

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL**WESTERN ZONAL BENCH AT PUNE****APPEAL NO. 31 OF 2020**

MACHINDRA THORVE

...APPLICANT

VERSUS

UNION OF INDIA & OTHERS

...RESPONDENTS

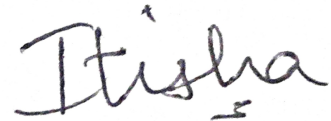
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Through

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Email:- Litigation@dclawchambers.com

Place:- Delhi

Dated:- 12.02.2025

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL**WESTERN ZONAL BENCH AT PUNE****APPEAL NO. 31 OF 2020**

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**REJOINDER TO REPLY OF RESPONDENT NO. 3 ON BEHALF OF THE
APPLICANT****MOST RESPECTFULLY SHOWETH:**

1. That the present Appeal has been filed under Section 16 (h) of the National Green Tribunal Act, 2010 challenging the legality of the Environmental Clearance dated 02.03.2020 granted to Godavari Marathwada Irrigation Development Corporation (GMIDC) by State level Environment Impact Assessment Authority, Maharashtra (SEIAA) for Lift Irrigation Scheme- III (LIS-III) of Ashti Irrigation Project in Taluka Ashti, District Beed, Maharashtra.
2. That the present Appeal was filed on the following main grounds:
 - (i) Krishna Water Disputes Tribunal- II has prohibited inter-basin usage of water, due to no water is available to be used for the impugned project and therefore, the project cannot be operationalized;
 - (ii) Non-compliance with mandatory Terms of Reference granted by MoEF&CC with respect to water availability for the project and other mitigation measures;
 - (iii) The public hearing was conducted in an illegal manner and was in violation of the EIA Notification, 2006;
 - (iv) There are financial discrepancies in the project cost;

- (v) Non-application of mind by State Expert Appraisal Committee on the fact that the project proponent never submitted the information sought from it, on water availability for the project, improper allocation of funds to the project and contrary information regarding tree felling;
- (vi) Maharashtra SEIAA failed to incorporate the conditions imposed by SEAC;
- (vii) The project has substantial social impact;
- (viii) SEAC has failed to refer to already pending cases with respect to inter-state water dispute between Maharashtra, Andhra Pradesh and Karnataka before the Hon'ble Supreme Court.

3. That Respondent No. 3 (State level Environment Impact Assessment Authority, Maharashtra) has filed Reply to the Appeal. All the contentions raised by the Respondent No. 3 are denied, unless expressly admitted or are part of record. The Applicant is filing the following Rejoinder to the Reply, and the Appeal as well as Rejoinder dated 29.08.2024 filed by Applicant to Reply to Respondent No. 2 may be read as part and parcel of record.

REJOINDER ON BEHALF OF APPELLANT

SEIAA has failed to provide response on any of the issues raised by the Appellant

4. That Respondent No. 3 in its Reply has failed to provide any response on the issues that have been raised by the Appellant in the Appeal. The Reply of Respondent No. 3 is inadequate and misleading. It has failed to provide any answers to the main contentions in the Appeal, and therefore, failed in assisting this Hon'ble Tribunal in proper adjudication of this Appeal. As a government authority, Respondent No. 3 has a higher responsibility to assist this Hon'ble Tribunal by providing clear facts and their stand on the allegations of the Appellant.

5. That the following paragraphs will show how Respondent No. 3 has failed to respond to the main contentions raised by Appellant:
 - i. On water availability for the project:
6. That Respondent No. 3 has failed in providing its reply to the ground that no water is available for operationalizing this project and the Environmental Clearance has been granted without considering the said issue. Respondent No. 3 has only stated that water will be made available from Polavaram project and Ujjani dam, however, has failed to provide an adequate response on the point that how none of these projects have the capability of providing water to the impugned project.
7. That the Government of Maharashtra introduced the Krishna-Bhima Stabilisation Project (hereinafter referred to as "**KBSP**") with the intention of supplying water to drought-prone districts of Marathwada region including Dharashiv and Beed districts in Maharashtra. This was aimed to be achieved by interlinking of river basins by constructing several lift-irrigation projects. The KBSP project was to operate on receiving 60 TMC of water from Ujjani dam which is located near Ujjani village of Madha Taluk in Solapur district in Maharashtra. This water was to be further re-distributed by inter-basin transfer of water and 21 TMC was to be provided to Krishna Marathwada Irrigation Project (hereinafter referred to as "**KMIP**").
8. KMIP consists of three lift-irrigation schemes i.e. LIS-I, LIS-II and LIS-III. The subject of the present Appeal is only limited to the Environmental Clearance granted to LIS-III which is a part of KMIP, and is therefore dependant on the supply of water from Ujjani dam and KBSP.
9. That operation of KBSP is dependent on re-distribution of water by inter-basin transfer between K-1 sub-basin to K-5 sub-basin. However, such

inter-basin transfer of water has been prohibited by Further Report of the on the basis that any inter-basin transfer disturbs the flow and use of water.

10. That Krishna Water Dispute Tribunal- II was constituted by the Central Government vide Notification number S.O. 451(E) dated 02.04.2004 for adjudicating dispute between the States of Maharashtra, Karnataka and erstwhile Andhra Pradesh under Section 4 of the Inter-State River Water Dispute (ISRWD) Act, 1956 regarding allocation of Krishna River Water between the said States. The Further Report clearly states that inter-basin transfer cannot be allowed to be undertaken:

*"Some projects have even been indicated in which Maharashtra intends to utilize this amount of water, namely, 35 TMC including Krishna-Bhima Stabilisation Scheme which envisages water to be taken from K-1 sub-basin to K-5 sub-basin. The two points of the project are at considerable distance. **It had been pointed out to the learned Counsel for the State of Maharashtra that this could not be permitted since this inter-basin transfer from K-1 sub-basin to K-5 sub-basin after travelling a long distance may disturb the flow and use of water in K-1 sub-basin.***

...

*Therefore, it is provided that the State of Maharashtra may utilize the water allocated to the 5 projects, namely, revised Urmodi, Nira Deogarh, Bhama Askhed, Gunjani at Velhe and Sina Nimgaon in other projects **subject to the condition that the utilization shall be within the sub-basin and not inter-basin utilisation.**" (Page 104)*

11. That since the operation of KBSP is dependent on inter-basin transfer of water from K-1 to K-5, therefore, it cannot be operationalized in view of the Further Report. Since KBSP was not operationalized, no water is available for the operation of the impugned project.

12. That the Integrated State Water Plan for Krishna Basin in Maharashtra of the Water Resources Department of Government of Maharashtra

issued in December, 2017 also only mentions water allocation for Osmanabad district and not to Beed District, where the impugned project is located. The list of projects sanctioned for water allocation as given in the Plan includes at S. No. 518- "Krishna Marathwada LIS" in District Osmanabad. This list does not contain the LIS for District Beed.

Copy of Integrated State Water Plan for Krishna Basin in Maharashtra is annexed herewith as **ANNEXURE A-1**.

13. That another source of water for the impugned project is claimed to be the Polavaram Irrigation Project, which is an interstate project on river Godavari which has been conceived as a part of recommendations of Godavari Water Disputes Tribunal (GWDT). GWDT finalized its award in 1980. The award identifies individual projects that can be taken up by the co-basin states of Maharashtra, Madhya Pradesh (including Chhattisgarh), Orissa, Karnataka and Andhra Pradesh on the main Godavari River as well as its tributaries.

14. That the reply of Respondent No. 2 makes it clear Maharashtra will receive 14 TMC of water from Polavaram project as per the Award granted by GWDT, out of which 5 TMC has to be provided to Chennai city. As per this calculation, Respondent No. 2 claims that out of the remaining 9 TMC water, 7 TMC water is available for all three lift irrigation schemes of KMIP. Respondent No. 2 also states that only 1.68 TMC water is available for Beed district and the rest 5.32 TMC is for Osmanabad district. It is submitted that the impugned project is supposed to provide water to the Beed district, meaning only 1.68 TMC water can be made available to the impugned project.

15. That 1.68 TMC is inadequate volume of water for operationalisation of the project, as the project requires a total of 5.68 TMC of water.

16. That however, even this quantity of water isn't available to the impugned project since the Polavaram project has not been completed and therefore, is still not operationalised. Multiple newspaper articles have reported that the completion of Polavaram project is nowhere in sight and therefore, no start date for its operationalisation can be given.

17. That for a detailed response, reference may be made to the Appeal (@ Page 12) and Rejoinder to Reply of Respondent No. 2 (@ Page 422) that water availability is not sufficient for the project to be operationalized, however, Respondent No. 3 has failed to go into the details of the contention.

ii. On non-compliance with Terms of Reference granted by MoEF&CC:

18. That Respondent No. 3 has also failed in fulfilling its responsibility on providing an adequate response on non-compliance with the Terms of Reference in the EIA Report. Respondent No. 3 has shirked its responsibility and put the responsibility on MoEF&CC to clarify the contention that the Terms of Reference (ToR) were not complied with in the EIA Report.

19. That Respondent No. 3 has stated that since the MoEF&CC had issued the ToR, any contention relating to its non-compliance has to be answered by MoEF&CC.

20. It is submitted that even though the ToR were issued by MoEF&CC, the final Environmental Clearance was issued by Respondent No. 3. While granting the Environmental Clearance, Respondent No. 3 is legally obligated to crucially analyse all documents relating to Environmental Clearance and verify that all compliances are in check. This process also includes checking that all Terms of Reference have been complied with

in the EIA Report. If the same has not been done, Environmental Clearance cannot be granted.

21. That however, Respondent No. 3 failed to verify the same and has shirked its responsibility upon MoEF&CC. It is submitted that scrutiny of all documents is upon the authority that grants the final Environmental Clearance. Para 7 IV (i) of the EIA Notification, 2006 requires the SEAC to carefully scrutinize the final EIA Report as part of the appraisal process prior to grant of final Environmental Clearance:

“Appraisal means the detailed scrutiny by the Expert Appraisal Committee or State Level Expert Appraisal Committee of the application and other documents like the Final EIA report, outcome of the public consultations including public hearing proceedings, submitted by the applicant to the regulatory authority concerned for grant of environmental clearance.”

22. That the scrutiny of the EIA Report and verification of the fact that the ToR have been complied with in the EIA Report takes place at the stage of appraisal, which was conducted by SEAC. It is at the stage of 'appraisal' that the EIA Report has to be scrutinized. MOEF&CC was not obligated to undertake such scrutiny. Therefore, by stating that the MoEF&CC is the authority that will clarify the contents of EIA Report, Respondent No. 3 has failed in undertaking a detailed scrutiny of the documents submitted for grant of Environmental Clearance.

iii. On public hearing being conducted in an illegal manner

23. That Respondent No. 3 has also not provided an adequate response on the contention raised with respect to public hearing and has only stated that it is upon the Maharashtra Pollution Control Board to clarify this issue. While granting the Environmental Clearance, Respondent No. 3 ought to have applied its mind to the fact that public hearing was not

conducted appropriately. However, the same was not done and Environmental Clearance was granted without such scrutiny.

24. That detailed scrutiny of the outcome of public consultations is upon the authority that grants the final Environmental Clearance. Para 7 IV (i) of the EIA Notification, 2006 requires the SEAC to carefully scrutinize the outcome of the public consultations including public hearing proceedings as part of the appraisal process prior to grant of final Environmental Clearance:

“Appraisal means the detailed scrutiny by the Expert Appraisal Committee or State Level Expert Appraisal Committee of the application and other documents like the Final EIA report, outcome of the public consultations including public hearing proceedings, submitted by the applicant to the regulatory authority concerned for grant of environmental clearance.”

25. That the Appellant had sent a complaint dated 14.04.2018 highlighting the illegalities that took place during the public hearing process, however, the same was not taken into consideration while appraising the project. The process of public consultation requires the authorities to take into account all representations made by the public, which is eventually scrutinized by the SEAC while appraising the project. The EIA Notification, 2006 describes ‘public consultation’ as follows:

***“7...III. Stage (3) - Public Consultation:
(i) “Public Consultation” refers to the process by which the concerns of local affected persons and others who have plausible stake in the environmental impacts of the project or activity are ascertained with a view to taking into account all the material concerns in the project or activity design as appropriate.”***

26. That however, the concerns of the local affected people including that of the Appellant were not considered and the impugned Environmental

Clearance has been granted without appraising the public hearing and public consultations proceedings.

iv. On financial discrepancies in the project cost:

27. That further, Respondent No. 3 has given no reply to the contention with respect to financial discrepancies in the project and has only stated that no comments are being offered on this matter. It is submitted that Respondent No. 3 is the authority that granted the impugned Environmental Clearance to the project. In such a situation, not providing any comments on an issue regarding financial discrepancies amounting to almost Rs. 1417 crores (refer to **Page 19, Para 28 of the Appeal**) clearly shows lack of scrutiny by Respondent No. 3.

v. On the fact that the project proponent never submitted the information sought from it, on water availability for the project, improper allocation of funds to the project and contrary information regarding tree felling:

28. That with respect to non-application of mind by Respondent No. 3 to issues such that the information sought from the project proponent with respect to water availability for the project, improper allocation of funds to the project and contrary information regarding tree felling were never submitted, Respondent No. 3 has not given any substantial response and has only stated that the minutes of the meeting may be referred to.

29. That it is submitted that a perusal of the minutes of the meeting will show that none of the information sought from the project proponent was received. Respondent No. 3 has failed in providing any response to why no action was taken when the project proponent did not submit the information and an Environmental Clearance was yet granted.

vi. On non-incorporation of conditions imposed by SEAC in the final Environmental Clearance

30. That with respect to non-incorporation of conditions imposed by State level Expert Appraisal Committee (SEAC) in the final Environmental Clearance, Respondent No. 3 has convoluted the allegation and has not responded to the contention raised by the Appellant. The allegation raised by the Appellant was that the condition imposed by SEAC fails to find mention in the Environmental Clearance, however, Respondent No. 3 has responded stating that there was a typographical error. It is beyond imagination how the response suffices as a clarification to the contention of the Appellant.

31. That there has been deliberate non-application of mind by SEAC on the fact that the information sought from the project proponent was never submitted and the impugned Environmental Clearance was granted.

vii. On social impact of the project and lis pendens

32. That Respondent No. 3 has also failed to clarify the contentions raised by the Appellant with respect to the social impact of the project and the issue of pending cases before the Hon'ble Supreme Court with respect to the Krishna Water Disputes Tribunal-II.

33. That Respondent No. 3 has only reiterated the contents of the EIA Report and has failed to provide any justification for the project when it has such large social impacts.

34. That further, Respondent No. 3 has also not responded to how an Environmental Clearance could have been granted without giving consideration to the already existing cases on the same issue which are sub-judice before the Hon'ble Supreme Court.

35. In light of the above facts and circumstances, this Hon'ble Tribunal may direct Respondent No. 3 to file a detailed response to the Appeal as it is the authority that granted the impugned Environmental Clearance to the project.

) Pass any other order as this Hon'ble Tribunal may deem fit in the facts and circumstances of the present case.


APPELLANT

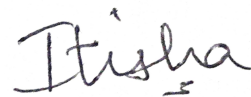
THROUGH



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VERIFICATION

Verified by Machindra Thorve, S/O Amruta Thorve, R/O at Post Kuntephal, Taluka Ashti, District Beed, Maharashtra- 414202, do hereby verify that the contents of Paragraphs 1 to 35 are true to my personal knowledge and nothing material has been concealed therefrom.


APPELLANT

Before The National Green Tribunal
Western Zone Bench at Pune

APPEAL NO. 31 OF 2020

IN THE MATTER OF:

MACHINDRA THORVE

...APPELLANT

VERSUS

STATE OF MAHARASHTRA & ORS.

...RESPONDENTS

AFFIDAVIT

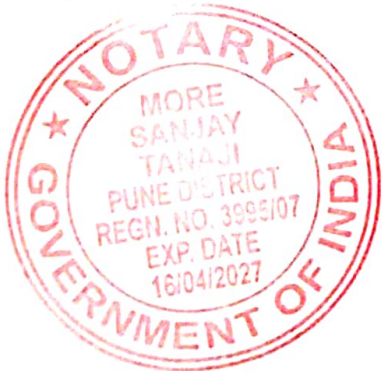
I, Machindra Thorve, S/O Amruta Thorve, R/O at Post Kuntephal, Taluka Ashti, District Beed, Maharashtra- 414202, do hereby solemnly affirm and declare as under:

1. That I am the Appellant in the above titled Appeal and conversant with the facts and circumstances of the case and competent to swear this affidavit.
2. That the contents of the accompanying Rejoinder are true and correct and nothing material has been concealed therefrom.

MA
DEPONENT

VERIFICATION

Verified on this 10th day of Feb 2025 that the contents of the present Affidavit are true and correct to my knowledge and belief and nothing material is concealed therefrom.



MA
DEPONENT

BEFORE ME
[Signature]
MORE S. T.
NOTARY, GOVT. OF INDIA
REGD. NO. 3995



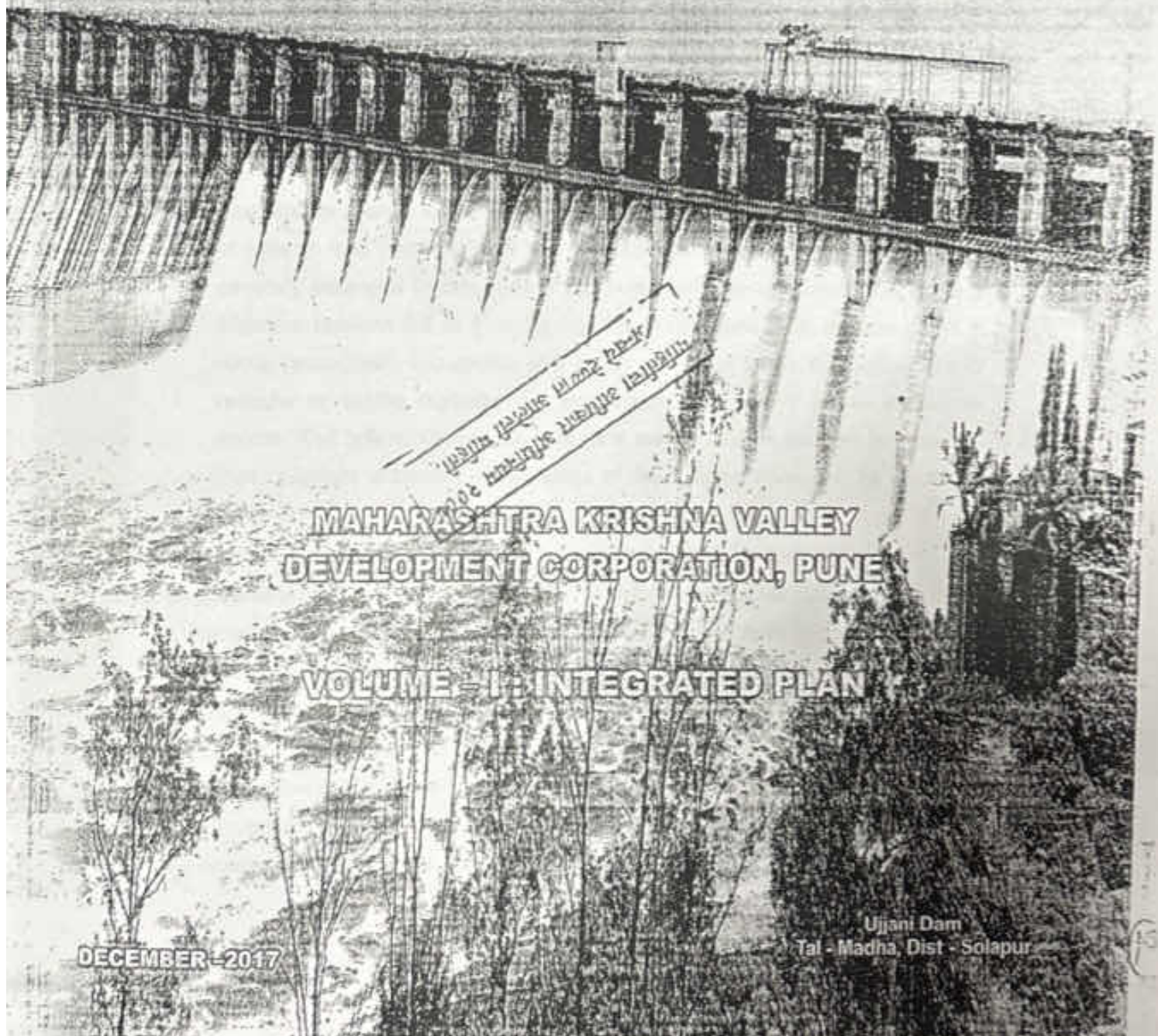
NOTARY AND REGISTERED AT
SERIAL NUMBER 09712025
DATED 10 FEB 2025



सत्यमेव जयते

GOVERNMENT OF MAHARASHTRA
WATER RESOURCES DEPARTMENT

**INTEGRATED STATE WATER PLAN FOR KRISHNA
BASIN IN MAHARASHTRA**



महाराष्ट्र क्रिष्णा घाटी
विकास कंपनी, पुणे

**MAHARASHTRA KRISHNA VALLEY
DEVELOPMENT CORPORATION, PUNE**

VOLUME - I: INTEGRATED PLAN

DECEMBER - 2017

Ujjani Dam
Tal - Madha, Dist - Solapur

LIST OF PROJECTS

Sl. No.	Project Name	Location	Category	Area (Ha)	Cost (Lakhs)	Year	Phase	Remarks
316	Trickle	Sengal	Sengal	2000.0	27800.0	000	0.00	0.00
316	KEELI (Outlet)	Solapur	Sengol, Madhavwada	10000.0	10150.0	000	0.00	0.00
316	Shiv - Kalyani (Part of 1980)	Bad	Ashi	0.0	0.0	0.00	0.00	0.00
318	Krishna Madhavwada LIS in K-5 (L.A.)	Deoradga	Zarenda	34204.8	34204.8	0.00	0.00	0.00
319	Parvati (Part of Khatavada)	Para	Bhivil	25993.0	25755.0	0.00	0.00	0.00
320	Lakshmi Madhav (Part of Para)	Para	Bhivil	0.0	0.0	0.00	0.00	0.00
321	Shivajir (Part of Bilina)	Solapur	Kodol	10000.0	14900.0	0.00	0.00	0.00
322	Shivajir (Part of Bilina)	Solapur	Shidol	18000.0	21800.0	0.00	0.00	0.00
323	Shivajir (Part of Bilina)	Solapur	N. Solapur	17510.0	24810.0	0.00	0.00	0.00
324	Shivajir (Part of Bilina)	Solapur	Karavada	10000.0	11833.0	0.00	0.00	0.00
325	Shivajir (Part of Bilina)	Solapur	Madha	18151.0	24550.0	0.00	0.00	0.00
326	Madhavwada (Part of Bilina)	Solapur	Madhavwada	11820.0	11820.0	0.00	0.00	0.00
326	Tempdu LIS	Sengal	Kerba Madhavwada, Aungdi	11154.0	22845.0	0.00	0.00	0.00
326	KEELI (Madhav)	Sengal	Madhavwada, Kerba, Madhavwada	13770.0	14180.0	0.00	0.00	0.00
326	Shiv Kalyani	Sengal	Kerba	15800.0	15900.0	0.00	0.00	0.00
326	Madhavwada (Part of 1 to 8)	Sengal	Aungdi	500.0	200.0	0.00	0.00	0.00

गणितज्ञ अधिकार अतिरिक्त २००५
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**Rejoinder to Reply R-3 on behalf of the Appellant in Appeal No. 31 of 2020
Machindra Thorve Vs. Union of India & Ors.**

1 message

Litigation . <litigation@dclawchambers.com>

Wed, Feb 12, 2025 at 3:33 PM

To: Aniruddha Kulkarni <aniruddha1488@gmail.com>, Manasi Joshi <adv.manasi.joshi@outlook.com>, Vivek Solshe <vcsolshe@gmail.com>

Cc: itishaawasthi@proton.me

Dear Sir/madam,

Please find attached- Rejoinder to Reply R-3 on behalf of the Appellant in Appeal No. 31 of 2020 Machindra Thorve Vs. Union of India & Ors.

Thanks & Regards
Counsel for the Appellant

 **Rejoinder on behalf of the Appellant.pdf**
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