if such protection is granted, however, grave prejudice would be caused to the Petitioner if the same is not granted.

7. **MAIN PRAYER**

It is therefore respectfully prayed that this Hon'ble Court

may be pleased to:-

- (i) Grant the Petitioner Special Leave to Appeal, under Article 136 of the Constitution of India, against the impugned final order dated 29.03.2019 passed by the High Court of Judicature at Bombay in Writ Petition (L) No. 954 of 2019; and/or
- (ii) Pass such other order or orders as may be deemed fit and proper in the interests of justice.

8. **PRAYER FOR INTERIM RELIEF**

It is respectfully prayed that pending the present Petition this Hon'ble Court may be pleased to:-

- (i) Grant ad interim ex parte stay of the impugned final order dated 29.03.2019 passed by the High Court of Judicature at Bombay in Writ Petition (L) No. 954 of 2019; and/or
- (ii) Direct that no coercive steps shall be taken against project proponents who had taken valid environmental clearances as per the Notification dated 14.09.2006 issued by the MoEF notwithstanding the judgment dated 10.08.2018 passed by this Hon'ble Court in the case of *Goel Ganga Developers versus Union of India* (in C.A. No. 10854 of 2016 and connected matters)

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- (iii) Pass such other order or orders as may be deemed fit and proper in the interests of justice.

AND FOR THIS ACT OF KINDNESS YOUR PETITIONERS AS IN DUTY BOUND SHALL EVER PRAY.

FILED BY:

(E.C. AGRAWALA)  
ADVOCATE FOR THE PETITIONER

Drawn on: 08.04.2019  
Filed on: 10.04.2019  
New Delhi

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL) NO. \_\_\_\_\_ OF 2019

IN the MATTER OF:-

Builders' Association of India (BAI)

...Petitioner

Versus

Union of India

...Respondent

CERTIFICATE

Certified that the Special Leave Petition is confined only to the pleadings before the Court whose order is challenged and the documents relied upon in those proceedings. No additional facts, documents or grounds have been taken upon therein or relied upon in the Special Leave Petition except Annexure P-10. It is further certified that the copies of the documents/annexures attached to the Special Leave Petition are necessary to answer the questions of law raised in the Petition or to make out grounds urged in the Special Leave Petition for the consideration of this Hon'ble Court. This certificate is given on the basis of the instructions given by the Petitioner whose affidavit is filed in support of the SLP.

FILED BY

(E.C. AGRAWALA)  
ADVOCATE FOR THE PETITIONER

FILED ON: 10.04.2019  
NEW DELHI

IN THE SUPREME COURT OF INDIA

31

CIVIL APPELLATE JURISDICTION

ENTRANCE REG.	NO. 3055
DATE	8/4/19

SPECIAL LEAVE PETITION (CIVIL) NO. \_\_\_\_\_ OF 2019

IN THE MATTER OF:-

Builders Association of India

...Petitioner

VERSUS

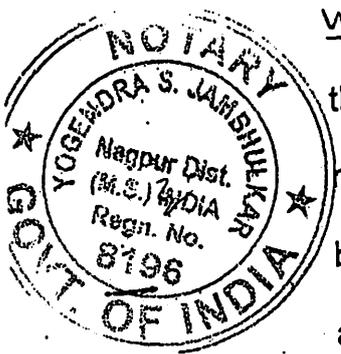
Union of India

...Respondent

AFFIDAVIT

I, NIRMALKUMAR S/o SHANKARRAO ATHAWALE, aged about 59 Years, having residence at 206/8, Behind Yes Bank, Civil Lines, Nagpur - 440001, do hereby solemnly affirm and declare on oath as under:-

1. That I am the authorized representative of the Petitioner in the above mentioned matter and am well conversant with the facts of the case and duly authorized to swear the present affidavit.
2. That I have read and understood the contents of the Synopsis and List of Dates consisting of 22 Pages (B to W) and SLP consisting of 26 pages (5 to 30) and say that the facts stated therein are true and correct to the best of my knowledge and belief and last paragraphs are prayers before this Hon'ble Court. I also state that the contents of accompanying applications are true and correct to the best of my knowledge and belief.



3. I state that the SLP is confined only to the pleadings before the Courts below and documents relied upon in those proceedings. No additional facts, documents or grounds have been urged therein. I also state that the copies of the documents annexed to the SLP are true copies of their respective originals and form part of the record of the Courts below.



*[Signature]*  
DEPONENT

**VERIFICATION:**

I the abovenamed deponent, do hereby solemnly verify that the contents of the aforesaid affidavit are true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Verified at NAGPUR on this 8<sup>th</sup> day of April, 2019.



*[Signature]*  
DEPONENT

WORN BEFORE ME ON THIS 8<sup>th</sup> DAY OF APRIL 2019 AT NAGPUR BY SHRI./SMT./MR./MRS. *Nirmal Kumar* R/O. *Master* WHO HAS BEEN IDENTIFIED BY SHRI./SMT. *self* ADVOCATE NAGPUR

*[Signature]*  
NOTARY  
GOVT. OF INDIA  
NAGPUR DIST. (M.S.) INDIA



**TRUE COPY**

*Bombria*

**S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS****Petition(s) for Special Leave to Appeal (C) No.10078/2019****(Arising out of impugned final judgment and order dated 29-03-2019 in WPL No. 954/2019 passed by the High Court Of Judicature At Bombay)****BUILDERS ASSOCIATION OF INDIA****Petitioner(s)****VERSUS****UNION OF INDIA****Respondent(s)****(FOR ADMISSION and I.R. and IA No.65285/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES )****Date : 29-04-2019 This petition was called on for hearing today.****CORAM :****HON'BLE MR. JUSTICE S.A. BOBDE  
HON'BLE MR. JUSTICE S. ABDUL NAZEER****For Petitioner(s) Mr. Mukul Rohatgi, Sr. Adv.  
Mr. Mahesh Agarwal, Adv.  
Mr. Anshuman Srivastava, Adv.  
Mr. E. C. Agrawala, AOR****For Respondent(s)****UPON hearing the counsel the Court made the following  
O R D E R****List the matter on 03.05.2019 before another Bench of which  
Hon'ble Mr. Deepak Gupta, J. is a member.****(SANJAY KUMAR-II)  
COURT MASTER (SH)****(INDU KUMARI POKHRIYAL)  
ASSISTANT REGISTRAR****TRUE COPY**

**S U P R E M E C O U R T O F I N D I A**  
**RECORD OF PROCEEDINGS**

Petition(s) for Special Leave to Appeal (C) No(s). 10078/2019

(Arising out of impugned final judgment and order dated 29-03-2019 in WPL No. 954/2019 passed by the High Court of Judicature At Bombay)

**BUILDERS' ASSOCIATION OF INDIA**

Petitioner(s)

**VERSUS**

**UNION OF INDIA**

Respondent(s)

(FOR ADMISSION and I.R. and IA No.65285/2019-PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES )

Date : 03-05-2019 This petition was called on for hearing today.

**CORAM :**

**HON'BLE THE CHIEF JUSTICE**  
**HON'BLE MR. JUSTICE DEEPAK GUPTA**

**For Petitioner(s)** Mr. Mukul Rohatgi, Sr. Adv.  
Mr. Mahesh Agarwal, Adv.  
Mr. Anshuman Srivastava, Adv.  
Mr. E. C. Agrawala, AOR

**For Respondent(s)**

**UPON hearing the counsel the Court made the following**  
**O R D E R**

**Issue notice.**

**In the meantime, no coercive steps shall be taken.**

**(SUSHIL KUMAR RAKHEJA)**  
**AR CUM PS**

**(ANAND PRAKASH)**  
**BRANCH OFFICER**

**TRUE COPY**

*Bombhise*

ITEM NO.89

REGISTRAR COURT. 2

SECTION IX

**S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S****BEFORE THE REGISTRAR SURINDER S. RATHI****IA 65285/2019, in Petition(s) for Special Leave to Appeal (C)  
No(s). 10078/2019****BUILDERS ASSOCIATION OF INDIA****Petitioner(s)****VERSUS****UNION OF INDIA****Respondent(s)****IA No. 65285/2019 - PERMISSION TO FILE ADDITIONAL  
DOCUMENTS/FACTS/ANNEXURES)****Date : 08-07-2019 These matters were called on for hearing today.****For Petitioner(s) Ms. Neha Aggarwal, Adv.  
Mr. E. C. Agrawala, AOR****For Respondent(s)****UPON hearing the counsel the Court made the following  
O R D E R****Ld.Counsel for petitioner has not filed spare copy, hence  
notice could not be issued.****Ld. Counsel for petitioner is enjoying the benefit of stay,  
therefore, not taking steps to serve the respondent. Accordingly,  
the matter be processed for listing before the Hon'ble Judge in  
Chambers for further directions. Await orders. List thereafter.****SURINDER S. RATHI  
Registrar**

Signature Not Verified  
Digitally signed by  
MADHU GROVER  
Date: 2019.07.09  
15:52:15 IST  
Reason: M

**TRUE COPY**

ANNEXURE-A-13**MAHARASHTRA POLLUTION CONTROL BOARD  
SUB-REGIONAL OFFICE – PUNE-I**Ph. 020-25811694  
Fax. 020-25811029Jog Center Bldg.  
2nd floor, Wakdewadi,  
Old Mumbai – Pune Highway,  
Pune 411003Visit ReportName & Address of Industry :- M/s. EKTA Housing Pvt. Ltd., "California/Florida"  
NIBM Road, Survey No. 9, Village - Undri,  
Tal. Haveli, Dist. Pune.Date of Visit :- 7<sup>th</sup> Aug. 2019Industry Officials :- Ram Divekar, Site Engg. 9730002420, 8788312054  
Borate.

Consent Validity :- Information not available.

Observations :- ram.d@ektaworld.com

— Visited to residential construction project against Mr. Tanaji Balasaheb Gambhise, Shulskar Peth, Pune has filed complaint against said project, which is received to this office on 01/8/2019

Present status :-

1. During visit P.P. representative could not produce any documents such as copy of Environmental clearance, Consent to Establish, Consent to Operate, Sanctioned layout plan.
2. As stated by representative there are total 5 No's of Bldgs. under "California" & one of the proposed bldg. under "Florida"

California Bldg. A - 12 Floors completed - possession given.  
California Bldg. B - 12 Floors completed - possession given.  
California Bldg. C - 12 Floors completed - possession given.  
California Bldg. D - 12 Floors completed - possession given.  
California Bldg. E - 12 Floors completed - possession given.

**TRUE COPY**Gambhise

(P.T.O.)

— 2 —

Near to this Bldg. one open plot was observed to which P.P. is naming as proposed Bldg. as "Florida". In that plot only excavation was observed & no construction work was observed during visit.

3. P.P. has provided STP for the treatment of domestic effluent & treated eff. utilized for flushing & gardening purpose.
4. P.P. has provided vermicompost pits - 7 Nos. for the treatment of bio-degradable waste.
5. P.P. has provided rain water harvesting system commonly for total 5 Nos Bldgs.
6. Said project is having one no. Borewell, utilizing water for domestic purpose.
7. P.P. has installed one no. D.G. set for emergency use only.

— In view of above you are requested to submit following documents.

1. Environmental Clearance copy, Copy of CTOE & CTOO
2. Sanctioned layout plan of Bldgs.
3. Area Statement of Architects Certificate & present status.
4. HOC of CGWA (Central Ground Water Authority)
5. Details of Solar system & Rainwater Harvesting
6. Completion Certificate of local body authority.



(Ram Divakar)  
Site Engrg.



(S.J. Bhui)  
F.O.  
MPCB, Pune-1



(Hitin Shinde)  
7/11/19  
Sub-Regional Officer,  
MPCB, Pune-1

**ANNEXURE-A-14****MAHARASHTRA POLLUTION CONTROL BOARD  
SUB-REGIONAL OFFICE – PUNE-I**

Ph. 020-25811694  
Fax. 020-25811029

Jog Center Bldg.  
2nd floor, Wakdewadi,  
Old Mumbai – Pune Highway,  
Pune 411003

MPCB/ SROP1/

190813-FJS-0216

Date: 13/08/2019

To,  
M/s. Ekta Housing Pvt Ltd., "California/Florida"  
NIBM Road, Survey No.9, Village Undri,  
Tal Haveli, Dist. Pune.

**Sub: Warning Notice- Non compliances of Consent conditions.**

- Ref: 1. Complaint/ Notice received from Mr. Tanaji Balasaheb Gambhire, Shukarwar Peth, Pune has filed complaint against your project against non compliances of consent conditions, which is received to this office on 01/08/2019.  
2. Board officials visited to your site on 07/08/2019 investigation of said complaint.

The Maharashtra Pollution Control Board is implementing various Environmental Acts such as Water (Prevention & Control Pollution) Act, 1974, Air (Prevention & Control Pollution) Act, 1981 in the state of Maharashtra & it is obligatory on every industry/ construction project to obtain Consent from M.P.C.Board under above mentioned Acts and to provide adequate pollution control systems for the pollutants so as to achieve Board's prescribed standards.

With reference to the above cited Acts, it is mandatory upon you to obtain consent under Water (Prevention & Control Pollution) Act, 1974, Air (Prevention & Control Pollution) Act, 1981. However, the Board officials has visited your construction site on 07/08/2019 & from the record of this office, it is observed that, you are operating residential construction project without obtaining valid consent from the Board.

During visit your representative could not produce any documents such as copy of Environmental Clearance, Consent to Establish, Consent to Operate, Sanctioned layout plan.

At the time of visit it was observed that, there are total 5 Nos. of Buildings under California and one of the proposed building under Florida. All 5 Nos. Bldgs. Of California construction work completed and possession given to all flat owners. Near to this buildings one open plot was observed naming as proposed bldgs. as Florida in that plot only excavation work was observed and no construction work was observed during visit.

In view of above you are requested to submit following documents 1. Copy of Environmental Clearance & Copy of CE & CO 2. Sanctioned layout plan of Bldgs. 3. Area Statement of Architect Certificate & present status. 4. NOC of CGWA (Central Ground Water Authority) 5. Details of Solar System & Rainwater harvesting & 6. Completion Certificate of local body authority.

You are, therefore, hereby instructed to submit non-compliance forthwith, else this office will have no option to initiate further legal action under The Water (Prevention & Control of Pollution) Act, 1974 & The Air (Prevention & Control of Pollution) Act, 1981 as deem fit in your case, which may please be noted.

*Nitin Shinde*  
(Nitin Shinde)  
Sub-Regional Officer,  
M.P.C.Board, Pune-I.

Copy submitted for information to :-  
The Regional Officer M.P.C.Board, Pune.

*σ/c*

**TRUE COPY**

*Gambhise*

**ANNEXURE-A-15**

31/9

**GOVERNMENT OF MAHARASHTRA**

No.Comp-2019/CR-24/SEIAA  
Environment Department,  
217(Annex), Mantralaya,  
Mumbai-400 032.  
Date: 08/08/2019.

To,

**M/s. EKTA HOUSING PRIVATE LIMITED**

Ekta World, 401, Hallmark Business Plaza,  
Sant Dnyaneswar Marg, Opp. Gurunanak Hospital, Kalanagar,  
Bandra East, Off Western Express Highway, Mumbai-400051,

**Subject:** - Proposed Directions u/s 5 of the Environmental (P) Act, 1986 r.w. EIA Notification, 2006 dated 14.9.2006

**Reference:** - Complaint / Notice of Mr. Tanaji Balasaheb Gambhire through Advocate Nitin Lonkar dated 24.07.2019 and Email from Complainant Dated-07.08.2019.

WHEREAS, it was obligatory on your part to obtain prior Environment Clearance from the Competent Authority, as per the EIA Notification dated 14.9.2006, before starting any building construction activity.

AND WHEREAS, we are in receipt of above referred, wherein following issues are raised by the complainants in respect of your building construction project "Ekta California & Florida" situated at Survey No. 9 (p) of Village-Undri, Taluka-Haveli, District-Pune.

- a) That the PP has misleded on account of two different projects comprising of 6 buildings, 190 flats and total BUA of 47429.2 Sq. Mtrs..
- b) That BUA of project was more than 47429.2 Sq. Mtrs. but PP did not applied for Environment clearance from SEIAA and also not applied for consents from MPCB
- c) That the BUA of project was more than 20000 Sq. Mtrs. but PP did not applied for Environment clearance and consents.
- d) PP has not obtained any prior Environment Clearance from SEIAA or MoEF.
- e) PP has not obtained any prior Consent to Establish from MPCB.
- f) That the PP has completed part project in year of 2016, but did not applied for consent to operate and put the completed portion of project under enjoyment without Consent to Operate.
- g) PP has carried out construction activity without Environment Impact Assessment and without implementation of their remedial measures.
- h) PP is extracting huge quantity of ground water from three bore wells for construction of project as well as for domestic use without any permission from competitive authority for operational purpose.
- i) PP has not made any test for ground water contamination and quality of water.

**TRUE COPY**Bombhise

- j) PP has not provided any solid waste management system and waste generated is dumped to PMC waste yard creating burden on public systems and solid waste is generating various greenhouse gases and there is no scientific disposal of the solid waste generated from project.
- k) PP has not provided any energy conservation system for energy saving like solar Energy system.
- l) PP has not provided any rain water harvesting system for ground water recharge.
- m) PP has not preserved top layer of fertile soil and there is no soil test for contamination.
- n) PP has not made tree plantation as per the norms and Non-development of green belt as per CPCB norms
- o) PP has provided swimming tank giving additional burden on the ground water.
- p) PP has installed 2 DG sets at project site and operation of DG set is causing air pollution.
- q) Huge quantity of sewage water is generated and there is no scientific treatment of sewage water as PP has not installed STP. There is direct discharge of sewage water in PMC seaware line.
- r) PP is creating huge burden on the environment due to day to day waste generation by consumption of natural resources and it is causing huge burden on the public facilities and services on account of environment damage.
- s) That the PP has committed the illegal activities and given rise to the violation of environmental protection enactments and further caused degradation of environment & ecology intentionally.
- t) PP has not complied the conditions of commencement certificate mandating prior environment clearance and consents from the MPCB.
- u) PP has not complied the conditions of commencement certificate related to installation of environment infrastructure to avoid the degradation.
- v) PP has not installation of Pollution Control Devices
- w) PP has made illegal land use change
- x) Involvement of bureaucratic nexus in the illegal act to help PP and Misuse of position by Government officers and thus provisions of EIA Notification-2006 r/w Environment Acts-1986, Water (P & CP) Act-1974 and Air (P & CP) Act-1981 are not complied by PP.
- y) PP is unapologetic and PP has adopted careless and reckless attitude towards the environment protection.
- z) PP has caused substantial damage to environment and ecology more than Rs. 425 Crores, which shall be recovered from PP.
- aa) PP has committed scam on account of FSI of internal road, amenity spaces, open spaces etc.
- bb) Thus it is mandatory to stop the project construction permanently till the compliance / rectification of the above illegal act and removal of the defects from the construction.

AND WHEREAS, as per the Complaint / Notice above referred, you have not obtained mandatory prior Environment Clearance, Consent to Establish and Consent to Operate in proposed Residential Building Construction Project at Survey No. 9 (P) of Village-Undri, Taluka-Haveli, District-Pune. This amounts to violation of the EIA Notification-2006 r/w Environment (Protection) Act-1986 along with Water (Prevention and Pollution Control) Act-1971 and Air (Prevention and Pollution Control) Act-1984.

NOW THEREFORE, in view of the above non-compliances, you are hereby directed to show cause as under: -

- a) Why your building construction activity shall not be stopped forthwith for the violation of Environment Impact Assessment Notification dated 14.09.2006, issued by the ministry of Environment & Forest, Government Of India, for not obtaining prior Environmental Clearance from the Competent Authority / Government of Maharashtra?
- b) Why further legal action shall not be initiated against you under the provisions of the Environment (Protection) Act, 1986 and Rules made there under?

Take notice that, you are hereby directed to submit your reply within a period of 15 days from the receipt of this Proposed Directions, after receipt of your reply, you may call for personal hearing so as to take appropriate decision in the matter, failing which, this office has no option than to initiated legal action against you including stoppage of your construction activity, which pleased be noted.

  
(Anil Diggikar)

Principal Secretary,

Environment Department &

Member Secretary- SEIAA Maharashtra

**Copy to:**

Commissioner, Pune Municipal Corporation, Shivajinagar, Pune-411 005-

You are the sanctioning authority of the aforesaid project therefore you are hereby requested to take appropriate actions against project proponent and also to submit the documents related to Project.

**Enclosed:** Copy of Complaint / Notice of Mr. Tanaji Balasaheb Gambhire through Advocate Nitin Lonkar dated 24.07.2019 is attached herewith

**TRUE COPY**



**ANNEXURE-A-16****5**

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**[ORDER XXI RULE 3 (1) (a)]**

**(UNDER ARTICLE 136 OF CONSTITUTION OF INDIA)**

**SPECIAL LEAVE PETITION (CIVIL) NO. OF 2019**

**[ WITH PRAYER FOR INTERIM RELIEF ]**

[ARISING OUT OF THE IMPUGNED FINAL JUDGEMENT AND ORDER DATED 29.03.2019 PASSED BY THE HON'BLE HIGH COURT OF JUDICATURE AT BOMBAY IN WRIT PETITION (L) NO. 954 OF 2019]

**IN THE MATTER OF:**

**POSITION OF PARTIES**

**HIGH COURT      THIS COURT**

<p>Credai Pune Metro Through Its Secretary Having Its Office At No.T-1, 3<sup>RD</sup> Floor, Nucleus Jeejeebhoy Towers, Church Road Pune-411 001 Maharashtra.</p>	<p>NOT A PARTY</p>	<p>PETITIONER</p>
--	--------------------	-------------------

**- V E R S U S -**

- |  |                   |   |
|--|-------------------|---|
| <p>1. Union Of India<br/>Through its secretary<br/>Ministry of Environment,<br/>Forest And Climate<br/>Change Indira Paryavaran<br/>Bhawan Jorbagh Road,<br/>New Delhi-110003.</p>                                     | <p>RESPONDENT</p> | <p>PROFORMA<br/>RESPONDENT<br/>NO.1</p> |
| <p>2. Builders Association Of<br/>India(BAI)<br/>Through its Authorized<br/>Representative<br/>Mr. Rajendra @ Nirmal<br/>Kumar.<br/>G1/G20, 7<sup>th</sup> Floor,<br/>Commerce Centre,<br/>J. Dadaji Road, Tardeo,</p> | <p>PETITIONER</p> | <p>PROFORMA<br/>RESPONDENT<br/>NO.2</p> |

**TRUE COPY**

*Bombrose*

Mumbai-400034.  
Maharashtra.

TO

THE HON'BLE CHIEF JUSTICE OF INDIA AND HIS  
COMPANION JUSTICES OF THE HON'BLE SUPREME  
COURT OF INDIA

THE HUMBLE PETITION OF  
THE PETITIONER  
ABOVENAMED

**MOST RESPECTFULLY SHOWETH:**

1. That the present Special Leave Petition is being filed against the impugned Final Judgment and Order dated 29.03.2019 passed by the Hon'ble High Court of judicature at Bombay in Writ Petition (L) No. 945 of 2019 whereby the Hon'ble High Court was pleased to reject the said Writ Petition filed by the Builders Association Of India.
- 1A. The Petitioners humbly submit that no Letters Patent Appeal or Second Appeal is maintainable against the impugned judgment and order.
2. **QUESTIONS OF LAWS:**
  - 2.1. Whether the Hon'ble High Court was justified in the facts and circumstances of the present case in dismissing the Writ Petition?

- 2.2. Whether in the facts and circumstances of the present case, the construction projects developed by the members of the Petitioner Association between 2006 to 2011 for which environment clearances were granted on the basis of built up area as defined in the DCRs ought to be protected?
- 2.3. Whether the projects developed by the members of the Petitioner Association between 2006 to 2011, for which environment clearances were granted on the basis of built up area as defined in the DCRs ought to be protected, in light of the fact that it was only on 04/04/2011 that the Ministry of Environment and Forests issued a notification clarifying that the built up area for the purpose of Notification dated 14/09/2006 was to mean the built up or covered area on all the floors put together including basement(s) and other service areas, which are proposed in the building/construction projects?
- 2.4. Whether the projects developed by the members of the Petitioner Association between 2006 to 2011 for which environment clearances were granted on the basis of built up area as defined in the DCRs ought to be protected in light of the fact that prior to the Notification dated 04/04/2011 the authorities

## 8

- themselves had granted such clearances on the basis of built up area calculated as defined in the DCRs?
- 2.5 Whether the members of the Petitioner Association can be penalized for no fault of theirs?
- 2.6 Whether the projects which have long been completed with requisite permissions and without any objections from the authorities can now considered in violation of the EIA Notification dated 14.09.2006 from the retrospective dates?
- 2.7 Whether the projects developed by the members of the Petitioner Association between 2006 to 2011 for which environment clearances were granted on the basis of built up area as defined in the DCRs ought to be protected in light of the fact that this Hon'ble Court itself had held that the threshold of 20,000 square metres built-up area was for covered construction and in case of facilities open to the sky, the built up area would be the activity area?
- 2.8. Whether the Notification dated 04/04/2011 issued by the Ministry of Environment and Forests ought to be applied prospectively?

3. **DECLARATION IN TERMS OF RULE 3(2):**

The Petitioners state that Special Leave Petition (Civil) No. 10078 of 2019 has been filed by Builders Association Of India challenging impugned judgment and order dated 29/03/2019 passed by the Hon'ble High Court in Writ Petition (L) No.954 of 2019. By order dated 03/05/2019 this Hon'ble Court was pleased to issue notice in the said Special Leave Petition and directed that in the meantime no coercive steps shall be taken.

4. **DECLARATION IN TERMS OF RULE 5**

The Annexures P/1 to P/10 produced along with the Special Leave Petition are true copies of the pleadings/documents. As the Petitioner was not a party to the proceedings in which the impugned order has been passed, the Annexures produced along with the Special Leave Petition were not part of the records of the Court/Authority below against whose order special leave to appeal is sought for in this petition.

5. **GROUND**

5.1. FOR THAT the Hon'ble High Court erred in dismissing the Writ Petition.

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- 5.2. FOR THAT the Hon'ble High Court, ought to have entertained the Writ Petition and granted the relief as prayed for in the Writ Petition.
- 5.3. FOR THAT the Hon'ble High Court ought to have appreciated that prior to the Notification dated 04/04/2011 Environmental Clearances were issued to the members of the Petitioner association by the concerned authorities on the basis of calculation of Built Up Area as provided for in the DCRs.
- 5.4. FOR THAT the Hon'ble High Court ought to have appreciated that there was no default on part of the members of the Petitioner association in carrying out construction on the basis of the Environmental clearances granted by the concerned authorities on the basis of calculation of Built Up Area as provided for in the DCRs.
- 5.5 FOR THAT the Hon'ble High Court ought to have appreciated that the members of the Petitioner Association could not have been penalized for no fault of theirs.
- 5.6. FOR THAT the Hon'ble Court ought to have appreciated that it was for the first time by notification dated 04/04/2011 issued by the Ministry of Environment and Forests, whereby the words of

Column 5 against Item 8(a) in the schedule annexed to the notification dated 14/09/2006 were replaced and substituted.

5.7. FOR THAT the Hon'ble High Court ought to have appreciated that notification dated 04/04/2011 issued by the Ministry of Environment and Forests ought to be applied prospectively to applications received for environmental clearance after the said Notification.

5.8. FOR THAT the Hon'ble High Court ought to have appreciated that the term 'built up area' came to be understood in terms of the state / municipal bye laws at least till the issuance of the 2011 notification even for the purposes of grant of environmental clearance. It is most respectfully submitted that in absence of a definition of the term 'built-up area' in the EIA Notification 2006, the same was calculated and/interpreted in consonance with the state bye-laws to fill in the vacuum until the 2011 Notification came into effect. That the construction industry as well as the Appropriate Authorities including MoEF had understood and proceeded the term built up area with respect to granting ECs'.

5.9.FOR THAT the Hon'ble High Court ought to have appreciated that prior to the 2011 Notification, the description of 'built up area' under the original EIA Notification 2006 was limited to covered construction, while in cases of facilities open to the sky it would be the activity area. However, there was guidance available as to the meaning of the term 'built up area' under the relevant state bye laws, and the practice adopted by the appropriate authorities was to interpret 'built up area' for the purpose of granting ECs in consonance with the applicable state bye laws. That most of the state-bye laws calculate 'built-up area' on the basis of Floor Space Index (FSI). It is submitted that the appropriate authorities were granting ECS on the basis of FSI.

5.10.FOR THAT the Hon'ble High Court ought to have appreciated that that this Hon'ble Court observed the ambiguity in the term 'built-up area' in the EIA Notification 2006 in the judgment and order dated 03/12/2010 in the case of T.N. Godavarman Thirumulpad Versus Union of India & Ors and expressed the need for redefining the same in the following words:

*"The EIA notification dated September 14, 2006 urgently calls for a close second look by the concerned authorities. The projects/activities under items 8(a) and 8(b) of the schedule to the notification need to be described with greater precision and clarity and the definition of built-up area with facilities open to the sky needs to be freed from its present ambiguity and vagueness."*

It is submitted that in compliance with the direction given by this Hon'ble Court in the aforementioned judgment, the MoEF brought into effect the 2011 Notification which contained a clear definition of the term 'built-up area' stating that

*"the built-up area for the purpose of this Notification is defined as the built up area or covered area on all floors put together including basements and other service areas, which are proposed in the building/construction project."*

5.11.FOR THAT the Hon'ble High Court ought to have appreciated that even the facts recorded in the judgment and order dated 03/12/2010 in the case of T.N. Godavarman Thirumulpad Versus Union of India & Ors reflect the general practice adopted by the appropriate authorities of interpreting 'built up area' in consonance with the state bye laws. The said Judgment pertained to a project undertaken by the Govt. of Uttar Pradesh to develop a recreational park at

NOIDA. The project involved massive construction inter alia including dedicatory columns, commemorative plaza, national memorial, plinth with sculptures, larger than life statutes etc.; and was undertaken without any prior environmental clearance as required under the EIA Notification 2006. When an issue was raised with respect to the project being undertaken without prior environmental clearance, the stand taken by the SEIAA UP was that the built-up area was less than 20,000 square meters and the EIA Notification 2000 would not be applicable. In submitting so, the SEIAA UP had calculated the 'built up area' on the basis of state bye-laws. Furthermore, during the course of the proceedings of the 2010 Judgment, the MoEF also took the unequivocal stand that the project in question did not require prior environmental clearance (*paras 38-49*). As was noted in para 42 of the 2010 Judgment:

*The built-up area has been calculated by the state of Uttar Pradesh on the basis of its building bye-laws.'*

*"..... The MoEF, however reiterated its stand in very definite and unequivocal terms that the project in question did not fall within the ambit of the EIA Notification 2006 and no environmental clearance was required for such kind of projects. The stand of the MoEF was based on the premise that the area of the project (33.43ha) was less than 50ha and its built up area (9542 sq m) was less than 20,000 sq.m. ...."*

The aforesaid is an example of the manner in which the different states' SEIAA, as well as the MoEF, were routinely calculating 'built up area' in consonance with state bye laws while granted environmental clearance prior to 04.04.2011.

5.12.FOR THAT the Hon'ble High Court ought to have appreciated that the definition of the term 'built-up area' as provided under 2011 notification ought to be applied prospectively. It is most respectfully submitted that the application of the 2011 Notification to projects granted ECs between 14.09.2006 - 04.04.2011 or to those projects which were exempted from an EC prior to the 2011 Notification shall oppress the vested rights of such project proponents, create new disabilities or obligations or impose new duties in respect of constructions already completed. The same shall cause chaos, disruption and disarray in the entire construction industry.

5.13.FOR THAT the Hon'ble High Court ought to have appreciated that prior to 04.04.2011, the widely followed practice for the project proponents was to specify the FSI area as the built-up area, and for the appropriate authority to grant the EC after noting such FSI area as the built-up area in the EC. It is

pertinent to note that even though most of the applications made prior to the 2011 notification specified 'built up area' to be the same as FSI, due to the practice followed, the applications submitted nonetheless contained:

- a) disclosures, details and or designs and drawings of non FSI area to the relevant authority .
- b) Details of the entire usable area to the relevant authority
- c) disclosures and details of environmental impact of the project such as water consumption, sewage, energy consumption, pollution generated etc.

All these factors would be independent of the manner in which 'built up area' was considered and remained the same. However, notwithstanding the disclosure of the entire area, ECs were routinely granted by the appropriate authorities with reference only to the FSI area specified in the application as the built-up area.

5.14. FOR THAT the Hon'ble High Court ought to have appreciated that even though the ECs may have been granted by the appropriate authorities for the projects

on the basis of 'FSI Area' for the purpose of calculating 'built up area' for the period between 2006-2011; the overall impact on the environment caused by the construction, including crucial factors such as water consumption, sewerage facilities, energy, consumption, welfare of the people, road requirements, pollution generated etc., remains unchanged. This is notwithstanding the use of non-FSI Area of the projects for the calculation of the built up area. Therefore, so long as the overall environmental impact remains unchanged, merely due to the fact that non-FSI area while being disclosed, was not taken as a part of 'built up area' by the appropriate authorities while granting ECs prior to 2011, (due to the then general understanding of the provisions of the 2006 notification), ought not to by itself trigger a violation of the EIA Notifications 2006 and ECs issued thereunder.

5.15 FOR THAT the Hon'ble High Court ought to have appreciated that from the years 2006-2011; i.e. prior to the introduction of the 2011 Notification, it was a common practice of the appropriate authorities to grant EC to project proponents on the basis of 'built up area' as defined in the state bye laws. That most of the state bye laws equated the terms 'built up area' and

'FSI' and many of the ECs granted used the terms 'built up area' and 'FSI' interchangeably.

5.16. FOR THAT the Hon'ble High Court ought to have appreciated that the application of the 2011 Notification to projects granted ECs between 14.09.2006 - 04.04.2011 or to those projects which were exempted from an EC prior to the 2011 Notification; shall oppress the vested rights of such project proponents, create new disabilities or obligations or impose new duties in respect of constructions already completed.

5.17 FOR THAT the Hon'ble High Court ought to have appreciated that the retrospective operation of notification dated 04/04/2011 issued by the Ministry of Environment and Forests will result in grave consequences. Not only the projects for which environmental clearances have been granted prior to 2011 on the basis of calculation of Built Up Area as provided for in the DCRs will be affected but also the projects for which no environmental clearances were obtained as they did not come within the purview of the Notification dated 14/09/2006 on the basis of calculation of Built Up Area as provided for in the DCRs, will also stand affected.

5.18.FOR THAT the Hon'ble High Court ought to have granted protection of the construction projects developed between 2006 to 2011 for which environment clearances were granted on the basis of built up area as defined in the DCRs.

5.19.FOR THAT the Petitioner craves leave of this Hon'ble Court to add/alter/amend the grounds if so advised.

**6. GROUND FOR INTERIM RELIEF:**

- 6.1 That as demonstrated above, the Petitioner has a good prime facie case on merits. The Petitioner has been advised that they have good chances of succeeding in the matter.
- 6.2 That grave prejudice would be caused to the members of the Petitioner Association if the interim relief as per for is not granted. Not only the projects for which environmental clearances have been granted prior to 2011 on the basis of calculation of Built Up Area as provided for in the DCRs will be affected but also the projects for which no environmental clearances were obtained as they did not come within the purview of the Notification dated 14/09/2006 on the basis of calculation of Built Up Area as provided for in the DCRs, will also stand affected. The members of the

Petitioner Association would be penalized for no fault of theirs. On the other hand no prejudice would be caused to the Respondents if the interim relief as prayed for is granted.

6.3 The balance of convenience tilts overwhelmingly in favour of the Petitioner.

7. **MAIN PRAYER :**

In the facts and circumstances of the case, it is, therefore, respectfully prayed that this Hon'ble Court may graciously be pleased to:

- (a) grant Special Leave to appeal to the Petitioners against the impugned final judgment and order dated 29.03.2019 passed by the Hon'ble High Court of judicature at Bombay in Writ Petition (L) No. 945 of 2019 and;
- (b) pass such other or further order or orders as this Hon'ble Court may deem fit and proper in the facts of the case;

8. **PRAYER FOR INTERIM RELIEF :**

In the facts and circumstances of the case, it is, therefore, respectfully prayed that this Hon'ble Court may graciously be pleased to:

- (a) pass an ex parte interim order granting stay of the operation of the impugned final judgment and order dated 29.03.2019 passed by the Hon'ble High Court of judicature at Bombay in Writ Petition (L) No. 945 of 2019 and;
- (b) pass an ex parte interim order directing that no coercive steps shall be taken against the members of the Petitioner Association, a list whereof is annexed at Annexure P/1, who had taken valid environmental clearances as per notification dated 14/09/2006 on the basis of calculation of built up area as provided for in the DCRs notwithstanding the judgment dated 10/08/2018 passed by this Hon'ble Court in the case of Goel Ganga Developers V. Union of India (in C.A. No. 10854 of 2016 and connected matters) till the final disposal of the present Special Leave Petition;
- (c) pass an ex parte interim order directing that notwithstanding the judgment dated 10/08/2018 passed by this Hon'ble Court in the case of Goel Ganga Developers V. Union

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of India (in C.A. No. 10854 of 2016 and connected matters), no coercive steps shall be taken against the members of the Petitioner Association, a list whereof is annexed at Annexure P/1, who had not taken environmental clearances as per notification dated 14/09/2006 as they did not come within the purview of the said notification on the basis of calculation of built up area as provided for in the DCRs, till the final disposal of the present Special Leave Petition;

(d) pass an ex parte ad interim order in terms of prayer clause (a), (b) and (c) above and;

(e) pass such other or further order or orders as this Hon'ble Court may deem fit and proper in the facts of the case

**AND FOR WHICH ACT OF KINDNESS THIS HUMBLE  
PETITIONERS AS DUTY BOUND SHALL EVERY  
PRAY**

DRAWN ON. 26/08/2019

FILED BY:

FILED ON: 03/09/2019

**PRAGYA BAGHEL.**  
Advocate for the Petitioner

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
SPECIAL LEAVE PETITION (CIVIL) \_\_\_\_\_ OF 2019  
IN THE MATTER OF:**

CREDAI PUNE METRO ..... APPLICANT/PETITIONER

VERSUS

UNION OF INDIA AND ANR .....RESPONDENTS

**C E R T I F I C A T E**

Certified that this Special Leave Petition is confined only to the pleadings before the Court whose order is challenged and the documents relied upon in those proceedings. No additional fact, documents, or grounds have been taken or are relied upon in this Special Leave Petition. It is, further certified that the copies of the documents (Annexure attached herewith) are necessary to answer the question of law raised in the SLP and to make out grounds urged in the SLP. This certificate is given on the basis of the instructions given by the persons authorized by the petitioners whose affidavit is filed in support of this Special Leave Petition.

DRAWN BY:

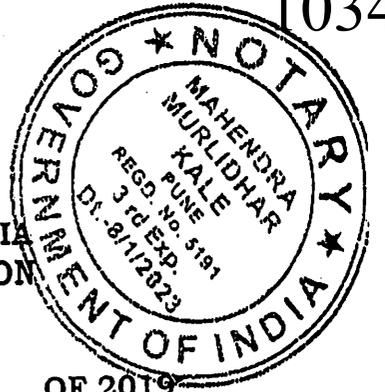
FILED BY:

DATE: 26/08/2019

DATE: 03/09/2019

PRAGYA BAGHEL  
(Advocate for the Petitioner)

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IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
I.A. NO. OF 2019

IN  
SPECIAL LEAVE PETITION (CIVIL) NO. OF 2019

**IN THE MATTER OF:-**

CREDAI PUNE METRO  
THROUGH ITS SECRETARY.....PETITIONER  
VERSUS

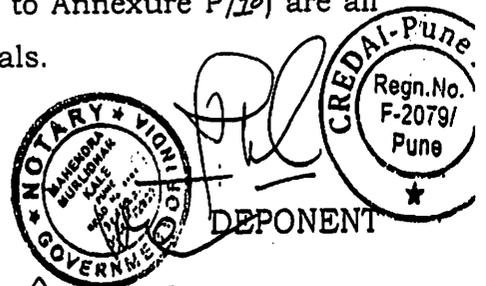
UNION OF INDIA AND ANR.....RESPONDENTS

**AFFIDAVIT**

I, MR. ADITYA VILAS JAVDEKAR S/o MR. VILAS YASHWANT  
JAVDEKAR aged 41 yrs, having office at Nucleus Jeejeebhoy  
towers, 3<sup>rd</sup> floor, Office T-1, T-2, T-3, Church Road, Opp.  
Commissioner Office, Camp, Pune- 411001, do hereby solemnly  
affirm and say as follows:

1. That I am the Secretary of the Petitioner herein and as such I am conversant and acquainted with the facts and circumstances of the instant case. I am competent and authorized to affirm this affidavit.
2. That the contents of the accompanying Synopsis and List of Dates (pages 8 to 2 ), Special Leave Petition (pages 5 to 24) ; para 1 to 8) and the Applications filed therein are true to my knowledge and belief and/or are based on the information received from the records and believed by me to be true.
3. That the Annexures (Annexure P/1 to Annexure P/10) are all true copies of their respective originals.

29 AUG 2019



DEPONENT

VERIFICATION

Verified at Pune on this 29 day of September, 2019 that the contents of the foregoing affidavit are true to my knowledge based on record, no part is false and nothing material has been concealed therefrom.

9 AUG 2019

NOTED AND REGISTERED AT

SERIAL NUMBER 6689/19 MAHENDRA MURLIDHAR KALE

ADVOCATE & NOTARY  
GOVT. OF INDIA

605, HARIPRIYA, VASANT KAMAL VIHAR,

DEPONENT

TRUE COPY

Bombay

**ANNEXURE-A-17****REPORTABLE**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**I.A. NO.64665 OF 2019****IN****CIVIL APPEAL NO. 10854 OF 2016**M/S. GOEL GANGA DEVELOPERS  
INDIA PVT. LTD.

... Applicant (s)

Versus

UNION OF INDIA THROUGH SECRETARY  
MINISTRY OF ENVIRONMENT  
AND FORESTS & ORS.

...Respondent(s)

**ORDER**

The only issue involved in this application is whether non-consideration of a judgment delivered by a three-Judge Bench in

***Re: Construction of Park at Noida Near Okhla Bird Sanctuary***

Signature Not Verified  
Digitally signed by  
ARJUN BISWAL  
Date: 2016.09.11  
16:51:16 IST  
Reason:

***& Ors.<sup>1</sup>***, hereinafter referred to as 'NOIDA Park case', has led to

wrong conclusions by this Court with regard to the interpretation of built up area in terms of Item No. 8 of the Schedule of the Environment Impact Assessment (EIA) Notification dated 14.09.2006. The relevant portion of the notification reads as follows:

(1)	(2)	(3)	(4)	(5)
<b>8</b>		<b>Building/Construction projects/Area Development projects and Townships</b>		
<b>8(a)</b>	Building and Construction projects		≥20000 sq. mtrs. And <1,50,000 sq. mtrs. Of built-up area#	#(built up area for covered construction; in the case of facilities open to the sky, it will be the activity area)
<b>8(b)</b>	Townships and Area Development projects		Covering an area ≥50 ha and or built up area ≥1,50,000 sq. mtrs. ++	++All projects under Item 8(b) shall be appraised as Category B1.

While interpreting this clause, one of us (Deepak Gupta, J.) held as follows:

**“13.** From a bare perusal of the two hash tags (#) in Column 4 and 5 of Item 8(a), it is apparent that what is shown under Column 5 is actually a continuation of Column 4 and basically it describes or defines ‘built up area’ to mean covered construction and if the facilities are open to the sky, it will be taken to be the activity area. This by itself clearly shows that

under the notification of 2006, all constructed area, which is covered and not open to the sky has to be treated as 'built up area'. There is no exception for non-FSI area.

**14.** Indeed, the concept of FSI or non-FSI has no concern or connection with grant of EC. The same may be relevant for the purposes of building plans under municipal laws and regulations but it has no linkage or connectivity with the grant of EC. When EC is to be granted, the authority which has to grant such clearance is only required to ensure that the project does not violate environmental norms. While projects and activities, as mentioned in the notification, may be allowed to go on, the authority while granting permission should ensure that the adverse impact on the environment is kept to the minimum. Therefore, the authority granting EC may lay down conditions which the project proponent must comply with. While doing so, such authority is not concerned whether the area to be constructed is FSI area or non-FSI area. Both will have an equally deleterious effect on the environment. Construction implies usage of a lot of materials like sand, gravel, steel, glass, marble etc., all of which will impact the environment. Merely because under the municipal laws some of this construction is excluded while calculating the FSI is no ground to exclude it while granting the EC. Therefore, when EC is granted for a particular construction it includes both FSI and non-FSI areas. As far as environmental laws are concerned, all covered construction, which is not open to the sky is to be treated as built up area in terms of the EIA Notification dated 14.09.2006.”

The contention raised on behalf of the applicant is that since the three-Judge Bench had in Para 84 of the judgment in the **NOIDA Park case** observed that the EIA Notification dated 14.09.2006 calls for a close second look by the authorities concerned especially in respect of the projects/activities falling

within the ambit of Items 8(a) and 8(b) of the Schedule to the Notification which need to be described with greater precision and clarity and the definition of built up area with facilities open to the sky needs to be freed from its present ambiguity and vagueness, the two-Judge Bench which delivered the judgment was bound by this judgment of three-Judge Bench and could not have held that the Notification dated 14.09.2006 clearly shows that all constructed area which is covered and not open to the sky, has to be treated as built up area.

Though the observations in Para 84, at first blush, support the contention of the applicant, one has to appreciate the factual background in which these observations were made. In the **NOIDA Park case**, this Court was asked to intervene and halt a project in which a huge park was being constructed. As far as Item 8(a) of the Schedule to the EIA Notification, 2006 is concerned, the contentions in this regard start from Para 38. The MoEF took the stand that no environmental clearance was required because the project area was 33.43 hectares, which was less than 50 hectares

and the built up area was 9542 sq. mtrs., which was less than 20,000 sq. mtrs.

It was contended on behalf of the petitioners and the amicus curiae that the project would fall under Section 8(a) because though the covered construction of the project was only 6999.50 sq. mtrs., the project by its very nature provided facilities open to the sky and the whole of this open area, which was activity area, should be treated as the built up area. The park consisted of certain constructed structures like pathways, walkways, statues, fountains, etc. which were open to the sky and treated as activity area. The contention of the amicus curiae and the petitioners who were objecting to the project was that the construction which was open to the sky and was to be treated as activity area should also be considered as part of the built up area.

The main dispute in the **NOIDA Park case** was whether the project was a building and construction project or a township and area development project. This Court held that this was a township and area development project. While considering this dispute the

Court felt that there was some ambiguity. This issue did not arise in the case in hand. The second point urged before the Court was that the facilities open to the sky i.e. the activity area should also be included in the built up area and it was this confusion which the court wanted the Central Government to settle. No party had raised any contention in the **NOIDA Park case** about the covered area being built up area. All the parties were *ad idem* that covered construction was built up area and the Court also held so.

This Court in this judgment has only held that all covered construction shall be deemed to be built up area and that the municipal laws regarding Floor Space Index (FSI) or Floor Area Ratio (FAR) have no relevance. This issue did not arise in the **NOIDA Park case**.

Therefore, in our opinion, the earlier judgment will have no impact on the present case.

Reference was also made to Notification dated 04.04.2011 and the Clarification dated 07.07.2017. These have already been dealt with in the judgment dated 10.08.2018 and those were not points of

issue in the **NOIDA Park case**. Therefore, we find no merit in the application and the same is dismissed accordingly.

.....**J.**  
**(Deepak Gupta)**

.....**J.**  
**(Aniruddha Bose)**

**New Delhi**  
**September 11, 2019**

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Bgmbrise

**S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S****SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 32134/2019****(Arising out of impugned final judgment and order dated 29-03-2019 in WPL No. 954/2019 passed by the High Court Of Judicature At Bombay)****CREDAI PUNE METRO****Petitioner(s)****VERSUS****UNION OF INDIA & ANR.****Respondent(s)****(FOR ADMISSION and I.R. and IA No.136818/2019-CONDONATION OF DELAY IN FILING and IA No.136816/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.136815/2019-PERMISSION TO FILE PETITION (SLP/TP/WP/..) )****Date : 20-09-2019 This petition was called on for hearing today.****CORAM :****HON'BLE MRS. JUSTICE R. BANUMATHI  
HON'BLE MR. JUSTICE A.S. BOPANNA****For Petitioner(s)****Mr. Sidharth Dave, Sr. Adv.  
Mr. Shyam Divan, Sr. Adv.  
Mr. Amol Chitale, Adv.  
Mrs. Pragya Baghel, AOR  
Ms. Ranjeeta Rohatgi, Adv.  
Mr. Abhishek Thakral, Adv.  
Mr. Saket Mone, Adv.  
Mr. Subit Chakrabarti, Adv.  
Mr. Abhishek Salian, Adv.****For Respondent(s)****UPON hearing the counsel the Court made the following****O R D E R****Permission to file special leave petition is granted.****We have heard Mr. Sidharth Dave and Mr. Shyam Divan, learned senior counsel appearing on behalf of the petitioner.****Delay condoned.****Issue notice.****In the meantime, no coercive steps shall be taken.****Tag with SLP(C)No. 10078 of 2019.****(MADHU BALA)  
COURT MASTER (SH)****TRUE COPY****(NISHA TRIPATHI)  
BRANCH OFFICER**

**ANNEXURE-A-19****IN THE SUPREME COURT OF INDIA**

CIVIL APPELLATE JURISDICTION

**INTERVENTION APPLICATION NO. 160684 OF 2019****IN****SPECIAL LEAVE PETITION (CIVIL) NO. 10078 OF 2019**

[Arising out of the impugned final Order dated 29.03.2019 passed by High Court of Judicature at Bombay in Writ Petition (L) No. 954 of 2019]

**IN THE MATTER OF:**

MR. TANAJI BALASAHEB GAMBHIRE ....APPLICANT

**AND IN THE MATTER OF:**

BUILDERS ASSOCIATION OF INDIA (BAI) ....PETITIONER

VERSUS

UNION OF INDIA ....RESPONDENT

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA AND  
HIS COMPANION JUDGES OF THE HON'BLE  
SUPREME COURT OF INDIA

THIS HUMBLE INTERVENTION  
APPLICATION OF THE  
APPLICANT ABOVE NAMED

**MOST RESPECTFULLY SHOWETH:**

1. It is respectfully submitted that, the SLP (Civil) No. 10078 of 2019 is filed by Builders' Association of India against Union of India through MoEF seeking relief on account of non-action by concern authorities on building construction project under item (8) of Schedule to EIA Notification-2006 and those who have received EC between 14.09.2006 to 04.04.2011 with help of Order &

**TRUE COPY***Bombhise*

Judgment dated 03.12.2010 IN RE: CONSTRUCTION OF PARK AT NOIDA and Final Order and Judgment dated 10.08.2018 in Civil Appeal No. 10854 of 2016.

- 2.** It is submitted that, biggest apprehension of the Petitioner-Builders' Association of India is that Built up area is nothing but FSI prior to issuance of clarification dated 04.04.2011 to EIA Notification-2006 and the definitions of Built up Area and FSI have to be considered from DC Regulations of the respective local authorities.
- 3.** It is submitted that, this Intervener Applicant is the Original Applicant / complainant before the Hon'ble NGT and Respondent No. 9 in Civil Appeal No. 10854 of 2016 in the matter of M/s. Goel Ganga Developers (I) Private Limited Vs Union of India & Others. Wherein Hon'ble NGT and this Hon'ble Court have clarified spectacle of BUA & FSI from the minds of incorrigible polluters and also shown iron hands to the authorities, those always wants to sit in line with such incorrigible polluters to preserve the will of beneficiary politicians from polluters and this is the harsh reality behind the curtains and no more secrete.
- 4.** It is submitted that, the SLP is nothing but the review of final Order and Judgment dated 10.08.2018 passed by this Hon'ble Court in Civil Appeal No. 10854 of 2016 and it is very surprising and shocking to this applicant how can someone file such SLP's seeking review of judgments. But from the petition of Builders Association of India, one

thing is become very clear that, the might and resourceful entrepreneurs can undo the thing with their unholy political and corrupt bureaucratic connection and can manipulate the system.

5. It is submitted that, the MoEF issued S. O. 60 (E) Environment Impact Assessment of Development Project Notification on 27.01.1994 mandating prior environment clearance as per clause 2.III.c of the this notification for the activities listed in the schedule-I of this notification as well as industries having investments more than 50 Crores apart from Schedule-I. It is specifically submitted that, the Building Construction projects and Area Development of Township projects was not included in this notification, but it was mandatory to obtain prior EC for those building construction projects having investments more than 50 Crores. A true copy of this EIA Notification-1994 dated 27.01.1994 is attached herewith and annexed as **ANNEXURE-A-1** (Page No. \_\_\_\_\_ to \_\_\_\_\_).
6. It is submitted that, the MoEF issued amendment to S. O. 60(E) Environment Impact Assessment of Development Project Notification on 27.01.1994 vide S. O. 801 (E) EIA Notification on 07.07.2004 with amending the schedule-I with addition of item No. “31. New Construction Projects & 32. New Industrial Estates”. It is clear that, for first time Environment clearance is made mandatory to the New Construction Projects by amending the schedule and

reason behind implicating building construction project as stated in notification is the decision of Hon'ble Supreme Court of India in Writ Petition (C) No. 725 of 1994, case titled/namely from news item published in Hindustan Times titled "And Quiet Flows the Maily Yamuna" vs. Central Pollution Control Board and Others". A true copy of this EIA Notification-2004 dated 04.07.2004 is attached herewith and annexed as **ANNEXURE-A-2** (Page No. \_\_\_\_\_ to \_\_\_\_\_).

7. It is submitted that, in both of these notification there is no mention of any definition or explanation of any technical term, because any technical term is have clear meaning from its birth or origin in science and any technical term have no confusion in the science and basic concepts of the engineering or science or technology cannot be disputed as there are no substitutes. Otherwise every research or invention made for development of civil society become null and void and everything will be in scrap if we misunderstand FSI as BUA. Therefore it cannot be said that the Built up area is nothing but Floor Space Ratio (FSA) or Floor Space Index (FSI/FAR).
8. It is submitted that, the MoEF issued S.O. 1553(E) Environment Impact Assessment Notification (in short EIA Notification-2006) dated 14.09.2006 superseding S.O. 60(E) Environment Impact Assessment of Development Project Notification on 27.01.1994 with great precision and clarification mandating prior

environment clearance. It is also submitted that, this EIA Notificaiton-2006 have well classification and categorisation of industries in 39 project activities divided into 8 categories and also procedure of obtaining prior EC is explained in stage wise manner. As we are concerned with the item-8 of schedule-I, that is “Building / Construction Projects / Area Development Projects and Townships”.

9. It is submitted that, the as per EIA Notification-2006, Prior Environment Clearance (EC) is mandatory for building / construction projects / Area Development Projects and Townships, if the proposed project involves construction of more than 20,000 Sq. Mtrs of Built-up Area in such projects. It is submitted that, the hashtag “#” built-up area shown in column-4 is the continuation of coloum-5 entry with “built-up area for covered Construction; in the case of facilities open to the sky, it will be the activity area” and therefore the Built-up area is the covered area and which is not only FSI but also includes Non-FSI and the said limit of 20000 sq. Mtrs. area for BUA includes all covered construction having no exemption to FSI and Non-FSI from calculation of total BUA of Projects. A true copy of this EIA Notification-2006 dated 14.09.2006 is attached herewith and annexed as **ANNEXURE-A-3** (Page No. \_\_\_\_\_ to \_\_\_\_\_).

10. It is submitted that, this Hon’ble Court has passed an Order and Judgment dated 03.12.2010 in the matter of

Anand Arya & another Versus UOI on Interlocutory Application No. 2609-10 of 2009 filed in Writ Petition (C) No. 202 of 1995. This Judgment is also known as 2011 (1) SCC 744, IN RE: CONSTRUCTION OF PARK AT NOIDA NEAR OKHLA BIRD SANCTUARY. It is submitted that, the biggest apprehension of the petitioner in the present SLP is the observation of the Hon'ble Court in para-84 of said judgment and the said para is reproduced here as below;

*“84. Before putting down the records of the case a few observations may not be out of place. The EIA notification dated September 14, 2006 urgently calls for a close second look by the concerned authorities. The projects/activities under items 8(a) and 8(b) of the schedule to the notification need to be described with greater precision and clarity and the definition of built-up area with facilities open to the sky needs to be freed from its present ambiguity and vagueness.....”*

- 11.** It is submitted that, the Hon'ble Court has opined for second close look for description of schedule with great precision and clarity and further the definition of built-up area with facilities open to the sky needs to be freed from its present ambiguity and vagueness. It is important to note here, issue of facilities open to sky was in need to be freed from its ambiguity and vagueness of built-up area definition. There was no occasion to consider the issue of covered construction into built-up area only because the

definition of built-up area is well established into civil engineering as well as in EIA Notification-2006. Also there is no ambiguity and vagueness on account of consideration of covered construction into built-up area. Moreover none of the party in Okhla Bird sanctuary case has disputed the ambiguity and vagueness in definition of Built-up area on account of consideration of covered area. On contrary all the parties has unique argument for covered construction is part of built-up area.

- 12.** It is submitted that, the core issued involved in IN RE: CONSTRUCTION OF PARK AT NOIDA NEAR OKHLA BIRD SANCTUARY are classified as below:

Sl.	Parameter	Alleged issue involved
1.	Project Type	Park
2.	Land classification	Alleged to be forest land
3.	Major Activity Area	Open to sky
4.	Open to sky facilities	To be considered in calculation of BUA
5.	Project Area	33.43 ha, i.e. 3343334 M <sup>2</sup>
6.	Total built-up covered Area	6999.50 M <sup>2</sup>
7.	Main issue	Prior EC is not obtained and there is violation of EIA Notification-2006 (Para-38 of Judgment)
8.	Classification of project	Project do not comes under Building/ Construction project or Township or area development Project
9.	Conclusion of this Hon'ble Court	Para-68. Since it is held that the project does not come within the ambient of the notification, the other three arguments based on the activity area, the application

		of general condition and the application of the Office Memorandum dated 2-1-2009 become irrelevant and need not be gone into in this case.
10.	Important Paragraphs	39, 61 to 68 and 84 of judgment

**13.** Therefore it is submitted that, the stand of the petitioners in both SLPs will not survive and also will not help the polluter for create more jugglery to overcome their illegalities of pollution causing damage to environment & ecology with help of authorities appointed for protection of environment. A true copy of the judgment 2011 (1) SCC 744, IN RE: Construction of Park at Noida near Okhla Bird Sanctuary, dated 03.12.2010 is attached herewith and annexed as **ANNEXURE-A-4** (Page No. \_\_\_\_\_ to \_\_\_\_\_).

**14.** It is submitted that, after the judgment of this Hon'ble Court IN RE: Construction of Park at Noida near Okhla Bird Sanctuary dated 03.12.2010, MOEF issued an clarification notification S. O. 695(E) dated 04.04.2011 explaining the definition of Built-up Area in EIA Notification-2006. The notification dated 04.04.2011 is enacted with the object of explaining and clarifying the meaning of the term built up area in the EIA Notification 2006. It is further submitted that, the preamble of the said clarificatory notification which is reproduced hereunder makes it abundantly clear that the clarification notification-2011 was to provide only

clarification with regard to the term “built-up area” as stated in the said notification as below:

*“And whereas, it has been decided to provide clarification with regard to the term “built-up area” used in the said Notification and also to make various paras of the Notification mutually consistent and to restore the unintentional changes, which got into the Notification while making amendment vide S.O. 3067 (E) dated 1st December, 2009, in particular the entry against item No. 7 (f) in the schedule to the EIA Notification, 2006 relating to highway projects and for this purpose to issue suitable amendments in the said Notification.”*

**15.** Therefore it is clear that, the term “built up area” is clarified by Notification dated 04.04.2011 as:

*“The built up area for the purpose of this Notification is defined as “the built up area or covered area on all the floors put together including basement(s) and other service area, which are proposed in the building/ construction projects”..*

**16.** Obviously therefore, the clarification given necessarily applies to EIA Notification-2006 with retrospective effect from 14.09.2006 the date on which EIA came into force. Thus the reasoning given by the Hon’ble Tribunal & this Hon’ble Court in regard of the BUA, FSI and EIA Notification 04.04.2011 is precise, unpretentious and trustworthy. A true copy of this EIA Notification-2011 dated 04.04.2011 is attached herewith and marked as **ANNEXURE-A-5** (Page No. \_\_\_\_\_ to \_\_\_\_\_).

17. It is submitted that, the issue of term Built-up area and FSI was also settled by the Hon'ble NGT in matter of Sunil Kumar Chugh & Anr. Vs. Secretary DoE & Ors. and the observations of Hon'ble NGT are as below:

*“18. It is true that the term “built up area” was not defined in the EIA notification 2006. The import of the term “build up area” could be understood from its plain meaning and could have been very well understood, as pointed out by the appellants, from DC Regulations for Greater Mumbai, 1991. What is built or constructed is that which can be called as built up. In common parlance therefore, that term “built up area” would mean total constructed area. If one refers to Development Control Regulations for Greater Mumbai, 1991, we find clear distinction between “built up area” and Floor Space Index (FSI) in following terms:*

**DCR 2(13): “Built-up area”** means the area covered by a building on all floors including cantilevered portion, if any, but excepting the areas excluded specifically under these Regulations.

**DCR 2 (42): “Floor space index (FSI)”**: means the quotient of the ratio of the combined gross area of all floors, excepting areas specifically exempted under these Regulations, to the total area of the plot, viz. :-

**Floor Space Index (FSI) = Total covered area on all floors/ plot area**

19. DC Regulations 1991 do not afford any specific exception as regard any area for computation of “built-up area” unlike specific exemption of area for computation of FSI specified as in DCR-35. Certain

*areas or structures permitted in recreational open spaces and areas covered by features permitted in open spaces as well as stair-case rooms, lift rooms above the topmost storey, lift-wells, stair cases and passage thereto, chimneys, elevated tanks are not to be counted towards FSI with certain exceptions as given under DCR-35. From definitions of “builtup area” and “FSI area” one can clearly see that these terms have independent and distinct meanings and they cannot be substituted or used inter-changeably with one another. No justification or excuse therefore, is available to the respondent no. 5 to contend that there was any room for misunderstanding the meaning of “built-up area” and only “FSI” area could have been the basis of coming to the conclusion whether the Environment Clearance for the project in question was necessary or not. The contention of the appellants that there was clear perception regarding the built-up area of the project exceeding 20,000 sq. meters amongst all stakeholders- project proponent and authorities concerned is meritorious.*

*20. Assuming that the Amendment of 2011 to the EIA notification, 2006 vide Gazette of India (Extraordinary) Notification S.O. 695(E) was enacted with the object of explaining and clarifying the meaning of the term built up area in the EIA Notification 2006, the applicants argued with reference to Zile Singh case (Zile Singh V. State of Haryana &Ors. Appeal (Civil) 6638 of 2004) that the rule against retrospective application of the statute is inapplicable to such legislations which are explanatory and declaratory in nature. The hon’ble Apex Court in Zile Singh case held as under:*

*“It is cardinal principle of construction that every statute is prima facie prospective unless*

*it is expressly or by necessary implication made to have a retrospective operation. But the rule in general is applicable where the object of the statute is to affect vested rights or to impose new burdens or to impair existing obligations. Unless there are words in the statute sufficient to show the intention of the Legislature to affect existing rights, it is deemed to be prospective only' nova constitution futuris formam imponere debet non praeteritis' \_ a new law ought to regulate what is to follow, not the past.*

*(See; Principles of Statutory Interpretation by Justice G.P. Singh, Ninth Edition, 2004 at p.438). It is not necessary that an express provision be made to make a statute retrospective and the presumption against retrospectivity may be rebutted by necessary implication especially in a case where the new law is made to cure an acknowledged evil of the benefit of the community as a whole. (ibid, p.440) The presumption against retrospective operation is not applicable to declaratory statutes. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is 'to explain' an earlier Act, it would be without object unless constructed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law retrospective operation is generally intended. An amending Act may be purely declaratory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory*

*amendment of this nature will have retrospective effect. (ibid, pp. 468-469).*

.....

*Where a statute is passed for the purpose of supplying an obvious omission in a former statute or to 'explain' a former statute, the subsequent statute has relation back to the time when the prior Act was passed. The rule against retrospectivity is inapplicable to such legislations as are explanatory and declaratory in nature. The classic illustration is the case of Att. Gen. Vs. Pougett ([1816] 2 price 381,392). By a Customs Act of 1873 (53 Geo. 3, c. 33) a duty was imposed upon hides of 9s. 4d., but the Act omitted to state that it was to be 9s. 4d. per cwt., and to remedy this omission another Customs Act (53 Geo. 3, c. 105) was passed later in the same year. Between the passing of these two Acts some hides were exported, and it was contended that they were not liable to pay the duty of 9s. 4d. per cwt., but Thomson C.B., in giving judgment for the Attorney-General, Said: "The Duty in this instance was in fact imposed by the first Act, but the gross mistake of the omission of the weight for which the sum expressed was to have been payable occasioned the amendment made by the subsequent Act, but that had reference to the former statute as soon as it passed, and they must be taken together as if they were one and the same Act." (p.395)*

*21. Preamble of the said amending notification which is reproduced hereunder makes it abundantly clear that the amending Notification was to provide clarification with regard to the term "built-up area":*

*“And whereas, it has been decided to provide clarification with regard to the term “built-up area” used in the said Notification and also to make various paras of the Notification mutually consistent and to restore the unintentional changes, which got into the Notification while making amendment vide S.O. 3067 (E) dated 1st December, 2009, in particular the entry against item No. 7 (f) in the schedule to the EIA Notification, 2006 relating to highway projects and for this purpose to issue suitable amendments in the said Notification.”*

*obviously therefore, the clarification given necessarily applies to EIA Notification, 2006 with retrospective effect from 14<sup>th</sup> September, 2006 the date on which EIA came into force.*

A true copy of final order and judgment in Appeal No. 66 of 2014 passed by Hon’ble NGT dated 03.09.2015 is attached herewith and marked as **ANNEXURE-A-6** (Page No. \_\_\_\_\_ to \_\_\_\_\_).

- 18.** It is submitted that, the MoEF & CC was the Respondent No. 1 in Original Application no. 184 of 2015 before Hon’ble NGT and wherein the Goel Ganga Developer raised a plea that the term built up area & FSI are synonymous and interchangeable terminologies. In this regards in Para-30 to 34 of judgment, Hon’ble NGT have rejected the above plea in totality.

*“30. It is manifest from the above referred EC that while granting the EC, the authority had appraised*

*the project with certain configuration and more pertinently, the Total Built up area. There is no reference to the term FSI area i.e. floor space index area. There is no ambiguity in the contents of EC and therefore, what can be seen from the plain reading of the EC is that the EC granted is circumscribed by the project description including its configuration and the Total built up area.*

*31. The term built up area has been well established in the parlance of Civil Engineering and Town Planning. The MRTTP Act, which regulate Regional and Town Planning in the state, authorise Municipal Corporation to have its own Rules, and PMC has notified the development control rules under the MRTTP act in order to regulate the development activities in the corporation area. In order to clarify the existing position and the understanding of the terms, Built-up area and F.S.I., it would be pertinent to refer to the 'Development Control Rules of the PMC, Pune, 1982'. Undoubtedly, both Respondent No.9-PP and PMC are required to comply with the Environment Clearance Regulations in terms of the building permissions granted by PMC to Respondent No.9-PP under the powers conferred upon PMC by the above said rules. The said Rules define 'built up area' and FAR/FSI and the relevant definitions from these rules are abstracted below :*

*2.1.3: Built up area – Area covered immediately above the plinth level by the building or external area of upper floor whichever is more accepting the areas covered by Rule 15.4.2.*

*2.39: Floor area Ratio (F.A.R.) -- The quotient obtained by dividing the total covered area (plinth area) on all floors excluding exempted areas as given in Rule No.15.4.2 by the area of the plot.*

*Total covered area on all floors.*

*F.A.R. = -----*

*Plot area.*

*Note: The term F.A.R. is synonymous with floor Space Index (F.S.I.)*

*32. From these definitions it is manifestly clear that the terms “built up area” and FSI/FAR are distinct and have different interpretation altogether. This would further negate the contention of Respondent No.9-PP that the term “built up area” was not clarified until the clarification issued by MoEF on 4th April, 2011. There could be ambiguity in calculation of built up area as per earlier Environment Clearance Regulations, but this cannot be stretched under any circumstances to take a plea that the built up area and FSI are synonymous and interchangeable terminologies. We cannot accept but reject in totality the submissions made by PMC and the Respondent No.9-PP in this regard.*

*33. Though, much has been claimed by Respondent No.9-PP regarding the clarificatory notification of MoEF dated 4th April 2011, wherein the term built up area has been clarified, we do not find any confusion or contradiction in definition of terms BUA and FSI. The Respondent No.9-PP is a major developer and must be well versed with these terminologies.*

*34. From the material referred to above, it leaves no scope for doubt that F.S.I. and BUA are two terms which apply with a distinction defining different extent of area.*

- 19.** It is submitted that, the core issued involved in M/s. Goel Ganga Developers (I) Prvt. Ltd. vs. Union of India & Ors. are classified as below:

Sl.	Parameter	Alleged issue involved
1.	Project Type	Building Construction
2.	Land classification	Residential Zone with DP Reservations
3.	Major Activity Area	Covered Construction
4.	Covered Area	To be considered in calculation of BUA
5.	Project Area	79100 M <sup>2</sup>
6.	Total built-up covered Area	100002.5 M <sup>2</sup>
7.	Main issue	No Prior EC is not obtained for additional construction and there is violation of EIA Notification-2006
8.	Classification of project	Project was under Building/Construction project and additional construction with proposed construction have BUA of more than 150000M <sup>2</sup> therefore Township or Area Development Project
9.	Conclusion of this Hon'ble Court	<p>Para-51. 2) The EC dated 04.04.2008 was granted for construction of built up area 57,658.42 sq. mtrs., whereas admittedly, as of now the constructed built up area is 1,00,002.25 sq. mtrs.. Therefore, there is clear-cut violation of the terms of the EC;. ....</p> <p>Para-57. Having held so we are definitely of the view that the project proponent who has violated</p>

		<p>law with impunity cannot be allowed to go scot-free. This Court has in a number of cases awarded 5% of the project cost as damages. This is the general law. However, in the present case we feel that damages should be higher keeping in view the totally intransigent and unapologetic behaviour of the project proponent. He has maneuvered and manipulated officials and authorities. Instead of 12 buildings, he has constructed 18; from 552 flats the number of flats has gone upto 807 and now two more buildings having 454 flats are proposed. The project proponent contends that he has made smaller flats and, therefore, the number of flats has increased. He could not have done this without getting fresh EC. With the increase in the number of flats the number of persons, residing therein is bound to increase. This will impact the amount of water requirement, the amount of parking space, the amount of open area etc.. Therefore, in the present case, we are clearly of the view that the project proponent should be and is directed to pay damages of Rs.100 crores or 10% of the project cost whichever is more.....</p>
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10.	Important Paragraphs	12 to 20, 51, 57 & 59 of judgment
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A true copy of final Order and judgment in Original Application No. 184 of 2015 passed by Hon'ble NGT dated 27.09.2016 is attached herewith and marked as **ANNEXURE-A-7** (Page No. \_\_\_\_\_ to \_\_\_\_\_).

**20.** It is submitted that, as soon as the Hon'ble NGT was passed an Order dated 27.06.2016, entire network of unethical politicians and corrupt bureaucrats acting behind the curtains and working for builder/ developers lobby got activated and came forward to protect their illegal investments with the developers and builders and one of the scarring incident took place. I specifically submits that, one Member of Parliament from Rajya Sabha wrote a letter on 07.10.2016 to the Hon'ble Prime Minister to intervene in the matter and may the concern ministry be informed to take necessary action. Further I submits that, the said letter states that,

*"I would like to bring into your notice the problems that are being faced by the construction industry of Maharashtra due to the Order passed by National Green Tribunal (NGT) under Ministry of Environment and further gave suggestions of amendment in NGT Act. I state that, the entire suggestions in the said letter was solely to benefit the present polluter-PP with horrible conclusion of silent points, **Conclusion:** - It can be concluded that it is an Act of NGT whereby it wants to create a atmosphere of fear in the mind of all concerns*

*like Builders, Corporation, State Government and want to punish them harshly and encourage fraudulent and extortionist applicants. This is detrimental for the development and growth of the city.”*

I submits that, the Builder, Corporation official and state government have acted in collusion and such arrogant personalities will never scare of any order until and unless they are dealt with heavy hands by Hon’ble Courts for their performance against their statutory duties and against the interest of public at large.

- 21.** It is submitted that, this illegal act of politicians indulging into the legal proceedings and misuse of powers to support the Polluters has become dangerous for the principle of sustainable development and against the object of our Constitution. This illegal things of having access to the power corridor are encouraging the builders lobby to commit the undue illegalities. The basic question before this original applicant is that, if anybody irrespective of their power and position is aggrieved by the Orders of the Hon’ble courts have right to approach the Hon’ble Appellate Courts, but it seems that, such politicians & bureaucrats have no respect towards judicial pronouncements except common man of this nation. It is also important to note that, the office of the Prime Minister, MoEF & CC etc. acted very diligently and working of the Hon’ble NGT has been changed without amendment with help of unwritten law as there is no

appointments of Judicial and expert members, non-functioning of NGT benches at Pune, Kolkata, Bhopal & Chennai and this is totally against democratic purposes and principals of our Constitution.

**22.** It is submitted that, the false, baseless, misleading facts and illegal suggestions of the letter dated 07.10.2016 shows that, there is deep unholy nexus of politicians and bureaucrats working for the Polluters and builders lobby. A true copy of the Letter dated 07.10.2016 along with the entire compilation of case is attached herewith and marked as **ANNEXURE-A-8** (Page No. \_\_\_\_\_ to \_\_\_\_\_).

**23.** It is submitted that, the Office Memorandum dated 07.07.2017 is issued on the request of Petitioners member/ application made by CREDAI Chapter Pune through the CREDAI Delhi. It is very clear from the email communication dated 30.04.2017 between the CREDAI and MoEF, the team from the Pune have given representation for procuring this OM. It is pertinent to note that, the director of the Appellant Goel Ganga is the Secretary of Pune CREDAI Chapter and on his behest, the application for procuring this OM was made and Goel Ganga was charged for heavy compensation by Hon'ble NGT at that time and therefore mighty Goel Ganga has played these illegal tactics of procuring this illegal OM in connivance with MoEF by adopting their resources. Also this OM is used for issuance of the post facto EC. This is how the might and resourceful project proponents being

members of petitioner procures Office Memorandum dated 07.07.2017 and also MoEF would like to set in line with polluters to help them, instead protecting environment from getting damaged. A true copy of Office Memorandum F. No. 22-35/2017.IA.III dated 07.07.2017 issued by MoEF & CC is attached herewith and marked as **ANNEXURE-A-9** (Page No. \_\_\_\_\_ to \_\_\_\_\_).

- 24.** The concept of Built up area was mentioned in the EIA Notification-2006 issued by MoEF & CC, which was extracted in the judgment & Order dated 10.08.2018;

*“11. It is not disputed that the EC was granted for built up area of 57,658.42 sq. mtrs.. The main dispute is with regard to the interpretation of the term ‘built-up area’. The case of the project proponent is that the term ‘built up area’ is synonymous with ‘Floor Space Index’ or FSI and that the constructed area, which is exempted from FSI area or is a non-FSI area is not a part of the ‘built up area’. On the other hand, the submission made by the original applicant as well as by the learned Additional Solicitor General appearing for the Ministry of Environment, Forest and Climate Change is that the built up area will cover all constructed area and the concept of FSI area or non-FSI area is totally alien to environmental laws. Learned senior counsel for the project proponent has drawn our attention to the Development Control Rules for Pune Municipal Corporation, Pune, 1982 (‘DCR’ for short). Under the DCR, no building can be constructed without grant of building permission/commencement certificate by the Pune Municipal Corporation. There is a*

*detailed procedure for obtaining the building permission/commencement certificate wherein lay out plans, building plans etc. have to be submitted. ....”*

*13. From a bare perusal of the two hash tags (#) in Column 4 and 5 of Item 8(a), it is apparent that what is shown under Column 5 is actually a continuation of Column 4 and basically it describes or defines ‘built up area’ to mean covered construction and if the facilities are open to the sky, it will be taken to be the activity area. This by itself clearly shows that under the notification of 2006, all constructed area, which is covered and not open to the sky has to be treated as ‘built up area’. There is no exception for non-FSI area.*

*14. Indeed, the concept of FSI or non-FSI has no concern or connection with grant of EC. The same may be relevant for the purposes of building plans under municipal laws and regulations but it has no linkage or connectivity with the grant of EC. When EC is to be granted, the authority which has to grant such clearance is only required to ensure that the project does not violate environmental norms. While projects and activities, as mentioned in the notification, may be allowed to go on, the authority while granting permission should ensure that the adverse impact on the environment is kept to the minimum. Therefore, the authority granting EC may lay down conditions which the project proponent must comply with. While doing so, such authority is not concerned whether the area to be constructed is FSI area or non-FSI area. Both will have an equally deleterious effect on the*

*environment. Construction implies usage of a lot of materials like sand, gravel, steel, glass, marble etc., all of which will impact the environment. Merely because under the municipal laws some of this construction is excluded while calculating the FSI is no ground to exclude it while granting the EC. Therefore, when EC is granted for a particular construction it includes both FSI and non-FSI areas. As far as environmental laws are concerned, all covered construction, which is not open to the sky is to be treated as built up area in terms of the EIA Notification dated 14.09.2006.”*

A true copy of final order and judgment passed by this Hon'ble Court dated 10.08.2018 is attached herewith and marked as **ANNEXURE-A-10** (Page No. \_\_\_\_\_ to \_\_\_\_\_).

**25.** It is submitted that, the Writ Petition (Civil) No. 24 of 2019 filed by Builder Associations of India Vs Union of India, on the basis of 2011 (1) SCC 744, IN RE: Construction of Park at Noida near Okhla Bird Sanctuary has been dismissed by this Hon'ble Court vide Order dated 12.02.2019. A true copy of Order passed by Hon'ble Court in Writ Petition (Civil) No. 24 of 2019 in Builder Association of India Vs UOI dated 12.02.2019 is annexed herewith and marked as **ANNEXURE-A-11** (Page No. \_\_\_\_\_ to \_\_\_\_\_).

**26.** It is submitted that, the Petitioner in SLP approached the Hon'ble Bombay High Court in Writ Petition (L) No. 954 of 2019, which was rejected on 29.03.2019 and this Order is under challenge in both SLP filed by Builder

Association of India and CREDAI METRO PUNE. A True copy of Order dated 29.03.2019 Passed by Hon'ble Bombay High Court is annexed herewith and marked as **ANNEXURE-A-12** (Page No. \_\_\_\_\_ to \_\_\_\_\_).

- 27.** It is submitted that, after the Order of this Hon'ble Bombay High Court in above writ petition, M/s. Goel Ganga filed Interlocutory Application No. 64665 of 2019 on 16.04.2019 in Civil Appeal No. 10854 of 2016 with the same contentions raised in writ petition and present SLP.
- 28.** It is submitted that, the MoEF being habitual of issuing of office memorandum which support the polluters to harm environment with flouting of law as observed by this Hon'ble Court in Para-20 of Order and Judgment in 10.08.2018. However some of MoEF officials are having disrespect and arrogant conduct even towards the Orders of Apex Court of this Nation and Office Memorandum dated 07.07.2017 was quashed by this Court and another lame attempt by issuing Office Memorandum dated 09.09.2019 Vide No. F-22-10/2019.IA.III again nullifying the effect of EIA Notification-2006 which is statutory in nature. This OM dated 09.09.2019 have also direct impact & counter blast to the Order and Judgment dated 10.08.2018 passed by this Hon'ble Court in Civil Appeal No. 10854 of 2016. This OM dated 09.09.2019 is directly giving benefits to the Polluters those have applied even prior to 14.03.2017 and during window period of EIA (Violation) Notificaiton-2017, but not admitted their

violation and violation is noticed during the appraisal of proposal. It means MOEF officer are giving sadistic pleasure to the unapologetic and increasing corrupt & malafide practices in democratic nation. This Office Memorandum need to be quashed by this Hon'ble Court and there should be action against those official who have issued this OM and also competent authority who have approve this OM. This Hon'ble Court may kindly take strict & serious actions against such incorrigible bureaucrats to send clear message in the corrupt community. It is submitted that, the Petitioners themselves have admitted that, there are more than thousands of cases in violations of EIA Notification-2006, therefore this Hon'ble Court may kindly call for that record and also exemplary & deterrent environmental damages to be recovered from the Polluter, otherwise it will sent wrong message of excusing the defaulter of law. A true copy of Office Memorandum vide No. F-22-10/2019-IA.III dated 09.09.2019 issued by MoEF is attached herewith and marked as **ANNEXURE-A-13** (Page No. \_\_\_\_\_ to \_\_\_\_\_)

- 29.** It is submitted that, another SLP has been filed by CREDAI Pune Metro on the same issue on 03.09.2019 in which this Hon'ble Court has issued notice vide its order dated 20.09.2019 with delay Condonation and thereafter same is registered on 23.09.2019 as SLP (C) No. 023143/2019 and connected with Petition of BAI.

**30.** It is submitted that, the Interlocutory Application No. 64665 of 2019 of Goel Ganga was dismissed by this Hon'ble Court on 11.09.2019 and this Hon'ble Court has categorically distinguished the difference between both the cases namely 2011 (1) SCC 744, IN RE: CONSTRUCTION OF PARK AT NOIDA NEAR OKHLA BIRD SANCTUARY and Goel Ganga Developers India Pvt. Ltd. Vs Union of India. And this Hon'ble Court opined that, the earlier judgment (2011 (1) SCC 744, IN RE: CONSTRUCTION OF PARK AT NOIDA NEAR OKHLA BIRD SANCTUARY) will have no impact on the present case. A true copy of Judgment passed by Hon'ble Court in I. A. No. 64665 of 2019 in M/s. Goel Ganga Developer (India) Pvt. Ltd. Vs UOI & Ors. dated 11.09.2019 is annexed herewith and marked as **ANNEXURE-A-14** (Page No. \_\_\_\_\_ to \_\_\_\_\_).

**31.** It is submitted that, the news article published on [www.huffingtonpost](http://www.huffingtonpost.com) dated 16.05.2019 "[https://www.huffingtonpost.in/entry/pawar-modi-real-estatelobby\\_in\\_5cd58280e4b054da4e87edd7?utm\\_hp\\_ref=in-politics](https://www.huffingtonpost.in/entry/pawar-modi-real-estatelobby_in_5cd58280e4b054da4e87edd7?utm_hp_ref=in-politics)" and dated 14.10.2019 "[https://www.huffingtonpost.in/entry/fadnavismaharashtrabuildersrealestateenvironment\\_in\\_5da3d6aae4b06ddf51c3794](https://www.huffingtonpost.in/entry/fadnavismaharashtrabuildersrealestateenvironment_in_5da3d6aae4b06ddf51c3794)" exposing the corrupt practices adopted by the Political leaders for lobbying and helping the Polluter for water down the effect of Order of this Court to get escape from the payment of environmental damages. It is

very clear from the news articles that, Mr. Sharad Pawar has involved into indulging with the judgment of NGT by writing the letters and misused his powers to help polluters and thereafter the Hon'ble Chief Minister Mr. Devendra Fadanvis of Maharashtra State have direct nexus with M/s. Goel Ganga Developers (I) Private Limited and he in collusion with Hon'ble Union Minister for Ministry of Environment, Forest and Climate Change Mr. Prakash Javadekar and Additional Secretary of MoEF Mr. Anil kumar Jain is lobbying for counter blast the Order and Judgment dated 10.08.2018 by filling this present SLPs at the behest of M/s. Goel Ganga Developers (I) Private Limited though BAI & CREDAI METRO Pune. Therefore it is my humble and respectful request, that this Hon'ble Court may kindly take appropriate actions against the Mr. Devendra Fadanvis, Mr. Prakash Javadekar and Additional Secretary of MoEF Mr. Anil Kumar Jain and directors of the M/s. Goel Ganga Developers (I) Private Limited. This intervener applicant was already brought on record the deep unholy nexus of M/s. Goel Ganga Developers (I) Private Limited and their corrupt practices. If these are the happening behind the curtains by politicians & bureaucrats for nullifying the Order of this Hon'ble Apex Court of nation, then it is clear that they are not following any law of this nation and therefore there should be strict action, which will shake

conscious of every one like these and setting in line with them.

A true copy of news article released on Huffington Post dated 16.05.2019 is is annexed herewith and marked as **ANNEXURE-A-15** (Page No. \_\_\_\_\_ to \_\_\_\_\_).

A true copy of news article released on Huffington Post dated 14.10.2019 is annexed herewith and marked as **ANNEXURE-A-16** (Page No. \_\_\_\_\_ to \_\_\_\_\_).

- 32.** It is submitted that, the nexus of polluters can be imagined from the unity of ruling and opposition on same page for the protection of mighty and resourceful project proponent is surprising. Actual fact is that, these unethical politicians are protecting their illegal funding's and corrupt bureaucrats are preserving their illegal investments.

**33. GROUND FOR INTERVENTION AND FOR DISMISSAL**

**THE SLPS:**

- a. These Special Leave Petitions are filed to give counter blast to the Final Order and Judgment dated 10.08.2019 passed by this Hon'ble Court in Civil Appeal No. 10854 of 2016.
- b. These Special Leave Petitions are nothing but the review petitions filed at the behest of M/s. Goel Ganga Developers (I) Pvt. Ltd.
- c. These Special Leave Petitions are not maintainable in the eyes of law and there is no provision in any law to seek such reliefs of nullify the effect Final Order and Judgment

dated 10.08.2019 passed by this Hon'ble Court in Civil Appeal No. 10854 of 2016.

- d. These Special Leave Petitions are filed by the luxuries litigants to overcome the illegalities committed with the help of corrupt and irresponsible bureaucrats in various local authorities.
- e. The Special Leave Petition of Builders' Association of India is nothing but lame attempt to escape from the intentional illegalities committed by their members if any, by causing substantial damage to the environment and ecology. Petitioner is the well-established entity having mighty and resourceful members carrying business in the field of construction, promoters and developers with specialised, qualified and expert staff in all departments. The actual and correct definition of the Built-up area is well within the knowledge of the Petitioner and their members are also aware about the meaning and interpretation of the Built-up Area (BUA) is always same in any law, notification or in common parlance of civil engineering. So the questions raised by the Petitioner in relation to the definition of Built-up Area defined in EIA Notification-2006 and defined in the Development Control regulation & Town Planning laws of various local authorities have no heads in any manner and it's just nuisances.
- f. Petitioner is attempting to make convenient and favourable interpretation of Built-Up Area defined in EIA

Notification 2006 to cover-up the illegalities by their members and this interpretation is based on misleading information with intention to get escape from violations.

- g. EIA Notification-2006 dated 14.09.2006 has defined the BUA and it includes the total covered construction area including the FSI and Non-FSI in short and only open to sky area is excluded.
- h. EIA Notification-2006 dated 14.09.2006 is the amendment in the Schedule list of activities coming under the Environment (Protection) Act 1986 and those activities shall be carried out in the manner described in the notification and Act. Any default or breach will result into the violation of this act. As the BUA is well defined the EIA Notification-2006 and this EIA notification is the subsequent amendment to the Environment (Protection) Act-1986, requires no separate amendment in definition of the act.
- i. BUA is the common terminology used in the field of construction and having same meaning and interpretation in both the statute, then the stand of Petitioner that BUA has to borrow from the DCR of Pune is baseless. BUA defined in the EIA notification and DCR is the same thing.
- j. BUA defined in the DCR is also showing the total construction area including the FSI and non-FSI area. Moreover the local authorities are charging the heavy premiums to the Non-FSI area, so the builder or

developers can avail the maximum benefits of the FSI. Any local authority is not giving any excuse or exemption to the non-FSI area from the total BUA or total construction area.

- k. EIA Notification-2011 dated 04.04.2011 is the clarification to the earlier EIA notification-2006 dated 14.09.2006 as stated in the notification itself. There is no new born concept and the effect of this EIA Notification-2011 dated 04.04.2011 is automatically gets the retrospective effect.
- l. This Hon'ble Court vide Judgment and Order dated 10.08.2018 quashed the office memorandum dated 07.07.2017 and was of the opinion that, EIA Notification-2006 was absolutely clear and needed no clarification and there is no ambiguity with regard to the definition of 'built up area' even under the notification of 2006 and it covers all constructed area not open to the sky.
- m. As for the purpose of granting EC to the project, construction which includes all covered areas and the concept of FSI area as well as non-FSI area are alien to the environmental law and the area open the sky is excluded from the Built up area calculations, therefore, as per the decision in IN RE: Construction of Park at Noida near Okhla Bird Sanctuary 2011 (1) SCC 744 and judgment and Judgment and Order dated 10.08.2018 draws the clear conclusion that, for granting of the EC for

building construction project that only area open sky shall be excluded from the built up area.

- n. As issue before this Hon'ble Court in the Appeal No. 10854 of 2018 decided by Judgment and Order dated 10.08.2018, was in respect to the built up area was that, EC dated 04.04.2008 was granted to the project proponent on the basis of built up area included covered construction but excluding open to sky area i.e. marginal spaces, recreational area, swimming tank, open parking area, internal roads, top terraces and ducts etc. The Project Proponent exceeded the construction beyond the EC limit. Therefore, there was no confusion in respect to FSI and Non-FSI and open to sky area.
- o. Even otherwise the opinion of this Hon'ble Court in Judgment and Order dated 10.08.2018 in respect to EIA Notification-2011 that the EIA Notification-2006 with regard to 'built up area' was absolutely clear and needed no clarification, this was observation of the court which does not make the decision in 2011 (1) SCC 744, IN RE: Construction of Park at Noida near Okhla Bird Sanctuary per incuriam and also does not come to the rescue of the Project Proponent as both the judgments have excluded open to sky area from the Built up area. This Hon'ble Court always have powers under Article 142 of constitution of India to pass appropriate orders to do complete justice.

- p. Writ Petition (Civil) No. 24 of 2019 filed by Builder Associations of India Vs Union of India, on the basis of 2011 (1) SCC 744, IN RE: Construction of Park at Noida near Okhla Bird Sanctuary has been dismissed by this Hon'ble Court vide Order dated 12.02.2019.
- q. It is submitted that, the violation committed by the Project Proponents is not limited to the illegal excess construction of BUA, but also it is necessary to consider the damage to environment & ecology on account of exceeding threshold limits in consonance with the parameters of increase in illegal number of flats, illegal increase in number of shops and thereby illegal increase in Population Density, excess consumption of fresh water, excess generation of waste water and its non-scientific treatment, excess solid waste generation & its non-scientific treatment of this solid waste, ground water extraction from bore wells & thereby damage to ground water level, illegal increase in vehicles, traffic congestion in the area causing air pollution, illegal operations of DG Sets, blasting for excavation of basement & illegal constructions of basements, Non-plantation of required trees, enjoyment of premises without obtaining Consent to operate, EIA, EMP & Risk Assessment. Therefore, the Judgment and Order dated 10.08.2018 of this Hon'ble Court is not per incuriam on account of decision in 2011 (1) SCC 744, IN RE: Construction of Park at Noida near Okhla Bird Sanctuary.

- r. Okhla Bird Sanctuary judgment have no bearing on the Order and judgment dated 10.08.2019 and therefore plea of Petitioners needs to be dismissed straight away.
- s. Liberty granted by this Hon'ble Court to the petitioner to withdraw petition and to approach the Hon'ble High Court cannot be constructed as direction to Hon'ble High Court. It is submitted that, there was no conflicts between the two judgments. It is the picture of jugglery created by members of petitioners.
- t. It is submitted that, the term Built up Area (BUA) is well established term in the field of Civil Engineering and this term is unique as there is no other substitute for this term. Moreover, definition given in the EIA Notification-2006 is very clear from its plain reading, "*built-up area for covered Construction; in the case of facilities open to the sky, it will be the activity area*". It is clear that, whatever is the covered construction for the project that is to be calculated & considered as built up area and open areas will be treated as activity area. This is very simple to understand, but confusion or vagueness will be born in the mind of violators & Polluters, when they have been exposed to their crimes and illegalities those were undertaken with the help of local authorities. In addition to this there is increase in awareness of the civil society for environment protection and their right to decent life in the last decade and this thing is making petitioner panic. Therefore this petition is filed afterthought to get

some relief on accounts of misleading facts of two different cases.

- u. It is submitted that, the Members of the Petitioner organisations are not the ordinary citizens and they are having upto dated intelligence, knowledge and advisers. These community of project proponent is with number of experts in their basic field of civil engineering having advance knowledge more than ordinary people. Basically there was no vagueness in technical terms used in any science or technology, there could be lack of knowledge to individuals having no access to the educational institutions or if they are illiterates from their forefathers. Therefore judgment of this Hon'ble Court in case of Kartar Singh Vs State of Punjab is not applicable to the present situation. But this can be considered as good attempt by mighty, resourceful and white collars to mislead this Hon'ble Court by showing themselves as community of ordinary intelligence.

- 34.** As directed by this Hon'ble Court in Lafarge case "2011 7 SCC 338-384" Online Data of Proposals, Meetings, and Reports, actions, complaint needs to be made available in letter and spirit and at present official web site of State Environment Department and MoEF are restricted and not maintained well manner.
- 35.** It is submitted that, considering the above falsehood, illegalities and misleading attempt, these SLPs are liable to be dismissed.

**PRAYERS**

In entire facts and circumstances it is most respectfully prayed that, this Hon'ble Court may graciously be pleased to:

- a. This Hon'ble Court may kindly allow this application and dismiss both SLP with exemplary cost.
- b. Pass any other order (s) in the interest of environmental justice.

DRAWN AND FILED BY

SHANKY AGRAWAL  
(ADVOCATE FOR THE APPLICANT)

DRAWN ON: 18.10.2019  
FILED ON: 18.10.2019  
PLACE: NEW DELHI

**TURE COPY**

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ITEM NO.40

**1 ANNEXURE-A-20**

REGISTRAR COURT. 2

SECTION IX

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

BEFORE THE REGISTRAR SH. SURINDER S. RATHI

IA 65285/2019, in Petition(s) for Special Leave to Appeal (C)  
No(s). 10078/2019

BUILDERS ASSOCIATION OF INDIA

Petitioner(s)

VERSUS

UNION OF INDIA

Respondent(s)

IA No. 65285/2019 - PERMISSION TO FILE ADDITIONAL  
DOCUMENTS/FACTS/ANNEXURES)

WITH

SLP(C) No. 23143/2019 (IX)

(FOR ADMISSION and I.R. and IA No.136818/2019-CONDONATION OF DELAY  
IN FILING and IA No.136816/2019-EXEMPTION FROM FILING C/C OF THE  
IMPUGNED JUDGMENT and IA No.136815/2019-PERMISSION TO FILE PETITION  
(SLP/TP/WP/..))

Date : 22-10-2019 These matters were called on for hearing today.

For Petitioner(s)

Mrs. Pragya Baghel, AOR  
Mr. Abhishek Thakral, Adv.Ms. Neha Aggarwal, Adv.  
Mr. E. C. Agrawala, AOR

For Respondent(s)

Mr. Sumanta S. Bandyopadhyay, Adv.  
Mr. Gurmeet Singh Makker, AORUPON hearing the counsel the Court made the following  
O R D E R

Appearance:

Ms. Neha Aggarwal and Mr. Abhishek Thakral, Ld.  
Counsel is present on behalf of the petitioner.Mr. Sumanta S. Bandyopadhyay, Ld. Counsel is  
present on behalf of respondent.**TRUE COPY**

**SLP(C) No. 10078/2019**

Four weeks' time is given to learned counsel for sole respondent to file counter affidavit.

List again on 8.1.2020.

**SLP(C) No. 23143/2019**

Service of notice is complete on both respondents but no one has entered appearance on their behalf.

However, Mr. Sumanta S. Bandyopadhyay, Ld. Counsel appearing on behalf of Mr. Gurmeet Singh Makker, Ld. Advocate-on-Record seeks and is given one week's time to file the vakalatnama and four weeks' time to file the counter affidavit on behalf of respondent No.1.

List again on 8.1.2020.

**SURINDER S. RATHI**  
Registrar

MG

**TRUE COPY**

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EHPL/188/2019

12<sup>th</sup> November 2019

To,

Mr. Nitin Lonkar, Advocate  
4<sup>th</sup> Floor, E-71, Preet Vihar,  
New Delhi – 110092.

Sir,

This in reference to your letter dated 25<sup>th</sup> July 2019 received by us on 30<sup>th</sup> July 2019 ("the said Letter").

At the outset we deny each and every statement and allegations contained in the said letter. We state that the contents of the letter are devoid of merits and bad in law. We state that from the contents of the said Letter it appears that your client has come with unclean hands with ulterior motives. We state that the intentions of your client is to harass us.

We shall now deal with the said letter paragraph wise:

1. With reference to paragraph 1 of the said Letter, we state that we are unaware of the whereabouts of Mr. Tanaji Balasaheb Gambhire.
2. With reference to paragraph 2 of the said Letter, we deny that your client is observing his duties as an RTI Activist and Environment Protection Activist. We deny that your client is an RTI Activist and Environment Protection Activist. We deny that very serious violations under various acts causing damage to Natural Resources etc. and also deny that various permissions were obtained by us by misleading Government authority as alleged. We deny that any of our acts have caused irreparable damage and degradation to environment and ecology as alleged. Our clients deny that any scam as referred by you is to our knowledge. We deny that any illegal activities are committed by us as alleged.
3. With reference to paragraph 3 (a to d) of the said Letter, we state that is in not mandatory for us to disclose the name of the Project in any of the permission obtained from Government Authority as alleged by you. We deny that any illegal activity is committed by us.
4. With reference to paragraph 4-a of the said Letter, we deny that the actual construction carried out at site is without environmental clearance and consent to establish as alleged. We say that all the construction work commenced by us on the project is after obtaining all the necessary permissions from the Government authority and in accordance with law. We state that the table

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*Bombhise*

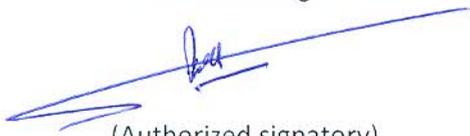
as shown by you in the said letter containing the actual construction carried out at site without environment clearance and consent to establish is absolutely false and bogus and without any merits. We put you to strict proof thereof.

5. With reference to paragraph 5 – a to c of the said Letter, we state that the contents of the said paragraph under reference are a matter of record which speaks for itself. We deny that the F Wing is already at the verge of completion as alleged.
6. With reference to paragraph 6 – a of the said Letter, we state that the necessary permissions as required under law have been obtained by us. We state that the details of the project are set out in the sanctioned plans and approvals obtained by us and therefore it is immaterial and not relevant to deal with the contents of the paragraph under reference.
7. With reference to paragraph 9 (a to z) of the said Letter, we state that we have constructed and completed construction of Wings A to E in accordance with the sanctioned plans and after obtaining necessary permissions from Government authority. We state that PMC has issued Occupation Certificate for the Buildings A to E after verifying all the permissions, approvals etc. we deny the contents of the paragraph under reference in toto. We state that the violation as alleged by you under the said Letter are baseless and without any merits. We state that you have not furnished any supporting documents with regards to the alleged violations in the letter. We state that your clients seems to have ulterior motive to harass us and blackmail our clients for reasons best known to you.
8. With reference to paragraph 10 of the said Letter, we deny the contents thereof in toto. We deny that the actual construction of the said Project had started before the EC clearance and consent from MPCB was obtained. We say that the construction is done in accordance with the sanctioned plans and permissions.
9. With reference to paragraph 11 (a to d) of the said Letter, we state that the details of the project are set out in the sanctioned plans and are a matter of record. These sanctions speak for itself and therefore it is irrelevant to deal with the contents of the said Paragraph under reference.
10. With reference to paragraph 12 (a to d) of the said Letter, we deny the content thereof in toto. We state that we have obtained all requisite permissions and have not violated EIA Notification – 2006 as alleged.
11. With reference to paragraph 13 (a to g) of the said Letter, we deny the contents thereof in toto. We state that we have all necessary permission. We deny that the construction activity is undertaken by us in violation of the Pollution Control Laws as alleged. We deny that the DG Sets are emitting polluted gases causing pollution to the air as alleged.

12. With reference to paragraph 14 (a to e) of the said Letter, we deny the contents thereof in toto. We state that we had the necessary permissions. We deny that we have committed any serious violation as alleged.
13. With reference to paragraph 15 (a to e) of the said Letter, we deny the contents thereof in toto. We deny that we have caused damage to the environment and committed violation of Environment Laws as alleged. We state that necessary rain water harvesting tanks are provided as is required under law.
14. With reference to paragraph 16 (a to j) of the said Letter, we deny the contents thereof in toto, we state that the Pune Municipal Corporation has issued the Occupation Certificate in respect of Buildings A to E after verifying all the requirements as prescribed under the Law and thus the question of threat to water quality, violation of environment protection norms etc. does not arise.
15. With reference to paragraph 17 (a to n) of the said Letter, we deny the contents thereof in toto. We deny that there is violation of pollution control and prevention norms as alleged.
16. With reference to paragraph 18 (a to f) of the said Letter, we deny the contents thereof in toto. We state that necessary permissions were obtained for DG sets and are located at appropriate space and necessary permissions and sanctions in this regard are issued by the appropriate authority. We deny that we are causing serious Air pollution and are infringing the provisions of Air Act and are liable for actions under the EPA and Pollution Control Act as alleged.
17. With reference to paragraph 19 (a to f) of the said Letter, we deny the contents thereof in toto, we state that there is no mandatory provision under any law to install solar panels and solar water heaters as alleged. We deny that substantial irreparable damage to the environment and ecology is caused as alleged.
18. With reference to paragraph 20 (a to c) of the said Letter, we deny the contents thereof in toto. We state that mandatory recreational open space as prescribed under Law is provided by us. We state that necessary permissions have been obtained from the Government authority for tree plantation and the open space for recreation. We deny that we have violated the norms of tree plantation and RG area as alleged. We state that necessary trees are planted as is required under the permissions obtained by us.
19. With reference to paragraph 21 (a to i) of the said Letter, we deny that we have callous attitude for environmental protection and have adopted careless, reckless attitude and have manipulated the government authority as alleged. We deny that any exemplary damages having deterrent effect is to be imposed on us. We deny that an amount of environment damage to the tune of 425 Crores is required to be imposed on us for restoration of area as alleged. We deny the remaining contents of the paragraph under reference.

20. With reference to paragraph 22 of the said Letter, we say that your comments are baseless and unwarranted and without any merits or documents in support thereof.
21. With reference to paragraph 23-a of the said Letter, we deny that any action is required to be taken as there is no violation by us.
22. With reference to paragraph 23-b of the said Letter, we deny that appropriate steps are required to demolish the illegal structure and to stop further construction as alleged. We state that all necessary permissions have been obtained, issued and construction is done in accordance therewith, therefore the question of demolition does not arise.
23. With reference to paragraph 23-c of the said Letter, we state that no legal action is required to be taken as there is no violation committed by us.
24. With reference to paragraph 23-d of the said Letter, we state that the construction activity is commenced in accordance with the necessary sanctions and approvals and without violation of any environmental laws. We state that we have commenced construction activity in accordance with the provisions of law and the question to stop the operation and construction activity does not arise.
25. With reference to ultimate paragraph of the said Letter, we call upon you to forthwith withdraw the said Letter. Should you take any legal action against us then we shall defend ourselves at your entire costs as to cost and consequences.

Yours truly,  
For Ekta Housing Pvt. Ltd.



(Authorized signatory)

C.C. :

- 1) Union of India, Through Secretary,  
Ministry of Environment and Forest,  
Paryavaran Bhawan, CGO Complex, Lodhi Road, New Delhi – 110001
- 2) Chief Secretary, Government of Maharashtra  
Annex Building, Mantralaya, Mumbai – 400 032
- 3) The Principal Secretary, Environment Department,  
Government of Maharashtra,  
Room No. 217, 2<sup>nd</sup> floor, Annex Building, Mantralaya, Mumbai-400 032

- 4) State Level Environment Impact Assessment Authority, Maharashtra (SEIAA)  
Through member Secretary,  
15<sup>th</sup> floor, New Administrative Building, Mantralaya, Mumbai – 400032
- 5) State Expert Appraisal Committee – III, Maharashtra (SEAC-III)  
Through Member Secretary  
15<sup>th</sup> floor, New Administrative Building, Mantralaya, Mumbai-400 032
- 6) Maharashtra Pollution Control Board, Through Member Secretary,  
Kalpataru Point, 3<sup>rd</sup> floor, Near Sion Circle, Opp, Cine Planet Cinema, Sion (E), Mumbai-400 022
- 7) Maharashtra Pollution Control Board, Through Regional Officer,  
Jog Centre, 3<sup>rd</sup> floor, Mumbai – Pune Old Highway,  
Wakadewadi, Pune – 411003
- 8) The Secretary, Urban Development Department,  
Government of Maharashtra,  
4<sup>th</sup> floor, Annex Building, Mantralaya, Mumbai-400 032, Maharashtra
- 9) Pune Municipal Corporation  
Through Municipal Commissioner  
Main Building, Shivaji Nagar, Pune – 411005
- 10) Building Permission Department – PMC  
Through City Engineer, Pune Municipal Corporation,  
Shivaji Nagar, Pune – 411005
- 11) Mr. Prashant Waghmare – City Engineer  
Pune Municipal Corporation,  
Shivaji Nagar, Pune – 411 005
- 12) Collector of Pune  
As Collector and President of District Environment Protection Committee – Pune  
Collector Office, Bund Garden, Pune - 411001

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*Bombhise*

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

B E F O R E T H E R E G I S T R A R S H . R A J I V K A L R A

IA 65285/2019,160684/2019, in Petition(s) for Special Leave to Appeal (C) No(s). 10078/2019

BUILDERS ASSOCIATION OF INDIA

Petitioner(s)

V E R S U S

UNION OF INDIA

Respondent(s)

IA No. 160684/2019 - INTERVENTION APPLICATION  
IA No. 65285/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

WITH

SLP(C) No. 23143/2019 (IX)  
(FOR ADMISSION and I.R. and IA No.136818/2019-CONDONATION OF DELAY IN FILING and IA No.136816/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.136815/2019-PERMISSION TO FILE PETITION (SLP/TP/WP/..))

Date : 08-01-2020 These matters were called on for hearing today.

For Petitioner(s)

Mrs. Pragya Baghel, AOR  
Mr. E. C. Agrawala, AOR  
Ms. Neha Agarwal, Adv.

For Respondent(s)

Mr. Gurmeet Singh Makker, AOR  
Mr. Sumanta S. Bandyopadhyay, Adv.

U P O N h e a r i n g t h e c o u n s e l , t h e C o u r t m a d e t h e f o l l o w i n g  
O R D E R

SLP(C) No. 10078/2019

Four weeks' time as a last chance is granted to the Sole Respondent to file Counter Affidavit.

Signature Not Verified  
Digitally signed by  
Rajiv Kalra  
Date: 2020.01.08  
18:23:53 IST  
Reason: [ ]

Interlocutory Application for Intervention filed by Mr.

Shankey Agarwal, Ld. Counsel is found to be defective. Ld. counsel shall rectify the defects within a period of four weeks.

**TRUE COPY**

List again on 02.03.2020.

*Bambhise*

SLP(C) No. 23143/2019

Service of notice is complete on both the Respondents but no one has chosen to enter appearance on their behalf. However, Mr. Sumanta S. Bandyopadhyay, Ld. Counsel on behalf of Mr. G. S. Makker, Ld. Advocate-on-Record undertakes to appear for Respondent No. 1. He seeks and is given one week time as a last chance to file the vakalatnama and four weeks' time as a last chance to file the counter affidavit.

After the expiry of four weeks, the matter shall be processed for listing before the Hon'ble Court as per rules.

RAJIV KALRA  
Registrar

pm

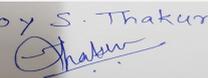
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<b>102 SEAC-3 meeting day 01</b>	
<b>SEAC Meeting number: 102 Meeting Date January 22, 2020</b>	
<b>Subject:</b> Environment Clearance for Proposed residential Building "Ekta California" development at S. No. 9/1(P), Undri, Pune.	
<b>Is a Violation Case:</b> Yes	
<b>1.Name of Project</b>	Ekta California
<b>2.Type of institution</b>	Private
<b>3.Name of Project Proponent</b>	Ekta Housing Private Limited
<b>4.Name of Consultant</b>	K Srinivasan
<b>5.Type of project</b>	Housing Project
<b>6.New project/expansion in existing project/modernization/diversification in existing project</b>	Expansion in existing project
<b>7.If expansion/diversification, whether environmental clearance has been obtained for existing project</b>	No
<b>8.Location of the project</b>	S. No. 9/1(P), Undri
<b>9.Taluka</b>	Pune
<b>10.Village</b>	--
<b>Correspondence Name:</b>	Ashok Mohanani
<b>Room Number:</b>	Office No. 401,
<b>Floor:</b>	4th Floor,
<b>Building Name:</b>	Hallmark Business Plaza,
<b>Road/Street Name:</b>	Off. W.E. Highway,
<b>Locality:</b>	Kalanagar, Bandra -East
<b>City:</b>	Mumbai- 400051
<b>11.Whether in Corporation / Municipal / other area</b>	Pune Municipal Corporation
<b>12.IOD/IOA/Concession/Plan Approval Number</b>	Commencement Certificate
	<b>IOD/IOA/Concession/Plan Approval Number:</b> Commencement Certificate: CC/3774/16, Dated-31/03/2017
	<b>Approved Built-up Area:</b> 46569.21
<b>13.Note on the initiated work (If applicable)</b>	Construction work initiated and total constructed area: 44841.72 Sq. Mt.
<b>14.LOI / NOC / IOD from MHADA/ Other approvals (If applicable)</b>	Commencement Certificate: CC/3774/16, Dated-31/03/2017
<b>15.Total Plot Area (sq. m.)</b>	26000.00 Sq. Mt.
<b>16.Deductions</b>	3253.10 Sq. Mt. (Land under 60 Meter wide DP road: 1713.10 Sq. Mt. + Land under 24 Meter wide DP road: 144.00 Sq. Mt. + Area Under reservation MH-26: 998.00 Sq. Mt. & PC-31: 398 Sq. Mt.)
<b>17.Net Plot area</b>	22746.90 Sq. Mt.
<b>18 (a).Proposed Built-up Area (FSI &amp; Non-FSI)</b>	<b>a) FSI area (sq. m.):</b> 24940.54
	<b>b) Non FSI area (sq. m.):</b> 21628.67
	<b>c) Total BUA area (sq. m.):</b> 46569.21
<b>18 (b).Approved Built up area as per DCR</b>	<b>Approved FSI area (sq. m.):</b> 24940.54
	<b>Approved Non FSI area (sq. m.):</b> 21628.67
	<b>Date of Approval:</b> 31-03-2017
<b>19.Total ground coverage (m2)</b>	7635.00
<b>20.Ground-coverage Percentage (%) (Note: Percentage of plot not open to sky)</b>	33.56 %
<b>21.Estimated cost of the project</b>	1374000000

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Joy S. Thakur  
  
 Joy S.Thakur (Secretary  
 SEAC-III)

**SEAC Meeting No: 102 Meeting Date: January  
 22, 2020**

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**Name:** K. Anil Kale  
**Signature:**   
 Shri. Anil Kale (Chairman  
 SEAC-III)

## 22.Number of buildings & its configuration

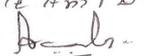
Serial number	Building Name & number	Number of floors	Height of the building (Mtrs)
1	Building A	Stilt on ground floor + stilt podium + 12 upper Floors + 24 Flats	36.00
2	Building B	Stilt on ground floor + stilt podium + 12 upper Floors + 24 Flats	36.00
3	Building C	Stilt on ground floor + stilt podium + 12 upper Floors + 24 Flats	36.00
4	Building D	Stilt on ground floor + 12 Floors + 24 Flats	36.00
5	Building E	Stilt on ground floor + 12 Floors + 24 Flats	36.00
6	Building F	Stilt on ground floor + 12 Floors + 70 Flats	39.20

23.Number of tenants and shops	Residential 190 Flats
24.Number of expected residents / users	1105 Nos.
25.Tenant density per hectare	83.50
26.Height of the building(s)	
27.Right of way (Width of the road from the nearest fire station to the proposed building(s))	Proposed 60 Meter wide road and 24 Meter existing road
28.Turning radius for easy access of fire tender movement from all around the building excluding the width for the plantation	9 .00 Meters
29.Existing structure (s) if any	Existing 5 Buildings (A to E)
30.Details of the demolition with disposal (If applicable)	NA

## 31.Production Details

Serial Number	Product	Existing (MT/M)	Proposed (MT/M)	Total (MT/M)
1	Not applicable	Not applicable	Not applicable	Not applicable

## 32.Total Water Requirement

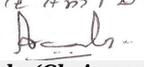
 <b>Joy S.Thakur (Secretary SEAC-III)</b>	<b>SEAC Meeting No: 102 Meeting Date: January 22, 2020</b>	<b>Page 53 of 62</b>	<b>Name: K ०१६ Anil D.</b> <b>Signature: </b> <b>Shri. Anil Kale (Chairman SEAC-III)</b>
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Dry season:	<b>Source of water</b>	Pune Municipal Corporation + treated sewage from STP							
	<b>Fresh water (CMD):</b>	100.00							
	<b>Recycled water - Flushing (CMD):</b>	50.00							
	<b>Recycled water - Gardening (CMD):</b>	25.00							
	<b>Swimming pool make up (Cum):</b>	5.00							
	<b>Total Water Requirement (CMD) :</b>	180.00							
	<b>Fire fighting - Underground water tank(CMD):</b>	200.00 (A to E building as per CFO) and 50.00 (F building as per CFO)							
	<b>Fire fighting - Overhead water tank(CMD):</b>	20.00 (for each building)							
	<b>Excess treated water</b>	33.00 (Treated water also used in Car washing (4.00) and STP backwash (10.00))							
Wet season:	<b>Source of water</b>	Pune Municipal Corporation + treated sewage from STP + RWH							
	<b>Fresh water (CMD):</b>	100.00							
	<b>Recycled water - Flushing (CMD):</b>	50.00							
	<b>Recycled water - Gardening (CMD):</b>	0.00							
	<b>Swimming pool make up (Cum):</b>	5.00							
	<b>Total Water Requirement (CMD) :</b>	155.00							
	<b>Fire fighting - Underground water tank(CMD):</b>	200.00 (A to E building as per CFO) and 50.00 (F building as per CFO)							
	<b>Fire fighting - Overhead water tank(CMD):</b>	20.00 (for each building)							
	<b>Excess treated water</b>	58.00 (Treated water also used in Car washing (4.00) and STP backwash (10.00))							
<b>Details of Swimming pool (If any)</b>	Swimming pool area: 425 Sq. Mt.								
<b>33.Details of Total water consumed</b>									
<b>Particulars</b>	<b>Consumption (CMD)</b>			<b>Loss (CMD)</b>			<b>Effluent (CMD)</b>		
<b>Water Requirement</b>	<b>Existing</b>	<b>Proposed</b>	<b>Total</b>	<b>Existing</b>	<b>Proposed</b>	<b>Total</b>	<b>Existing</b>	<b>Proposed</b>	<b>Total</b>
Domestic	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable

Joy S. Thakur  
  
 Joy S.Thakur (Secretary  
 SEAC-III)

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Name: K. Anil Kale  
  
 Signature:  
 Shri. Anil Kale (Chairman  
 SEAC-III)

<b>34.Rain Water Harvesting (RWH)</b>	<b>Level of the Ground water table:</b>	3- 4 Meters
	<b>Size and no of RWH tank(s) and Quantity:</b>	1 RWH Tank of 130 KLD
	<b>Location of the RWH tank(s):</b>	On Ground
	<b>Quantity of recharge pits:</b>	NA
	<b>Size of recharge pits :</b>	NA
	<b>Budgetary allocation (Capital cost) :</b>	21.00 Lacs
	<b>Budgetary allocation (O &amp; M cost) :</b>	0.84 Lacs/year
	<b>Details of UGT tanks if any :</b>	Domestic UG tank: 150 KLD Flushing UG tank: 75 KLD Fire Tank: 200 KLD
<b>35.Storm water drainage</b>	<b>Natural water drainage pattern:</b>	The storm drainage above ground will essentially cater for the seasonal rains. The major part of discharge will be from the roof. Rain water outlets will be provided at the edges from where it will be carried down by UPVC agriculture pipes to discharge water into storm water entrance chambers below ground. Run- off from the ground and terrace will be finally discharged into rain water harvesting tank below ground. The overflow from rain water harvesting tank will be discharged into storm water c
	<b>Quantity of storm water:</b>	3.60 M3/ Min
	<b>Size of SWD:</b>	750 mmØ pipe
<b>Sewage and Waste water</b>	<b>Sewage generation in KLD:</b>	135 KLD
	<b>STP technology:</b>	MBBR
	<b>Capacity of STP (CMD):</b>	212 KLD STP
	<b>Location &amp; area of the STP:</b>	On ground and area 118.50 Sq. Mtrs.
	<b>Budgetary allocation (Capital cost):</b>	45.00 Lacs
	<b>Budgetary allocation (O &amp; M cost):</b>	3.00 Lacs/year
<b>36.Solid waste Management</b>		
<b>Waste generation in the Pre Construction and Construction phase:</b>	<b>Waste generation:</b>	Excavated soil will be used in land leveling purpose & construction debris will be handed over to authorized agency.
	<b>Disposal of the construction waste debris:</b>	Construction debris will be handed over to Authorized agency.
<b>Waste generation in the operation Phase:</b>	<b>Dry waste:</b>	306.60 Kg/day
	<b>Wet waste:</b>	204.40 Kg/day
	<b>Hazardous waste:</b>	NA
	<b>Biomedical waste (If applicable):</b>	NA
	<b>STP Sludge (Dry sludge):</b>	3.20 kg/day
	<b>Others if any:</b>	NA
SEAC-III)	22, 2020	01/02 SEAC-III)

<b>Mode of Disposal of waste:</b>	<b>Dry waste:</b>	Handed over to authorized agency.
	<b>Wet waste:</b>	Composting through OWC & used at site/as manure.
	<b>Hazardous waste:</b>	NA
	<b>Biomedical waste (If applicable):</b>	NA
	<b>STP Sludge (Dry sludge):</b>	Used as manure within the premises for plants. Excess shall be sold /handover to outside parties or gardens.
	<b>Others if any:</b>	NA
<b>Area requirement:</b>	<b>Location(s):</b>	On Ground
	<b>Area for the storage of waste &amp; other material:</b>	30 Sq. Mt. including machinery
	<b>Area for machinery:</b>	--
<b>Budgetary allocation (Capital cost and O&amp;M cost):</b>	<b>Capital cost:</b>	4.00 Lacs
	<b>O &amp; M cost:</b>	0.40 Lacs/year

### 37. Effluent Characteristics

Serial Number	Parameters	Unit	Inlet Effluent Characteristics	Outlet Effluent Characteristics	Effluent discharge standards (MPCB)
1	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
Amount of effluent generation (CMD):		Not applicable			
Capacity of the ETP:		Not applicable			
Amount of treated effluent recycled :		Not applicable			
Amount of water send to the CETP:		Not applicable			
Membership of CETP (if require):		Not applicable			
Note on ETP technology to be used		Not applicable			
Disposal of the ETP sludge		Not applicable			

### 38. Hazardous Waste Details

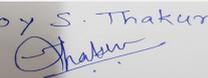
Serial Number	Description	Cat	UOM	Existing	Proposed	Total	Method of Disposal
1	Not applicable						

### 39. Stacks emission Details

Serial Number	Section & units	Fuel Used with Quantity	Stack No.	Height from ground level (m)	Internal diameter (m)	Temp. of Exhaust Gases
1	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable

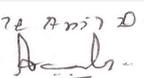
### 40. Details of Fuel to be used

Serial Number	Type of Fuel	Existing	Proposed	Total
1	Not applicable	Not applicable	Not applicable	Not applicable
41. Source of Fuel		Not applicable		
42. Mode of Transportation of fuel to site		Not applicable		

Joy S. Thakur  
  
 Joy S. Thakur (Secretary SEAC-III)

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Name: K. Anil Kale  
  
 Shri. Anil Kale (Chairman SEAC-III)

<b>43.Green Belt Development</b>	<b>Total RG area :</b>	Green area on Ground: 2274.70 Sq. Mt. and Green area on podium: 1240.00 Sq. Mt.
	<b>No of trees to be cut :</b>	NA
	<b>Number of trees to be planted :</b>	Required: 223 Nos. and Proposed on site: 320 Nos.
	<b>List of proposed native trees :</b>	As mentioned below.
	<b>Timeline for completion of plantation :</b>	Trees already planted on site

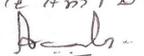
#### 44.Number and list of trees species to be planted in the ground

Serial Number	Name of the plant	Common Name	Quantity	Characteristics & ecological importance
1	Mimusops elengi	Bakul	75	Butterfly host plant having high Air Pollution Index Tolerance (APIT) tree, small white fragrant flowers.
2	Couroupita guianensis	cannonball	75	medicinal uses for the plant.
3	Swietenia mahagoni	Cuban mahogany	75	There has been some research into the acaricidal effects of its leaves and bark for control of the honey bee pest.
4	Elaeocarpus sphaericus	Rudraki	50	Fruits have properties such as sedative, hypnotic, tranquillizing, anti-convulsive, anti-epileptic and anti-hypertensive properties, used in the treatment of epilepsy and heart problems.
5	Alstonia scholaris	blackboard tree	25	It has proved a valuable remedy in chronic diarrhoea and the advanced stages of dysentery.
6	Purple bauhinia	Purple Orchid Tree	20	evergreen small tree or shrub up to 4 - 10 m tall and 2 m across
7	--	--	--	--
8	--	--	--	--
<b>45.Total quantity of plants on ground</b>				

#### 46.Number and list of shrubs and bushes species to be planted in the podium RG:

Serial Number	Name	C/C Distance	Area m2
1	--	--	1240.00

#### 47.Energy

 <b>Joy S.Thakur (Secretary SEAC-III)</b>	<b>SEAC Meeting No: 102 Meeting Date: January 22, 2020</b>	<b>Page 57 of 62</b>	<b>Name: K. Anil Kale</b>  <b>Signature: Shri. Anil Kale (Chairman SEAC-III)</b>
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<b>Power requirement:</b>	<b>Source of power supply :</b>	MSEDCL
	<b>During Construction Phase: (Demand Load)</b>	100 kVA
	<b>DG set as Power back-up during construction phase</b>	as per requirement
	<b>During Operation phase (Connected load):</b>	3340 KW
	<b>During Operation phase (Demand load):</b>	1176 KW
	<b>Transformer:</b>	630 KVA- 1 NO. & 1000 KVA -1 No.
	<b>DG set as Power back-up during operation phase:</b>	1 No. of 140 kVA DG
	<b>Fuel used:</b>	HSD
	<b>Details of high tension line passing through the plot if any:</b>	NA

#### 48. Energy saving by non-conventional method:

Reduction in consumption by using Energy Saving Measure:

1. Use of LED lamps for common area (Landscape)
2. Stair-case, Lift lobby, Passage parking Lightings

#### 49. Detail calculations & % of saving:

Serial Number	Energy Conservation Measures	Saving %
1	AVERAGE ANNUAL ENERGY SAVINGS	--
2	SAVINGS ON ONLY SOLAR PANELS	--
3	ADDITIONAL AVERAGE ANNUAL ENERGY SAVINGS WITH SOLAR WATER HEATING	--

#### 50. Details of pollution control Systems

Source	Existing pollution control system	Proposed to be installed
Not applicable	Not applicable	Not applicable

<b>Budgetary allocation (Capital cost and O&amp;M cost):</b>	<b>Capital cost:</b>	--
	<b>O &amp; M cost:</b>	--

### 51. Environmental Management plan Budgetary Allocation

#### a) Construction phase (with Break-up):

Serial Number	Attributes	Parameter	Total Cost per annum (Rs. In Lacs)
1	PPE	--	5.00
2	Site Sanitation Facility	--	4.00
3	Drinking water facility	--	2.00
4	Solid Waste Management	--	2.50

  
 Joy S. Thakur (Secretary SEAC-III)

**SEAC Meeting No: 102 Meeting Date: January 22, 2020**

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Name: K. Anil Kale  
 Signature:   
 Shri. Anil Kale (Chairman SEAC-III)

5	Safety railing, platform, ladder, hoist, Cranes etc.	--	6.00
6	House keeping	--	2.00
7	Health Check	--	1.00
8	Environmental Monitoring	--	1.50
9	Anti-rusting coating on foundation steel bars	--	5.00

**b) Operation Phase (with Break-up):**

Serial Number	Component	Description	Capital cost Rs. In Lacs	Operational and Maintenance cost (Rs. in Lacs/yr)
1	Rain water Harvesting	--	21.00	0.84
2	Sewage Treatment Plant	--	45.00	3.00
3	Solid Waste Management	--	4.00	0.40
4	Landscaping	--	15.00	0.50

**51.Storage of chemicals (inflamable/explosive/hazardous/toxic substances)**

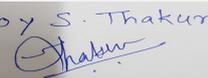
Description	Status	Location	Storage Capacity in MT	Maximum Quantity of Storage at any point of time in MT	Consumption / Month in MT	Source of Supply	Means of transportation
Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable

**52.Any Other Information**

No Information Available

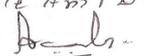
**53.Traffic Management**

Nos. of the junction to the main road & design of confluence:	2
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Joy S. Thakur  
  
**Joy S.Thakur (Secretary SEAC-III)**

**SEAC Meeting No: 102 Meeting Date: January 22, 2020**

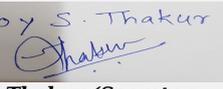
**Page 59 of 62**

Name: K. Anil Kale  
  
**Shri. Anil Kale (Chairman SEAC-III)**

<b>Parking details:</b>	<b>Number and area of basement:</b>	NA
	<b>Number and area of podia:</b>	1 podium and area 3375 Sq. Mt.
	<b>Total Parking area:</b>	4139.00 Sq. Mt.
	<b>Area per car:</b>	12.50 Sq. Mt.
	<b>Area per car:</b>	12.50 Sq. Mt.
	<b>Number of 2-Wheelers as approved by competent authority:</b>	Scooter Required: 387 Nos. and Scooter Proposed: 387 Nos. ; Cycle Required: 350 Nos. and Cycle Proposed: 350 Nos.
	<b>Number of 4-Wheelers as approved by competent authority:</b>	Required: 230 Nos. and Proposed: 230 Nos.
	<b>Public Transport:</b>	--
	<b>Width of all Internal roads (m):</b>	7.5 & 12 Meters
	<b>CRZ/ RRZ clearance obtain, if any:</b>	NA
	<b>Distance from Protected Areas / Critically Polluted areas / Eco-sensitive areas/ inter-State boundaries</b>	NA
	<b>Category as per schedule of EIA Notification sheet</b>	8 (a) B2
	<b>Court cases pending if any</b>	NA
	<b>Other Relevant Informations</b>	NA
	<b>Have you previously submitted Application online on MOEF Website.</b>	No
	<b>Date of online submission</b>	-

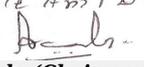
### SEAC DISCUSSION ON ENVIRONMENTAL ASPECTS

<b>Environmental Impacts of the project</b>	-
<b>Water Budget</b>	-
<b>Waste Water Treatment</b>	-
<b>Drainage pattern of the project</b>	-
<b>Ground water parameters</b>	-
<b>Solid Waste Management</b>	-

Joy S. Thakur  
  
 Joy S. Thakur (Secretary SEAC-III)

**SEAC Meeting No: 102 Meeting Date: January 22, 2020**

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of 62

Name: K. Anil Kale  
 Signature:   
 Shri. Anil Kale (Chairman SEAC-III)

Air Quality & Noise Level issues	-
Energy Management	-
Traffic circulation system and risk assessment	-
Landscape Plan	-
Disaster management system and risk assessment	-
Socioeconomic impact assessment	-
Environmental Management Plan	-
Any other issues related to environmental sustainability	-

### Brief information of the project by SEAC

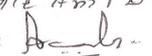
PP had submitted application for prior Environmental clearance for total plot area of 26000 m<sup>2</sup>, FSI area of 24940.54 m<sup>2</sup>, Non FSI area of 21628.67 m<sup>2</sup> and total BUA of 46,569.21 m<sup>2</sup>.

The building configuration of the proposal is as below:

1 Building A Stilt on ground floor + stilt podium + 12 upper Floors + 24 Flats m	Height 36.00
2 Building B Stilt on ground floor + stilt podium + 12 upper Floors + 24 Flats m	Height 36.00
3 Building C Stilt on ground floor + stilt podium + 12 upper Floors + 24 Flats m	Height 36.00
4 Building D Stilt on ground floor + 12 Floors + 24 Flats	Height 36.00 m
5 Building E Stilt on ground floor + 12 Floors + 24 Flats	Height 36.00 m
6 Building F Stilt on ground floor + 12 Floors + 70 Flats m	Height 39.20

PP informed that the total constructed area on site is: 44841.72 m<sup>2</sup> till date.

### DECISION OF SEAC

 <b>Joy S. Thakur (Secretary SEAC-III)</b>	<b>SEAC Meeting No: 102 Meeting Date: January 22, 2020</b>	<b>Page 61 of 62</b>	<b>Name: K. Anil Kale</b>  <b>Signature: Shri. Anil Kale (Chairman SEAC-III)</b>
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The Committee noted that PP has NOT applied within the within the stipulated amenity period as per the MoEF&CC Notification dated 14/03/2017 and 8/03/2018.

The Committee decided to **refer the proposal to SEIAA** for further needful action.

**Specific Conditions by SEAC:**

### FINAL RECOMMENDATION

Kindly find SEAC decision above.

SEAC-AGENDA-0000000387

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<p>Joy S. Thakur <i>Joy S. Thakur</i> Joy S. Thakur (Secretary SEAC-III)</p>	<p><b>SEAC Meeting No: 102 Meeting Date: January 22, 2020</b></p>	<p><b>Page 62 of 62</b></p>	<p><b>Name: K. Anil Kale</b> <b>Signature: <i>Anil Kale</i></b> <b>Shri. Anil Kale (Chairman SEAC-III)</b></p>
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REGISTRAR COURT. 2

SECTION IX

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

BEFORE THE REGISTRAR SH. RAJIV KALRA

IA 65285/2019,160684/2019, in Petition(s) for Special Leave to Appeal (C) No(s). 10078/2019

BUILDERS ASSOCIATION OF INDIA

Petitioner(s)

VERSUS

UNION OF INDIA

Respondent(s)

IA No. 160684/2019 - INTERVENTION APPLICATION  
IA No. 65285/2019 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/FACTS/ANNEXURES)

WITH

SLP(C) No. 23143/2019 (IX)  
(FOR ADMISSION and I.R. and IA No.136818/2019-CONDONATION OF DELAY IN FILING and IA No.136816/2019-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.136815/2019-PERMISSION TO FILE PETITION (SLP/TP/WP/..))

Date : 02-03-2020 These matters were called on for hearing today.

For Petitioner(s)

Mrs. Pragya Baghel, AOR

Ms. Neha Aggarwal, Adv.

Mr. E. C. Agrawala, AOR

For Respondent(s)

Mr. Durga Dutt, Adv.

Mr. Gurmeet Singh Makker, AOR

For Intervenor

Mr. Nitin Lonkar, Adv.

Ms. Sonali Suryawanshi, Adv.

Mr. Shanky Agrawal, Adv.

UPON hearing the counsel the Court made the following  
O R D E R

Signature Not Verified  
Digitally signed by  
Rajiv Kalra  
Date: 2020.03.02  
15:36:57 IST  
Reason: I am the signatory

SLP(C) No. 10078/2019

The office report indicates that sole respondent has already filed counter affidavit. Viewed thus, the matter be processed for

TRUE COPY

*Bombhise*

listing before the Hon'ble Court under the rules with pending I.As.

SLP(C) No. 23143/2019

Service of notice is complete on both respondents but no one has entered appearance on their behalf. Viewed thus, the matter be processed for listing before the Hon'ble Court, under the rules.

RAJIV KALRA  
Registrar

MG

TRUE COPY

Bombhise

<b>195 th Meeting of SEIAA</b>	
<b>SEIAA Meeting number: 195 Meeting Date March 14, 2020</b>	
<b>Subject:</b> Environment Clearance for Proposed residential Building "Ekta California" development at S. No. 9/1(P), Undri, Pune.	
<b>Is a Violation Case:</b> Yes	
<b>1.Name of Project</b>	Ekta California
<b>2.Type of institution</b>	Private
<b>3.Name of Project Proponent</b>	Ekta Housing Private Limited
<b>4.Name of Consultant</b>	K Srinivasan
<b>5.Type of project</b>	Housing Project
<b>6.New project/expansion in existing project/modernization/diversification in existing project</b>	Expansion in existing project
<b>7.If expansion/diversification, whether environmental clearance has been obtained for existing project</b>	No
<b>8.Location of the project</b>	S. No. 9/1(P), Undri
<b>9.Taluka</b>	Pune
<b>10.Village</b>	--
<b>Correspondence Name:</b>	Ashok Mohanani
<b>Room Number:</b>	Office No. 401,
<b>Floor:</b>	4th Floor,
<b>Building Name:</b>	Hallmark Business Plaza,
<b>Road/Street Name:</b>	Off. W.E. Highway,
<b>Locality:</b>	Kalanagar, Bandra -East
<b>City:</b>	Mumbai- 400051
<b>11.Whether in Corporation / Municipal / other area</b>	Pune Municipal Corporation
<b>12.IOD/IOA/Concession/Plan Approval Number</b>	Commencement Certificate
	<b>IOD/IOA/Concession/Plan Approval Number:</b> Commencement Certificate: CC/3774/16, Dated-31/03/2017
	<b>Approved Built-up Area:</b> 46569.21
<b>13.Note on the initiated work (If applicable)</b>	Construction work initiated and total constructed area: 44841.72 Sq. Mt.
<b>14.LOI / NOC / IOD from MHADA/ Other approvals (If applicable)</b>	Commencement Certificate: CC/3774/16, Dated-31/03/2017
<b>15.Total Plot Area (sq. m.)</b>	26000.00 Sq. Mt.
<b>16.Deductions</b>	3253.10 Sq. Mt. (Land under 60 Meter wide DP road: 1713.10 Sq. Mt. + Land under 24 Meter wide DP road: 144.00 Sq. Mt. + Area Under reservation MH-26: 998.00 Sq. Mt. & PC-31: 398 Sq. Mt.)
<b>17.Net Plot area</b>	22746.90 Sq. Mt.
<b>18 (a).Proposed Built-up Area (FSI &amp; Non-FSI)</b>	<b>a) FSI area (sq. m.):</b> 24940.54
	<b>b) Non FSI area (sq. m.):</b> 21628.67
	<b>c) Total BUA area (sq. m.):</b> 46569.21
<b>18 (b).Approved Built up area as per DCR</b>	<b>Approved FSI area (sq. m.):</b> 24940.54
	<b>Approved Non FSI area (sq. m.):</b> 21628.67
	<b>Date of Approval:</b> 31-03-2017
<b>19.Total ground coverage (m2)</b>	7635.00
<b>20.Ground-coverage Percentage (%) (Note: Percentage of plot not open to sky)</b>	33.56 %
<b>21.Estimated cost of the project</b>	1374000000

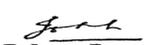
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**Shri. Anil Diggikar (Member Secretary SEIAA)**

**SEIAA Meeting No: 195 Meeting Date: March 14, 2020**

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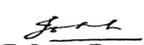
**Shri. Johnny Joseph (Chairman SEIAA)**

<b>22.Number of buildings &amp; its configuration</b>				
<b>Serial number</b>	<b>Building Name &amp; number</b>	<b>Number of floors</b>	<b>Height of the building (Mtrs)</b>	
1	Building A	Stilt on ground floor + stilt podium + 12 upper Floors + 24 Flats	36.00	
2	Building B	Stilt on ground floor + stilt podium + 12 upper Floors + 24 Flats	36.00	
3	Building C	Stilt on ground floor + stilt podium + 12 upper Floors + 24 Flats	36.00	
4	Building D	Stilt on ground floor + 12 Floors + 24 Flats	36.00	
5	Building E	Stilt on ground floor + 12 Floors + 24 Flats	36.00	
6	Building F	Stilt on ground floor + 12 Floors + 70 Flats	39.20	
<b>23.Number of tenants and shops</b>		Residential 190 Flats		
<b>24.Number of expected residents / users</b>		1105 Nos.		
<b>25.Tenant density per hectare</b>		83.50		
<b>26.Height of the building(s)</b>				
<b>27.Right of way (Width of the road from the nearest fire station to the proposed building(s))</b>		Proposed 60 Meter wide road and 24 Meter existing road		
<b>28.Turning radius for easy access of fire tender movement from all around the building excluding the width for the plantation</b>		9 .00 Meters		
<b>29.Existing structure (s) if any</b>		Existing 5 Buildings (A to E)		
<b>30.Details of the demolition with disposal (If applicable)</b>		NA		
<b>31.Production Details</b>				
<b>Serial Number</b>	<b>Product</b>	<b>Existing (MT/M)</b>	<b>Proposed (MT/M)</b>	<b>Total (MT/M)</b>
1	Not applicable	Not applicable	Not applicable	Not applicable
<b>32.Total Water Requirement</b>				

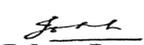
  
**Shri. Anil Diggikar (Member Secretary SEIAA)**

**SEIAA Meeting No: 195 Meeting Date: March 14, 2020**

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**Johny Joseph**  
**Shri. Johny Joseph (Chairman SEIAA)**

Dry season:	Source of water	Pune Municipal Corporation + treated sewage from STP							
	Fresh water (CMD):	100.00							
	Recycled water - Flushing (CMD):	50.00							
	Recycled water - Gardening (CMD):	25.00							
	Swimming pool make up (Cum):	5.00							
	Total Water Requirement (CMD) :	180.00							
	Fire fighting - Underground water tank(CMD):	200.00 (A to E building as per CFO) and 50.00 (F building as per CFO)							
	Fire fighting - Overhead water tank(CMD):	20.00 (for each building)							
	Excess treated water	33.00 (Treated water also used in Car washing (4.00) and STP backwash (10.00))							
Wet season:	Source of water	Pune Municipal Corporation + treated sewage from STP + RWH							
	Fresh water (CMD):	100.00							
	Recycled water - Flushing (CMD):	50.00							
	Recycled water - Gardening (CMD):	0.00							
	Swimming pool make up (Cum):	5.00							
	Total Water Requirement (CMD) :	155.00							
	Fire fighting - Underground water tank(CMD):	200.00 (A to E building as per CFO) and 50.00 (F building as per CFO)							
	Fire fighting - Overhead water tank(CMD):	20.00 (for each building)							
	Excess treated water	58.00 (Treated water also used in Car washing (4.00) and STP backwash (10.00))							
Details of Swimming pool (If any)	Swimming pool area: 425 Sq. Mt.								
<b>33.Details of Total water consumed</b>									
Particulars	Consumption (CMD)			Loss (CMD)			Effluent (CMD)		
	Existing	Proposed	Total	Existing	Proposed	Total	Existing	Proposed	Total
Water Requirement	Existing	Proposed	Total	Existing	Proposed	Total	Existing	Proposed	Total
Domestic	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable

 <b>Shri. Anil Diggikar (Member Secretary SEIAA)</b>	<b>SEIAA Meeting No: 195 Meeting Date: March 14, 2020</b>	<b>Page 252 of 534</b>	 <b>Shri. Johnny Joseph (Chairman SEIAA)</b>
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<b>34.Rain Water Harvesting (RWH)</b>	<b>Level of the Ground water table:</b>	3- 4 Meters
	<b>Size and no of RWH tank(s) and Quantity:</b>	1 RWH Tank of 130 KLD
	<b>Location of the RWH tank(s):</b>	On Ground
	<b>Quantity of recharge pits:</b>	NA
	<b>Size of recharge pits :</b>	NA
	<b>Budgetary allocation (Capital cost) :</b>	21.00 Lacs
	<b>Budgetary allocation (O &amp; M cost) :</b>	0.84 Lacs/year
	<b>Details of UGT tanks if any :</b>	Domestic UG tank: 150 KLD Flushing UG tank: 75 KLD Fire Tank: 200 KLD
<b>35.Storm water drainage</b>	<b>Natural water drainage pattern:</b>	The storm drainage above ground will essentially cater for the seasonal rains. The major part of discharge will be from the roof. Rain water outlets will be provided at the edges from where it will be carried down by UPVC agriculture pipes to discharge water into storm water entrance chambers below ground. Run- off from the ground and terrace will be finally discharged into rain water harvesting tank below ground. The overflow from rain water harvesting tank will be discharged into storm water c
	<b>Quantity of storm water:</b>	3.60 M3/ Min
	<b>Size of SWD:</b>	750 mmØ pipe
<b>Sewage and Waste water</b>	<b>Sewage generation in KLD:</b>	135 KLD
	<b>STP technology:</b>	MBBR
	<b>Capacity of STP (CMD):</b>	212 KLD STP
	<b>Location &amp; area of the STP:</b>	On ground and area 118.50 Sq. Mtrs.
	<b>Budgetary allocation (Capital cost):</b>	45.00 Lacs
	<b>Budgetary allocation (O &amp; M cost):</b>	3.00 Lacs/year
<b>36.Solid waste Management</b>		
<b>Waste generation in the Pre Construction and Construction phase:</b>	<b>Waste generation:</b>	Excavated soil will be used in land leveling purpose & construction debris will be handed over to authorized agency.
	<b>Disposal of the construction waste debris:</b>	Construction debris will be handed over to Authorized agency.
<b>Waste generation in the operation Phase:</b>	<b>Dry waste:</b>	306.60 Kg/day
	<b>Wet waste:</b>	204.40 Kg/day
	<b>Hazardous waste:</b>	NA
	<b>Biomedical waste (If applicable):</b>	NA
	<b>STP Sludge (Dry sludge):</b>	3.20 kg/day
	<b>Others if any:</b>	NA
<b>Secretary SEIAA)</b>	<b>14, 2020</b>	<b>07/554 (Chairman SEIAA)</b>

<b>Mode of Disposal of waste:</b>	<b>Dry waste:</b>	Handed over to authorized agency.
	<b>Wet waste:</b>	Composting through OWC & used at site/as manure.
	<b>Hazardous waste:</b>	NA
	<b>Biomedical waste (If applicable):</b>	NA
	<b>STP Sludge (Dry sludge):</b>	Used as manure within the premises for plants. Excess shall be sold /handover to outside parties or gardens.
	<b>Others if any:</b>	NA
<b>Area requirement:</b>	<b>Location(s):</b>	On Ground
	<b>Area for the storage of waste &amp; other material:</b>	30 Sq. Mt. including machinery
	<b>Area for machinery:</b>	--
<b>Budgetary allocation (Capital cost and O&amp;M cost):</b>	<b>Capital cost:</b>	4.00 Lacs
	<b>O &amp; M cost:</b>	0.40 Lacs/year

### 37. Effluent Characteristics

Serial Number	Parameters	Unit	Inlet Effluent Characteristics	Outlet Effluent Characteristics	Effluent discharge standards (MPCB)
1	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable
Amount of effluent generation (CMD):		Not applicable			
Capacity of the ETP:		Not applicable			
Amount of treated effluent recycled :		Not applicable			
Amount of water send to the CETP:		Not applicable			
Membership of CETP (if require):		Not applicable			
Note on ETP technology to be used		Not applicable			
Disposal of the ETP sludge		Not applicable			

### 38. Hazardous Waste Details

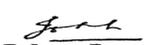
Serial Number	Description	Cat	UOM	Existing	Proposed	Total	Method of Disposal
1	Not applicable						

### 39. Stacks emission Details

Serial Number	Section & units	Fuel Used with Quantity	Stack No.	Height from ground level (m)	Internal diameter (m)	Temp. of Exhaust Gases
1	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable

### 40. Details of Fuel to be used

Serial Number	Type of Fuel	Existing	Proposed	Total
1	Not applicable	Not applicable	Not applicable	Not applicable
41. Source of Fuel		Not applicable		
42. Mode of Transportation of fuel to site		Not applicable		

 <b>Shri. Anil Diggikar (Member Secretary SEIAA)</b>	<b>SEIAA Meeting No: 195 Meeting Date: March 14, 2020</b>	<b>Page 254 of 534</b>	 <b>Shri. Johnny Joseph (Chairman SEIAA)</b>
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<b>43.Green Belt Development</b>	<b>Total RG area :</b>	Green area on Ground: 2274.70 Sq. Mt. and Green area on podium: 1240.00 Sq. Mt.
	<b>No of trees to be cut :</b>	NA
	<b>Number of trees to be planted :</b>	Required: 223 Nos. and Proposed on site: 320 Nos.
	<b>List of proposed native trees :</b>	As mentioned below.
	<b>Timeline for completion of plantation :</b>	Trees already planted on site

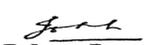
#### 44.Number and list of trees species to be planted in the ground

Serial Number	Name of the plant	Common Name	Quantity	Characteristics & ecological importance
1	Mimusops elengi	Bakul	75	Butterfly host plant having high Air Pollution Index Tolerance (APIT) tree, small white fragrant flowers.
2	Couroupita guianensis	cannonball	75	medicinal uses for the plant.
3	Swietenia mahagoni	Cuban mahogany	75	There has been some research into the acaricidal effects of its leaves and bark for control of the honey bee pest.
4	Elaeocarpus sphaericus	Rudraki	50	Fruits have properties such as sedative, hypnotic, tranquillizing, anti-convulsive, anti-epileptic and anti-hypertensive properties, used in the treatment of epilepsy and heart problems.
5	Alstonia scholaris	blackboard tree	25	It has proved a valuable remedy in chronic diarrhoea and the advanced stages of dysentery.
6	Purple bauhinia	Purple Orchid Tree	20	evergreen small tree or shrub up to 4 - 10 m tall and 2 m across
7	--	--	--	--
8	--	--	--	--
<b>45.Total quantity of plants on ground</b>				

#### 46.Number and list of shrubs and bushes species to be planted in the podium RG:

Serial Number	Name	C/C Distance	Area m2
1	--	--	1240.00

#### 47.Energy

 <b>Shri. Anil Diggikar (Member Secretary SEIAA)</b>	<b>SEIAA Meeting No: 195 Meeting Date: March 14, 2020</b>	<b>Page 255 of 534</b>	 <b>Shri. Johnny Joseph (Chairman SEIAA)</b>
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<b>Power requirement:</b>	<b>Source of power supply :</b>	MSEDCL
	<b>During Construction Phase: (Demand Load)</b>	100 kVA
	<b>DG set as Power back-up during construction phase</b>	as per requirement
	<b>During Operation phase (Connected load):</b>	3340 KW
	<b>During Operation phase (Demand load):</b>	1176 KW
	<b>Transformer:</b>	630 KVA- 1 NO. & 1000 KVA -1 No.
	<b>DG set as Power back-up during operation phase:</b>	1 No. of 140 kVA DG
	<b>Fuel used:</b>	HSD
	<b>Details of high tension line passing through the plot if any:</b>	NA

#### 48. Energy saving by non-conventional method:

Reduction in consumption by using Energy Saving Measure:

1. Use of LED lamps for common area (Landscape)
2. Stair-case, Lift lobby, Passage parking Lightings

#### 49. Detail calculations & % of saving:

Serial Number	Energy Conservation Measures	Saving %
1	AVERAGE ANNUAL ENERGY SAVINGS	--
2	SAVINGS ON ONLY SOLAR PANELS	--
3	ADDITIONAL AVERAGE ANNUAL ENERGY SAVINGS WITH SOLAR WATER HEATING	--

#### 50. Details of pollution control Systems

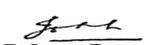
Source	Existing pollution control system	Proposed to be installed
Not applicable	Not applicable	Not applicable

<b>Budgetary allocation (Capital cost and O&amp;M cost):</b>	<b>Capital cost:</b>	--
	<b>O &amp; M cost:</b>	--

### 51. Environmental Management plan Budgetary Allocation

#### a) Construction phase (with Break-up):

Serial Number	Attributes	Parameter	Total Cost per annum (Rs. In Lacs)
1	PPE	--	5.00
2	Site Sanitation Facility	--	4.00
3	Drinking water facility	--	2.00
4	Solid Waste Management	--	2.50

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5	Safety railing, platform, ladder, hoist, Cranes etc.	--	6.00
6	House keeping	--	2.00
7	Health Check	--	1.00
8	Environmental Monitoring	--	1.50
9	Anti-rusting coating on foundation steel bars	--	5.00

**b) Operation Phase (with Break-up):**

Serial Number	Component	Description	Capital cost Rs. In Lacs	Operational and Maintenance cost (Rs. in Lacs/yr)
1	Rain water Harvesting	--	21.00	0.84
2	Sewage Treatment Plant	--	45.00	3.00
3	Solid Waste Management	--	4.00	0.40
4	Landscaping	--	15.00	0.50

**51.Storage of chemicals (inflamable/explosive/hazardous/toxic substances)**

Description	Status	Location	Storage Capacity in MT	Maximum Quantity of Storage at any point of time in MT	Consumption / Month in MT	Source of Supply	Means of transportation
Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable	Not applicable

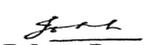
**52.Any Other Information**

No Information Available

**53.Traffic Management**

Nos. of the junction to the main road & design of confluence:	2
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<b>Parking details:</b>	<b>Number and area of basement:</b>	NA
	<b>Number and area of podia:</b>	1 podium and area 3375 Sq. Mt.
	<b>Total Parking area:</b>	4139.00 Sq. Mt.
	<b>Area per car:</b>	12.50 Sq. Mt.
	<b>Area per car:</b>	12.50 Sq. Mt.
	<b>Number of 2-Wheelers as approved by competent authority:</b>	Scooter Required: 387 Nos. and Scooter Proposed: 387 Nos. ; Cycle Required: 350 Nos. and Cycle Proposed: 350 Nos.
	<b>Number of 4-Wheelers as approved by competent authority:</b>	Required: 230 Nos. and Proposed: 230 Nos.
	<b>Public Transport:</b>	--
	<b>Width of all Internal roads (m):</b>	7.5 & 12 Meters
	<b>CRZ/ RRZ clearance obtain, if any:</b>	NA
	<b>Distance from Protected Areas / Critically Polluted areas / Eco-sensitive areas/ inter-State boundaries</b>	NA
	<b>Category as per schedule of EIA Notification sheet</b>	8 (a) B2
	<b>Court cases pending if any</b>	NA
	<b>Other Relevant Informations</b>	NA
	<b>Have you previously submitted Application online on MOEF Website.</b>	No
	<b>Date of online submission</b>	-
<b>SEAC DISCUSSION ON ENVIRONMENTAL ASPECTS</b>		
Summorisred in brief information of Project as below.		
<b>Brief information of the project by SEAC</b>		

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PP had submitted application for prior Environmental clearance for total plot area of 26000 m<sup>2</sup>, FSI area of 24940.54 m<sup>2</sup>, Non FSI area of 21628.67 m<sup>2</sup> and total BUA of 46,569.21 m<sup>2</sup>.

The building configuration of the proposal is as below:

1 Building A Stilt on ground floor + stilt podium + 12 upper Floors + 24 Flats m	Height 36.00
2 Building B Stilt on ground floor + stilt podium + 12 upper Floors + 24 Flats m	Height 36.00
3 Building C Stilt on ground floor + stilt podium + 12 upper Floors + 24 Flats m	Height 36.00
4 Building D Stilt on ground floor + 12 Floors + 24 Flats	Height 36.00 m
5 Building E Stilt on ground floor + 12 Floors + 24 Flats	Height 36.00 m
6 Building F Stilt on ground floor + 12 Floors + 70 Flats m	Height 39.20

PP informed that the total constructed area on site is: 44841.72 m<sup>2</sup> till date.

### DECISION OF SEAC

The Committee noted that PP has NOT applied within the within the stipulated amenity period as per the MoEF&CC Notification dated 14/03/2017 and 8/03/2018.

The Committee decided to **refer the proposal to SEIAA** for further needful action.

**Specific Conditions by SEAC:**

### SEIAA DECISION

As PP was absent, SEIAA decided to defer the proposal.

**Specific Conditions by SEIAA:**

### FINAL RECOMMENDATION

SEIAA have decided to defer the proposal. Kindly find SEIAA decision above.

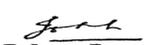
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*Bombhise*

  
**Shri. Anil Diggikar (Member  
Secretary SEIAA)**

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**Shri. Johnny Joseph  
(Chairman SEIAA)**