

**BEFORE THE NATIONAL GREEN TRIBUNAL SITTING  
AT PUNE**

(Under Section 18 (1) read with Sections 15 and 20 of the  
National Green Tribunal Act, 2010)

**APPLICATION NO. 100 OF 2024**

**BETWEEN :**

Vanashakti and Anr )... Applicants

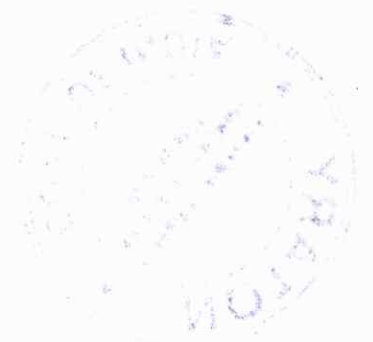
***Versus***

State of Maharashtra and Ors )... Respondents

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**AFFIDAVIT IN REJOINDER ON BEHALF OF THE  
RESPONDENTS**

1. I, Mr Stalin Dayanand the Authorised representative of the Applicant No. 1 and the Applicant No. 2, having my office address at Second Floor, Nandkumar Pawar House, Opposite Jagnath Darshan, MD Keni Marg, Bhandup (East), Mumbai - 400042, do hereby state on solemn affirmation:
2. I say that I have read the present Application and am conversant with its contents. I have also read a copy of the



Affidavit in Reply of the Respondent No. 11 dated 1st August 2024 as well as the Report of the Joint Committee appointed by this Hon'ble Tribunal, thus I am competent to depose on behalf of the Applicants in the present Affidavit in Rejoinder.

3. At the outset I say that the Report of the Joint Committee vindicates and corroborates the case of the Applicants in great, extensive detail. The Joint Committee has issued several recommendations on how to preserve and protect the ecology and land constituting the Dindoshi hills and the ESZ region of the Sanjay Gandhi National Park, and the report of the Joint Committee should be accepted and made binding on the Respondents though the directions of this Hon'ble Tribunal.
4. I say that the contents of para 1 of the Affidavit of the Respondent No. 11 is a matter of record and does not warrant a specific reply.
5. In relation to the contents of para 2, I say that I am not personally aware of the extent of involvement and division of the project and development rights/ownership of land between the Respondent No. 10 and 11 apart from what is



available in the public domain. I say that the Chairman of the Respondent No. 10 is the same as the Director of the Respondent no. 11, and it appears there is some overlap in the management of Respondent No. 10 and 11 and that they share the same registered office address. For the purpose of responding to the present Application, the Applicants are only concerned that the correct Respondent, one that can answer the questions and averments raised in the present Application, file a response. At any rate, it is denied that the Application is bad in law for misjoinder of parties by adding the Respondent No. 10.

6. I say that at para 3 of its Affidavit, the Respondent no. 11 has raised some averments challenging the maintainability of the present Application. I say that my response to the averments raised by the Respondent regarding the Application is as follows:

7. **Limitation** - I say that the contention of the Respondent No. 11 that the present Application is barred by limitation at para 3.1 of its Affidavit is wholly untenable, as the report of the Joint Committee clearly bears out that the destruction of the Dindoshi hills is a continuous occurrence over several years.



The Applicant has filed complaints regarding the same in 2015 (page 117-119) of the Application, in 2019, an FIR was evidently filed regarding the destruction of the hill by setting the trees ablaze in December 2018, and the news reports annexed at pages 57-58 of the Original Application shows that the fires being set off on Dindoshi hills occurred again in 2022. There is irrefutable proof therefore that the destruction of the hills constitutes a continuing cause of action and there is no delay or laches in the filing of the present Application.

8. **No jurisdiction** - I emphatically deny the contention of the Respondent at para 3.2 of its Affidavit, that this Hon'ble Tribunal does not have the jurisdiction to entertain matters pertaining to the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975. I say that this Hon'ble Tribunal regularly adjudicates matters pertaining to the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975 and I further say that the present application raises a myriad of significant issues of environmental law, all of which this Hon'ble Tribunal is competent to adjudicate and the argument of the Respondent that this Hon'ble Tribunal does not have jurisdiction to hear the present matter



is a bad faith and malafide attempt of the Respondent to avoid liability for its illegal destruction of the Dindoshi hills and to evade orders of this Hon'ble Tribunal. It is pertinent to note that I say that it is noteworthy that in its judgment in the matter of *Municipal Corporation of Greater Mumbai v Ankita Sinha and Ors (Civil Appeal No. 86/2019)*, the Hon'ble Supreme Court held that "*The mandate and jurisdiction of the NGT is therefore conceived to be of the widest amplitude and it is in the nature of a sui generis forum..As can be seen, the Parliament intended to confer wide jurisdiction on the NGT so that it can deal with the multitude of issues relating to the environment which were being dealt with by the High Courts under Article 226 of the Constitution or by the Supreme Court under Article 32 of the Constitution. The Tribunal is also expected to proceed with such matters with the understanding that environment and environmental principles are part of Article 21 of the Constitution. [See Vellore Citizens' Welfare Forum vs. UOI12; M.C. Mehta vs. UOI etc.]"*

9. In the matter of *Sandeep Motilal Sanghavi vs Tree Officer, Talegaon Dabhade Municipal Council M.A No. 88/2014* In



Application No.33/2014, the Hon'ble Tribunal categorically held that it has the jurisdiction to entertain matters that pertain to Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975. A copy of the order of this Hon'ble Tribunal in the matter of *Sandeep Motilal Sanghavi vs Tree Officer, Talegaon Dabhade Municipal Council M.A No. 88/2014* in Application No.33/2014 has been annexed hereto and marked as **Annexure A – 1**

**10. Rej-judicata** - I deny the averment of the Respondent at para 3.3 of its Affidavit that any of the issues raised in the present Application is covered by the principle of res-judicata. The issues raised in this Application have never been decided finally by any court of law, and the Respondent has not even annexed any order of this Hon'ble Tribunal to its affidavit on the basis of which it can allege that the issues raised in the present Application has been adjudicated in the past. I say that OA No. 193/2016 pertained to the need to protect the ESZ area around Sanjay Gandhi National Park, and the orders passed in the said OA did not address or even overlap with the destruction of Dindoshi Hills at the hands of the Respondent No. 11 over the last few years as has been raised



in the present Original Application. I say that there is no question of the present Application being barred by res judicata since the OA 193/2016 was not heard on merits and was disposed of as being infructuous due to the issuance of the ESZ Notification dated 05.12.2016. A copy of the order of this Hon'ble Tribunal in OA 193/2016 dated 24.01.2020 has been annexed hereto and marked as **Annexure A-2**.

11. **Authority** - In relation to the averments made at para 3.4 and 3.5 of the Affidavit of the Respondent, I say that the Applicant is a regular litigant before this Hon'ble Tribunal and has complied with all procedural requirements in filing the present Application, and the Application has been duly scrutinised by the Registry of this Hon'ble Tribunal. I say that in the event this Hon'ble Tribunal requires any additional authorisation to be filed by the present Applicants, the Applicant will comply with any such request of the Hon'ble Tribunal, but until such time, the Respondent is free to verify the bonafides and achievements of the Applicants on its website at <https://vanashakti.org/>. I say that no public trust is required to file its trust deed before any court of law when initiating litigation in public interest or pertaining to



environmental degradation and I categorically deny that there has been any concealment of facts by the Applicants.

12. Prior to issuing a para-wise denial of the averments of the Applicant at para 7, at para 4 of its Affidavit, the Respondent has sought to address in general the pleadings regarding Hill Cutting, Tree Cutting and Water Courses raised in the Application, once again by simply denying, as an assertion of fact, the contentions of the Applicant. The Applicants have therefore addressed each of three issues by citing the relevant portions of the Report of the Joint Committee.

13. **Hill Cutting** - I deny the statements of the Respondent at para 4(a) of its Affidavit that there has been no hill cutting in the region. I say that such an averment on the Respondent is directly contradicted by para 9, page 267 of the Report of the Joint Committee where it is noted that,

*“During the Joint Committee's field visit, it was observed that hill cutting and soil excavation activities have been conducted at few spots to facilitate the construction of the D.P. Road on the northern side of the land parcel. Such excavation can*



lead to increased soil erosion and instability, potentially affecting the surrounding environment. Besides the hill cutting, soil excavation was also noted at some locations within the land parcel. These activities have disrupted the natural soil layers, which could impact the area's ability to retain water and support vegetation.”

Similarly, Recommendation No. 3 on page 269 of the Joint Committee Report states that,

“The Joint Committee has concluded that the part of the area in question (up to 100 metres from the boundary of the Sanjay Gandhi National Park) falls within the boundaries of the notified ESZ of Sanjay Gandhi National Park. Consequently, the Committee recommends that hill cutting in this region be strictly prohibited to comply with the regulations governing the ESZ and to prevent any adverse impacts on the park’s ecological integrity.”



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Images of the hill cutting are also appended at page 278 of the Joint Committee Report. I say that aside from the confirmation of the averments of the Applicant in the Joint Committee Report, I further say that the Applicant has annexed sufficient evidence of the same in the photographs and representations/complaint letters annexed at pages 115-130 of the Application regarding the issue of hill cutting and destruction of Dindoshi hills.

With regards to averment of the Respondent that, *“Plateauing / Levelling / filling / excavation for development of buildings, access, roads, infrastructure is permissible as per law. There is no prohibition for the development of the said land for users / activities as per the sanctioned D.P. & as per provisions of Development Control Regulations for the City of Mumbai.”* I say that the Maharashtra Town Planning (Compounded Structure) Rules, 2017 clearly stipulate that unauthorised developments cannot be compounded/regularised, inter alia, on land such as *“hill slope having slope greater than 1:5.”* I



say that its is pertinent to note therefore that the said rules, which are evidently issued under Section 52A(1) and clause (xxxviii) of sub-section (2) of Section 158 of the MRTTP Act, 1966 of the MRTTP Act clearly records the intention of the Urban Development Department to categorise hills having a slope greater than 1:5 as being an area where “*development is prohibited by or under any law, or any development prohibited area*” A copy of the Maharashtra Town Planning (Compounded Structure) Rules, 2017 has been annexed hereto and marked as **Annexure A - 3** .

14.I deny that there is no prohibition for the development of the said land for users / activities as per the sanctioned D.P. & as per provisions of Development Control Regulations for the City of Mumbai. I say that it is an admitted position of the Respondent that:

- a. An 18.30 metre wide road is being constructed by the MCGM within the ESZ of Sanjay Gandhi National Park on the land bearing CTS



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No. 827A/4A/1. [Para 5.4 of the Affidavit of the Respondent No. 11]

b. An area of 80,934 sq m was removed from the zoning/user of NDZ in the Development Plan for the land bearing Survey No. 239/1(part) and CTS No 827A/4A/2 vide a notification dated 5.4.2016 of the Municipal Commissioner of the MCGM for the purpose of construction of police housing [para 5.4 of the Affidavit of the Respondent No. 11]

c. The Respondent No. 11 has obtained permission of the ESZ Committee of the Sanjay Gandhi National Park on 01.11.2018 to develop commercial/residential property on the land bearing survey no CTS No. 827A/4A/1 [Para 5.5 of the Affidavit of the Respondent No. 11]

**POLICE HOUSING AND THE ACCESS ROAD TO THE  
POLICE HOUSING**



15. In relation to the issue of the proposed construction of the police housing, it is submitted that the report of the Joint Committee, at para 3 and 4 of pages 262 and 263 reveals

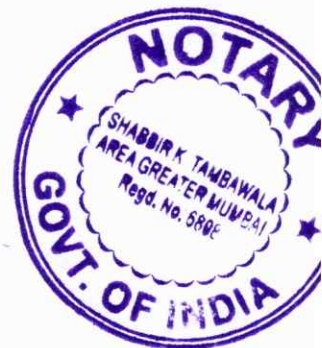
a. The construction work for the Police Housing has not yet commenced.

b. The proposed 18.30 metre road passes through the land bearing *CTS No. 827A/4A/1* which is an NDZ land in the possession of the Respondent No. 11. In fact, According to the Development Plan, an 18.30-meter-wide D.P. Road runs along the boundary of Sanjay Gandhi National Park (SGNP) on the north side, providing access to the adjoining plot bearing CTS No. 827A/4A/2 of Village Malad (East), which is reserved for Police Housing. It is therefore evident that the road actually falls predominantly in the land bearing CTS No. 827A/4A/1 and provides access to the land bearing CTS No. 827A/4A/2



- c. The advance possession of this 18.30-meter-wide road was taken over by the Municipal Corporation of Greater Mumbai (MCGM) on 27.07.2019.
- d. Additionally, the requisite permissions for the development of the "Police Housing" and the D.P. Road from the competent authority under the SGNP Eco-sensitive zone notification have not yet been obtained.

16.I say that a perusal of the Joint Committee Report makes it evident that a large amount of the destruction of Dindoshi hills was occurring due to the *"Land levelling work is currently underway for the 18.30-meter-wide D.P. Road, which runs parallel to the Sanjay Gandhi National Park (SGNP) the northern boundary of the plot"* (Observation No. 7 page 265 of the report). Observation No. 9 at page 267 of the Report records that, *"During the Joint Committee's field visit, it was observed that hill cutting and soil excavation activities have been conducted at few spots to facilitate the construction of the D.P. Road on the northern*



side of the land parcel. Such excavation can lead to increased soil erosion and instability, potentially affecting the surrounding environment." Photographs of the destruction caused for the purpose of the construction of the Road are also attached at page 277 of the report.

17.I say that it is not clear whether the construction of the road is being done by the Respondent MCGM (as alleged by the Respondent No. 11), or is being done by the Respondent No. 11, as the location of the road falls partially within the land bearing CTS No. 827A/4A/1, but at any rate, any construction work of the road is evidently illegal as:

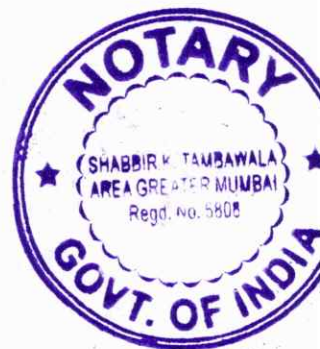
- a. There is no clearance/permission of the ESZ committee for the construction of the road
- b. The Zonal Master Plan, which is required to be prepared under the ESZ Notification of 5th December 2016 is not yet prepared, and the Joint Committee has specifically recommended at recommendation no. 1 of its report at page 268-269 that no construction be permitted within the ESZ of the Sanjay Gandhi



National Park without the Zonal Master Plan being prepared

- c. The Notification dated dated 5.4.2016 through which 80,934 sq m was removed from the zoning/user of NDZ in the Development Plan for the land bearing Survey No. 239/1(part) and CTS No 827A/4A/2 does not indicate that portions of the land bearing CTS No. 827A/4A/1, where the road is admittedly being constructed, were also removed from the zoning of NDZ. The road was only sanctioned to be removed from NDZ to “Residential” vide the Notification dated 12.05.2023 which partially sanctioned EP-PN89.*[Pages 296-299 of the Report of the Joint Committee]*

18.I therefore say that the Respondent MCGM and/or the Respondent No. 11 must be directed to forthwith stop the construction of the 18.30m wide road, or the construction of any road, on the land bearing CTS No. 1 827A/4A/1 and CTS no. 827A/4A/2.

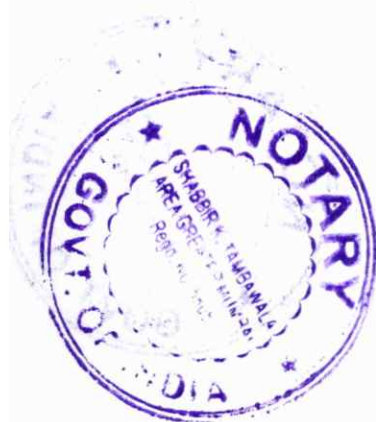


## ZONAL MASTER PLAN

19. It is pertinent to note that the Zonal Master Plan, which is required to be prepared under Clause 2 of the ESZ Notification dated 5.12.2016, to provide, inter alia, for the “*restoration of denuded areas, conservation of existing waterbodies, management of catchment areas, watershed management, groundwater management, soil and moisture conservation, needs of local community, and other such aspects of the ecology and environment that need protection.*”. The Zonal Master Plan is also expected to demarcate the types of and kinds of forests, green areas, lakes and other water bodies.

20. I say that the preparation of the Zonal Master Plan forms the pith and substance of the ESZ Notification for Sanjay Gandhi National Park, as without the preparation of this plan, development can occur fairly liberally, provided it is in conformity with the Development Plan.

**COMMERCIAL/RESIDENTIAL DEVELOPMENT OF  
RESPONDENT NO 11.**



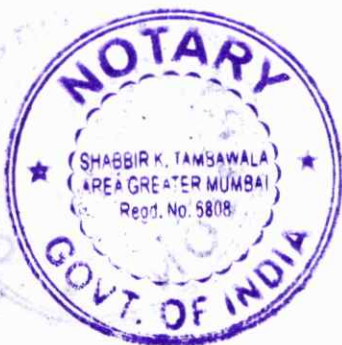
21. In relation to the commercial/residential development of the Respondent No. 11 proposed on the land bearing CTS No. 827A/4A/2 I say that it is pertinent to note the following

- a. The Respondent No. 11 received permission from the SGNP ESZ Monitoring Committee, as per their letter dated 1st November 2018, to develop residential and commercial buildings on the plot CTS No. 827A/4A/1, which is designated as a No Development Zone (NDZ) according to the D.P. Remarks.
- b. There can be no construction, commercial or residential on land designated as NDZ in the Development Plan
- c. No construction should be permitted in the ESZ of SGNP until such time as the Zonal Master Plan, which is required to be prepared under the ESZ Notification of 5th December 2016 is prepared, (Joint Committee recommendation no. 1 at page 268-269)



d. The Joint Committee Report has recommended that the Hon'ble Tribunal should impose a key condition in the Zonal Master Plan stipulating that no areas currently designated as No Development Zone (NDZ) within the Eco-sensitive Zone (ESZ) of the Sanjay Gandhi National Park shall be converted into Development Zones in the future. This measure is crucial to preserving the natural integrity of the area. If this Hon'ble Tribunal was to accept this recommendation, the proposed construction of the Respondent No. 11 would have to be revised.

e. The ESZ Committee's permission/NoC dated 01.11.2018 itself notes at Essential Condition No. 2 that the issuance of the permission "does not mean that the project proponent has not violated any environmental laws in the past and whatever decision under EP Act or of the Hon'ble Court does not give immunity to the project proponent in the case filed against him,



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if any action initiated under EP Act. Similarly, Essential Condition No. 8 notes that the permission was granted , “*subject to obtaining NOC from the statutory bodies as applicable to this project*”. As such, the Respondent No. 11 is not at liberty to burn trees and construct on NDZ land, and must obey all legal restrictions applicable to it and the land bearing CTS No. 827A/4A/1 and the Respondent No.11 cannot cite the clearance of the ESZ Committee as a carte blanche to proceed with its construction work. A tabulated summary of the permissions obtained and the permissions still needed by the Respondents for its proposed constructions have been annexed hereto and marked as **Annexure A - 4.**

22.I deny that the development on hilly terrains is also permissible as per the judgment of the Hon'ble Supreme Court order dated 14th July 2020 in the reported case of *The Director General (Road Development) National Highways Authority of India*



*vs. Am Aadmi Lokmanch & Ors.* I say that the said judgment of the Hon'ble Supreme Court only held that a direction issued under Section 154 of the NGT Act, 2010 should be issued under the Maharashtra Regional Town and Country Planning Act, 1966 after considering expert opinion, scientific evidence or the report of any technical expert and should be well reasoned. With regards to averment of the Respondent that the "*The said land is part of the sanctioned Development Plan for the Mumbai and the development thereof is governed by the sanctioned regulations.*" I say that it is incumbent upon the Respondent MCGM and the Respondent 11 to clarify the following issues:

- a. How is the construction of the 18.30 m wide road possible without sanction of the ESZ Committee?
- b. How is hill cutting, "*plateauing/ excavation, levelling*" being undertaken by the Respondent No. 11, admittedly, in pursuance of its alleged development permission to construct



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residential/commercial properties on the land bearing CTS No. 1 827A/4A/1 possible, when the land is currently reserved/zoned as an NDZ?

23. Tree cutting - I categorically and emphatically deny the averment of the Respondent at para 4(b) of its Affidavit that, *“land comprises of open plateaus and since many years only shrubs and grass have been in existence and no trees were there. No trees coverage existed on the said land except the trees planted by Respondent No.11, hence the question of felling and or burning of trees does not arise.”* I further say that the averment of the Respondent that *“The satellite images annexed as Annexure A-3 do not depict any changes in the ecology of Dindoshi Hills overtime as alleged or otherwise. In fact Annexure A-3 i.e satellite image depicts open land without any tree.”* is also a bald faced lie. I say the statements of the Respondent are demonstrable falsehoods, and the Respondent should not be permitted to issue denials of basic questions of fact that can be proved by a chain of documentation and evidence. The Joint Committee Report states at page 264 and 265 that,



*“According to documents provided by the MCGM, a significant fire broke out on 3rd December 2018 at the land parcel CTS 827A/4A/1 in Malad. Following this incident, the Deputy Regional Officer of the Maharashtra Pollution Control Board (MPCB) conducted a thorough inquiry to determine the impact of the fire. The findings of this investigation were detailed in a report dated 26.02.2019 (Copy of the report of Deputy Regional Officer, MPCB is attached as **Annexure-8**). The report revealed the details about the condition of the land prior to the fire. Specifically, it was found that 65 large teak trees and 126 large trees of various other species had been cut down at the roots shortly before the fire occurred. Additionally, 185 medium-sized teak trees and 778 trees of other species were similarly felled. The report further documented that 522 tree roots were severed prior to the fire, and during the blaze, 4,216 tree roots were destroyed, indicating extensive deforestation activities had taken place on the land.*



*The scale of the destruction and the timing of the tree cutting strongly suggested deliberate human intervention aimed at clearing the land, possibly to facilitate future development. In response to the MPCB's findings, Mr. Mayuresh Dattatray Bhoir from Garden Department, P/North Ward, MCGM, filed a FIR against Ferani Hotels Pvt Ltd., at Dindoshi Police Station, Mumbai, urging immediate legal action for large scale illegal tree felling on land parcel CTS 827A/4A/1 in Malad. Regarding FIR No. 942/19, filed by Mr. Mayuresh Dattatray Bhoir from the Garden Department, P/North Ward, MCGM, against Ferani Hotels Pvt. Ltd. at Dindoshi Police Station, Mumbai, the case was investigated, and 'A' summary report was submitted by the investigating officer to the competent authority."*

24.I say that the above-cited MPCB inspection report recorded that a whopping 60 hectares of land, and trees thereon, had been burned down.



25. It is pertinent to note that The Bombay Police Manual 1959 (*Containing the Rules under the Bombay Police Act, XXII of 1951, the Bombay Police (Extension and Amendment) Act, XXXIV of 1959 and other Departmental Regulation.*) Volume III, Under Section 219 defines "Final Reports" and stipulates that an "A" summary report is one which is "*True, undetected (where there is no clue whatsoever about the culprits or property or where the accused is known but there is no evidence to justify his being sent up to the Magistrate (for trial).*"

26. I say that the said incident of the fire and the filing of the FIR have been deliberately concealed by the Respondent to mislead this Hon'ble Tribunal and the Respondent is evidently comfortable to lie on oath without fear of any consequences. I say that the Respondent is evidently guilty of *suppresio veri* and *suggestio falsi*, and that nothing stated in the Affidavit of the Respondent should be considered as being authentic and the veracity of each statement of the Respondent in its affidavit must be questioned by this Hon'ble Tribunal. I further say that



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heavy costs should be imposed on the Respondent by this Hon'ble Tribunal for lying on oath.

27. It is to be noted that Recommendation No. 2 of the Joint Committee Report states as follows at page 269 of the report that:

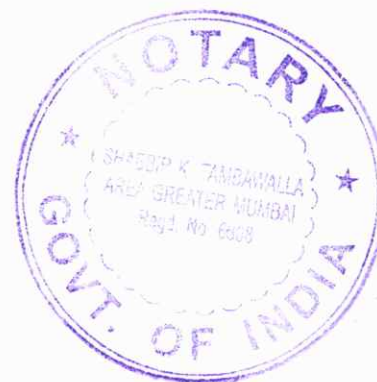
*“Regarding FIR No. 942/19, filed by Mr. Mayuresh Dattatray Bhoir from the Garden Department, P/North Ward, MCGM, against Ferani Hotels Pvt. Ltd. at Dindoshi Police Station, Mumbai, the case was investigated, and ‘A’ summary report was submitted by the investigating officer to the competent authority. Upon reviewing the police report, it was found that the investigation relied primarily on witness statements. However, incidents such as illegal tree felling and persistent burning cannot be adequately investigated through conventional police investigation methods alone. These types of violations require a more rigorous approach, such as vigilant monitoring of change*



*detection studies, which provide reliable quantitative data.*

I therefore say that the investigation into FIR 942/19 deserves to be resumed with greater vigour, and the Respondent No.11, who is admittedly in possession and actively “plateauing/levelling/excavating” the said land must be held accountable for the fires and other illegal activity occurring on the land.

28. Water courses - I deny the statement of the Respondent at para 4(c) of its affidavit that, *“The water stream running through the said land is locally known as "Walbut Nalla" and the same is not a river. As there is no dedicated water source to the said Nalla, the only source of water is the seasonal rains and hence the said Nalla gets water only in the rainy season which it drains down to the lower area of land. After the rains are over, the Nalla remains completely dry for the rest of the year. The flow of the water is not obstructed in any manner. There is no obstruction and/or reduction of the Walbut Nalla carried out by this Respondent.”*



29. I say that it is pertinent to note that at para 7 of the Joint Committee report at page 266, it noted as follows

*"The water stream running through the plot bearing CTS No. 827A is known as 'Walbut Nalla,' a feature also documented in the Development Plan 2034 for this land parcel. The major nalla remarks for the plot bearing CTS No. 827A, Village Malad (East), provided by the Deputy Engineer (Storm Water Drains), Planning Cell, are included in **Appendix-11**. Accordingly, a portion of the Walbut Nalla has been partially trained as confirmed by the letter from the Executive Engineer (Storm Water Drains) (P&R), MCGM, dated 24.02.2019 (a copy of the letter is attached as **Appendix-12**).*

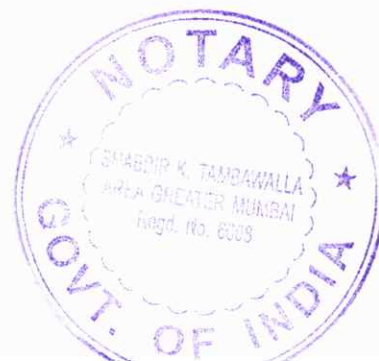
*This land parcel forms part of the watershed for Walbut Nalla. As an integral part of the natural drainage system, this area plays a crucial role in channeling rainwater and maintaining the hydrological balance necessary for the proper flow of these nalla.*



*However, previous development activities on this land have already caused significant disruptions to the natural watercourses. These activities have altered the terrain, leading to disturbances in the natural water flow, potentially resulting in waterlogging, reduced groundwater recharge, and increased surface runoff. Such disruptions not only impact the immediate environment but also affect the overall ecological health of the Walbut Nalla, with potential consequences like downstream flooding and erosion.*

*Further unregulated development on this land parcel poses an even greater threat to the watershed.*

*Additional construction and land modification would likely exacerbate the existing disturbances, further obstructing the natural water flow. The continued alteration of this watershed area threatens to undermine the region's environmental stability, emphasizing the need for careful consideration of any future development plans to prevent further harm to this critical urban watershed in the region. “*



30.I say that the above-cited extracts of the Joint Committee Report makes it clear that the region serves as the watershed for the Walbut Nallah, which is a natural waterbody, and that development in the region could result in potential consequences such as downstream flooding and erosion, and of course destruction to the Walbut Nallah. I say the term nallah must not be constructed to mean a drain, in fact, the term “nallah” in Marathi means river-stream, and since the Joint Committee has recorded that the region serves as the “watershed” to the “water-stream” named the Walbut Nallah. The watershed of a river or a stream is the land area that channels rainfall and snowmelt to creeks, streams, and rivers, and eventually to outflow points such as reservoirs, bays, and the ocean, it is indisputable that the Walbut Nallah/Oshiwara river traverses through this region of the Dindoshi Hills.

31.I further say that this is confirmed by DP remark annexed to the Report of the Joint Committees, which records that *inter alia*, under the heading of “Natural Water Course” it is noted that “*the land under reference is under influence*



*zone of waterbody hence specific remark from the concerned Authority should be obtained separately before taking up any development on the land” (page 307 of the report of the Joint Committee).*

32.I further say Regulation 18 (b) of the DCPR 2034 for Mumbai mandates that no land that constitutes a site within 6 m from the edge of a water mark of a minor water course or 15 m from the edge of the water mark of a major water course can be used as the site of the construction of a building unless arrangements are made to the satisfaction of the Commissioner to drain the flow of the water course.

33.I further say that at the time of the Inspection, I along with all the members of the Joint Committee had the noted the presence of Poisar River, and not just the Oshiwara River and Walbut Nallah, however it appears that the reference to Poisar river in the said plot appears to have been inadvertently omitted in the report of the Joint Committee. Additional, clearer satellite images of the river courses have been annexed hereto and marked as **Annexure A- 5**.



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34. At para 5 of its Affidavit, the Respondent has put down its version of the "Facts of the case". My parawise response to para 5 of the Affidavit of the Respondent has been reproduced herein below:

- a. I say that the contents of para 5.1 of the Affidavit of the Respondent are a matter of record and do not warrant any specific comment from the Applicant
  
- b. I say that at para 5.2 of its affidavit, the Respondent no. 11 has clearly admitted to "outlevelling/plauteuing/excavation" the land in its possession in Dindoshi hills, and has asserted that such activities are being done as per "sanctions issued by the Planning Authority from time to time as per the provisions of prevailing Development Control Regulations." However, the Respondent has not disclosed that the land in its possession constitutes NDZ land and therefore no



construction is even permissible there under the Development Control Regulations.

c. At the cost of repetition I say that the claim of the Respondent that there were no trees on the land is a complete falsehood, and its assertion that it has grown 1003 trees is irrelevant as the location of trees allegedly grown by the Respondent No. 11 is evidently at the foothills of the Dindoshi hills.

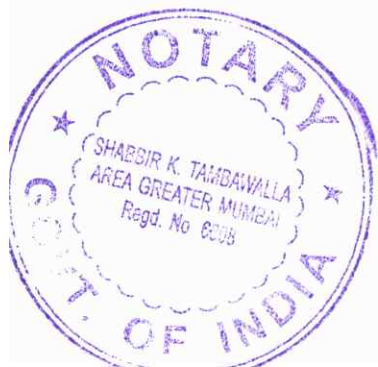
d. In relation to the statements made by the Respondent at para 5.3 of its Affidavit, I deny that the Walbut Nallah remains completely dry after the rains are over. I further say that the concrete embankments made at the Walbut nallah, a picture of which is annexed at Annexure R-2 of the Affidavit of the Respondent, is an evident obstruction to the flow of the nallah and I say that the Joint Committee in its report has recorded the flow



of the stream has been obstructed. I further say that the evident difference in the green cover and vegetation between SGNP and Dindoshi hills in the recent satellite images are evidently due to the fact that the trees on Dindoshi hills are burnt down every few years by the Respondent No. 11.

e. In relation to the contents of para 5.4 of the Affidavit of the Respondent No. 11, I say that I have already dealt with earlier in this affidavit, in detail, the permissions and lack thereof issued for the police housing and the 18.3 m road on the lands bearing CTS Nos. 827A/4A/1 and 827A/4A/2. I repeat and reiterate the said submissions in relation to the contents of para 5.4 of the Affidavit of the Respondent No. 11.

f. In relation to the contents of para 5.5 of the Affidavit of the Respondent No. 11, I say that



I have already dealt with earlier in this affidavit, in detail, the permissions of the ESZ Committee dated 01.11.2018 for construction on the land bearing CTS Nos. 827A/4A/1. I repeat and reiterate the said submissions in relation to the contents of para 5.5 of the Affidavit of the Respondent No. 11. I further say that the permission of the ESZ Committee of the Sanjay Gandhi National Park, should never have been granted, particularly as the Zonal Master Plan for the ESZ has not been prepared even 8 years after the issuance of the ESZ Notification in 2016. I say that a prohibition on construction and development of the Region in the absence of the Zonal Master plan has even been recommended by the Joint Committee in Recommendation No. 1 at page 268-269 of its Report. I further say that the ESZ Committee should also never have issued such permissions due to the orders of this Hon'ble Tribunal dated 13.01.2016 annexed at page 101 of the Application,

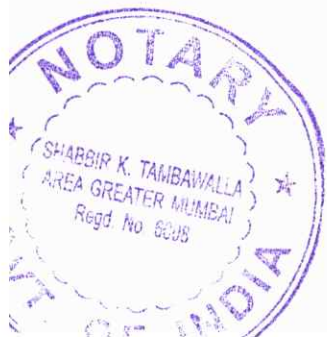


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wherein this Hon'ble Tribunal had directed that status quo be maintained in relation to development on Survey No 239 in the Dindoshi village . I say that the ESZ Committee should have remained seized of the importance of preserving the land bearing Survey no 239 and has miserably failed in its mandate to preserve and protect the ESZ of the Sanjay Gandhi National Park.

35. I deny the contents of para 6 of the Affidavit of the Respondent that the Applicant has not come with clean hands before this Hon'ble Tribunal. I deny that the Applicant is "malicious" or that there is any attempt to single out the Respondent No. 11.

36. I say that the Respondent has, at para 7 of its affidavit, simply denied the submissions of the Applicants without providing supporting proof, evidence, or addressing the arguments of the Applicant on merits and has accordingly put down its para-wise response to the Application of the Applicants. I say that nothing in the Affidavit of the



Respondent, particularly the contents of para 7, should be deemed to have been admitted by me for lack of specific denial unless the same is specifically admitted by me hereinafter. I say that for the sake of brevity I have not responded to each of the statements made in para 7 of the Affidavit of the Respondent as they are devoid of any merit, and are repetitive lines used extensively several times over throughout the affidavit. I say that I have only responded only to relevant statements/averments of the Respondent No. 11 in para 7 of the Affidavit of the Respondent as herein below:

37. Para 7 and 7.1 do not warrant any specific response of the Applicants

38. I deny that the contention of the Respondent at para 7.2 of its affidavit that it is carrying out the development of the said plot in reference as per law.

39. With regards to the averments of the Respondent at para 7.3 of its affidavit I say that it is irrelevant that the Respondent No. 11 is unaware of, and does not admit, that the Applicant No. 1 is a public trust and the Applicant No.



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2 is an environmentalist and the Applicant No. 1 has authorised the Applicant No. 2 to file the present case. I say it is irrelevant that the Respondent No. 11 is unaware of the achievements, work and efforts of the Applicant. I say that the Applicant has provided all necessary information required to file the present Application and I deny that any further proof is required to be filed by the Applicant. I say that the Respondent cannot deny the PILs and cases filed by the Applicant to protect the tree cover of Mumbai, the protection of forests, mangroves, coast and beaches. The record of this litigation is available in the public domain and constituted recorded facts.

40. With regards to the averments of the Respondent at para 7.4 of its affidavit, I repeat and reiterate that the Respondent No. 11 is responsible for destruction of the hills located at Dindoshi contiguous to the Sanjay Gandhi National Park.

41. With regards to the averments of the Respondent at para 7.5 of its affidavit, at the cost of being repetitive I deny that the present Application is barred by res-judicata. I say that any permission for cutting dry grass and shrubs cannot be



extrapolated to allow the Respondent to burn down trees on the land bearing CTS No. Nos. 827A/4A/1, which the Respondent No. 11 is guilty of doing. I repeat and reiterate that Walbut Nallah is indeed a river. I repeat and reiterate that the entire area of Dindoshi hills does in fact bear the same geomorphological characteristics of Sanjay Gandhi National Park. I say that observation No. 6 of the Joint Committee Report at page 263 and 264 states that,

*“6) Unlike the dense vegetation within the boundary of Sanjay Gandhi National Park, this land parcels in CTS No. 827A/4A/1 and 827A/4A/2 are notably devoid of tree growth, a stark contrast that highlights the impact largely barren, with only shrubs and grass remaining. This lack of significant tree cover is a direct result of repeated human interventions, including the removal of vegetation. No root stocks, which could allow for natural regrowth, were found during the inspection, indicating that the area has been degraded. The remaining vegetation is sparse and is the product of the land being continuously put under biotic pressure.”*



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42. As part of Observation 10(i) on page 267 of the Joint Committee Report, it is noted,

*“Like CTS 827A/4A/1, CTS No. 827A/4A/2 is situated near the SGNP boundary, placing it within the same ecological zone and subject to identical environmental regulations and protections.”*

43. At para Recommendation on page 270 of the Joint Committee Report that,

*“To address this issue, it is recommended that a targeted rejuvenation plan be developed. This plan should involve creating a 50-meter green belt within the Eco-sensitive Zone (ESZ) inside CTS 827A/4A/1 and CTS 827A/4A/2 by replanting native plant species that are well-suited to the local environment along the boundary of the Sanjay Gandhi National Park. Implementing this replanting strategy will help restore natural habitat conditions, support wildlife, and improve soil health. M/S Ferani Hotels Pvt. Ltd. and M/S D.B. Realty should respectively undertake*



*this work using their own funds, in consultation with the Forest Department."*

44. I say these above-cited portions of the Joint Committee Report confirms the averments of the Applicant that the region being constructed upon and consequently being destroyed by the Applicant bears the same characteristics as that of Sanjay Gandhi National Park and has been destroyed by human intervention and now requires to be specifically rejuvenated.

45. I further say that even the opening paragraphs of the Joint Committee Report which describes the history of the land indicates that the subject land constitutes part of the parcel of 1488 acres and 33 gunthas of land that had been sought to be acquired by the Divisional Forest Officer of Borivali National Park from the F.E Dinshaw Trust in August 1975. This subject land was apparently not handed over to the Divisional Forest Officer of Borivali National Park by the F.E Dinshaw Trust as it had already been acquired by the MCGM. However, around 10 years later, the MCGM returned the land to the F.E Dinshaw trust due to the *hilly*



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*terrain* of the land being unsuitable for cattle settlement, which was the intended use for which the MCGM had acquired the land, with an intention that this land could be used to expand Aarey Milk Colony. The narration of these facts at pages 259 and 260 of the Report of the Joint Committee makes it evident that the Dindoshi hills were originally sought to be acquired under Section 35(3) of the Indian Forest Act, as part of a large parcel of land admeasuring 1488 acres and 33 gunthas of land, which now forms the Sanjay Gandhi National Park. This would imply that the land constituting Dindoshi hills was clearly assessed to be of similar geomorphic characteristics of the land now constituting Sanjay Gandhi National Park. Further, the return of this land by the MCGM due to its hilly terrain further confirms the averments raised by the Applicants herein. I say that Respondent Authorities can confirm these contentions by providing a clear map of the boundaries of the land sought to be acquired by the Divisional Forest Officer of Borivali National Park in 1975. I say that even a contemporary drone-based study of the region will confirm the contention of the Applicants.



46. With regards to the averments of the Respondent at para 7.6 of its affidavit, I say that is ludicrous for the Respondent No. 11 to claim that satellite images as Annexure A-3 do not show changes in the ecology of Dindoshi hills when it is evident that there is a marked difference in the foliage and green cover of Dindoshi hills on page 97 to page 100 of the Application. The satellite image of 2015 shows a deep and thick green foliage over the region whereas, the satellite images on page 99 and 100 showing the condition of the plot from 2022 and 2023 show barren land which is brown, Burnt down and bereft of tree coverage. I have appended hereto additional images showing the burnt down forest, which have been marked as **Annexure A - 6**

47. With regards to the averments of the Respondent at para 7.7 of its affidavit, I repeat and reiterate there is no order of any court adjudicating the issues raised in this Application and there is no question of res judicata barring this Application and there is no delay on the parts of the Applicants. I say there is no malafide intention of the Applicant to single out the Respondent and the Application does not deserve to be dismissed with costs.



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48. With regards to the averments of the Respondent at para 7.11 of its affidavit, I deny that the judgments relied on by the Applicant will not assist the Applicant.

49. With regards to the averments of the Respondent at para 7.15 of its affidavit, I repeat and reiterate that the land forming the subject of the present Application in home to tribal hamlets of Adivasis.

50. With regards to the averments of the Respondent at para 7.19 of its Affidavit, I deny that the Applicant has chosen to convert the Walbut Nallah into a river, and that the Walbut Nallah is a natural water stream forming part of the Oshiwara river.

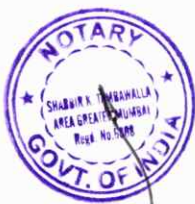
51. With regards to the averments at para 7.25 of the Affidavit of the Respondent, I say that the other constructions mentioned in the paragraph such as those for MHADA, RBI, Shiv Shahi Punarvasan Prakalp Etc, did not result in the destruction of the Dindoshi hills. These structures exist on the base of the Dindoshi hills and did not result in the cutting, excavation and flattening of the hills for their construction. In fact, even



after the construction of these structures, until the last two years, people used to visit the waterfalls on Dindoshi hills and access to these waterfalls have been cut off and the watercourses have been altered by the Respondent No. 11.

52. With regards to para 8, I say that the report of the Joint Committee constituted by this Hon'ble Tribunal has confirmed the extent and scale of the destruction of the ecologically sensitive Dindoshi hills and has issued several crucial recommendations that should be made binding on the Respondent Authorities and the Respondent No. 10 and 11 to comply with as directions of this Hon'ble Tribunal.

53. I therefore say that this Application deserves to be allowed and the prayers sought herein deserve to be made absolute.



Solemnly affirmed at Mumbai  
Dated this 19<sup>th</sup> day of September 2024

)   
) APPLICANT



(Stalin Dayanand)

IDENTIFIED BY ME

**RONITA BHATTACHARYA**

Advocate for the Applicant

**BEFORE ME**  
  
**S. K. TAMBAWALLA**  
ADVOCATE, HIGH COURT  
B-23, Taheri Manzil  
Nesbit Road, Mazgaon  
Mumbai - 400 010

BEFORE ME 19/9/24

**NOTARY & REGISTERED**  
20330 19/9/24  
Sr. No..... dt.....



BEFORE THE NATIONAL GREEN TRIBUNAL  
(WESTERN ZONE) BENCH, PUNE

M.ANo. 88/2014

IN

APPLICAITN NO.33/2014

**CORAM:**

**Hon'ble Shri Justice V.R. Kingaonkar**  
(Judicial Member)

**Hon'ble Dr. Ajay A.Deshpande**  
(Expert Member)

**B E T W E E N:**

1. **Sandeep Motilal Sanghavi**  
Age : 44 Yrs, Occu: Business,  
R/o 8, Vasant Smruti,  
Telegaon Dabhade,  
Tal. Maval, District : Pune.

2. **Somnath Ananda Shinde**  
Age : 41 yrs, Occu : Employee  
R/o, Ambika Park, Vatannagar,  
Telegaon Dabhade,  
Tal. Maval, District : Pune.

...APPLICANTS

**A N D**

1. **Tree Officer,**  
Telegaon Dabhade Municipal Council  
Through the Chief officer,  
Telegaon Dabhade,  
Tal.Maval, District : Pune-410 507.

2. **Telegaon Dabhade Municipal Council**  
through the Chief officer,  
Telegaon Dabhade,  
Tal.Maval, District : Pune-410 507.



**3. The Chairman of Tree Authority**

Talegaon Dabhade Municipal Council  
through the Chairman of Muncipal Council.  
Talegaon Dabhade,  
Tal.Maval, District : Pune-410 507.

.....Respondents

**Counsel for Applicant**

Mr. G.D.Jagtap  
Mr.R.A. Tamboli,

**Counsel for Respondent(s):**

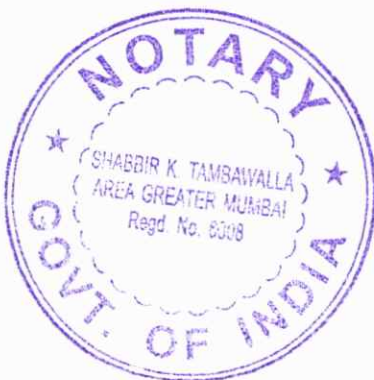
Mr. R.K. Patekar Respondent Nos 2&3.

Date: May 6<sup>th</sup>2014

**J U D G M E N T (ORAL)**

1. Both the Applicants named above, filed main Application (Application No.33/2014) seeking following reliefs:

- a) The application/petition be allowed as above with all reliefs.
- b) That the said Act is enacted by the legislature for special purpose of curbing illegal axing of trees within urban areas, therefore the acts of the respondents itself wash out the very purpose of The Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975 and therefore direction be given to respondent No. 2 shall be followed scrupulously and that the existing tree authority shall be abolished, turned down and all its operations shall be restricted till formation of new tree authority as per the provisions of the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975.
- c) The resolution passed by Respondent no. 3, dated 03.10.2012 be quashed and set aside and be held as null and void.
- d) The Hon'ble Tribunal may kindly be pleased to call all records and proceedings of Tree Authority and details with quantitative date form year 1996 to till



today.

- e) The respondents be perpetually restrained from taking /decision to cut old / new trees on Talegaon Dabhade Jijamata Chouk to Talegaon Station Road] and further be perpetually restrained from causing harm to birds nest and trees on the said road.

2. While opposing the main Application, MA No.88/2014 Is filed on behalf of the Chief Officer of Talegaon Dabhade, Municipal Council. By this Application, the Municipal Council has sought framing of preliminary issue under Section 9-A of the C.P. Code, challenging jurisdiction of this Tribunal. It is the contention of the Municipal Council that NGT has no jurisdiction to entertain the original Application filed under Section 14(1) read with Section 15 and 18 of the NGT Act, 2010. It is contended that the original Applicants have challenged resolution dated 3<sup>rd</sup>October, 2012, alleging that it is null and void, inasmuch as it is against the provisions of the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975. According to the Municipal Council, the relief claimed in respect of such resolution falls outside the jurisdiction of the NGT. It is submission of the Municipal Council that the resolution passed by the Municipal Council cannot be struck down by the NGT, nor the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975, is covered by schedule-I, of the NGT Act, and therefore, the trial of the main Application is outside the scope of jurisdictional avenue available to the NGT.



3. We have heard learned Counsel Mr. Petkar for the Municipal Council, Talegaon Dabhade and Mr. G.D.Jagtap, learned Counsel for the original Applicants. We have also carefully perused the pleadings of the parties and the prayers in the Application.

4. It is argued by learned Counsel Mr. Petkar for the Municipal Council, that main thrust of the Applicants, is to challenge the Resolution dated 3<sup>rd</sup>October, 2012, passed by the Municipal Council which has nothing to do with substantial environmental issue. He would submit that the Applicants have sought directions against the Municipal Council to follow statutory provisions of the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975, which enactment is not specified in Schedule-I, of the NGT Act, 2010 and as such, jurisdiction of the Tribunal cannot be invoked in such a matter.

5. As against this, learned Counsel for the Applicant invited our attention to the pleadings enumerated in the ground 'C' 'G' and 'I' of the Application as well as prayer Clauses 'I' and 'F'. According to such pleadings, the main purpose of the original Application is to restrain the Municipal Council from indiscriminate cutting of old trees situated between Jijamata Chowk and Talegaon Station road, without following due process of Law.

6. Considering rival submissions of the learned Counsel and the pleadings enumerated in the original



Application, it is explicit that the Applicants have not restricted the prayers to challenge the Municipal Resolution dated 3<sup>rd</sup> October, 2012, but have also sought prohibitory injunction against the Municipal Council from discriminate cutting of the trees, which according to them would cause harm to the bird's nesting as well as environment and ecology. The photographs placed on record *prima facie* show that some of the trees are having nesting of birds, including bats and may be of protected species of bats. There is *prima facie* material to show that nesting of the birds will be destroyed if such trees are cut. It is true that the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975, is not shown in the list of specifically enactments, which are mentioned in the Schedule-I, of the NGT Act, 2010. However, that is not at all required. The reason is not far to seek. The enactment is aimed at preservation of the trees and therefore is duly encompasses under the Environment (Protection) Act, 1986. The word 'environment' is of wide amplitude. Section 2(m) of the NGT Act, cannot be given restricted meaning. In our opinion, the present Application is duly covered by dictum in case of **Goa Foundation & Anr V. Union of India &Ors** (MA No.49/2013 in Application No.26/2012, which is an elaborate order/Judgment, rendered by the Principal Bench of the NGT. By the said Order/Judgment dated July, 18<sup>th</sup> 2013, the Hon'ble Chairperson, heading the Principal



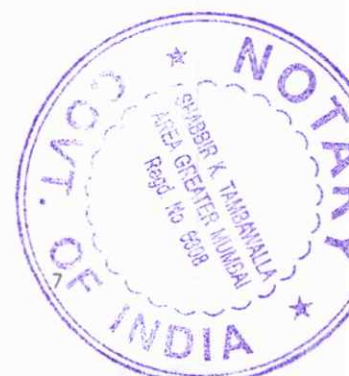
Bench, dealt with various facets of the interpretations of legal provisions and particularly in relation to expression 'civil cases', as used in Section 14(1) of the NGT Act, 2010 and scheme of the NGT Act. The relevant observations in paragraph 22 of the said Order/Judgment would indicate that "a substantial question of environment" does imply anticipated actions as substantially relating to environment." Some of the observations of the Hon'ble Principal Bench, may be quoted for the purpose of benefit, in order to avoid over lapping of discussion in the present case. They are as below:

*"Once the legislature has intended to include 'all civil cases' in contradistinction to criminal cases, then it is not desirable for the Tribunal to carve out another class of cases which are to be excluded from the jurisdiction of the Tribunal. This will amount to adding words to a statute which are not provided otherwise. In a civil case which raises a question relating to environment, the Tribunal shall have jurisdiction to decide disputes arising out of such a question. Therefore, there is no need to carve out any exception for exclusion which is not spelt out by the legislature itself.*

42. Under the scheme of the Act, an anticipated action will also fall within the ambit of the jurisdiction of the Tribunal. Section 20 of the NGT Act provides that, while deciding cases before it, the Tribunal shall take into consideration the three principles --- principle of sustainable development, precautionary principle and the polluter pays principle. The



*precautionary principle would operate where actual injury has not occurred as on the date of institution of an application. In other words, an anticipated or likely injury to environment can be a sufficient cause of action, partially or wholly, for invoking the jurisdiction of the Tribunal in terms of Sub-sections (1) and (2) of Section 14 of the NGT Act. The language of Section 20 is referable to the jurisdiction of the Tribunal in terms of Sections 14 and 15 of the Act. The precautionary principle is permissible and is opposed to actual injury or damage. On the cogent reading of Section 14 with Section 2(m) and Section 20 of the NGT Act, likely damage to environment would be covered under the precautionary principle, and therefore, provide jurisdiction to the Tribunal to entertain such a question. The applicability of precautionary principle is a statutory command to the Tribunal while deciding or settling disputes arising out of substantial questions relating to environment. Thus, any violation or even an apprehended violation of this principle would be actionable by any person before the Tribunal. Inaction in the facts and circumstances of a given case could itself be a violation of the precautionary principle, and therefore, bring it within the ambit of jurisdiction of the Tribunal, as/defined under the NGT Act. By inaction naturally, there will be violation of 'the precautionary principle' and therefore, the Tribunal will have jurisdiction to entertain all civil cases raising such questions of environment. Such approach is further substantiated by the fact that Section 2© while defining environment, covers everything. Section 2 (m) brings into play a direct violation of a specific statutory environmental obligation as contemplated under Section 5 of the Environment Act, as being substantial question relating to environment. These provisions, read with Section 3(1) and Section 5 of the Environment Act, which place statutory obligation and require the*



Government to issue appropriate directions to prevent and control pollution, clearly show that the legislature intended to provide wide jurisdiction to the Tribunal to deal with and cover all civil cases relating to environment, as stated by the Supreme Court in the case of *S.A.L. Narayan Row & Anr. v. Ishwarlal Bhagwandas & Anr.* (AIR 1965 SCC 1818). The character of the proceedings is normally not with reference to the relief that the Tribunal can grant but upon the nature of the right violated and the appropriate relief which can be claimed.

7. In our opinion, when the Hon'ble Principal Bench has elaborately dealt with the same issue, it is not desirable to again reiterate same facets of the issues and particularly when tree cutting activity cannot be disassociated from the environmental issues. The challenge to the above referred resolution of the Municipal Council, is of incidental nature. Indeed, what the Applicants are asking by way of present Application, is that the provisions of legal enactment shall be followed by the Municipal Council in *stricto sensu*. The Applicants allege that by way of resolution dated 3<sup>rd</sup> October, 2012, settlement of offences outside the Court only by accepting certain amount, is not permissible under the Law and that should be stopped. We do not want to express any opinion on such an issue at this juncture. We may only say that there exists a substantial dispute relating to environment and therefore the NGT can entertain the original Application. There is no need to frame



preliminary issue in the context of jurisdiction. The Application is, therefore, dismissed. No Costs.

..... JM  
(Justice V. R. Kingaonkar)

..... EM  
(Dr. Ajay A. Deshpande)

TRUE COPY  
  
ADVOCATE



Item No. 04

Court No. 1

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

Original Application No.193/2016 (WZ)

Vanashakti & Ors.

Applicant(s)

Versus

Union of India &Ors.

Respondent(s)

Date of hearing: 24.01.2020

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

**ORDER**

1. Challenge in this application is to construction and hazardous activities inside the ESZ area notified on 05.12.2016 for Sanjay Gandhi National Park, Mumbai.
2. In pursuance of order dated 10.10.2019, the MoEF&CC has filed affidavit to the effect that the ESZ area has been now reduced, after following due procedure of law, and any new construction in ESZ is allowed as per Zonal Master Plan. Relevant averments are:

*"6.3 That the matter relating to finalization of ESZ Notification was considered during the 20<sup>th</sup> meeting of the Expert Committee of ESZ held on 5<sup>th</sup> July, 2016. During the meeting, the representative of Government of Maharashtra informed that various stakeholders/public have requested for reducing the area of ESZ and to keep it bare minimum. The Committee noted that the National Park being in the centre of the Mumbai city, a large number of residential colonies including high-rise buildings, other human habitations such as slums, office buildings and*



types of human activities already exists alongside the Park on either side. It was mentioned by the State Government that the Metro Rail Shed is also proposed in the Aarey land; therefore, **an area of 1.65 sq. km which include private land and some slums was proposed to be excluded from the ESZ. Thus, the final ESZ proposed by the State was 59.46 sq.km instant of 61.106 km<sup>2</sup>. Keeping in view the State Government's submission, exclusion of an area of 1.65 sq.km land for Mumbai Metro Rail Corporation, temple, etc. was agreed to by the Committee.** However, the Committee recommended that any new construction within ESZ shall be in accordance with the Zonal Master Plan, which has to be prepared within two years of the publication of final notification. Also, the clearances would be required as per prevalent rules and regulation. The minutes of the meeting along with the corrigendum therein are annexed at Anenxure-R1-3.

7. That the final notification declaring ESZ around Sanjay Gandhi National Park has been issued by the Ministry of Environment, Forest & Climate Change **vide S.O. No. 3645 (E) on 5th December, 2016 with an ESZ area of 59.46 sq.km. having an ESZ extent of 100m-4.0 km** after following the due process of scrutinisation, consultation seeking comments from the public and on the basis of suggestions of the State Government and after the recommendation of Expert Committee on Eco-Sensitive Zone.”
3. In view of the above, no further order is necessary.

The application is disposed of.

Adarsh Kumar Goel, CP

S.P Wangdi, JM

Dr. Nagin Nanda, EM

Siddhanta Das, EM

January 24, 2020  
Original Application No. 193/2016 (WZ)  
AK

TRUE COPY  
  
ADVOCATE



महाराष्ट्र प्रादेशिक नियोजन व नगर रचना अधिनियम, १९६६ मधील कलम ५२ क नुसार अनधिकृत बांधकामे प्रशमन आकार लावून "प्रशमित संरचना" म्हणून घोषित करण्यासाठी अधिनियमाचे कलम १५८(१) अन्वये केलेले नियम प्रसिध्द करणेबाबत ...

महाराष्ट्र शासन  
नगर विकास विभाग,  
मंत्रालय, मुंबई-३२

शासन निर्णय क्रमांक: टिपीएस-१८१४/प्र.क्र.८२/१४/नियम/नवि-१३  
दिनांक : ०७/१०/२०१७

शासन निर्णय :- सोबतची शासकीय अधिसूचना महाराष्ट्र शासनाच्या असाधारण राजपत्रामध्ये प्रसिध्द करावी.

महाराष्ट्राचे राज्यपाल यांचे आदेशानुसार व नांवाने,



(संजय सावजी)

उप सचिव, महाराष्ट्र शासन

प्रत :-

- १) मा.मुख्यमंत्री महोदय यांचे सचिव.
- २) मा. राज्यमंत्री, नगर विकास यांचे खाजगी सचिव.
- ३) प्रधान सचिव (नवि-१), नगर विकास विभाग, मंत्रालय, मुंबई.
- ४) प्रधान सचिव (महसूल), महसूल व वन विभाग, मंत्रालय, मुंबई.
- ५) प्रधान सचिव, ग्राम विकास विभाग, मंत्रालय, मुंबई.

प्रति :-

- १) संचालक, नगर रचना, महाराष्ट्र राज्य, पुणे.
- २) व्यवस्थापक, शासकीय मध्यवर्ती मुद्रणालय, चर्नी रोड, मुंबई.  
त्यांना विनंती करण्यांत येते की, सोबतची शासकीय अधिसूचना महाराष्ट्र शासनाच्या असाधारण राजपत्रामध्ये प्रसिध्द करून त्याच्या प्रत्येकी १०० प्रती या विभागास पाठवाव्यात.
- ३) महानगरपालिका आयुक्त / मुख्याधिकारी, नगरपरिषदा / नगरपंचायती (सर्व).
- ४) मुख्य कार्यकारी अधिकारी, एमआयडीसी.
- ५) व्यवस्थापकीय संचालक, सिडको.
- ६) कक्ष अधिकारी (नवि-२९) नगर विकास विभाग, मंत्रालय, मुंबई.  
त्यांना विनंती की सदरची सूचना या विभागाच्या वेबसाईटवर प्रसिध्द करणेत यावी.

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NOTIFICATION  
Urban Development Department  
Mantralaya, Mumbai - 400 032.  
Dated 7<sup>th</sup> October, 2017.

**Maharashtra Regional and Town Planning Act, 1966**

No.TPS-1814/CR-82/14/Rules/UD-13:-In exercise of the powers conferred by sub section (1) of Section 52A and clause (xxxviii) of sub section (2) of Section 158 of the Maharashtra Regional and Town Planning Act, 1966 (Mah.XXXVII of 1966), and of all other powers enabling it in that behalf, the Government of Maharashtra hereby make the following rules, the same having been previously published as required by sub-section (1) of the said section 158, as follows:-

- 1) These rules may be called the Maharashtra Town Planning (Compounded Structures) Rules, 2017.
- 2) These rules shall apply to the unauthorised developments carried out on or before 31/12/2015 within the jurisdiction of Local Authority/ Planning Authority & New Town Development Authority constituted under section-113 of the MR&TP Act, 1966.
- 3) These rules shall come into force at once.
- 4) In these rules, unless the context requires otherwise,-

(a) "Act" means the Maharashtra Regional and Town Planning Act, 1966 (Mah. XXXVII of 1966);

(b) "Buffer zone" means an area to be left free from development as per the concerned regulations;

(c) "Compounded structure" means a structure defined as compounded structure under clause (5A) of section 2 of the Act;

(d) "Compounding charges", "infrastructure charges" and "premium" means compounding charges, infrastructure charges and premium as specified by the Government under these rules;

(e) "Prohibited areas" means the areas where development is prohibited on account of safety and legal or natural impediments or constraints;



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(f) "Regulations" means Development Control and Promotion Regulations made under the Act;

(g) "Structurally unsafe buildings" means the building which is declared as dangerous structure under the relevant provisions of the concerned Municipal laws time being in force;

(h) "Unauthorised development" means an unauthorised development as envisaged in subsection (1) of Section 52 of the Act;

The words an expression used in these Rules but not defined hereinabove shall have the same meaning as respectively assigned to them under the Act, rules or regulations made thereunder.

5) The following types of unauthorised developments shall not be considered for declaration as compounded structure under section 52 A of the Act, namely:-

(a) Unauthorised developments in the areas where development is prohibited by or under any law, or development prohibited areas such as rivers, canals, tanks, blue flood line, defence zone, quarry, heritage buildings, dumping grounds, ecologically sensitive areas like hill slope having slope greater than 1:5, CRZ-I areas, mangroves, forest etc.;

(b) Unauthorised development in Buffer Zones;

(c) Structurally unsafe building;

(d) Unauthorised development on lands in zones other than the Residential Zone, Public-Semipublic Zone, Commercial Zone & Industrial Zone;

(e) Unauthorised development carried out by violating the land use permissible in zones of Development Plan except in the Residential Zone.

6) The following types of unauthorised developments may be considered for declaration as compounded structure subject to the fulfilment of conditions mentioned below and parameters specified in the table annexed to these rules.



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(a) Unauthorised development on inam lands and class-II Occupant lands on production of clearance or No Objection Certificate from the competent authority;

(b) Unauthorised developments on lands reserved for public purposes except playground, garden and open spaces in any plan, if the said reservation is shifted or deleted after following due process of law, subject to the condition that the cost of shifting or deletion is borne by the owner and / or occupier;

(c) Unauthorised developments on lands reserved for linear reservations such as roads, railways, metros in any plan, if the said linear reservations are shifted after following due process of law;

(d) Unauthorised developments on buildable reservations in any plan, if requirements of regulation for Accommodation Reservation are complied with;

(e) Unauthorised developments violating the land use zone, if the land use zone is changed after following due process of law subject to the condition that the cost of zone change is borne by the owner and / or occupier;

(f) Unauthorised developments on Government lands or lands owned by other public authorities on production of,-

(i) No objection certificate from the land owning authority authorised to do so under the law applicable thereto; and

(ii) After transfer or allotment or lease of such land to the concerned person by following due process of law under the law applicable thereto;

(g) Unauthorised development on land earmarked for any special scheme for rehabilitation or resettlement of any Project Affected Person, at the discretion of the Planning Authority;

(h) Unauthorised developments on unauthorised plots subject to conditions mentioned in entry 15 in the table annexed hereto;

7) Development which is permissible in Residential or Commercial or Public-semipublic or Industrial Zone as per prevailing development control Regulations but constructed without obtaining prior permissions of the authority shall be



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considered for declaration as compounded structure by charging compounding charges.

8) Unauthorised developments (**Residential or other use**) which is carried out in Residential or Commercial or Public-semipublic or Industrial Zone in violation of Regulations on the following grounds may be considered for declaration as compounded structure after taking into consideration the parameters specified in the table annexed to these rules,-

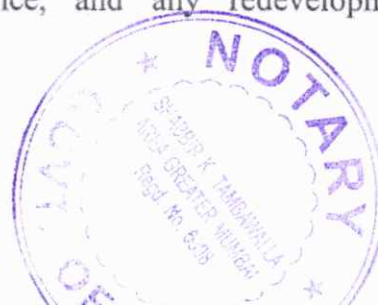
- (i) Floor Space Index (F.S.I.);
- (ii) Height of building;
- (iii) Marginal open spaces;
- (iv) Coverage;
- (v) Road width; or
- (vi) Other development control matters provided in the table annexed to these rules.

9) Every Planning Authority shall, within six months from the commencement of these rules, publish notice, in local newspapers widely circulated in its area, inviting applications, in the form provided by it in the public notice, from the owners or occupiers of unauthorised development, for consideration to declare such structure as compounded structure and stating therein the time and date on or before which the application must reach to it, and applications received thereafter shall not be considered.

10) Every Planning Authority shall consider the applications received by it after taking into consideration the parameters specified in these rules and in the table annexed to these rules;

11) And where the Planning Authority is satisfied in case or class of cases the unauthorised developments or use of such developments can be permitted for retention or continuation of use by charging and recovering premium, infrastructure charges and compounding charges, as specified in these rules and upon such payments, the Planning Authority may declare such unauthorised development as compounded structure.

12) Where the planning authority has declared any unauthorised development as compounded structure, no further development shall be permissible in such structure other than repairs and maintenance, and any redevelopment or



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reconstruction of such structure shall be permissible only as per the provisions of the prevailing Development Control and Promotion Regulations.

13) In respect of unauthorised development to be declared as compounded structure, in addition to the Development Charges,-

(a) i) Infrastructure charges equal to the development charges shall be levied and recovered.

ii) Compounding charges not less than double the development charges shall be levied and recovered.

(b) Premium shall be assessed, levied and recovered as applicable in the jurisdiction of planning authorities for the categories such as Additional Floor Space Index premium, Transferrable Development Rights (TDR) loading premium, infrastructure improvement charges, Deficiency premium etc. as the case may be.

14) All money received by the planning authority as premium, infrastructure charges and compounding charges under these rules shall be credited to a separate head of account and the same shall be utilized only for the purpose for providing public amenities, utilities and services in the respective areas.

By order and in the name of Governor of Maharashtra,



(Sanjay Saoji)  
Deputy Secretary to Government



Table

Parameters to be taken into consideration by the Planning Authority while declaring unauthorised developments as compounded structures,-

1	Permissible height of building with respect to Road Width.	Road width	Maximum permissible height
		6.00 mt.	Upto 15.00 mt.
		9.00 mt.	Upto 24.00 mt.
		12.00 mt.	Upto 36 mt.
		Note:- No building shall be declared as compounded structure having height more than 36 mt.	
2	Permissible building use.	<p>i) Mixed uses under R-1 and R-2 zones may be considered as permissible in Development Control Regulations without the limitations of the floors.</p> <p>ii) Uses in independent building may be considered as permissible in Development Control Regulations, provided the road width is minimum 9 mt.</p> <p>iii) Mixed use other than residential use may be considered by charging compounding charges as specified in these rules.</p>	
3	Permissible Floor Space Index (FSI)	<p>Floor Space Index (FSI) shall be permissible as per the prevailing Development Control Regulations of the respective Planning Authority;</p> <p>Provided that if some extra construction has been carried out beyond the then permissible Floor Space Index limit or areas free of Floor Space Index have been brought into habitable use, then such areas / construction can be considered for declaration as compounded structure by procuring premium Floor Space Index or Fungible Floor Space Index or Transferrable Development Right admissible as per the current norms in the prevailing</p>	



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		<p>Development Control Regulation by paying additional compounding charges at the rate of 10% of land rate as mentioned in the Annual Statement Rates in addition to the premium for such additional Floor Space Index:</p> <p><u>Explanation:-</u></p> <p>For the purpose of this clause higher permissible Floor Space Index as applicable for Economically Weaker Section / Low Income Group housing and slum rehabilitation projects shall be taken into consideration subject to the restrictions of dwelling unit sizes mentioned in the respective Development Control Regulations.</p>												
4	Inadequate set backs	<p>Inadequate marginal distances with respect to Development Control Regulations may be considered as per the following table:-</p> <table border="1"> <thead> <tr> <th>Sr. No</th> <th>Building height</th> <th>Minimum required setback</th> </tr> </thead> <tbody> <tr> <td>1</td> <td>Height up to 10 mtr.</td> <td>0.75 mtr.</td> </tr> <tr> <td>2</td> <td>10 to 24 mtr.</td> <td>50 % of required setback</td> </tr> <tr> <td>3</td> <td>Above 24 mtr.</td> <td>50 % of required setback or as decided by Chief Fire Officer.</td> </tr> </tbody> </table> <p>It can be considered for compounding subject to recovery of an amount equal to 50 % of the cost of the unauthorised development occupied by inadequate marginal distance calculated as per the construction rate mentioned in applicable Annual Statement of Rates, with additional compounding charges equal to 10 % of the land rate in current Annual Statement of Rates subject to No Objection Certificate of fire, wherever necessary.</p>	Sr. No	Building height	Minimum required setback	1	Height up to 10 mtr.	0.75 mtr.	2	10 to 24 mtr.	50 % of required setback	3	Above 24 mtr.	50 % of required setback or as decided by Chief Fire Officer.
Sr. No	Building height	Minimum required setback												
1	Height up to 10 mtr.	0.75 mtr.												
2	10 to 24 mtr.	50 % of required setback												
3	Above 24 mtr.	50 % of required setback or as decided by Chief Fire Officer.												



Signature



		<p>Provided that the unauthorised development carried out along the classified roads may be permitted within building / control line subject to no objection certificate from the concerned authority.</p>
5	Width of approach road	<p>Width of approach road must be as per the approved Development Control Regulations of the concerned planning authority. If width of approach road is not as per the Development Control Regulations, the possibility of widening the same may be explored by adopting the process under prevailing Acts / Rules / Regulations. However, in any case, following minimum width of road should be observed.</p> <p><b>In Gaothan Area -</b></p> <p>i) For purely Residential use - at least 4.50 m.</p> <p>ii) For Mixed use - at least 6.00 m.</p> <p><b>In Outside Gaothan Area -</b></p> <p>i) For purely Residential use - at least 6.00 m.</p> <p>ii) For Mixed use - at least 9.00 m.</p> <p>However such uses may be considered by charging the additional compounding charges equal to 10 percent of the land rate in current Annual Statement of Rates.</p>
6	Plinth area (Ground Coverage)	<p>Plinth area or Ground Coverage may be relaxed by the concerned planning authority or officer authorised by charging the additional compounding charges equal to 10% of the land rate in current Annual Statement Rates. These charges shall not be necessary in cases in which charges for inadequate setback are recovered.</p>



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7	Parking area	If parking area is not possible to be provided for the individual building, possibility be explored to provide mechanical parking or a space for common parking adjoining such area. If not possible then for residential building only concession be given by charging additional premium equal to 20% of land rate in current Annual Statement of Rates. For other building concession may be given not exceeding 50% of required parking area by charging additional premium as mentioned above.
8	Inner chowk / duct sizes.	Relaxation may be granted upto 33% in the required sizes.
9	Stair case width / passage width / balcony / terrace / misuse of any free Floor Space Index component.	Relaxation may be granted up to 30 % of the base Floor Space Index as per the Development Control Regulations by recovering additional compounding charges equal to 10 % of the land rate in current Annual Statement of Rates.
10	No Objection Certificates of Drainage Department	No Objection Certificate from authorised officer of Planning Authority is required wherever necessary.
11	No Objection Certificates of Water Supply Department	No Objection Certificate from authorised officer of Planning Authority is required wherever necessary.
12	No Objection Certificates of Garden	No Objection Certificate from authorised officer of Planning Authority is required wherever necessary.
13	No Objection Certificates of Fire department	Wherever required as per the Development Control Regulations, fire No Objection Certificate from authorised officer is necessary.
14	Structural stability of Unauthorized building	Wherever required as per the Development Control Regulations, Structural stability certificate / No Objection Certificate from authorised structural engineer is necessary.



15	Unauthorised sub-division of layouts / plot in Residential Zone	<p>Unauthorised layout / plot / subdivision in Residential zone -</p> <p>i) Unauthorised layouts which are as per the Development Control Regulations can be regularised by charging one time compounding charges as specified by the Government. But when such layouts are not as per the Development Control Regulations, then in such cases compounding charges plus land value of compulsory re-creational open space shall be recovered.</p> <p>ii) for unauthorised sub-division of plot, when such plot owner comes for regularisation then such plot may be regularised by charging compounding and infrastructure charges.</p> <p>iii) In cases (i) and (ii) above where open spaces are not available in layouts, in such cases Floor Space Index shall be the 75 per cent of the basic Floor Space Index.</p>
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By order and in the name of Governor of Maharashtra,



*(Signature)*

(Sanjay Saoji)

Deputy Secretary to Government

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ADVOCATE



## ANNEXURE A-4

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## Tabulated summary of clearances required to construct on Dindoshi Hills

Sr No	Project	Survey No	Status of Land shown in DP Reservati on	Developing Authority	ESZ Committee Sanction	Demarcation in the Zonal Master Plan made under the ESZ Notification	Development Permissions issued by MCGM	Water Resources/ Irrigation Department remarks
1	Police Housing	CTS No. 827A/4A/2	Residential [DP map at page 308 of the JCR]	D.B Realty [Para 10, Page 268 of the JCR]	Required, but not obtained [Observation No. 3 at page 262-263 of the JCR]	Required, but not prepared [Recommendation No. 1 at page 268-269 of the JCR]	Not Clearly evident from the Record	Not Clearly evident from the Record
2	18.30m wide Access Road to Police Housing	CTS No. 827A/4A/1 And CTS No. 827A/4A/2	Residential [DP map at page 308 of the JCR]	Respondent No. 1 MCGM [Para 5.4 of the Affidavit in Reply of the Respondent No.11]	Required, but not obtained [Observation No. 3 at page 262-263 of the JCR]	Required, but not prepared [Recommendation No. 1 at page 268-269 of the JCR]	Not Clearly evident from the Record	Required and not obtained (page 307 of the JCR).



ANNEXURE A-4

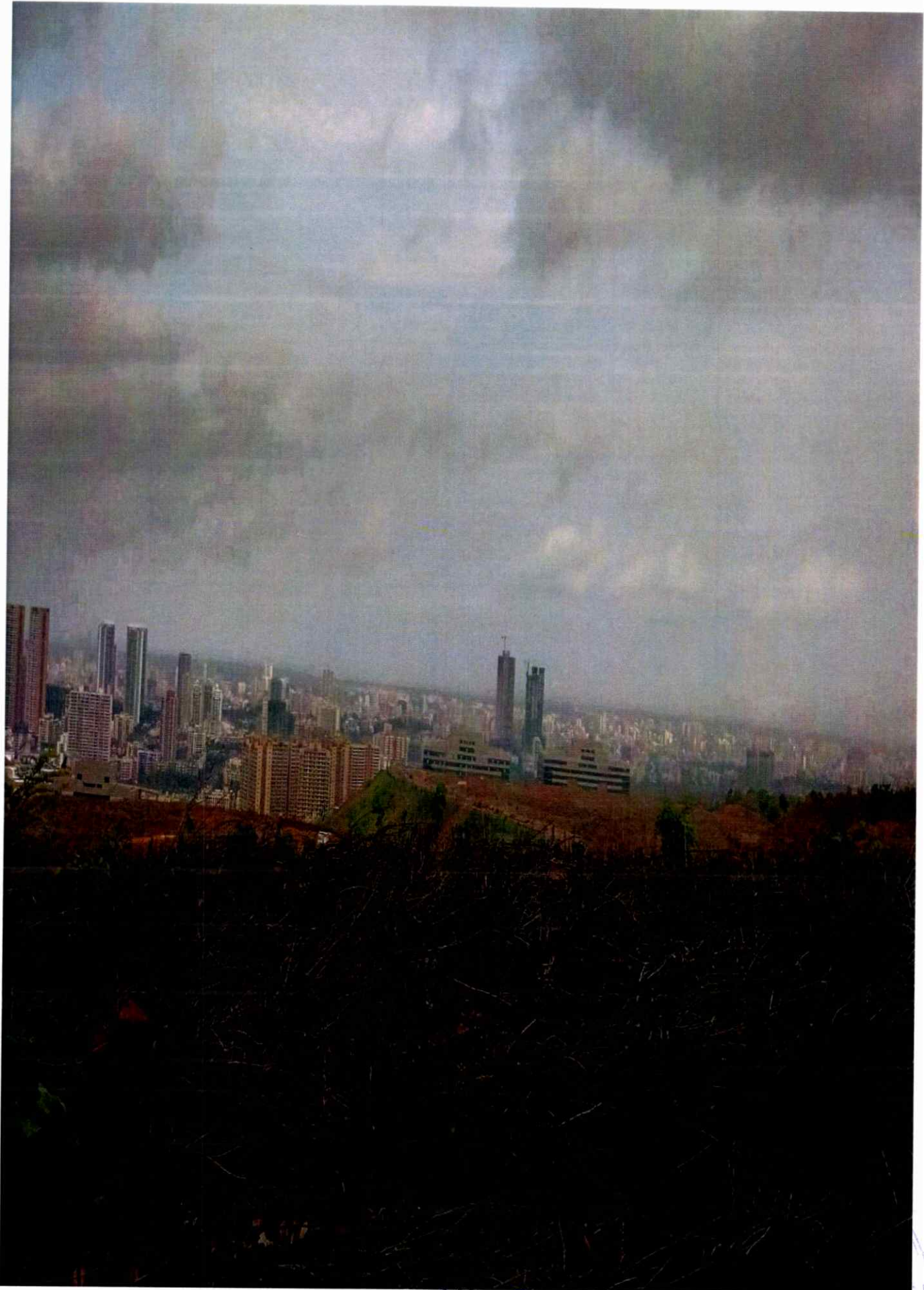
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Tabulated summary of clearances required to construct on Dindoshi Hills

3	Residential/ Commercial Development	CTS No. 827A/4A/1	No Development Zone [DP remarks at page 304 map at page 308 of the JCR]	Respondent No. 11 Ferani Hotels Private Ltd [Para 5.2 of the Affidavit of the Respondent no.11]	Required and obtained [Observation No. 5 at page 263 of the JCR]	Required, but not prepared [Recommendation No. 1 at page 268-269 of the JCR]	Required and not obtained (page 307 of the JCR).
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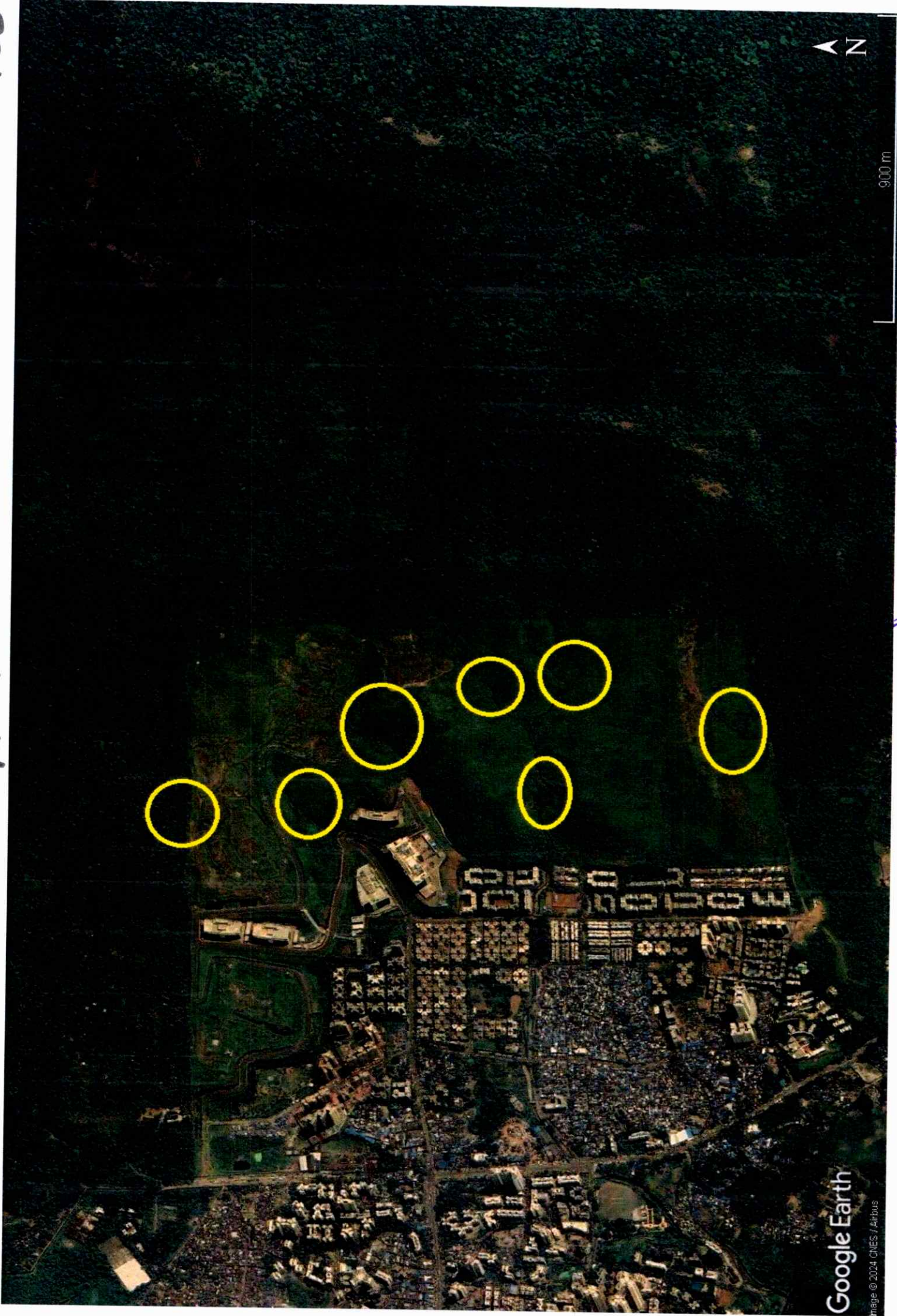
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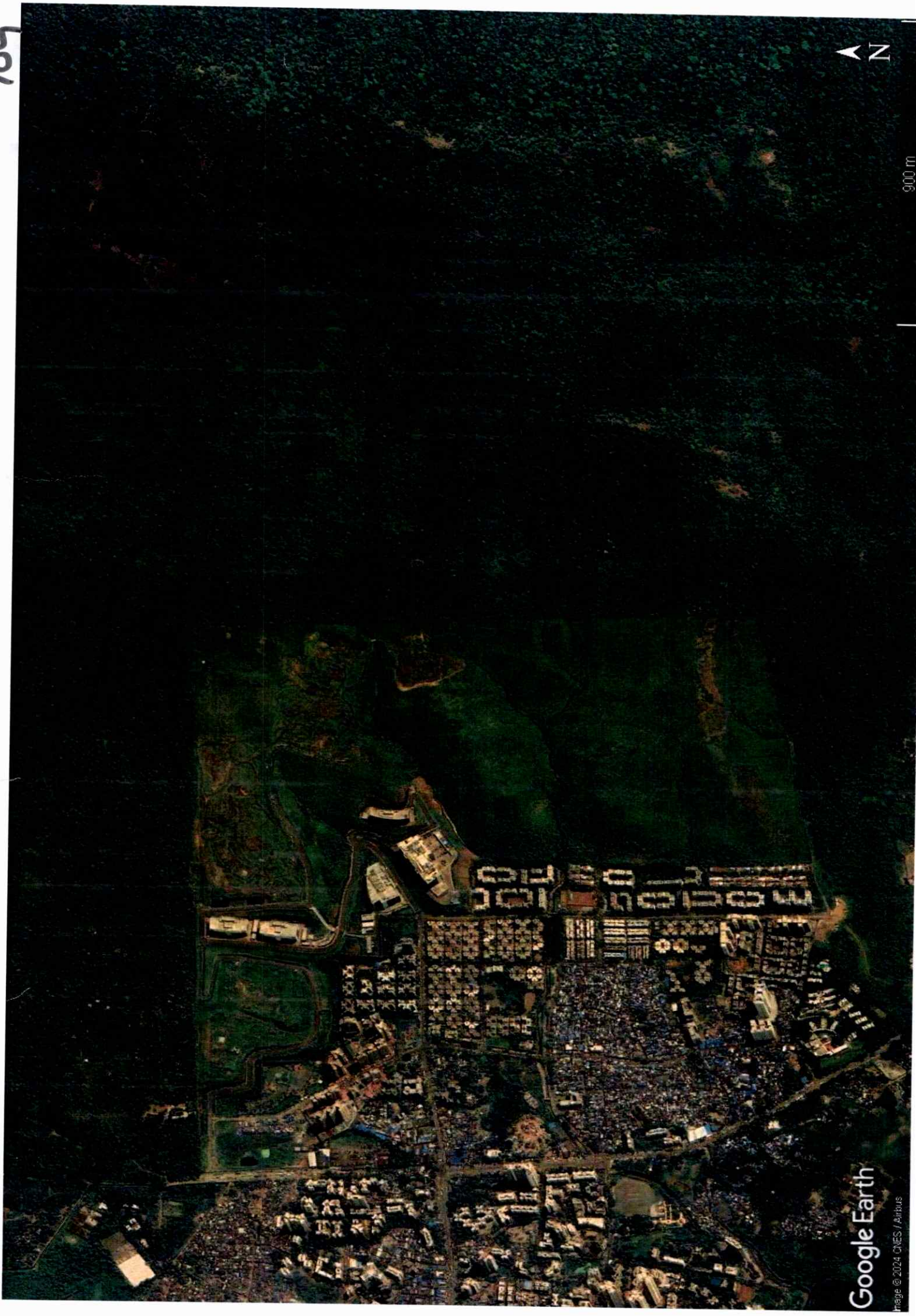


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Google Earth

Image © 2024 CNES / Airbus

**BEFORE THE NATIONAL GREEN  
TRIBUNAL SITTING AT PUNE**

(Under Section 18 (1) read with Sections 15 and 20  
of the National Green Tribunal Act, 2010)

**APPLICATION NO. 100 OF 2024**

**BETWEEN :**

Vanashakti and Anr )... Applicants

*Versus*

State of Maharashtra and Ors )... Respondents

**AFFIDAVIT IN REJOINDER ON BEHALF OF THE  
RESPONDENTS**

**On this Dated 19<sup>th</sup> September 2024**

**RONITA BHATTACHARYA**

Advocate for the Applicant

17, 1st floor, Rohit Chambers,

Janmabhoomi Marg,

Fort, Mumbai – 400001

Mobile No. 9920097464

RONITA.B6@GMAIL.COM

