BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
WESTERN ZONE BENCH PUNE
ORIGINAL APPLICATION NO. 33/2019

IN THE MATTER OF:

MR. TANAJI BALASAHEB GAMBHIRE ... APPLICANT

VERSUS

UNION OF INDIA-MoEFCC & ORS. ... RESPONDENTS

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9.	**(2013) 5 SCC 336**; Deepak Kumar Mukharjee Vs. KMC & Ors. ***¶8**; money power of unholy nexus with the power corridor* ***¶9**; there should be no judicial tolerance of illegal and unauthorized constructions by those who treat the law to be their subservient* ***¶29**; while preparing the master plan/zonal plans, the planning Authority takes into consideration the prospectus of future development and accordingly provides for basic amenities like water and electricity lines, drainage, sewerage, etc. Unauthorised construction of buildings not only destroys the concepts of planned development which is beneficial to the public but also places unbearable burden on the basic amenities and facilities provided by the public authorities. At times, construction of such buildings becomes hazardous for the public and creates traffic congestion. Therefore, it is imperative for the public authorities concerned not only to demolish such construction but also, impose adequate penalty on the wrongdoer.*	3431 – 3451
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Date: 10.08.2024

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(TANAJI B. GAMBHIRE)
ORIGINAL APPLICANT

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WESTERN ZONE BENCH PUNE AT PUNE
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REJOINDER ON BEHALF OF ORIGINAL APPLICANT TO THE REPLY OF R-16 & 17: PP DATED 18.01.2023, R-7 & 8: MPCB DATED 19.01.2023, R-1: MOEFCC DATED 22.02.2023, R-4: SEIAA DATED 17.05.2023, R-13: PMRDA DATED 18.05.2023, R-18 & 19: SOCIETIES DATED 02.08.2023 AND REPLY TO IA NO. 01/2023 FILED BY R-16 & 17: PP ON MAINTAINABILITY OF OA

I, Mr. Tanaji Gambhire S/o Shri. Balasaheb Gambhire Age: 41 Years, Profession: Advocate, R/at: CTS No. 296, Shukrawar Peth, Laxmi Apartment, Near Shivaji Maratha High School, White House Lane, Pune-411002 (MH), do hereby solemnly affirm and state on oath as follows;

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PART-A: BRIEF BACKGROUND OF CASE

1. I state that, this Original Applicant have filed this Original Application No. 33/2019 (WZ) U/s. 14, 15, 18 & 20 of NGT Act, 2010 vide dated 02.03.2019 (**P@0001-1448, Total Volume No. 7**) for declaration of illegal construction, demolition of illegal construction for restitution & restoration of an area, EDC to be imposed on PP and its recovery, handover of structures to the government without benefits & forfeiture of FSI & TDR from this project land, special damages on account of encroachment on forest land, illegal hill cutting, illegal tree felling & non-plantation of trees, damage to bio-diversity, illegal ground water extraction, burning of solid waste in open, & forfeiture of all bank guarantees given to PMRDA and SEIAA & MPCB to take legal action against PP and this Hon'ble NGT to take actions of erring government officials etc.

1.1 DISPOSAL OF OA ON FIRST HEARING: That, this Hon'ble NGT on first date of hearing of this matter on 19.05.2021 disposed of the matter without adjudication on merit and thereby constituting the Joint Committee of CPCB, SEIAA, MPCB, PMRDA & Collector of Pune and directing the Joint Committee to take remedial action following due process of law and if, violations are found take preventive & remedial action including recovery & assessment of compensation.

1.2 APPEALS BEFORE HON'BLE SUPREME COURT AND HON'BLE SC ORDER DATED 01.08.2022: That, being aggrieved by this Order, Respondent No. 16-PP filed Civil Appeal No. 1975/2022 on 26.02.2022 & Original Applicant filed Civil Appeal No. 4589/2022 on 21.03.2022 before Hon'ble Supreme Court, where in Hon'ble Supreme Court vide its Order dated 01.08.2022 remanded back the matter to consider the Original Application on "**de nove**" basis.

1.3 IA NO. 143/2022 BY APPLICANT: That, this Original Applicant filed an Interlocutory Application No. 143/2022 (WZ) on 21.09.2022 (**P@1449-1552**) to bring on record the Order passed by Hon'ble Supreme Court and thereafter, this Hon'ble NGT vide its Order dated 14.10.2022 took cognizance of the Order of Hon'ble SC and issued notices to all the respondents and service was effected on all Respondents and affidavit of service was filed vide dated 08.11.2022 (**P@1553-1558**).

1.4 PLEADINGS DETAILS: That, thereafter Respondents have filed their reply, IA & other documents in support of their contentions with following details;

Sr.	Respondent	Document Details	Date	Page No.
1.	R-16 & 17-PP	IA No. 01/2023	20.12.2022	P:1559-1574
2.	R-16 & 17-PP	Reply Affidavit	18.01.2023	P:1575-1767
3.	R-16 & 17-PP	Compilation of Judgments		P:1768-1870
4.	R-7-8:MPCB	Reply Affidavit	19.01.2023	P:1871-1892
5.	R-1:MOEFCC	Reply Affidavit	22.02.2023	P:1893-1997
6.	R-4:SEIAA	Reply Affidavit	17.05.2023,	P:1998-2028
7.	R-13:PMRDA	Reply Affidavit	18.05.2023	P:2029-2040
8.	Applicant	Service Affidavit	18.05.2023	P:2041-2043
9.	R-18 & 19: SOCIETIES	Reply Affidavit	02.08.2023	P:2044-2258
10.	R-18 & 19: SOCIETIES	Compilation of Judgments	05.08.2023	P:2259-2479
11.	Applicant	Additional Documents & Judgments	12.01.2024	P:2480-3207
12.	Applicant	Rejoinder	09.08.2024	P:

1.5 IMPLEADMENT OF RESPONDENT NO. 18 & 19-SOCIETIES: That as per the order dated 23.03.2023 of this Hon'ble NGT, Applicant have impleaded the "Xrbia Hinjewadi Co-op. Housing Society Ltd., Sector R-29 through its Chairman/Secretary as Respondent No. 18 and Xrbia Hinjewadi Phase-2 Co-op. Housing Society Ltd., through its

Chairman/Secretary as Respondent No. 19" and memo of impleadment is filed on record.

1.6 Therefore, this consolidated rejoinder on behalf of Original Applicant to the replies of all respondents as well as reply to the IA No. 01/2023 of PP taking preliminary objections to OA;

2. IMPORTANT DATES & EVENTS-"EXPANSION, LOCUS, LIMITATION, NON-JOINDER OF NECESSARY PARTY, PLURAL REMEDIES & REPLY TO IA NO. 01/2023":

I state that, the following dates & events to understand the violations committed by PP and also to understand the maintainability of original Application and misleading statements of the Respondent No. 16 & 17-PP.

Sr.	Date	Important Event	Relevance & Page No.
1.	1952	Village Map: Kasarsai	Sr. No. 62-Forest P@84
2.	1989	Village Map: Marunji	Sr. No. 71 & 72-Forest P@85
3.	1993	Village Map: Dattawadi	Sr. No. 55 & 56-Forest P@86
4.		Village Map: Nere	P@87
5.	23.03.1974	Water (P&CP) Act, 1974	S.25 & S.26: "*no person shall, without the previous consent of the state board*": Prior CTE & Prior CTO
6.	29.03.1981	Air (P&CP) Act, 1981	S.21: "*no person shall, without the previous consent of the state board*": prior CTE & CTO
7.	19.11.1986	Environment (P) Act, 1986	S.3: & S.5: P@
8.	27.01.1994	EIA Notification, 1994	¶1: impose restriction & prohibition on expansion & modernisation: **P@89** ¶Schedule-I: List of Projects: 29 projects: **P@94**
9.	07.07.2004	Amendment to EIA Notification, 1994	¶ (ii) (g): any construction project: Persons-1000, Discharge of Sewage-50000 Litres/day, investment of Rs. 50 Crores of below. **P@110** ¶ Explanation: (iii): Entire project covering all phases or modules, ¶ II: Sr. 31: New Construction Projects
10.	22.09.2004	GoI-MCA: Certificate: Change in Name	#EIFFEL INFOCITY PRIVATE LIMITED #EIFFEL DEVELOPERS AND REALTORS PRIVATE LIMITED

			#EIFFEL DEVELOPERS AND REALTORS LIMITED #XRBIA DEVELOPERS LIMITED=R-16-PP **P@112-114**
11.	21.11.2005	Gazette Notification No. TPS-1804/Pune R.P. DCR/UD-13	#Regulations of development of Township in area under Pune Regional Plan: **P@115** ¶1.4: EC shall be obtained from MoEF-GoI under Notification, 07.07.2004: **P@118**
12.	07.01.2006	Amendment in Gazette Notification No. TPS-1804/Pune R.P. DCR/UD-13	#addition of rule 1.2 as sub-proviso dated 06.01.2006: **P@126**
13.	20.01.2006	Collector Sanction	#273 Bungalows only
14.	10.04.2006	CTE: Consent to Establish	¶1: For Development of Land/Plot: **97.28 Ha** ¶3-3:No Quarrying ¶3-4: No feeling of Trees ¶3-5: Prior permission for ground water extraction ¶3-7: Water from project-do not enter outside environment & external pollutant degrading internal environment ¶3-8: Water Harvesting: ¶3-9: Waste generation: Segregation & Composting ¶12(c): Cutting of trees ¶12(d): Green Belt: **P@127-131**
15.	14.06.2006	Application for EC	#Plan of 1000 Plots: **P@138** **#**Provide details of Environmental features**: Trees & Water bodies, P@140** #1000 Plots for bungalow: **P@141** **#III (A): presence of endangered species; P@141** **#Bore Well Water: P@142** **#Animals: Leopard, tigers, wolf, P@142,** @Bore well- **40 M^3/day: P@144;** **#EAC-Minutes:** Committee Enquired Water Supply, land use, ground water, RWH, STP & treatment, Solid Waste Treatment, ____ & Recommends EC**, P@175**
16.	Mar-2006	EIA Report	¶4.5.2: Ecological Setting: No Forest or reserve forest in project area: **P@280** ¶9: Water will be drawn from bore well; **P@316**

			#EIA Report does not discloses the details of existing trees & excavation details, forest land sharing boundary of project. **It is suppression**
17.	14.09.2006	EIA Notification, 2006	¶1: Restrictions & **Prohibition** on activities or project, "**new or expansion** or modernisation or change in product mix": **P@ 355** ¶2: Prior EC: **P@355** ¶8(b): Township & Area Development Project: **Category B1**; **P@371**
18.	27.12.2006	Environment Clearance	¶1: EC under EIA Notification, 1994 & 2004, **P@395** ¶2: Land Area: 97.28 Ha, Township of 1000 Plots, Total Area for Construction: 48.64 Ha, Water Requirement: 50 Cu. M., total waste Water Generation: 38 Cu. M., Common STP, Solid Waste: 1.0 Mt/Day, SWM: Private Vendor, **P@395** ¶PAART-B (iv): 6 monthly Compliance Report: P@398 ¶6: Change in Scope of Project, the project would require a fresh appraisal by the ministry, **P@398** ¶11: other Stipulations would be enforced: Water Act, 1974, Air Act, 1981, EPA, 1986, PL(I) Act, 1991, EIA Notification, 2006; **P@399**
19.	20.02.2007 To 23.02.2007	Excavation Permission	#99 Brass, P@400 #99 Brass, P@402 #99 Brass, P@404 #99 Brass, P@406 #99 Brass, P@408 #99 Brass, P@410 #99 Brass, P@412 #99 Brass, P@414 #99 Brass, P@416 Total=891 Brass= 2522.42 M^3 **#Actual Excavation & Hill Cutting=**520739.75 **M^3, ¶45(d) P@21** r/w **P@1392-1396**
20.	31.07.2008	Special Township Regulation	#Dattawadi: Sr. No. 36, 38/2, 38/3, 39, 56, 57; #Kasarsai: Sr. No. 52, 53, 54 Land Area: 81.20 Ha, **P@420, #Change in Survey Numbers**
21.	05.01.2009	Letter of intent (LOI)	#Dattawadi: Sr. No. 36, 38/2, 38/3, 39, 56, 57;

			#Kasarsai: Sr. No. 52, 53, 54 Land Area: 81.20 Ha, **P@424,** #Ownership/Development Agreement: **70 Ha 75.80 R, P@425-426** **¶7:** Environment Norms: State & Union: are mandatory compliance, **P@426** **¶14:** MPCB-Consent Conditions compliance**; P@427** **¶15:** Undertaking of PP dated 07.11.2008 for EC as per EIA Notification, 2006, to be submitted **P@427,**
22.	27.04.2009	Corrigendum of Notification	Correction in Survey Numbers: #Dattawadi: Sr. No. 36(pt), 38/2, 38/3, 39, 56(pt), 57; #Kasarsai: Sr. No. 52(pt), 53(pt), 54(pt) Land Area: 81.20 Ha, **P@430,**
23.	28.05.2009	Corrigendum of Gazette notification	As above, **P@446-451**
24.	08.06.2009	Location Clearance	¶2: Independent EC permission to be obtained under GoI-MoE Notification, 14.09.2006, prior to Letter of Intent; **P@456**
25.	24.06.2009	Corrigendum of Letter of intent issued by Collector of Pune	P@457-458
26.	08/07/2009	Consent to Establish	M/s. Eiffel Developers & Realtor Ltd. **"Silicon City"** S. No. 52, 53, & 54, Vill: Dattawadi & Kasarsai, Tal: Mulashi, Dist: Pune. **Validity**: Commissioning of the project or five years, whichever is earlier. P@1609 Total Plot Area: 100700 M^2, Total Built Up Area: 30658 M^2 "This CTE is not related to the present Township and CTE is for different project"
27.	19.12.2009	Corrigendum of Letter of intent	Correction: 52/1/2= 80 Are from 52/1/9=50 Are; **P@459**
28.	16.02.2010	Measurement Plan and Boundary layout	Mo. R. No. 166/10, 167/10, 168/10 for Village Nere-Dattawadi; **P@** Mo. R. No. 169/10, 170/10, 172/10, 173/10, 174/10 for Village-Kasarsai; **P@**

29.	19.05.2010	Bank Guarantee	#Rs. 97,50,000/- for development of amenities; **P@463, Prayer: ¶42(G)**
30.	07.09.2010	Revised Sanction Plan by Collector of Pune vide no. PMH/TS/SR/355/08	Conditions-Environment permission & Env. Infra. ¶7, 15, 17, 18, 19, 25 & 27: P@467-471 Plan P@475-476 r/w Village Map P@86, Hill & Forest
31.	04.04.2011	S.O.695(E), Clarification to EIA Notification-2006	Clarification on TBUA; **P@481-484**
32.	31.10.2011	Compliance Report	Evasive & misleading, **P@485-490**
33.	07.01.2012	Layout sanction	Conditions: ¶4, 6, 16, 18, 19, 20, 26 & 29; P@492-497
34.	21.01.2012	Undertaking for Bank Guarantee of	Remaining amount before obtaining layout sanction Total BG = Rs. 9.64 Crores Given BG= Rs. 5.15 Crores Remaining BG= Rs. 4.49 Crores; P@502 r/w **P@463, Prayer: ¶42(G)**
35.	28.01.2012	Undertaking	Compliance of conditions no. 1 to 14, IMP Conditions: 2, 5, 6, 8, 9, 11, P@505-508
36.	06.02.2012	Objection raised by Collector of Pune	¶1: BG, ¶3: MSW, ¶4: Total land Area-EC-MoEF, **P@509-510**
37.	06.03.2012	Bank Guarantee	Rs. 5,17,00,000/- for development amenities; **P@512, r/w P@463, Prayer: ¶42(G)**
38.	31.03.2012	Revised Sanction Plan no. PMH/TS/SR/21/2012	Conditions: ¶4, 6, 16, 18, 19, 20, 26 & 29; P@517-521 Plan;P@524
39.	12.07.2012	Letter for change in name of PP	From Eiffel Infocity Pvt. Ltd. to Eiffel Developers & Realtor Ltd.; Subject: **P@525**
40.	04.09.2012	**Application** for prior Environment Clearance	OA ¶20(b); P@47-49; Large expansion- Change in Scope of project Application: P@527-592
41.	10.09.2012	Revised Sanction Plan	P@599
42.	25.09.2012	Minutes of 60th SEAC meeting	No Condition Complied, IMP Condition No. 6- restrict hill cutting to retain native vegetation on hill slope of plot, **P@606**
43.	Jan-3013	Consolidated Statement submitted by PP	#31: Green Belt: ¶3: Planation: Number, size, age, species of trees to be cut trees to be transplanted: very few trees exist on site, and same will be retained on the site. **P@614**

44.	29.01.2013	Minutes of 65th SEAC meeting	#PP directed to comply the observation; **P@51-52 r/w P@633**
45.	18.02.2013	Evasive compliance Report of 65th SEAC MoM filed by PP	#Evasive and false, misleading reply to the above 60th & 65th SEAC. **P@52 r/w 634-648**
46.	Feb-2013	EIA Report filed by PP	P@649-811
47.	March-2013	Revised Application for prior Environment Clearance for newly recast project before SEIAA	P@812-871
48.	March-3013	Consolidated Statement submitted by PP	P@872-896
49.	March-2013	Representation before SEAC	P@897-997
50.	12.03.2013	Minutes of 68th SEAC meeting	#Submit a note on the existing trees, trees to be cut, trees to be transplanted and trees to be planted (nos., size, age, and species) as per MoEF guidelines. There is deficiency in ecology and BD in fauna which needs to be redone and report submitted; **P@54 r/w P@1006, There is suppression by PP**.
51.	03.08.2013	Sanction Plan for amenity by Collector of Pune vide no. PMH/TS/SR/14/2013	#Amenity Building-Primary School, P@1007-1011; Not completed by PP, BG need to forfeited
52.	08.11.2013	Revised Sanction Plan by Collector of Pune vide no. PMH/TS/SR/29/2013	#Sector R-29, OA ¶19(f) ;P@43 r/w P@1012-1017 **Total BUA Sector R-29: 82817.25** M^2
53.	17.11.2013	Objection letter by Collector of Pune	#ownership of land, P@1018
54.	24.12.2013	FSI Statement for Sector R-22 to R-29 by PP	#Sector R-22-28, r/w P@1019-1020
55.	04.06.2014	Sanction Plan no. PMH/TS/SR/10/2014	#Dispensary; P@1021
56.	05.06.2014	Revised Sanction Plan no. PMH/TS/SR/11/2014	#Sector Layout R-22 to R-28; P@1022-1030
57.	04.07.2014	Plinth Check Certificate (PCC)	@¶35; P@12 r/w 22(b); P@56, #Buildings A-1 to A-13 on Sector R-29; P@1031-1033
58.	08.08.2014	Fire NOC	#Sector R-22, R-24, R-27, R-28; P@**1034-1040**, #Actual no fire system
59.	01.09.2014	Plinth Check Certificate (PCC)	@¶35; P@12 r/w 22(a); P@55, #buildings A-14, A-15, B-1, B-2, B-3, B-6, B-7, B-8, C-2, C-3, C-4, C-5, C-6 & C-7 on Sector R-22 TO R-28; P@**1041-1042**

60.	20.02.2015	Office note by Assistant director Town Planning on occupancy application	P@1043-1049
61.	16.05.2015	Undertaking cum affidavit for obtaining consent to operate before occupancy	@¶38; P@13 r/w 24(c); P@59, #PP under taking for CTO: P@1050-1051,
62.	29.12.2015	Sanction for Essential Shopping and Vegetable Market No. PRH/TS/SR/25/2015	P@1052
63.	29.12.2015	Revised Layout Sanction No. PRH/TS/SR/26/2015	Conditions: ¶2, 4, 10, 11, 12, 14 & 16; P@1053-1057
64.	29.01.2016	Part completion certificate No. PRH/KV/960/2016	P@1058-1063
65.	27.06.2016	Application for group housing	P@1064-1066
66.	15.07.2016	Application for obtaining occupancy certificate	P@1067
67.	21.07.2016	Affidavit by PP for obtaining revised sanction	#undertaking title of land; P@1068-1072
68.	21.07.2016	Form for obtaining revised sanction	P@1073-1078
69.	30.09.2016	Revised sanction no. BMU/CR-811/16-17	#Misleading Conditions: ¶22, 23, 24, 25, 29; P@1079-1086
70.	09.12.2016	S.O.3999(E), EIA Notification-2016	*Diluting EIA Notification-2006 and Pollution Control Acts P@1087-1097
71.	22.12.2016	Corrected Occupancy certificate	P@1098-1106
72.	14.03.2017	S.O.804(E), EIA Notification-2017 for regularization of violation cases	P@1107-1113
73.	08.12.2017	Judgment of Hon'ble NGT (PB) in OA 677 of 2016,	*Quashing MoEFCC Notification, 2016; P@1114-1168
74.	29.01.2018	Circular DoE	P@1169-1171
75.	03.08.2018	RTI Application to PMRDA	P@1172
76.	03.08.2018	RTI Application-RO-MPCB	P@1173
77.	03.08.2018	RTI Application-DoE	#Online, P@1174-1175
78.	03.08.2018	RTI Application-MoEF	#Online, P@1176-1177
79.	06.08.2018	Letter-PMRDA	P@1178-1179
80.	07.08.2018	Letter-MPCB Pune	P@1180
81.	28.08.2018	RTI reply-MoEF	#There is no EC for the project, P@1181-1182
82.	30.08.2018	MPCB Site Visit Report	¶1: Two Phases-I & II ¶2:Phase-I;13Bldg.A1-A13 ¶3:Phase-II;16Bldg. ¶4: Possession-2016 ¶5: Flats-3200 completed, Flat-2200-Occupied ¶6: STP-600 KLD ¶7: pit-sewage ¶8: Not provided waste treatment; ¶10: Well Water & Bore well=4 No.

			P@1183-1184 r/w ¶37-P@13, ¶40-P@14, ¶17(d)-P@40, ¶27(c)-P@66
83.	31.08.2018	MoEF website status	#Compliance report and monitoring report, P@1185-1186
84.	03.09.2018	MPCB proposed direction u/s. 33A of water (P&CP) Act-1974 and Sec. 31A of Air (P&CP) Act-1981 issued to PP	¶ Illegal construction Report; ¶1-¶7 ¶1:Close down forthwith? ¶2: Disconnect water/ electricity supply?; P@1187-1188
85.	06.09.2018	Letter inviting to attend the hearing	¶Attain the hearing; P@1189
86.	10.09.2018	Minutes of Hearing conducted at RO-MPCB	¶42, P@17; r/w P@1190-1194 "Violations pointed out"
87.	08.10.2018	Reply by DoE-GoM	¶43, P@19; r/w P@1195 "No EC granted"
88.	09.10.2018	Compliance report of PP to MPCB proposed direction	¶False & Evasive; P@1196-1236
89.	11.12.2018	RTI Application	Range Forest Office, Paud-Mulshi; P@1237
90.	13.12.2018	RTI Application	Forest Department, Pune; P@1238
91.	13.12.2018	RTI Application	RO-MPCB, Pune; P@1239
92.	19.12.2018	RTI Application	Dy. Superintendent Land Record, Paud-Mulshi; P@1240
93.	11.01.2019	Reply by MPCB to RTI	P@1241-1242
94.	14.01.2019	Online RTI Application	PUCLO/R/2019/60031 Collector; P@1243-1244
95.	14.01.2019	Online RTI Application	MOENF/R/2019/50043 to MoEF Delhi; P@1245-1246
96.	14.01.2019	Online RTI Application	UDDEP/R/2019/60033 to UDD-13 Mumbai; P@1247-1248
97.	16.01.2019	Online RTI Application	PUCLO/R/2019/60037 to collector; P@1249-1250
98.	17.01.2019	RTI Application	Dy. Superintendent Land, Paud-Mulshi Record for obtaining measurement plans; P@1251
99.	19.01.2019	Online RTI Application	PUCLO/R/2019/60040 to collector; P@1252-1253
100.	19.01.2019	RTI reply for Application	PUCLO/R/2019/60037 by Collector; P@1254
101.	23.01.2019	Online RTI Application	PUCLO/R/2019/60043 to collector; P@1255-1256
102.	24.01.2019	RTI reply for Application	MOENF/R/2019/50043 by MoEF; P@1257
103.	24.01.2019	RTI reply for Application	UDDEP/R/2019/60033 by UDD-13 Mumbai ; P@1258
104.	05.02.2019	RTI reply for Application	PUCLO/R/2019/60031 by Collector Pune; P@1259
105.	05.02.2019	RTI reply for Application	PUCLO/R/2019/60043 by Collector Pune; P@1260
106.	01.08.2018	Site Photographs taken by applicant	#Hill Cutting; Tree Cutting, Excavation; P@1261-1282

107.	12.01.2019	Site Photographs taken by applicant dated	#unscientific STP, P@1283-1315 #Seepage of sewage water into water body & forest land (21/63); P@1293, #Illegal Structures in forest Land; (30/63, 35/63); P@1297 #Pit/Lagoon-Sewage Water (42/63, 45/63); P@1303 #Solid Waste-Dumping & Burning (48/63, 49/63, 50/63, 51/63, 52/63, 53/63, 54/63, 55/63, 56/63, 57/63, 58/63, 59/63, 60/63, 61/63, 62/63, 63/63); **P@1306**
108.	1984-2018	Google Earth images	#Illegal Hill Cutting & Excavation; & Illegal felling of trees; P@**1349-1369**
109.	2005-2018	Google Earth Hill view images	#Illegal Excavation & Hill Cutting; P@1370-1390 #Sewage Waste Water Stored in Open Pit/Lagoon; P@1390
110.		Google Earth images for **surface area of excavation** details	P@1392: 16381.25 M^2 P@1393: 37816.83 M^2 P@1394: 20771.40 M^2 P@1395: 24485.40 M^2 P@1396: 33652.70 M^2
111.	01.02.2019	Notice/Complaint by Applicant	Non-action by SEIAA, PMRDA, Collector, P@2480-2533
112.	28.02.2019	Police complaint of Applicant	P@2534-2552
113.	02.03.2019	OA Filed before this Hon'ble NGT	P@001-83
114.	18.03.2019	Notice to Police officers	P@2553-2560
115.	12.06.2019	Show Cause notice issued by SEIAA	P@2561-2564
116.	20.06.2019	Letter filed by the PP before MPCB withdrawing allegation against this Applicant	P@2565
117.	19.06.2019	Notice to the Police Officer	P@2566-2567
118.	19.05.2021	Hon'ble NGT disposed of case	#Joint Committee to take action as per law; P@1461-1464
119.	07.07.2021	MoEFCC OM For Identification & handling of Violation cases under EIA Notification, 2006	P@1987-1995
120.	16.02.2022	Application for ToR/EC under OM dated 07.07.2021	Exhibit-L; P@1698-1738
121.	26.02.2022	Civil Appeal No. 1975/2022	Filed by PP before Hon'ble SC; P@1465-1477
122.	23.03.2022	Civil Appeal No. 4589/2022	Filed by Applicant before Hon'ble SC; P@1478-1548

123.	29.03.2022	SEAC-III Minutes of 137th Meeting	P@1739-1751
124.	21.04.2022	SEIAA Minutes of 242nd Meeting	P@2625–2629
125.	01.08.2022	Hon'ble SC Order	OA to be considered on "de nove" basis; P@1549-1552
126.	21.09.2022	IA No. 143/2022 by Applicant	Bring on record Hon'ble SC Order; P@1449-1460
127.	08.11.2022	Service Affidavit by Applicant	P@1553-1558
128.	20.12.2022	IA No. 01/2023 by PP	Preliminary Objection; P@1559-1574
129.	09.01.2023	MPCB Site Visit Report	¶8: Water Supply-4 No. of Dug well; **P@1982** ¶10: OWC-Three Units-Found not in operation; **P@1982** ¶12: Proposed Direction; 03.09.2018; **P@1982** ¶13: No compliance of PD-03.09.2018;Possession handed over without obtaining CTO; **P@1982** ¶14:MPCB filed criminal Case: RCC No. 5023/2019; CJM Pune
130.	14.03.2023	Letter of PP to the SEIAA for listing of proposal for further consideration	P@2630–2638
131.	03.04.2023	SEIAA Minutes of 258th Meeting	P@2639–2643
132.	12.06.2023	SEAC-III Minutes of 174th Meeting	P@2644–2657
133.	08.08.2023	SEIAA Minutes of 264th Meeting	P@2658–2669
134.	25.09.2023	SEIAA granted ToR	Under OM dated 07.07.2021, violation admitted & confirmed
135.	02.01.2024	Order passed by Hon'ble Supreme Court in WP (Civil) No. 1394/2023,	P@2682 Staying MoEFCC, Office Memorandum issued on 07.07.2021 & 28.01.2022

2.1 EXPANSION OF PROJECT BY CHANGE IN SCOPE OF PROJECT, CAUSE OF ACTION & LIMITATION AND **OA IS WELL WITHIN LIMITATION UNDER NGT ACT, 2010:** In respect of the cause of action, I state that the cause of action is bundle of facts. I state that, the entire OA is based on cause of action i.e. Proposed Direction issued by MPCB vide dated 03.09.2018 (**P@1187-1188**) as stated in Para-40: Cause of Action (**P@78-79**) & Para-41: Limitation (**P@79-80**) of OA. I

state that the PMRDA have admitted in its affidavit (**P@2029-2040**) dated 18.05.2023 that the PP have increased the scope of the project from 1000 bungalows to 3120 flats comprising 29 buildings.

Sr.	Sanction Date	Plot Area (M^2)	TBUA (M^2)	Flats
1.	20.01.2006	159000.00		
2.	07.09.2010	242388.81		
3.	31.03.2012	584335.00		
4.	10.09.2012	108009.24		
5.	08.11.2013	38123.43	68030.60	
6.	05.06.2015		77148.31	
7.	29.12.2015	584335.00		
8.	30.09.2016		75211.66	1552
9.	20.10.2016		68030.60	1568
10.	**Total**	**584335.00**	**143242.26**	**3120**

That the PP have procured the Commencement certificates from 20.01.2006 to till 20.10.2016 on condition to obtain the prior EC and occupancy certificates dated 07.11.2016 & 27.01.2017 and thereafter, applied for ex-post facto EC before SEIAA vide dated 02.12.2011, 12.06.2013 & 16.02.2022 to get regularise the illegal construction and there is no valid EC & CTE till date.

I state that, the PP have procured various sanction expanding the scope of project since 20.01.2006 to 20.10.2016 by increasing the plot area from 159000.00 to 584335.00, by increasing the BUA to the tune of 143242.26 M^2 and flats to the tune of 3120. I state that, it was mandatory on part of the PP to obtain the prior EC, CTE, CTO etc. for this change in scope of project. However, PP failed to obtain the prior permissions of EC, CTE, CTO etc. for changed scope of project till 20.10.2016 and due to this expansion/ increase in scope of project, EIA Notification, 2006 mandates burden on PP for obtaining necessary permission. Also, on complaint of this Applicant, MPCB taken cognizance and issued proposed

directions vide dated 03.09.2018, issued stop work order vide dated 10.09.2018. I state that, the OA filed on 02.03.2019 is well within the limitation of 6 months from issuance of proposed direction of MPCB vide dated 03.09.2018 and also, within 5 years from sanction dated 20.10.2016.

Therefore, the cause of action first arose to file this Original Application is occurred on 03.09.2018 (**P@1187-1188**}, when MPCB issued proposed direction to the PP and its trigged cause of action, which is well within limitation of 5 years from filing of OA vide dated 01.08.2020 as held by this Hon'ble NGT in "***Para-20 to 33*** *of Forward Foundation Case-****2015 SCC OnLine NGT 5***" and as uphold by Hon'ble SC in ***Para-39 to 50*** *of Matri Techzone Vs. Forward Foundation-****(2019) 18 SCC 494***, and ***Para-125*** *of Common Cause Case-****(2017) 9 SCC 499***".

Therefore, objection raised by PP from Para-4 to 9 (**P@1561-1565**) of IA on account of Limitation is meaningless, baseless, misleading, false and raised by PP only in view to create the nuisance in the matter as well as to prolong the matter.

2.2 **LOCUS**: I state that, this Applicant have explained the locus in detailed in Para-38 (**P@74-77**) of OA, However, PP have raised this objection notoriously. It is fundamental duty of every citizen to protect the environment under article 51A(g) of Constitution and therefore, the concept of the Locus is liberal in environmental cases as per "Para-10, 37, 42, 86, 88, of MCGM Vs Ankita Sharma, Para-47 of ***(1996) 5 SCC 281*** *Indian Council for Enviro-Legal Action Vs Union of India & Ors.*, Para-29 & 30 in *M. A. No. 108/2014 in Appeal No. 9/2014 (WZ) in the matter of Anil Tharthare Vs. Secretary DoE & Others decided on* 04.05.2016, Para-164@469 of (2019) 15 SCC 401, (1998) 7 SCC 270 in Dr. Duryodhan Sahu and Others v. Jitendra Kumar Mishra and Ors., AIR 1976 SC 578 in Jasbhai

Motibhai Desai Vs Roshan Kumar, (1977) 1 SCC 155 in Maharaj Singh Vs State of Uttar Pradesh". That the Original Applicant is Vigilant Citizen, whistle blower, informer of environmental cause to the court of law performing his fundamental duties casted by constitution as well as by this Hon'ble Court and acting punctually, diligently, promptly and Original Applicant have raised various environmental issues having three reported judgments of Hon'ble Supreme Court to his credentials for protection of Environment i.e. (2018) 18 SCC 257-Goel Ganga Case, (2019) 9 SCC 288-Goel Ganga Case and 2021 SCC OnLine SC 1133-Sai Baba Sales Case and number of judgment of this Hon'ble NGT i.e. OA No. 184/2015(WZ), OA No. 83/2019, OA No. 64/2019(WZ), OA No. 34/2020(WZ), Appeal No. 32/2020(WZ), Appeal No. 34/2020(WZ), OA No. 28/2019(WZ), OA No. 38/2020(WZ), OA No. 48/2020(WZ), Appeal No. 48/2019(WZ), OA No. 26/2020(WZ).

MCGM Vs Ankita Sinha & Ors. **2021 SCC Online SC 897: Para-42.** Another distinguishing feature of the environmental forum is on the aspect of *locus standi* which was made as wide as is available to the High Courts and the Supreme Court. Thus, any person or organization who may be interested in the subject matter is permitted to approach the NGT.

Para-75: **Principle 10 of the Rio Declaration** which speaks of three fundamental rights i.e., **access to information, access to public participation and access to justice**, **Para-86**: Larger societal interest, whether that be in the form of 'Public Interest Litigation' or widening the scope of locus standi.

Therefore, objection raised by PP from Para-10 to 14 (**P@1565-1569**) of IA on account of Locus is meaningless, baseless,

misleading, false and raised by PP only in view to create the nuisance in the matter as well as to prolong the matter.

2.3 **NON-JOINDER OF NECESSARY PARTY**: I state that, as per the Order passed by this Hon'ble NGT vide dated 23.03.2023, Respondent No. 18 & 19 i.e. Societies formed by PP for management of daily business of project maintenance are impleaded because this Applicant is seeking demolition of the entire project constructed without mandatory prior EC, CTE & CTO, CGWA permission and EIA Notification, 2006 is prohibiting this development without EC. Moreover, these Respondent No. 18 & 19-Socieites have brought on record the real face of PP for his environmental violations and non-sustainable development vide its affidavit dated 02.08.2023 (**P@2044-2258**). Therefore, objection raised by PP from Para-15 (**P@1569-1570**) of IA on account of non-joinder of necessary parties is meaningless at this juncture and raised by PP only in view to create the nuisance in the matter as well as to prolong the matter.

2.4 **PLURAL REMEDIES**: I state that, the entire OA is based on the single cause of action i.e. Proposed Direction issued by MPCB vide dated 03.09.2018 (**P@1187-1188**) as stated in Para-40: Cause of Action (**P@78-79**) & Para-41: Limitation (**P@79-80**) of OA. Therefore, this OA is in compliant of Rule No. 14 of NGT (P&P) Rules, 2011. Therefore, objection raised by PP from Para-16 to 20 (**P@1570-1572**) of IA on account of plural remedies are meaningless, baseless, misleading, false and raised by PP only in view to create the nuisance in the matter as well as to prolong the matter

2.5 **REPLY TO IA NO. 01/2023**: I state that, the issues raised in IA No. 01/2023 (WZ) filed by PP raising preliminary objections are replied by Original Applicant as above and these objections

are meaningless, baseless, misleading, false and raised by PP only in view to create the nuisance in the matter as well as to prolong the matter. I state that, the preliminary objections of the Respondent No. 16 & 17-PP are illegal and OA is well maintainable on all counts of Jurisdiction, locus, cause of action, limitations, Single cause of action etc. Therefore, this IA may kindly be dismissed at final stage while deciding OA on its merit as it involves mixed questions of law and based on disputed facts.

3. CONTENTIONS FROM OA: SUBSTANTIAL ISSUES OF ENVIRONMENT: That the following issues are raised in OA, which are substantial issues of environment and ecology.

Court cannot regularise Unauthorised Construction

3.1 ADMITTED CASE OF VIOLATION, EXPANSION & CHANGE IN SCOPE OF PROJECT, NON-SUSTAINABLE DEVELOPMENT AND COURT CANNOT REGULARISE UNAUTHORISED CONSTRUCTION AND ONLY DEMOLITION IS THE SOLUTION FOR DETERRENT EFFECT: PP has carried out illegal Construction as below without EC, CTE, CTO & CGWA-NOC and same is admitted fact;

Sr.	Description	TBUA (m^2)	Bldg.	Flats	Remark
1.	As per OA	190094.20	29	3120	P@9,44,45, 1017, 1086
2.	As per PP	175879.00	29	3120	P@1567-1568, 1700
3.	As per PMRDA (75211.66+68030.6) (1552+384)	143242.26		1936	P@2033, 2037
4.	As per SEIAA	175879.00	29	3120	P@2000, 2019-2020
5.	As per MPCB: (13+16) & (1558+1560)		29	3118	P@1873, 1892
6.	As per MoEFCC	Mute Spectator			
7.	As per Collector Pune	Mute Spectator			
8.	EC: 27.12.2006	1000 Bungalow Plots on Land of 48.64 Ha out of 97.28 Ha: **P@395** **Condition No. 6:** *In case of any change in scope of project, the project would require a fresh appraisal by this Ministry* **P@398**			

a) That the PP have carried out the illegal construction for TBUA of 190094.20 M2 comprising of 29 buildings & 3120 flats with 5 shops and this is change in scope of project enlarging/expanding the project from 1000 bungalow plots as restricted in EC dated 27.12.2006. Therefore, this is violations of condition No. 6 of EC dated 27.12.2006 and as per EIA Notification, 2006, said expansion is the **prohibited activity** without mandatory prior EC as mentioned in Para No. 1 & 2 of the said Notification.

OA	PP Affidavit	Rejoinder
Illegal Construction without prior EC **¶3: P@8-9** **¶8: P@8-9** **¶Table-1; Sr. 1-45(x) P@9-24**	Construction beyond scope and no prior EC obtained **¶11**: Envisaged development 2005-06 **¶12**: EC-27.12.2006 Plot: 97.28 ha, 1000 Bungalow, constructed area 48.60 ha **¶13**: EC Application: 02.12.2011 **¶14**:SEAC-60th Meeting **¶15**:CC-10.09.2012 **¶16**:EC Application: 12.06.2013; not pursued **¶17**:CC-20.10.2016 **¶18**:PP Application for ex-post facto EC 16.02.2022 under OM 07.07.2021 **¶19**:SEAC 137th meeting;30.03.2022 **¶20**: Followed procedure of grant of EC **P@1586-1589**	PP procured ToR dated 25.09.2023 under OM dated 07.07.2021 admitting violation; **P@2670-2681** EC dated 27.12.2006 was to develop 1000 plot on 48.60 ha out of 97.28 ha and 48.60 ha is not built-up area of construction. PP have admitted violation. PP does not hold any EC for change in scope of project for its expansion of 29 buildings, 3120 flats, TBUA 190094 M^2 #PP supressing important document and PP have collusion with SEIAA officials & PS-DoE with help of environment consultant.

b) That this Hon'ble NGT vide its Order dated 20.01.2023 have framed an issue on demolition as below;

"Whether the construction of the flats and other residential buildings made by respondent Nos. 16 and 17 – Project Proponent from 12.06.2013, for which an application for grant of Environmental Clearance (EC) was moved by them

but did not pursue the same, till 16.02.2022 when they moved an application for grant of ex-post facto EC, needs to be demolished, the same having been made deliberately in violation of the EIA Notification, 2006?"

c) That none of the Respondent except R-18 & 19-Socieites have replied this issue. That the settled position on this issue is that the Hon'ble Supreme Court in its verdict at Para-50 from **(2010) 2 SCC 27** have held that the Court shall not put seal of authorisation on unauthorised construction.

d) That the Environmental jurisprudence in this nation has been evolved by the great efforts taken by the Hon'ble Apex Court through its judicial activism and sacrifices of the many thousands individuals & NGO's. That the Environmental issues are always have public at large interest and Hon'ble Courts are bound to protect the public interest under Constitution of India. That the Deterrence Doctrine has to apply in blatant environmental cases against the wrong doers-Polluters and there is no leniency & immunity to the polluters in any of the environmental statute. That the legal battle for protection & development of common sharing of public against mighty & resourceful entity is very difficult due to deep unholy nexus with corrupt bureaucracy. Therefore, this Hon'ble NGT shall demolish the illegal construction of PP carried out without mandatory prior EC that ought to be obtained under EIA Notification, 2006 imposing prohibition on such activity without EC.

3.2 PRIOR EC IS MANDATORY, NO EC OBTAINED FOR EXPANSION AND ONLY DEMOLITION IS THE SOLUTION: As per the EIA Notification, 2006 scheduled project /activities are to be carried out with "**Restrictions with prior EC** and without prior EC there is **Prohibition** on activities or project

in the manner of "new or expansion or modernisation or change in product mix" as stated therein Para-1 & 2 of the EIA Notification. Therefore, as per the above Para-3.1, there is substantial expansion in the project increasing capacity of project with change in scope of the project without obtaining prior EC till date and this expansion is prohibited activity, which cannot be regularised by this Hon'ble NGT having no powers for regularisation as held by Hon'ble Supreme Court.

Sr.	Description	Relevance	Page
1.	14.09.2006: EIA Notification, 2006	¶1: Restrictions & **Prohibition** on activities or project, "**new or expansion** or modernisation or change in product mix": **P@ 355** ¶2: Prior EC: **P@355** ¶8(b): Township & Area Development Project: **Category B1**; **P@371**	
2.	(1999) 6 SCC 464: MI Builders	Unauthorised Construction: Court should order demolition of such construction even though builder invested considerable amount	
3.	(2010) 2 SCC 27: Priyanka Estates International Pvt. Ltd.	**¶49-50** & 55-62; **IMP: 50:** Seal of Approval for such illegal activities is not required to be given by this Court	
4.	Doctrine of Repugnant:	Article: 254: Inconsistency between laws made by Parliament and laws made by the legislature of state: **Proviso-** E(P) Act, 1986-EIA Notification, 2006 ≠ MRTP, 1966-DCR	

Therefore, this Hon'ble NGT shall order the demolition without hesitation as this Hon'ble NGT cannot regularise the illegal construction being a prohibited activity under EIA Notification, 2006 as such illegal constructions are adversely affecting the rights of public at large and stand of the PP & societies for their hard earned money and large investments in projects are meaningless as per MI builder case and ratio laid down by the Hon'ble Supreme Court not providing any leniency to the illegal & unauthorised construction.

3.3 PRIOR CTE & CTO IS MANDATORY AND NO CTE & CTO IS OBTAINED: That the provisions of the Water (P&CP) Act, 1974: S. 25 & 26 "*no person shall, without the previous consent of the state board*" and Air (P&CP) Act, 1981: S. 21 "*no person shall, without the previous consent of the state board*", mandates prior CTE & CTO. However, PP failed to obtain the same for this change in scope of the project with huge expansion in the project. Therefore, this illegal construction cannot state in the eyes of law and only demolition is the solution.

OA	PP Affidavit	Rejoinder
Illegal Construction without prior CTE & Operations without CTO **¶3: P@8-9** **¶8: P@8-9** **¶Table-1; Sr. 1-45(x) P@9-24**	Not have valid CTE & CTO for this project **¶21**: Provisions of Water Act, Air Act not attracted to residential project and it is no industry, operations or process **¶22**: CTE; 10.04.2006 & 08.07.2009 **¶23**: allegations are false **P@1586-1589**	CTE: 10.04.2006 is only for township of bungalow development and thereafter, PP obtained revised CTE: 08.07.2009, which was valid upto five years of commissioning, whichever is earlier i.e. 07.07.2014. Said CTE is only for 30658 M^2. Both these Consents are not for the present configuration of construction.

3.4 SEIAA & MPCB-SHOW-CAUSE NOTICES, PROPOSED DIRECTIONS, FINAL DIRECTIONS, STOP WORK NOTICES:

Description	Date	Page
MPCB Site Visit	30.08.2018	1183–1184
MPCB Proposed direction, #Blatant violations: No EC, No CTE, NO CTO, No CGWA NoC, No STP, No OWC,	03.09.2018	1187–1188
MPCB Hearing Minutes	10.09.2018	1190-1194
SEIAA Show Cause notice	12.06.2019	2561–2564
MPCB Site Visit	09.01.2023	1891-1892

3.5 PMRDA/COLLECTOR BUILDING PERMISSIONS: CONDITIONAL CC, PCC & OCC:

A) **Conditional Commencement Certificates**:

Sr.	Sanction Date	Sanction No.	Total Plot Area (M^2) PMRDA	TBUA (M^2) PMRDA	TBUA (M^2) OA	Flats PMRDA
1.	20.01.2006	PRA/NA/SR/123/06 Bungalows	159000.00			273
2.	07.09.2010	PMH/TS/SR/355/08 Bungalows	242388.81			
3.	31.03.2012	PMH/TS/SR/21/2012 Sectors Layout	584335.00			
4.	10.09.2012	PMH/TS/SR/30/2012 Sectors Layout	108009.24			
5.	03.08.2013	PMH/TS/SR/14/2013 Amenity Building-Primary School				
6.	08.11.2013	PMH/TS/SR/29/2013 Sector R-29	38123.43	68030.60	**82817.25**	
7.	04.06.2014	PMH/TS/SR/10/2014 Dispensary Building				
8.	05.06.2015	PMH/TS/SR/11/2014 Sector R-22 to R-28		77148.31		
9.	29.12.2015	PRH/TS/SR/25/2015 Essential Shopping & Vegetable Market				
10.	29.12.2015	PRH/TS/SR/26/2015 Sector R-1 to R-29	584335.00			
11.	30.09.2016	BMU/CR-811/16-17 Sector R-22 to R-28		75211.66	**107336.98**	1552
12.	20.10.2016			68030.60		1568
13.	**Total**		**584335.00**	**143242.26**	**190094.23**	**3120**

B) **PP MISLEADED ON ACCOUNT OF THE TOTAL LAND AREA ETC**: I state that, the PP has misleaded on account of the total land area, area not proposed for development, area under township development, required green space area as per rule no. 5.2, proposed green space area, area under slope more than 1:5, balance net area under actual township development and floor space area etc. **(¶19(d); P@43)**

Sr.	Area Statement	PMH/TS/SR/355/08 07.09.2010	PMH/TS/SR/21/2012 31.03.2012	PRH/TS/SR/26/2015 29.12.2015
1.	Total Land Area	686415	686415	686415
2.	Area Not Proposed For Development		102080	102080
3.	Area Under Township Development		584335	584335
4.	Required Green Space Area As Per Rule No. 5.2	343207.50	292167.5	292167.5

5.	Proposed Green Space Area	343233.82	292338.58	292244.66
6.	Area Under Slope More Than 1:5	83456.58	83456.58	83456.58
7.	Balance Net Area Under Actual Township Development		500878.42	500878.42
8.	Floor Space area (Maximum 50% of No. (7)	300342	250439.21	250439.21

C) **Plinth Check Certificates (PCC)**:

Date	PCC Details	Pleadings & Page
04.07.2014	PCC #Buildings A-1 to A-13 on Sector R-29;	¶35; P@12 r/w 22(b); P@56, PCC: P@1031-1033
01.09.2014	PCC #buildings A-14, A-15, B-1, B-2, B-3, B-6, B-7, B-8, C-2, C-3, C-4, C-5, C-6 & C-7 on Sector R-22 TO R-28;	¶35; P@12 r/w 22(a); P@55, PCC P@**1041-1042**

D) **Occupancy Certificates (OCC)**:

Date	CCC Details	Flats	Pleadings & Page
07.11.2016	OCC #buildings A14, A15, B1, B2, B3, B6, B7, B8, C2, C3, C4, C5, C6, C7, D1, D6	1552	**OCC: P@1626-1628**
27.01.2017	OCC #Buildings A8, A11, A12 on Sector R-29;	384	¶36; P@12 r/w 22; P@56, OCC P@**1629-1631**
29.01.2016 01.02.2017	OCC #Buildings A-1, A2, A3, A4, A5, A6, A7, A9, A10, A13 on Sector R-29;	1184	¶36; P@12 r/w 22; P@56, OCC P@**1632-1639**
	Total	3120	

3.6 ILLEGAL HILL CUTTING & EXCAVATION, ILLEGAL TREE FELLING AND NO REQUISITE TREE PLANTATION:

Sr.	Description	Quantity	Page
1.	CTE: 10.04.2006 Quarrying of activities Condition No. -3(3):	No quarrying activities without permission, No quarrying on forest land, no export of quarry material out side	P@128
2.	CTE: 10.04.2006 Quarrying of activities Condition No. -3(4):	There shall not be felling of trees whether on forest, government, revenue or private land except as per prevailing rule	P@128
3.	Condition No. -3 (12) (c)	Cutting of tree is not permitted, however in unavoidable conditions necessary permission from the local body shall be obtained	

4.	CTE: 08.07.2009 Quarrying of activities Condition No. -3(3):	No quarrying activities without permission, No quarrying on forest land, no export of quarry material out side	P@1610
5.	CTE: 08.07.2009 Quarrying of activities Condition No. -3(4):	There shall not be felling of trees whether on forest, government, revenue or private land except as per prevailing rule	P@1610
6.	Sanction plan no. 04 of 04 granted by Collector of Pune vide no. PMH/TS/SR/21/2012 dated 31.03.2012	major part of the project site is hill top-hill slope area site having slope of more than 1:5 and area under slope more than 1:5 is **83456.58** Sq. Mtrs. as admitted	P@40 r/w P@524
7.	PP has procured 9 permissions from the learned Tehsildar of Paud Mulshi for excavation	Total quantity of excavation of minor minerals permitted by Learned Tehsildar Mulshi is =9 x 99= 891 brass = 2.835 x 891= 2575.88 Cu. Mtrs.	P@41 r/w P@400-417
8.	¶18(e): From the site condition and Google earth images, there is substantial hill cutting and excavation in illegal manner	Surface area of excavation and hill cutting=**133107.58** M^2 Excavation Quantity**= 520739.75 M^3**	P@41 r/w P@1392-1396
9.	PP has made hill cutting and excavation of **520739.75 Cu. Mtrs.** against the permission of **2575.88 Cu. Mtrs.** from Tehsildar		P@42 r/w P@21, 32, 47, 51, 65
10.	Proposed Trees plantation	Trees to be planted 17969 on RG Area of 3,59,386 Sq. Mtrs.	P@879,
11.	¶25(f): **FELLING OF TREES AND NO TREE PLANTATION: e.** PP has made felling of tick wood trees and other indigenous species more than 50000 without permission		P@63 r/w 21,
12.	Google Images		P@1350-1369 P@1370-1389
13.	SEAC 68th meeting to *"9. Submit a note on the existing trees, trees to be cut, trees to be transplanted and trees to be planted (nos., size, age, and species) as per MoEF guidelines. There is deficiency in ecology and BD in fauna which needs to be redone and report submitted."*		P@1006

3.7 NON-SUSTAINABLE DEVELOPMENT: SEAC 60TH MEETING: NO DEVELOPMENT BY HILL CUTTING, CONTOUR MAP AND DCR PROHIBITS CONSTRUCTION BY HILL CUTTING: That the DCR provisions dated 12.11.2013 does not permits the construction on land having slope more than 1:5 and by hill cutting. However, despite legal prohibition under DCR, conditions imposed by SEAC in its 60th meeting, PP have cut

the hill having slope 1:5 and carried out the illegal construction in this activity is non-sustainable and needs demolition.

Sr.	Description	Remark & Page No.
1.	OA Pleadings: **Slope 1:5**	¶18(a) P@40, ¶19 (d) P@43,
2.	OA Pleadings: **Hill Cutting**	*Hill Area=83456.58 M^2 ¶7(b) P@7, *Hill Cutting Area=133107.58 M^2 ¶45(d) P@21 *Hill area, Development is not possible ¶16(b) P@39, 18(a)-(f) P@40-42
3.	OA Pleadings: **Non-sustainable development**	¶37 P@13, ¶45(u) P@23, ¶20(i)#Table-Sr. No.8 P@47, ¶28 (l) P@72, ¶42(D) P@81
4.	Minutes of SEAC 60th Meeting	**Condi. No. 6**: Topography, Restrict Hill Cutting, & **Condi. No. 9**: Submit layout plan superimposed on contour map indicating "**No Development Zone**" **P@606**
5.	Minutes of SEAC 68th Meeting	Condi. No. 8: **Sustainable Model** P@ 1006
6.	Contour Map	¶2.4 Site Setting, 665 M above Sea Level, #Highest Elevation =165 M #Lowest Elevation 40 M; #Contour Map-Fig-2.2 P@666-667
7.	DCR: 12.11.2013	¶Sec. 11.1 No piece of land shall be used as a site for the construction of building ¶Sec. 11.1 (o) If the site is hilly and having gradient more than 1:5. **P@ 3279** ¶Sec. 14.4 Non-Conforming Uses: except in Hill Top-Hill Slope Zone of any plan, **P@ 3280** ¶41.0. Mining or Quarrying Operations ¶ v) Hill tops and hill slopes from which rain water flows should not be allowed to be used for mining and quarrying. ¶ v) The natural landscape and **environment** are not to be adversely affected. **P@ 3281**
8.	PP Reply	¶ 29 P@1593: No rebuttal to illegal hill cutting,
9.	MoEF/SEIAA/MPCB/PMRDA Stand	No Reply
10.	**Actual Status**: That the PP have illegally cut the hill/hill slope of 1:5, which is prohibited under DCR as well as SEAC imposed such condition	

	for not to make development on "no development zone". However, PP have ignore the mandate of law and carried out the illegal construction in prohibited area and therefore, this development is not sustainable development and liable for demolition. That this Hon'ble Court shall not ignore the land sliding threat which will put life of resident in danger situation. This Hon'ble NGT needs to issue direction for demolition.

3.8 ILLEGAL GROUND WATER EXTRACTION: ADVERSE IMPACT ON GROUND WATER & NO GROUND WATER TEST:

Sr.	Description	Page
1.	¶25(a) FRESH WATER REQUIREMENT & ILLEGAL EXTRACTION OF GROUND WATER-	P@60, 61 r/w 15, 19, 21, 38, 40, 68, 81
2.	**CTE: 10.04.2006; Ground Water extraction, Condition No. -3(5) :** Extraction of ground water shall require prior permission from SGWA or other relevant authority, as applicable	P@128
3.	EC: 27.12.2006; Condition No. xii; Ground water level monitoring	P@398
4.	**MPCB SITE VISIT REPORT DATED 30.08.2018,** **(10)** PP has informed that water source is well water & 04 Nos. of bore wells.	P@1183-1184
5.	MPCB Site Visit: 09.01.2023; (8) Water supply is from dug well of nearby 4 nos. of farmers. PP has installed water treatment plant	P@1892

3.9 NON-INSTALLATION OF REQUISITE STP, INADEQUATE CAPACITY & ITS UNSCIENTIFIC OPERATIONS:

Sr.	Description	Page
1.	¶25(b) **Sewage generation & STP Installation**-	¶Table-1; ¶25 P@11, ¶Table-1; ¶45(f) P@21, ¶25(b) P@61,
2.	**MPCB SITE VISIT REPORT DATED 30.08.2018,** **(6)** PP has provided STP & same is in operation having **capacity 600 KLD** consisting bar screen, collection tank, aeration tank, tube settle, sludge tank, filter tank & treated tank. Not provided dying beds & treated tank & Treated water used for flushing & gardening	P@ 1183-1184
3.	**MPCB PROPOSED DIRECTIONS DATED 03.09.2018: (5)** You have not provided sludge drying bed in STP	P@1187-1188
4.	12.01.2019: Site Photographs taken by applicant	#unscientific STP, P@1283-1315

		#Seepage of sewage water into water body & forest land (21/63); P@1293, #Illegal Structures in forest Land; (30/63, 35/63); P@1297 #Pit/Lagoon-Sewage Water (42/63, 45/63); P@1303
5.	**SEIAA ToR: 25.09.2023;** Sewage Generation: 1579 m3/day; **STP Required:** 1600 m3/day	**¶27:** P@2673
6.	**MPCB Affidavit: Actual Installed** STP: 1360 CMD (630 CMD + 730 CMD)	¶2(viii) P@1874 #STP not adequate and not in scientific operation and also, STP is installed by encroaching on forest land

3.10 DAMAGE TO FOREST LAND: Discharge of sewage into open pit excavated on forest land and then discharge into forest land through water body originating at project site and Encroachment on forest land:

Sr.	Description	Page
1.	**OA Pleadings: Forest Land**	¶f P@21, ¶i P@21, ¶9 P@24, ¶d P@50
2.	Reserved forest land on Survey No. 4, 5, 8, 55, 60, 61, 62, 66, 67, 88, 99, 101A of Village Kasarsai	Sr. No. 62-Forest P@84
3.	Reserve forest land on Survey No. 67, 71 & 72 of Village Marunji	Sr. No. 71 & 72-Forest P@85
4.	Reserve forest land on Survey No. 55 & 56 of Village-Dattawadi	Sr. No. 55 & 56-Forest P@86
5.	PP excavated the pit (Kaccha Lagoon) on Survey No. 62 of Kasarsai and discharged sewage water into it and dumped construction waste on the same and it is clear cut encroachment on the forest land and thereby PP has caused serious damage to the forest land and wild life	P@1390
6.	**MPCB SITE VISIT REPORT DATED 30.08.2018, (7)** Near STP one pit was found in erected condition which was found with partial sewage & in septic condition	P@ 1183-1184
7.	March-2006: EIA Report ¶4.5.2: Ecological Setting: No Forest or reserve forest in project area: **P@280** ¶9: Water will be drawn from bore well; **P@316** **#**EIA Report does not discloses the details of existing trees & excavation details, forest land sharing boundary of project. **It is suppression**	
8.	12.01.2019: Site Photographs taken by applicant #unscientific STP, P@1283-1315 #Seepage of sewage water into water body & forest land (21/63); **P@1293** #Illegal Structures in forest Land; (30/63, 35/63); **P@1297**	

	#Pit/Lagoon-Sewage Water (42/63, 45/63); **P@1303** #Solid Waste-Dumping & Burning (48/63, 49/63, 50/63, 51/63, 52/63, 53/63, 54/63, 55/63, 56/63, 57/63, 58/63, 59/63, 60/63, 61/63, 62/63, 63/63); **P@1306**

3.11 10% RG AREA/OPEN SPACE/GREEN BELT AS PER CPCB NORMS IS NOT DEVELOPED AS PER NORMS:

Sr.	Description	Remark & Page No.
11.	OA Pleadings	¶45 (k) P@22, ¶13 (f) 15 P@33, ¶15 P@28, ¶20 (b) 12 P@49, ¶25(f) P@68,
12.	EC: 27.12.2006	¶ (x) P@398
13.	CTE: 10.04.2006	¶3(12) (d) P@129
14.	PP Reply	No reply
15.	PP-Application for EC:04.09.2012	Trees: 17969, RG Area:359386 M^2, P@878-879
16.	PP-Ex-post facto ToR: 25.09.2023	RG Area: 11876 M^2 P@2673
17.	MoEF/SEIAA/MPCB/PMRDA Stand	No Reply
18.	**Actual Status**: There is no plantation to the tune of 17969 as of local species well as no development of an RG Area to the tune of 369386 M^2. Moreover, PP have reduced this Area to 11876 M^2 and this proposed RG area of 11876 M^2 is not as per the norms as well as there is no green belt development.	

3.12 NON-INSTALLATION OF OWC & NO SCIENTIFIC OPERATIONS; SOLID WASTE IS <u>BURNED</u> OPENLY:

Sr.	Description	Remark & Page No.
1.	OA Pleadings	¶Table-1 Sr. 26 P@11, Sr. 42 P@17, ¶44 (7) P@19, ¶45 (l) P@22, ¶12 (b) 13 P@28, ¶13 (a/f) P@31/33, ¶20 (b) 11 P@48, **¶25(c) P@61**,
2.	EC: 27.12.2006	¶ (viii) P@398
3.	CTE: 10.04.2006	¶3(9) P@128
4.	PP Reply	No reply
5.	PP-Application for EC:04.09.2012	Pre-construction and construction phase is 24.86 MT/day Operation Phase Dry waste MT/day:- 1.64 TPD Wet waste MT/day:- 10.09 TPD Quantity of waste oil – The quantity of waste oil from DG sets would be 22,016 lit/annum. Bio medical waste (kg/month):0.163 TPD STP sludge (Dry sludge) kg/day: 0.89TPD P@877
6.	PP-Ex-post facto ToR: 25.09.2023	Wet waste: 2632Kg/day : OWC, P@2673

7.	MPCB Stand	¶viii: 3 No. of OWC, Not in Operation, P@1874
8.	Actual Status: 12.01.2019: Site Photographs taken by applicant #Solid Waste-**Dumping & Burning** (48/63, 49/63, 50/63, 51/63, 52/63, 53/63, 54/63, 55/63, 56/63, 57/63, 58/63, 59/63, 60/63, 61/63, 62/63, 63/63); **P@1306**	

3.13 NON-PRESERVATION OF TOP LAYER OF FERTILE SOIL & NO SOIL TEST:

Sr.	Description	Remark & Page No.
1.	OA Pleadings	¶45 (h) P@21, ¶12 (b) 25 P@29, ¶13 (f) 17/18 P@33, **¶25(g) P@64**,
2.	EC: 27.12.2006	¶ (ii) P@396,
3.	CTE: 10.04.2006	¶13 P@131
4.	PP Reply	¶29 P@1593; Top soil used for land scaping
5.	PP-Application for EC:04.09.2012	¶30 P@612: 15 cm top layer of soil will be preserved
6.	PP-Ex-post facto ToR: 25.09.2023	¶1.8 P@ 2578-2579
7.	MoEF/SEIAA/MPCB/PMRDA Stand	No Reply
8.	**Actual Status**: No top soil is preserved, no testing for soil contamination and said top soil layer is used for construction of Pit/Lagoon in this Sewage waste water was stored as shown in Google image at P@1390.	

3.14 NON-INSTALLATION OF RWH & NO SCIENTIFIC OPERATIONS:

Sr.	Description	Remark & Page No.
1.	OA Pleadings	¶45 (m) P@22, ¶20 (b) 9 P@48, ¶13 (f) 17/18 P@33, **¶25(g) P@64**,
2.	EC: 27.12.2006	¶ (v) P@397,
3.	CTE: 10.04.2006	¶3(8) P@128
4.	PP Reply	¶24 P@1593; no permission imposes such condition
5.	PP-Application for EC:04.09.2012	¶26 P@875: No. of Rain water harvesting tanks: 3 with 630 kl capacity Size, No. of recharge pits and Quantity : 307 Nos. of recharge bore wells
6.	PP-Ex-post facto ToR: 25.09.2023	¶26 P@2673: No of Recharge Pits: 7
7.	MoEF/SEIAA/MPCB/PMRDA Stand	No Reply
8.	**Actual Status**: No RWH System installed at site, stand of PP is false & misleading and out of frustration. Rain Water from roof top & project site is directly discharged to the Nalla passing through forest land	

3.15 NON-INSTALLATION OF SOLAR SYSTEM FOR ENERGY CONSERVATION:

Sr.	Description	Remark & Page No.
1.	OA Pleadings	¶13 (f) 21 P@33, ¶Table:45(n) P@22, **¶25(e) P@62**,
2.	EC: 27.12.2006	¶ (xiii) P@398,
3.	CC:30.09.2016	¶24 P@1083
4.	PP Reply	¶24 P@1591; none of the permission imposes such condition to install solar panels
5.	PP-Application for EC:04.09.2012	¶32 P@879: *Details of calculation and % of saving: 10%
6.	PP-Ex-post facto ToR: 25.09.2023	¶32 P@2673: Details of Energy saving: -
7.	MoEF/SEIAA/MPCB /PMRDA Stand	No Reply
8.	**Actual Status**: PP is misleading on this issue of solar panel installation. However, EC Condition, EC Application, Commencement Certificate etc. imposes condition for installation of solar panels for energy saving.	

3.16 AIR POLLUTION BY VEHICLES AND ILLEGAL INSTALLATION OF DG SETS & ITS ILLEGAL OPERATIONS:

Sr.	Description	Remark & Page No.
1.	OA Pleadings	¶Table:45(j) P@22, **¶25(d) P@62**,
2.	EC: 27.12.2006	¶(vi) P@396, ¶(ii) P@397
3.	CTE: 10.04.2006	¶5 P@129
4.	PP Reply	¶30 P@1593; DG Sets No. 2 installed,
5.	PP-Application for EC:04.09.2012	¶32 P@879: *625KVA=8 Nos & 500KVA=3 Nos. Vehicles: Sector-29 Car: 836, Two Wheelers: 4863 Sector-22 to 28 Case: 164, Two Wheelers: 2952,
6.	PP-Ex-post facto ToR: 25.09.2023	¶31 P@2673: * 1 x 500KVA, 1 x 125 KVA
7.	MoEF/SEIAA/MPCB/PMRDA Stand	No Reply
8.	Actual Status: That the installation of the DG sets must be approved by the grant of permission. However, PP failed to obtain necessary EC & CTE, CTO for this Installation of DG Sets.	

3.17 CONDITIONS IMPOSED IN COMMENCEMENT CERTIFICATE FOR ENVIRONMENT PROTECTION, UNDERTAKINGS NOT COMPLIED BY PP AND NON-INSTALLATION OF REQUISITE ENVIRONMENT

INFRASTRUCTURE: **HON'BLE NGT TO FORFEIT BANK GUARANTEE**:

Sr.	Description	Remark & Page No.
1.	OA Pleadings	¶Table-1 (38) P@13, ¶23 P@57, ¶24 P@59, ¶42 P@82
2.	Undertaking: 19.05.2010	P@462-464; BG **Rs. 97,50,000**/-
3.	CC: 07.09.2010	¶7, 15, 17, 18, 19, 25, 27; **P@ 465-474**
4.	CC: 07.01.2012	¶4, 6, 16, 18, 19, 20, 26 29; **P@491-499**
5.	Undertaking: 06.03.2012	P@511-513; BG **Rs. 51700000**/-
6.	CC: 31.03.2012	¶4, 6, 16, 18, 19, 20, 26, 29; **P@514-523**
7.	CC: 29.12.2012	¶2, 4, 10, 11, 12, 14,16; **P@1053-1056**
8.	CC: 30.09.2016	¶ 22, 23, 24, 25, 29; **P@ 1079-1085**
9.	PP Reply	No reply
10.	Collector of Pune/ Town Planning/ PMRDA Stand	No Reply
11.	Actual Status: That these conditions imposes installation of Environment Infrastructure as well as provisions of sustainable development, i.e. **CC: 07.09.2010**: Obtaining prior EC, STP Installation, Solid Waste Treatment facility, Rain Water Harvesting, Fresh Water Supply Arrangement, Compliances of EC & Consents, RG Area Development, **CC: 07.01.2012, CC: 31.03.2012 & CC: 29.12.2012**: 10 % RG Area/ Open Space, prior EC, STP, Solid Waste, Land Filling, Municipal Waste Handling, Fresh Water Supply & Rain Water Harvesting, Green Spaces etc. **CC: 30.09.2016**: Wet & Dry Waste Treatment, Plantation of One tree per 80 M^2, **Solar System Installation** etc. However, PP have misleaded in its Reply Affidavit and there is no prior EC, CTE, CTO as well as installation of Environmental Infrastructure accommodating the pollution load of present project configuration. Therefore, PP have violated the conditions of Commencement Certificate mandating installation of Environmental Infrastructure for sustainable development. This Hon'ble NGT may kindly forfeit the Bank Guarantees.	

3.18 VIOLATION OF BIOLOGICAL DIVERSITY ACT, 2002 r/w INDIAN WILDLIFE (PROTECTION) ACT, 1972, FOREST (CONSERVATION) ACT, 1980 AND SERIOUS DAMAGE TO BIODIVERSITY: That, the SEAC in its 68th meeting held on 12.03.2013, while apprising the proposal of PP directed him to submit the Report on "ecology & BD" as stated in condition No. 9 as below;

"9. Submit a note on the existing trees, trees to be cut, trees to be transplanted and trees to be planted (nos., size, age, and

species) as per MoEF guidelines. There is deficiency in ecology and BD in fauna which needs to be redone and report submitted."

Sr.	Description	Remark & Page No.
1.	OA Pleadings	¶3 P@5, **¶26 P@65**,
2.	EC Application: 24.06.2006	¶4.5.2: No Forest or reserve forest
3.	EC Application: 24.06.2006	**¶3.10 P@256**: Teak Wood (genus Tectona grandis) and Sandal Wood (Santalum album) listed from reserve trees as per the Maharashtra Felling of Trees (Regulation) Act 1964 and this is admitted fact by PP ¶Table 4.5a **P@280**, 4.5b P@281, 4.5c P@281, and 4.5d P@282; Biologically protected species: **P@280-283**,
4.	SEAC 65th Minutes: 12.03.2013 *"There is deficiency in ecology and BD in fauna which needs to be redone and report submitted"*	¶Condition No. 9; **P@1006**
5.	EIA Report: 2013	¶Table 3.14 P@703: Plant Species ¶3.11.2 P@704: Species composition & composition ¶Table 3.18 P@708: Wild boar, Monkey, Barking-Deer, Jackal, Hare (Lepus) from Mammals class, Krait, Frogs, Viper from reptile class and Bulbuls, mayena, Sunbirds, Cuckoo, Golden Oriole from Birds
6.	PP Reply	No Reply
7.	MoEF/SEIAA/MPCB/PMRDA/GoM Forest Dept. Stand	No Reply
8.	**Actual Status**: That the PP himself have made contradiction in the data submitted in 2006 & 2013 for obtaining EC, That the facts shows that there is substantial irreparable disturbance by the PP with ecology & biodiversity and PP failed to obtain prior permission for project from competent authority.	

3.19 IRREPARABLE DAMAGE TO THE ENVIRONMENT & ECOLOGY: EMPIRICAL DATA ADMITTED BY PP: That this Original Applicant have claimed EDC for restitution and restoration of environment & ecology to the tune of Rs. 1500 Crores in **¶28 (a) to (n) P@67-72** of Original Application. That

the said EDC amount has been increased as calculated in below para due to illegal operations of the project without requisite infrastructure and without having prior permissions.

3.20 PRAYERS IN OA: That the project under challenge is the township & area Development project which is not sustainable development and the deterrence shall be only in Demolition of illegal construction as solution, Moreover, EDC for restoration & Restitution to the tune of Rs. **2442.63 Crores** shall be recovered from R-16 & 17, forfeiture of remaining benefits form the project and also, handing over of vacant flats and land to the MoEFCC for establishment of environmental research institution etc. and in facts & circumstances of case actions against erring officers needs to be taken for end of justice & for abuse of process of law etc. This Hon'ble NGT may kindly consider these prayers as suggestions while passing final order in OA.

4. LEGAL NOTICE & COMPLAINT TO THE RESPONDENTS:

That the Original Applicant have lodged complaints to the competent authorities dealing in the issues of abetment of pollution and however, except MPCB none of the Authority taken cognizance of the complaints and unbridle and uncontrolled situation has been arisen;

Sr.	Govt. Authorities	Complaint date	Page No.
1.	Complaint	30.08.2018	
2.	Notice/Complaint to Respondents from OA	01.03.2019	P@2480-2533
3.	Police	05.03.2019	P@2534-2552
4.	Police	18.03.2019	P@2553-2560
5.	Police	19.06.2019	P@2566-2567

That the SEIAA and MoEFCC are the most negligent authorities in taking cognizance on complaint for

environmental violations. After Goel Ganga Case, in number of cases this negligence of the SEIAA & MoEFCC have been reported to this Hon'ble NGT also, but this Hon'ble NGT is also no taking any action on erring officials. That the duty of the Applicant or any citizen is to report the crimes/offences/violations to the government authorities and Authorities are duty bound to take legal action against the defaulter of law. But this Original Applicant has come to know that the complaints/notices of citizens are used by Government Officials for their well-known business of settling their own score of corruption or malpractices.

5. EIA REPORT OF 2006, 2012 AND 2012 SHOWS DAMAGE TO THE ECOLOGY AND SUPPRESSION, MISMATCH AND MISLEADING OF PP APPLICATIONS DATED 04.09.2012 (CONSOLIDATED STATEMENT, MARCH-2013) AND 16.02.2022 FOR TOR & SEEKING EX-POST FACTO EC: That the PP has filed Application in 04.09.2012 (**P@527-592**) and when this PP exposed for violations by way of complaint & proceeding in OA then applied on 16.02.2022 (**P@2568-2618**) for procuring ex-post facto EC under MoEFCC Office Memorandum dated 07.07.2021 with Admitted Empirical Data and PP have admitted the blatant violation. That the following parameters shows there is mismatch, suppression and misleading of facts & data by PP in its various Application seeking EC, Consolidated Statement (CS) and EIA Report;

Sr.	Parameters	EC:2007 (EC-P@395) (EIA-P@224)	EC Appli:2012 (CS-P@872)	ToR:2022 (P@2670)
1.	Land Area	98.28 Ha	821512 M^2	117232 M^2
2.	Hill Area		83456.58 M^2	
3.	Area Under Development	48.64 Ha	738353 M^2	
4.	TBUA proposed (M^2)		479930 M^2	175879 M^2
5.	Ground Coverage		24.66%	17987.63
6.	Project Cost	25 Crore	556 Crores	347 Crores

		(P@213)		
7.	Bungalows	1000	282	
8.	Building		41	29
9.	Flats		5520	3120
10.	Residents-Residential		23014	7276
11.	Residents-Commercial		10064	
12.	Fresh Water	50 CMD	2640	1974
13.	RWH-Pits		307	7
14.	Sewage Generation	38 CMD	3568 CMD	1579 CMD
15.	STP		3654	1600 CMD
16.	Waste Generation-Construction Phase		24.86 MTD	
17.	Waste Generation-Operation Phase; Dry	1.0 MTD	1.64 TPD	1754 KgPD
18.	Waste Generation-Operation Phase; Wet		10.09 TPD	2632 KgPD
19.	Waste Generation-Operation Phase; Bio-Medical		0.163 TPD	
20.	Hazardous Waste		22016 Lit/Annum	
21.	STP Sludge		0.89 TPD	
22.	Green Belt (M^2)		359386	11876
23.	Trees to be planted		17969	
24.	Existing Trees		91	
25.	Energy Demand	250 KVA	44.49 MW	
26.	Parking Area (M^2)		1632272	32404
27.	Parking-Car			328
28.	Parking-Two Wheeler			7076
29.	Flora & Fauna	(P@142) (P@282)	P@701-710	Not Disclosed
30.				

6. REJOINDER TO STAND OF R-16 & 17-PP: 18.01.2023 & CASE LAWS:

I state that the reply affidavit of the PP is partly misleading, false, baseless and partly admitting the violations and following facts are shows the tactic played by PP to overcome the violations by supressing actual facts;

I state that, the PP have filed Application vide dated 16.02.2022 (**P@2568-2618**) seeking ToR under MoEFCC OM dated 07.07.2021 (**P@1987-1995**) admitting the violations and accordingly SEIAA have granted ToR vide dated

25.09.2023 (**P@2670-2681**), Therefore, it is admitted case of violation;

Sr.	OA	PP Affidavit	ToR r/w PP Application for ex-post facto EC and Rejoinder
	02.03.2019	18.01.2023	25.09.2023
1.	¶38: Locus, P@74 ¶39:Jurisdiction, P@77 ¶40:Cause of action, P@78 ¶41:Limitation, P@80	**¶3, 4, 5: preliminary objection: Limitation, Locus, Non-joinder of necessary party, plural remedies: IA NO. 01/2023**	OA is well within limitation, Applicant have locus, Societies are already party to OA and OA is based on single cause of action. Detailed reply is given above
2.	**¶Table-1; Sr. 1-45(x) P@9-24**	**¶6**, Allegation from OA	OA is not limited to the Allegation mentioned in **¶6** of reply affidavit.
3.	**¶7** of OA: PP responsible all violations from OA and PP have adopted careless & reckless practices	**¶7**, Background of PP	PP is misleading by creating wrong picture
4.	**ANNEXURE-A-1 to A-105 of OA P@84-1448**	**¶8**: Background of project **Exhibit-A to R** P@1582-1585	PP have supressed vital facts
5.	**¶Table-1; Sr. 1-33 P@9-11**	**¶9-10**, PP completed construction of 29 Buildings & 3120 flats P@1585-1586	PP have admitted violations
6.	Illegal Construction without prior EC **¶3: P@8-9** **¶8: P@8-9** **¶Table-1; Sr. 1-45(x) P@9-24**	Construction beyond scope and no prior EC obtained **¶11**: Envisaged development 2005-06 **¶12**: EC-27.12.2006 Plot: 97.28 ha, 1000 Bungalow, constructed area 48.60 ha **¶13**: EC Application: 02.12.2011 **¶14**:SEAC-60th Meeting **¶15**:CC-10.09.2012 **¶16**:EC Application: 12.06.2013; not pursued **¶17**:CC-20.10.2016 **¶18**:PP Application for ex-post facto EC 16.02.2022 under OM 07.07.2021 **¶19**:SEAC 137th meeting;30.03.2022 **¶20**: Followed procedure of grant of EC	PP procured ToR dated 25.09.2023 under OM dated 07.07.2021 admitting violation; **P@2670-2681** EC dated 27.12.2006 was to develop 1000 plot on 48.60 ha out of 97.28 ha and 48.60 ha is not built-up area of construction. PP have admitted violation. PP does not hold any EC for change in scope of project for its expansion of 29 buildings, 3120 flats, TBUA 190094 M^2 #PP supressing important document and PP have collusion with SEIAA officials & PS-DoE with help of environment consultant.

		P@1586-1589	
7.	Illegal Construction without prior CTE & Operations without CTO **¶3: P@8-9** **¶8: P@8-9** **¶Table-1; Sr. 1-45(x) P@9-24**	Not have valid CTE & CTO for this project **¶21**: Provisions of Water Act, Air Act not attracted to residential project and it is no industry, operations or process **¶22**: CTE; 10.04.2006 & 08.07.2009 **¶23**: allegations are false **P@1586-1589**	CTE: 10.04.2006 is only for township of bungalow development and thereafter, PP obtained revised CTE: 08.07.2009, which was valid upto five years of commissioning, whichever is earlier i.e. 07.07.2014. Said CTE is only for 30658 M^2. Both these Consents are not for the present configuration of construction.
8.	**Rain Water Harvesting** ¶Table-1;Sr.32: **RWH=** 3 Tanks, 307 RWP; P@11 **¶25(h)**; P@64	**¶24**: No condition for RWH; P@1590	**¶26: only** 7 No. of RWP proposed P@2673 RWH Not Installed
9.	Ground water extraction **¶45(g) P@21, ¶12(b-10) P@28, ¶17 P@39:**	**¶25:**Tanker-Construction; **P@1591** **#False Reply**	**¶25: water supply form** Irrigation Dept., P@2673 **#False information provided to SEIAA** No supply form Irrigation, GW extraction from bore wells & Dug well; MPCB site visit, MPCB PD
10.	**Solar System** ¶ Table-1; 45(n) P@22, ¶25 (e) P@62, ¶29 P@73, ¶42 (c) P@81	**¶26:** No condition, P@1591	¶32: Details of Energy saving: - P@2673 Not installed Solar System
11.	**Tree Felling & Plantation** ¶12(b-14) P@28, ¶13(f-12/13) P@33, ¶25(f) P@63, ¶26(a)P@65, ¶28(f) P@67,	**¶27:** planted adequate trees, P@1592	¶30: Green Belt - P@2673 Illegal Tree felling & no plantation to maintain ecological balance
12.	**Sewage generation & STP Installation** ¶Table-1; 25 P@11, ¶Table-1; 45(f) P@21, ¶25(b) P@61,	**¶28:** Installed STP, P@1592 **#No capacity is disclosed**	**Proposed: ¶27:** Sewage Generation: 1579 m3/day STP: 1600 m3/day P@2673 **Actual:** STP: 1360 CMD ¶2(viii) P@1874 STP not adequate and not in scientific operation

13.	**Solid Waste Generation & OWC Installation** ¶Table-1; 26 P@11, ¶Table-1; 45(l) P@22, ¶25(c) P@61, ¶12(b-6) P@28, ¶13(f-10/11) P@33,	**NO Comment**	**¶29:** Dry Waste: 1754 kg/day: Local Body Wet Waste: 2632 Kg/day: OWC; P@2673 ¶2(viii) P@1874 Three OWC installed, but not in operation MPCB Affidavit & site visit **#No capacity is disclosed**
14.	**Top Soil Not preserved** ¶Table-1; 45(h) P@21, ¶25(g) P@64, ¶12(f-22) P@29, ¶13(b-17/18) P@33,	**¶29:** Landscape & backfilling, P@1593	**No Comment in ToR** No preservation of Top fertile Soil
15.	**Illegal Hill Cutting & excavation** ¶Table-1;45(d) P@21, ¶18 P@40, **Permission:** 891 brass = 2575.88 Cu. Mtrs. **Actual Excavation:** 520739.75 Cu. Mtrs.	**¶29:** Landscape & backfilling, P@1593	**No Comment in ToR** Excavation Permission: A-15 P@400-417 Google Images: A-105 P@ 1392-1396
16.	**Illegal Operation of DG Set** ¶Table-1;45(j) P@22, ¶25(d) P@62, **7x500 kVA**	**¶30:** DG Sets are environment compliant, P@1593 #Suppression of actual DG Sets Installation, False & baseless information	**¶31:** **1x500 kVA** **1x125 kVA** False & Baseless information by PP
17.	**¶38: LOCUS TO FILE PRESENT APPLICATION; P@74**	**¶31:** Credentials, Correctness of information & information provided shall not be vague & indefinite	PP himself have admitted his violations by filed Application seeking ex-post facto EC under MoEFCC OM dated 07.07.2021, it is admitted case of violation. Therefore PP is creating nuisances as PP failed to make out the case and misleading & diverting attention of Hon'ble NGT from merit of case by making such false, frivolous & baseless allegations.

			These allegations are made out of frustration of PP as well as professional representing PP.
18.		**¶32-36:** Allegation from OA are dealt in reply and grievances raised in OA are fully answered, Applicant failed of make cogent & compelling case, IA for maintainability, bald allegations in OA, dismiss the OA.	These are copy paste paragraphs added by professional representing PP having no merit. As PP himself have admitted entire violations in totality no opportunity is required for additional affidavit or for production of documents as PP is guilty for ***suppressio veri suggestio falsi***.

OA is well within limitation under NGT Act, 2010: I state that, the PP have procured various sanction expanding the scope of project since 20.01.2006 to 20.10.2016 by increasing the plot area from 159000.00 to 584335.00, by increasing the BUA to the tune of 143242.26 and flats to the tune of 3120. Therefore, it was mandatory on part of the PP to obtain the prior EC, CTE, CTO etc. for this change in scope of project. However, PP failed to obtain the prior permissions of EC, CTE, CTO etc. for changed scope of project till 20.10.2016 and due to this expansion/ increase in scope of project, EIA Notification, 2006 mandates burden on PP for obtaining necessary permission. Also, on complaint of this Applicant, MPCB taken cognizance and issued proposed directions vide dated 03.09.2018, issued stop work order vide dated 10.09.2018. Therefore, OA filed on 02.03.2019 is well within the limitation of 6 months from issuance of proposed direction of MPCB vide dated 03.09.2018 and also, within 5 years from sanction dated 20.10.2016.

7. REJOINDER TO STAND OF R-7 & 8-MPCB: 19.01.2023:

I state that the following facts have admitted by the MPCB in its reply affidavit dated 19.01.2023 (P@1871-1982);

Sr.	Description	Parameter		Page
1.	Xrbia Hinjewadi Township **or** Megacity Hinjewadi **or** Silicon City	Sr. No. 36, 38/2, 38/3, 39, 40/1d, 42, 56, 57 Village-Dattawadi (Nere), and **Survey No. 52, 53, 54 of Village-Kasarsai**, Taluka-Mulshi, Dis.-Pune		P@1871
2.	¶2(i) MoEF, EC: 27.12.2006	Total Plot Area=97.28 Ha Total Plot Area for Construction=48.64 Ha		P@1872 P@1876
3.	¶2(ii) MPCB, CTE: 10.04.2006 **M/s. Nahar's Silicon City**	Development Area=97.28 Ha **Village: Dattawadi Nere**		P@1872 P@1881
4.	¶2(iii) MPCB, CTE: 08.07.2009 **M/s. Eiffel Developers & Realtor Ltd**., Silicon City	Total Plot Area: 100700 M^2 TBUA: 30,658 M^2 Survey No. 52, 53 & 54, Village: Dattawadi & Kasarsai, **#Scope of the project increased/expanded**		P@1873 P@1886
5.	¶2(iv) Completed Construction	Phase-I	Phase-II	Total
	Building Names	A-1 to A-13	A-14 & 15, B-1 to B-3, B-6 to B-8, C-2 to C-7, D-1 & D-6	P@1873
	Total Buildings	**13**	**16**	**29**
	Total Flats	**1558**	**1560**	**3120**
6.	¶2(v)Possession	All flats: MPCB Statement is vague and MPCB not provided details of empty flats.		P@1873
7.	¶2(vi) Handover of project to Society	PP not provided any MoU to MPCB		P@1874
8.	¶2(vii)Water Supply to Project	Dug Wells: 4 Numbers from farmer		P@1874
9.	¶2(viii)STP Installation: 2 Nos.	STP-I Capacity: 630 CMD STP-II Capacity: 730 CMD		P@1874
10.	¶2(viii)OWC Installation: 3 Nos.	**#Not in operation**		P@1874
11.	¶2(ix)Construction Activity	**#No Construction Activity**		P@1874
12.	¶3, Consent to Operate: CTO	**#Not Obtained, possession given**		P@1874
13.	¶3,Complaint by Original Applicant: 30.08.2018	30.08.2018		P@1874
14.	¶3, MPCB Proposed Direction	03.09.2018		P@1874
15.	¶4, Criminal Complaint	RCC NO. 5023/2019		P@1874
16.	¶5,TBUA/Architect Certificate	PP not provided any document to MPCB		P@1875
17.	MPCB site visit report	Violations are admitted		P@1891

I state that, the MPCB is the only authority have taken cognizance of the complaint of this Original Applicant and following due process have filed criminal prosecution against

PP vide RCC NO. 5023/2019 before Hon'ble CJM, Pune on 18.12.2019.

I state that, the MPCB affidavit clearly shows the blatant violations of PP, which constitute the substantial irreparable damage to the environment and ecology as there is no prior EC, CTE for expansion of project, illegal operations without CTO, and illegal ground water extraction without CGWA Permission. Non-operation of OWC and solid waste is directly burned in open filed causing substantial Air pollution (**P@1306-1314: Photographs dated 12.01.2019**).

8. REJOINDER TO STAND OF R-1-MOEFCC-22.02.2023:

I state that the affidavit of MoEFCC dated 22.02.2023 (**P@1893-1997**) is meaningless and might be filed on behest of PP as there is nothing case specific & concrete in this affidavit despite the First EC dated 27.12.2006 was granted by the MOEFCC;

Sr.	Description	Parameter	Page
1.	¶3, EIA Notification, 2006: Regulates Developmental Projects	#New Project/ Activities/ expansion or modernisation of existing projects	P@1896
2.	¶4, MoEFCC Notification, 14.03.2017	#ToR/EC for project started work on site, expanded the production beyond EC Limits, changed the product mix #PP could apply within 14.03.2017 to 13.09.2017 & 14.03.2018 to 13.04.2018 #Mandatory to obtain CTE/CTO independently **#PP not applied**	P@1897
3.	¶5, Appeal No. 34/2020; NGT Order 24.05.2021	**#MoEFCC to issue SoP to handle violations cases**	P@1899 P@1983
4.	¶6, MoEFCC-OM: 07.07.2021	**#MoEFCC-SoP:** Identification & handling of violation cases **under EIA Notification, 2006**	P@1901
5.	¶11, MoEFCC-Letter: 13.01.2023	#MPCB to Provide Joint Committee Report	P@1902 P@1996

I state that the MoEFCC is mute spectator and does not respect the judicial proceedings before this Hon'ble NGT. Further, I state that the MoEFCC being the principal authority to regulate the environmental statues in the country is acting against the environment. This Hon'ble NGT may kindly take judicial note of this conduct of MoEFCC for not clarifying the facts & circumstances on case to case basis and as such vague affidavit are filed.

9. REJOINDER TO STAND OF R-9-10-SEIAA 17.05.2023:

a) I state that the following facts have admitted by the SEIAA in its reply affidavit dated 17.05.2023 (**P@1998-2028**);

b) I state that the SEIAA reply affidavit is the copy paste of PP letter dated 16.02.2022 filed before SEIAA for consideration of the proposal for grant of ex-post facto EC, alleging the basis of Order passed by this Hon'ble NGT vide dated 10.02.2022 in M/s. Embassy Property Development Pvt. Ltd. case;

c) However, there is no such order passed by this Hon'ble NGT for consideration of proposal of this PP for grant of ex-post facto EC, but SEIAA by misinterpreting the order passed in M/s. Embassy Property Development Pvt. Ltd. has considered the proposal of R-16 & 17-PP and issued ToR dated 25.09.2023. Basically, Order passed by the Hon'ble NGT on 10.02.2022 is the opinion expressed by them and there is no direction issued to SEIAA for any consideration of proposal.

d) I state that, the SEIAA, PP & Environment Consultant have abused the process of Hon'ble NGT. That this entire misdeeds are having direct counterblast to the proceedings of OA No. 33/2019 (WZ). Therefore, this Hon'ble NGT may kindly take judicial note of conduct of SEIAA Officials & R-16-17-PP for abuse of process of NGT.

e) Further I state that, the dates & events on **P@2007-2009** shows the collusion of PP with SEIAA officials for misleading this Hon'ble NGT as well as admissions to the violations;

Details (All areas in m^2)	Sector R-22 to 28	Sector R-29	Total
Sector Area in m^2	79,109	38,123	1,17,232
FSI area in m^2	75,212	68,031	1,43,242
Non-FSI area in m^2	17,289	15,348	32,637
Total Construction Area	92,501	83,378	**1,75,879**
P@2006,			

f) I state that, the **Dates & Events at Page No. 2007 to 2009** are evident & admission to the violations committed by the PP and negligence of SEIAA, SEAC, SEAC-III and collusion between them.

g) **False Statement of SEIAA**: I state that, the SEIAA have made following false statement at **Para No. 7 in its affidavit at Page No. 2000**.

"7. The total construction of around 17.5 ha (1,75,879 m^2) was completed for residential sectors (R-22 to R-28 and R-29) in the year 2016-2017 **against the 48.64 ha (4,86,400 m^2) without EC**"

h) I state that, the area shown in EC dated 27.12.2006 to the tune of **48.64 ha (4,86,400 m^2)** is the land area available for the construction out of 97.28 ha and this is not the built-up area of construction permissible under EC dated 27.12.2006. Therefore, statement of the SEIAA as well as R-16 & 17-PP in this respect is totally false as compare to the Area Statement filed by PP while obtaining EC dated 27.12.2006 in its EIA Report at **P@232 & 249, 272, 321** as below.

"AREA STATEMENT

SR. NO.	VARIOUS REQUIREMENT OF PLOT AREA	AREA IN HECTORS
01.	Total plot area	97.28 Ha
02.	Total area available for construction as per approved plan	48.64 Ha

03.	Open Space/Recreational Ground/Green Belt	
04.	Public amenities	

i) The project area will consist of 1000 plots of various sizes for Bungalow with internal roads, streetlights, landscapes gardens, Plantations to boundaries of plots and Roads. Each plot will have its own septic tank and soak pit for sewage treatment. The entire Project area will have storm water drainages."

"**2.2.2 Land Use**

The proposed project plot is rectangular in shape with flat terrain and slope towards the northern side. The plot area is 53.30 Ha. The area statement is shown as below:

AREA STATEMENT

SR. NO.	VARIOUS REQUIREMENT OF PLOT AREA	AREA IN HECTORS
01.	Total plot area	97.28 Ha
02.	Total area available for construction as per approved plan	48.64 Ha
03.	Open Space/Recreational Ground/ Green Belt	
04.	Public amenities	

2.2.3 Approach and Accessibility"

j) Further I state that, the SEIAA in its various meeting held for granting of ToR has admitted the pollution load on the environment and ecology that is under degradation from PP.

10. REJOINDER TO STAND OF R-13-PMRDA-18.05.2023:

a) I state that the following facts have admitted by the PMRDA in its reply affidavit dated 18.05.2023 (P@2029-2040);

Sr.	Sanction Date	Total Plot Area (M^2)	TBUA (M^2)	Flats
1.	20.01.2006	159000.00		
2.	07.09.2010	242388.81		
3.	31.03.2012	584335.00		
4.	10.09.2012	108009.24		
5.	08.11.2013	38123.43	68030.60	
6.	05.06.2015		77148.31	

7.	29.12.2015	584335.00		
8.	30.09.2016		75211.66	1552
9.	20.10.2016		68030.60	1568
10.	**Total**	**584335.00**	**143242.26**	**3120**

b) **PMRDA Admitted TBUA of completed construction to the tune of 143242.26 M², Misleading Act**: I state that, as per sanctions issued by Collector of Pune as well as PMRDA shows total completed BUA is more than **190094.20 M²** and as per PP application for ex-post facto EC filed before SEIAA vide dated 16.02.2022, TBUA is **175879M²**. However, as per PMRDA affidavit dated 18.05.2023 completed construction TBUA is **143242.26 M²**. This is biggest discrepancy/suppression on part of PP & PMRDA and same is misleading to this Hon'ble NGT.

c) **PMRDA granted OCC only for 1936 and No Occupancy for 1184 flats out of 3120 flats sanctioned and completed**: I state that, the PMRDA in its affidavit 18.05.2023 at Para No. 13 (**P@2036-2037**) have stated that the PMRDA have granted Occupancy Certificate vide dated 07.11.2016 for 1552 flats and Occupancy Certificate vide dated 27.01.2017 for 384 flats. It means there is OCC only for 1936 flats out of total completed 3120 flats and there is no OCC for 1184 flats **out of 3120 flats sanctioned and completed**.

Sr.	OCC Date	Units	TBUA (M^2)
1.	07.11.2016	1552	76452.48
2.	27.01.2017	384	15357.56
3.	**Total**	**1936**	**91810.04**

d) That the issue raised by PMRDA on account of preliminary objection has been replied in Para "Dates & Events" above.

e) Therefore, I state that the PMRDA have also admitted this case as admitted case of violation and also, PMRDA have misleaded on account of limitation of OA.

11. **REJOINDER TO STAND OF R-18 & 19-SOCIETIES-02.08.2023**: That these Respondents Societies of flat purchasers have most of the violations of PP and then, requested for not to order the demolition. However, the settle position of law does not authorise this Hon'ble NGT to regularise the illegal & unauthorised construction under prohibited category of without prior EC, CTE & CTO. Also, this construction coming on hilltop/ hill slope having gradient of more than 1:5 as prohibited as per DCR. Therefore, there is no other alternative than the demolition. That this Hon'ble NGT is duty bound to fallow the law laid down by Hon'ble Supreme Court and as this construction is dangerous due to constructed due to large hill cutting and attracting land slide and we cannot wait to happen the "**Vaynad-Kerala Case**".

12. **OFFICIALS FROM GOVERNMENT AUTHORITIES ARE MUTE SPECTATORS AND NEEDS STRICT ACTIONS AGAINST ERRING OFFICIALS FROM GOVT. AUTHORITIES**: That the PP failed to obtain the prior Permission of EC, CTE & CTE, CGWA-NoC, NWLB-NOC, Forest Clearance, for this project. However, officials from Collector of Pune, Town Planning Department, UDD, SEIAA, MoEFCC, Irrigation/Water Resource Department, MPCB etc. closed their eyes and not taken any action on PP for his large scale construction project of Township & Area Development and this is professional misconduct, abuse of process of law & powers, etc. by the officials from these government authority. Moreover, the Chief Secretary as well as Forest Secretary for Government of Maharashtra also, failed to initiate inquiry as well as action on complaint dated 01.03.2019 of this Original Applicant. That the MPCB is the only department who have

filed criminal prosecution under provisions of Water (P & CP) Act, 1974 and Air (P&CP) Act, 1981. Therefore, this Hon'ble NGT may kindly take judicial note and pass appropriate order under Rule No. 24 of the NGT (P&P) Rules, 2011 for end of justice and avoid the abuse of process of law by the Government Officials and this order has to be passed under the facts & Circumstance of the case as held by the Hon'ble SC in MCGM Vs. Ankita Sinha & Ors..

13. **CARELESS & RECKLESS CONDUCT OF R-16 & 17-PP AND BENEFITS OF MOEFCC NOTIFICATION, 14.03.2017 NOT AVAILED AND SEIAA & PP ARE MISUSING MOEFCC SOP-OM 07.07.2021**: That the PP could avail this golden opportunity of getting ex-post facto EC. However, PP ignored to avail the same, which shows careless & reckless attitude of PP towards the environment protection. That the MoEFCC has issued the procedure for implementation of Notification dated 14.03.2017 by way of SoP through OM dated 07.07.2021. That, this OM is applicable to the proposals submitted under Notification dated 14.03.2017. that the PP have filed application dated 16.02.2022 under this OM dated 07.07.2021 and this is completely wrong procedure as this OM cannot support Application seeking ex-post facto EC as the PP failed to file Application under Notification, 14.03.2017 and now, EIA Notification, 2006 does not recognise the grant of ex-post facto EC. Therefore, PP is careless & reckless in adopting Environmental issues.

14. **EDC FOR RESTITUTION AND TOTAL PROJECT COST ADMITTED BY PP**: That the PP & other government authorities have admitted empirical data related to this project as disclosed in their affidavits and minutes of meeting of

SEIAA, MPCB, PMRDA etc. and detailed calculation of the EDC with bifurcations are as below;

14.1.1 EDC FOR ILLEGAL CONSTRUCTION WITHOUT EC: PP has carried out the illegal construction of 29 residential buildings, 1 commercial building, 1 club house, amenity buildings, electric substation, fire station comprising 3120 flats, 5 shops with total BUA of **190094.20** M^2 **(¶h, I, j; P@45**) excluding shops, club house, amenity building, electric substation, fire station without prior EC under EIA Notification, 2006 and committed violation causing irreparable damage to the Environment & Ecology. That the PP have carried out the illegal excess construction of more than **190094.20 M^2** as disclosed in PMC sanction dated 03.04.2023. In Goel Ganga Case, (2018) 18 SCC 257, Hon'ble Supreme Court have imposed 100/- Crores for illegal excess construction of 46000 M^2 (102000 M^2–56000 M^2) in violation of EC. So per square meter damages comes to the tune of Rs. 21739/. Total damages on account of illegal excess construction without prior EC is = 21739 x **190094.20 M^2 = Rs. 4132457813.8**/- i.e. Rs. **413.25 Crores**.

14.1.2 EDC ON ACCOUNT OF NOT OBTAINING CTE & CTO: That the PP have started construction of illegal construction with change in scope of project from 23.04.2009 as seen from Google Earth Image at P@1353, therefore there is no CTE from 23.04.2009 to till date i.e. 10.08.2024 and total Gap Days for not having CTE are **5584** days. Also, PP have procured first Occupancy Certificate (OCC) on 07.11.2016 and there is no CTO from 07.11.2016 to till date i.e. 10.08.2024 and total Gap Days for not having CTO are **2831** days. That the project is large scale construction project,

Project cost is more than Rs. 2000 Cores, population of Pune district is more than 10 Million, That as per the formula set out by the Hon'ble NGT & CPCB in "Parayavaran Suraksha Case", Environment Damage Compensation (EDC) on account of not obtaining CTE & CTO is as below;

EC= PI X N X R X S X LF						Total EDC Rs.
	PI	N	R	S	LF	
Not CTE	100	**5584**	500	1.5	1.25	523500000
No CTO	100	**2831**	500	1.5	1.25	265406250
	Total EDC for CTE & CTO in RS					**788906250**
PI	That the project is large scale construction project and project is falls under red category therefore Pollution Index is considered as 100.					
N	Number of days for not obtaining CTE are **5584 days** and for not obtaining CTO are **2831 days**					
R	Factor in Rupees, considering the magnitude of the project and Minimum Rs. 100 to Maximum Rs. 500 scale. It will suggest amount of Rs. 500/- for this project being large scale project					
S	Factor for scale of operation, the unit is being Large Scale Industry-LSI, S=1.5					
LF	Factor based on Population of Pune, Population is between 1 Million to 5 Million, LF=1.25					
Therefore, total EDC on account of not obtaining prior CTE & CTO is Rs. **788906250/-** i.e. **Rs. 78.89 Crores**						

14.1.3 PENALTY FOR NOT OBTAINING CTE & CTO: That as per the Circular of the MPCB vide letter no. BO/MPCB/AS(T)/Circular/B-220712FTS0047 dated 12/07/2022 to discourage the defaulting industries by adopting "Polluter Pays" principal by imposing appropriate cost of violation of provision of Environment enactments for violation. That the CTE & CTO fees will come to the tune of Rs. 500000/- as per the project cost & scale of the project. Therefore, penalty for Not obtaining CTE & CTO is as below;

Cost of Violation for CTE: Red Category = 5 times of one term consent fee X no. of years of violation = [5 X 500000 X (5584/365)] = **Rs. 38246575.34**/-.

Cost of Violation for CTO: Red Category = 5 times of one term consent fee X no. of years of violation = [5 X 500000 X (2831/365)] = **Rs. 19390410.95**/-

Therefore, total Penalty for not obtaining prior CTE & CTO is **Rs. 57636986.29**/- i.e. **Rs. 5.77 Crores**.

14.1.4 EDC ON ACCOUNT OF NOT OBTAINING CGWA PERMISSION AND ILLEGAL GROUND WATER EXTRACTION: That the PP is extracting ground water from Dug/Open Well & 4 bore wells as admitted by the MPCB in its Report dated 30.08.2018 in **¶10 P@1183-1184** and fresh water demand for this project as per the ToR granted by the SEIAA vide dated 25.09.2023 (**P@2670-2681**) is **1974 CMD** as stated at Sr. No. 23 of said ToR. That the PP have put his project under occupation from 07.11.2016 as per OCC received from Local Authority. Therefore, as per the Ministry of Jal Shakti-CGWA has issued Notification dated 24.09.2020, for computation of Environmental Damage Compensation (EDC) as well as taking legal recourse on defaulting entity. That the EDC on account of illegal ground water extraction is to be calculated as per Sec. 15 of the Notification dated 24.09.2020 as below;

EC_{GW} = Ground water consumption per day x Environmental Compensation rate (ECR_{GW}) x No. of days x Deterrence factor

(Where ground water consumption is in m^3/day and ECR_{GW} in Rs./cum)

EC_{GW}	Ground water consumption per day	Environmental Compensation rate (ECR_{GW})	No. of days	Deterrence factor
EC_{GW}	**1974**	60	**2831**	1.50
Ground water consumption per day	As per ToR dated 25.09.2023 of SEIAA, Water requirement is mentioned to the tune of **1974** CMD			

Environmental Compensation rate (ECR_{GW})	That the area under reference is Semi critical area and therefore, ECR_{GW} is 60 as per table No. 15.2 of Notification dated 24.09.2020
No. of days	No. of Days are calculated from 07.11.2016 to 10.08.2024
Deterrence factor	That the Ground water extraction is going on from the year 2016 and extraction is more than 1000 KLD, but less than 5000 KLD, Therefore as per table No. 15.4 of the Notification dated 24.09.2020, Deterrence factor is 1.50
EC_{GW}=1974x60x2831x1.5= 502955460/- **(Rs. Fifty Crores Twenty Nine Lakhs Fifty Five Thousands Four Hundreds & Sixty only) i.e. Rs. 50.30 Crores** That this EDC shall be imposed on both the Respondents No. R-16 & 17-PP and same shall be recovered from them.	

14.1.5 EDC ON ACCOUNT OF ILLEGAL TREE FELLING: FELLING OF 50000 TREES: It is evident from the above facts that the PP have felled 50000 trees in illegal manner and also there is no compensatory plantation. That the Expert committee appointed by Hon'ble Supreme Court in SLP (Civil) No. 25047/2018 have opined that a single tree gives us various benefits on ecological balance to the tune of Rs. 74200/- per year. That the age of felled tree is not available and it is considered as 1 (One) for computation of EDC and due to this per tree damage is considered as Rs. 200000/- (Two Lakhs). Therefore, the EDC on account of destruction of trees and non-plantation of compensatory trees is Rs. = **50000 x 200000 x 1 = 10,000,000,000**/- (One Thousands Crores Only)

14.1.6 EDC ON ACCOUNT OF WASTE BURNING: That as per the ToR letter dated 25.09.2023 (¶29 **P@2670-2681**), PP is generating Dry waste of 1754 Kg/day and Wet waste of 2632 Kg/day, and therefore, total Waste generated from project is 4386 Kg/day i.e. 4.386 MT. That as per Hon'ble NGT Order in OA No. 606/2018 (PB), Per Ton rate for damage is Rs. 300/- and Number of days for the generation of Waste since

07.11.2016 to till 10.08.2024 are 2831 days and total waste generated is 2831 x 4.386 = 12416.766 MT and Total EDC on account of unscientific Waste disposal is Rs. = 12416.77 MT/day x 300 = 3725029.8/- i.e. **0.3725 Crores**.

14.1.7 EDC ON ACCOUNT OF SEWAGE DISCHARGE IN LAGOON/ DAMAGING FOREST LAND/ENCROACHMENT: That the PP has erected the pit on forest land at Gat No. 62 of Village Kasarsai as well as damaged Gat No. 55 which is also forest land for disposal of untreated sewage and that the waste water generation from the ToR dated 25.09.2023 (¶29 **P@2670-2681**) from this project since 07.11.2016 is 1579 M^3/day. That as per Hon'ble NGT Order in OA No. 606/2018 (PB), Per MLD rate for damage is Rs. 2 Crores/MLD and Number of days for the generation of Waste since 07.11.2016 to till 10.08.2024 are 2831 days and total waste generated is 2831 x 1579 KLD = 4470149 KLD i.e.447.02 MLD and Total EDC on account of unscientific Waste disposal is Rs. = 447.02 MLD /day x 2 Crore = /- i.e. **894.04 Crores**.

14.1.8 FALSE & MISLEADING PROJECT COST MENTIONED IN VARIOUS APPLICATIONS FOR EC & TOR BY PP: That the PP have misleaded on account of the project cost as mentioned in various documents and therefore, project cost disclosed by the PP cannot be used for computation of damages. If the project cost disclosed by PP is used then it will be abuse of process of law and like providing pleasure to the polluter. That the following table shows the discrepancies in the project cost in various permission.

Sr.	Description	Date	Cost in Rs.	Page No
1.	CTE	10.04.2006	Not Disclosed	P@127-131
2.	EC	27.12.2006	Not Disclosed	P@395-399

3.	CTE	08.07.2009	24.24 Crores	#14, P@1890
4.	Consolidated Statement	March-2013	556 Crores	#15, P@874
5.	ToR	25.09.2023	347 Crores	#19, P@2671

14.1.9 TOTAL EDC IS AS BELOW; That the EDC claimed by this Original Applicant for restitution & restoration of environment and ecology at the time of filling of OA is Rs. 1500/- Crores. However, OA is pending since 02.03.2019 for 6.5 years. Therefore, the EDC has been calculated till 10.08.2024 and same is **Rs. 2442.63 Crores**. This EDC amount of Rs. **2442.63 Crores** shall be imposed on R-16 & 17-PP and same shall be recovered from PP.

Sr.	Description	Amounts Rs.
1.	EDC on Account of Illegal Construction of TBUA **190094.20** M^2 by Expansion/Change in scope of Project in violation of earlier EC Conditions	413.25 Crores
2.	EDC On Account of not Obtaining CTE & CTO	78.89 Crores
3.	Penalty not Obtaining CTE & CTO	5.77 Crores
4.	EDC On Account of not Obtaining CGWA Permission and illegal Ground Water Extraction	50.30 Crores
5.	EDC On Account of Illegal Tree Felling	1000 Crores
6.	EDC on Account of Solid Waste Burning	0.3725 Crores
7.	EDC On Account of Sewage Discharge in Lagoon damaging Forest Land/Encroachment	894.04 Crores
	Total EDC to imposed and recovered from R-16 & 17-PP in Rs.	2442.63 Crores

15. INHERENT POWERS GRANTED TO HON'BLE NGT BY RULE NO. 24 OF NGT (P&P) RULES, 2011 & SEC. 20 OF NGT ACT, 2010: That the Hon'ble NGT have received inherent powers under Rule No. 24 of NGT (P&P) Rules, 2011 to grant the relief for end of justice as well as to deal with the issue of abuse of powers. In the present case, PP, MoEFCC, SEIAA, Collector of Pune, PMRDA, Forest Department of GoM, Irrigation Department etc. have not performed their statutory duties as well as fundamental duties and this Hon'ble NGT shall take

the judicial note along with appropriate powers for combat the issue of brought daylight blatant violations committed by PP defiantly having deep unholy nexus & access to the power corridor.

16. CASE LAWS & JUDGMENTS BY ORIGINAL APPLICANT:

That the Original Applicant is relying on the following judgments for the issues of Preliminary Objection, Environmental Damage Compensation (EDC), Demolition, Powers of NGT etc. Therefore, this Hon'ble NGT may kindly refer this judgments for adjudicating the matter and while passing final verdict by allowing the OA with demolition of illegal construction at site.

Sr.	**Judgment & Para**	Page No.
1.	M.C. Mehta **Vs.** UoI, **(1987) 1 SCC 395**, ¶31-**32** **Purpose:** EDC, magnitude & capacity of Polluter, deterrent effect,	P@2709
2.	Indian Council for Enviro-Legal Action Vs. Union of India, ***(1996) 5 SCC 281***, ¶47 **Purpose:** Locus; Govt. Authorities to take assistance of resources NGO/individuals	P@2732
3.	Vellore Citizens Welfare Forum **Vs.** UoI & Ors, **(1996) 5 SCC 647**, ¶11 (III) & 25 (5) **Purpose**: Onus of Proof & Polluter liable to pay for past violations	P@2746 P@2756
4.	Sterlite Industries (I) Ltd. **Vs.** UoI & Ors., **2013 (4) SCC 575**, ¶46-47 **Purpose:** EDC: to be exemplary to have deterrent effect on Polluter	P@2788 P@2789
5.	The Forward Foundation **Vs**. State of Karnataka, **2015 SCC OnLine NGT 5**, ¶24-33 **Purpose:** Preliminary Objection	P@2804
6.	Tanaji B Gambhire Vs Union of India & Ors. **2016 SCC OnLine NGT 4213**, ¶46-47, **Purpose: EDC,** total lack of supervision and enforcement at government authority, Polluter shall be at economical disadvantage	P@2847
7.	Goel Ganga Developers India Pvt. Ltd. Vs UoI-MoEFCC **(2018) 18 SCC 257**, ¶17, 58-64 **Purpose:** Built-up area, EDC & conduct of PP	P@2864 P@2877
8.	Mantri Techzone Pvt. Ltd. Vs. Forward Foundation **(2019) 18 SCC 494**, ¶34-50 **Purpose:** Preliminary objection and maintainability of OA, if court have jurisdiction , then to pass appropriate relief	P@2904

9.	Goel Ganga Developers India Pvt. Ltd. Vs UoI-MoEFCC & Ors. **(2019) 9 SCC 288**, ¶2-8 **Purpose:** Built-up area	P@2912
10.	Hanumant Laxman Aroskar Vs. UoI, **(2019) 15 SCC 401**, ¶164 **Purpose:** Bonafide of applicant in environmental cases cannot be doubted	2916 – 2984
11.	Keystone Realtor Pvt. Ltd. Vs. Anil V. Tharthare **(2020) 2 SCC 66**, ¶13, 19-20 **Purpose:** Interpretation of Clause 2 & 7 of EIA Notification, "Expansion", adopt the interpretation which is in consonance with object of legislation, bright line test,	P@2993 P@2995
12.	MCGM Vs Ankita Sinha & Ors. **2021 SCC Online SC 897**, ¶41, 76, 84 **Purpose:** grant reliefs based on facts & circumstances, precautionary principle-S. 20 of NGT Act, Locus	P@3007 P@ 3013 P@3014
13.	Union Territory of Ladakh & Ors. vs. Jammu and Kashmir National Conference & Anr. Civil Appeal No. 5707 of 2023 (@Special Leave Petition (Civil) No. 18727 of 2023, dated 06.09.2023, ¶35 **Purpose:** Courts will proceed to decide matters on the basis of the law as it stands	P@3071
14.	Tanaji B Gambhire Vs Union of India & Ors. Original Application No. 28/2019 (WZ) Judgment dated 22.02.2023, ¶58-67 **Purpose:** preliminary objections, recurring cause of action, expansion of project	P@3131
15.	Tanaji B Gambhire Vs Union of India & Ors. Original Application No. 48/2020 (WZ) Judgment dated 10.08.2023, ¶44 & 45 **Purpose:** preliminary objections, recurring cause of action, expansion of project	P@3194
16.	**(1997) 1 SCC 388**; MC Mehta ***Vs*** Kamal Nath & Ors. ***¶37****: The Precautionary Principle and the Polluter Pays Principle have been accepted as part of the law of the Land.* ***¶38****: It thus settled by this Court that one who pollute the environment must pay to reverse the damage caused by his acts.* ***¶39(1)****: The public trust doctrine, as discussed by us in this judgment is a part of the law of the land.* **Purpose: demolition**	P@3343 P@3344 P@3345
17.	**(1999) 6 SCC 464**; M. I. Builders Pvt. Ltd. **Vs.** Radhey Shyam Sahu & Ors. ***¶73****; no consideration to be shown to the builder or any other person where construction is authorised. This dicta almost bordering the rule of law.* ***¶81****; while directing demolition of Unauthorised construction, the court should also direct enquiry as to how the Unauthorised construction came about and to bring the offenders to book.* **Purpose: Demolition & enquiry of erring officers**	P@3411 P@3412
18.	**(2010) 2 SCC 27**; Priyanka Estate International Pvt. Ltd. & Ors. ***Vs***. State of Assam & Ors.	P@3428 P@3429

	¶50; *Seal of Approval for such illegal activities is not required to be given by this Court* ***¶55****; unlawful constructions are defiantly against the public interest* ***¶59****; it is a sound policy to punish the wrongdoers and it is in the spirit that the court have moulded the relief of granting compensation to the victims in exercise of the powers conferred on it.* **Purpose: Demolition**	P@3430
19.	**(2013) 5 SCC 336**; Deepak Kumar Mukharjee Vs. KMC & Ors. ***¶8****; money power of unholy nexus with the power corridor* ***¶9****; there should be no judicial tolerance of illegal and unauthorized constructions by those who treat the law to be their subservient* ***¶29****; while preparing the master plan/zonal plans, the planning Authority takes into consideration the prospectus of future development and accordingly provides for basic amenities like water and electricity lines, drainage, sewerage, etc. Unauthorised construction of buildings not only destroys the concepts of planned development which is beneficial to the public but also places unbearable burden on the basic amenities and facilities provided by the public authorities. At times, construction of such buildings becomes hazardous for the public and creates traffic congestion. Therefore, it is imperative for the public authorities concerned not only to demolish such construction but also, impose adequate penalty on the wrongdoer.* **Purpose: Demolition**	P@3439 P@3451
20.	Hon'ble NGT Order passed in OA No. 606/2018; (In respect of State of Maharashtra), In re: Compliance of Municipal Solid Waste Management Rules, 2016 and other environmental issues dated 08.09.2022 ***¶45 & 46; Liquid Waste 1 MLD= Rs. 2 Crores, Solid Waste 1 MT = Rs. 300/-*** **Purpose:** EDC for Solid Waste & Liquid Waste	P@3485 P@3486

17. HUMBLE SUGGESTIONS ON BEHALF OF THE ORIGINAL APPLICANT TO ASSIST THIS HON'BLE NGT FOR GRANT OF FINAL ORDER (S), DIRECTION (S), RELIEFS (S): That considering the facts & circumstances of blatant, intentional & serious environmental violations causing irreparable & grave damage to the environment & ecology on part of PP in collusion with the Government Authorities and this Hon'ble NGT shall apply the deterrence doctrine without showing any leniency to polluters & to send clear message in the lobby of

polluters to present many such violations in future, this Original Applicant would like to give his humble suggestions to this Hon'ble NGT as below;

A) Direct demolition of illegal construction under the deterrence doctrine for restoration of the area to its original position.

B) Permanent stoppage of entire development & construction activity at impugned project site and forfeit all the benefits of further development and direct restitution & restoration of the area.

C) That this Hon'ble NGT shall direct PP to handover the remaining land and flats to MoEFCC and then MoEFCC will state the environmental research institute, wildlife rehabilitation etc. public purposes.

D) Impose appropriate EDC on PP for violation of EC, not obtaining prior EC for enlarged scope, EDC as per "Paryavaran Suraksha Case Formula" for carrying illegal construction & its operation without prior CTE & CTO and further EDC for non-installation of environment infrastructure, tree felling, hill cutting etc..

E) Enquiry & Action against erring officer,

F) Appropriate orders.

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

Bombhire

AFFIANT

(MR. TANAJI B. GAMBHIRE**)**

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE BENCH PUNE
ORIGINAL APPLICATION NO. 33 OF 2019

IN THE MATTER OF:

MR. TANAJI BALASAHEB GAMBHIRE ....APPLICANT

VERSUS

UNION OF INDIA & ORS. ....RESPONDENTS

AFFIDAVIT IN SUPPORT OF REJOINDER TO THE REPLY OF RESPONDENTS

I, Mr. Tanaji Gambhire S/o Shri. Balasaheb Gambhire Age: 41 Years, Profession: Advocate, R/at: CTS No. 296, Shukrawar Peth, Laxmi Apartment, Near Shivaji Maratha High School, White House Lane, Pune-411002, do hereby solemnly affirm and state on oath as follows:

1. I state that, I am Original Applicant in the aforesaid matter and I am well aware with the facts and circumstances of the case and in such capacity competent to depose by way of this affidavit.
2. I have read the contents of the accompanying Rejoinder to the Respondents Replies and the same has been drafted by myself and that same are true facts in my personal knowledge.
3. I state that, the annexures attached with the Rejoinder to the Respondents Replies are true copies of their respective and content of this affidavit are true and correct to the best of my knowledge and belief.
4. Hence this Affidavit in support of Rejoinder.

Date: 10.08.2024
Place: Pune

NOTARY SHASHIKANT B. KURHADE REGD.NO. 10476 PUNE CITY EXPIRY OF COMMISSION 31/1/2028 GOVERNMENT OF INDIA

Gambhire

AFFIANT
(MR. TANAJI B. GAMBHIRE)

BEFORE ME

Shashikant B. Kurhade
Notary Govt. of India

NOTARIAL NOTARIAL NOTARIAL NOTARIAL NOTARIAL

Noted and Registered
at Sr. No. 514/2024
Date:- 10 AUG 2024

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ANNEXURE-A-1

RNI No. MAHBIL /2009/31745
Reg. No. MH/MR/South-327/2013–15

महाराष्ट्र शासन राजपत्र

असाधारण भाग एक–मध्य उप-विभाग

वर्ष ५, अंक ३७(३)] गुरुवार, नोव्हेंबर २१, २०१३/कार्तिक ३०, शके १९३५ [पृष्ठे १८२, किंमत : रुपये १२.००

असाधारण क्रमांक ६४

प्राधिकृत प्रकाशन

URBAN DEVELOPMENT DEPARTMENT

Mantralaya, Mumbai 400 032, dated the 21st November 2013

NOTIFICATION

THE MAHARASHTRA REGIONAL AND TOWN PLANNING ACT, 1966.

No. TPS-1812/157/CR-71/12/Reconstruction No. 34/12/DP/UD-13.—Whereas, the Government in the Urban Development and Public Health Department, *vide* notification No. TPS No. 3678/814-B-UD-5(1), dated the 2nd November 1979 published the Standardized Building Bye-laws and Development Control Rules for A, B and C class Municipal Councils, under the provisions of section 323 of the Maharashtra Municipalities Act, 1965 ;

And whereas, the Government in the Urban Development and Public Health Department *vide* Resolution No. TPS. 3678/814-B-UD-5(1), dated the 16th July 1980 had given directives under the provisions of Section 154 of the Maharashtra Regional and Town Planning Act, 1966 (Maharashtra Act No. XXXVII of 1966) (hereinafter referred to as 'the said Act') to all the Municipal Councils to adopt the Standardized Building Bye-laws and Development Control Rules for A, B and C class Municipal Councils (hereinafter referred to as the said Existing Rules);

And whereas, the Government has sanctioned various Development Plans (hereinafter referred to as 'the said Development Plans') along with the above mentioned Standardized Building Bye-laws and Development Control Rules with or without modifications (hereinafter referred to as 'the said Development Control Rules') to A, B and C Class Municipal Councils, Nagar Panchayats and Non-Municipal towns (hereinafter referred to as 'the said Planning Authorities') in the Maharashtra State under the provisions of the said Act, as mentioned in Schedule-A appended hereto ;

And whereas, the said Development Control Rules of the said Planning Authorities needed overall changes because of rapid urbanization, introduction of concepts like FSI, TDR, various

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land uses and need for Regulations which support developments like generation of parking areas, creation of more built-up area for Hospitals, Educational Institutions, Star Category Hotels, Institutional Buildings, Development of more housing stock through MHADA, eco-friendly buildings, regulation of height of buildings commensurate with fire fighting facilities etc. and therefore such new provisions were required to be included in the said Development Control Rules of smaller towns ;

And whereas, the Government in Urban Development Department, *vide* Resolution No. TPS. 1810/612/CR-2200/UD-13, dated the 24th March 2010 had appointed an Expert Drafting Committee under the Chairmanship of Director of Town Planning, Maharashtra State for drafting the Development Control Regulations for A class, B class and C class Municipalities in the State ;

And whereas, the *said Expert Drafting Committee* prepared the Draft Standardised Development Regulations for all classes of Municipal Councils and Nagar Panchayats named as *'Draft Development Control and Promotion Regulations for Municipal Councils and Nagar Panchayats in Maharashtra'* and submitted the same to the Government *vide* letter No. 6546, dated the 27th October 2010 ;

And whereas, the Government felt it necessary to replace the said Development Control Rules by the *Draft Standardised Development Control and Promotion Regulations for Municipal Councils and Nagar Panchayats in Maharashtra* prepared by the *Expert Drafting Committee (hereinafter referred to as "the said proposed modification")*;

And whereas, the Government, found it expedient in the public interest to take recourse to the provision contained in Section 37(1AA) of the said Act ;

And whereas, in accordance with the provisons contained in Section 37(1AA) of the said Act, the Government has published the notice *vide* No. TPS. 1810/612/CR-2200/2010/UD-13, dated the 30th June 2011 for inviting suggestions and objections to the *said proposed modification* from the public with reasons thereof within 30 (thirty) days from the date of publication of the notice in *Official Gazette*. The suggestions and objections were supposed to be addressed to the concerned District Heads of the Town Planning Department in respect of the concerned Municipal Councils/ Nagar Panchayats/Non-Municipal Towns mentioned in Schedule-A appended to the Notification who were appointed as the "Officer" under Section 162 of the said Act for the concerned Municipal Councils/Nagar Panchayats/ Non-Municipal Towns and authorised to hear the suggestions and objections which were received within the aforesaid stipulated period and also say of the respective planning authorities and submit their report to the Government ;

And whereas, after completing the legal formalities, the appointed Officers have submitted their reports to the Government for further necessary action ;

And whereas, after making necessary inquiries and after consulting the Director of Town Planning, Maharashtra State, the Government is of the opinion that the said proposed modification should be approved with some changes ;

Now, therefore, in exercise of the powers conferred under sub-section (c) of Section 37(1AA) of the said Act, the Government hereby approves the *said proposed modification* with some changes ;

The *Standardised Development Control and Promotion Regulations for Municipal Councils and Nagar Panchayats in Maharashtra* as finally approved by the State Government shall be published in the *Official Gazette* and shall be kept open for inspection by the general public in the Offices of the concerned Municipal Councils, Nagar Panchayats, Zilla Parishads in respect of Non-Municipal Towns and concerned Branch Officers of the Town Planning Department. The aforesaid approved modification shall come into force on the date of its publication in the *Official Gazette* and shall be applicable to the development proposals in respect of fresh or revised permissions in the areas of Development Plans for the towns, as listed in the Schedule-A hereto.

This Notification along with the finally approved *Standardised Development Control and Promotion Regulations for Municipal Councils and Nagar Panchayats in Maharashtra* shall also be made available on the Government website - *www.maharashtra.gov.in*

SCHEDULE-A

Accompaniment to the Government in Urban Development Department's Notification No. TPS. 1812/157/CR-71/12/Reconstruction No. 34/12/DP/UD-13, dated the 21st November 2013

Pune Division

District	Name of Municipal/ Non-Municipal Town	Class
Pune	Baramati (R)	B
	Daund	B
	Talegon-Dhabhade	B
	Jejuri	C
	Indapur	C
	Saswad	C
	Shirur	C
	Bhor	C
	Alandi	C
	Junnar	C
	Loni-Kalbhor	Non-MC
Kolhapur	Ichalkarnji (Old area)	A
	Ichalkarnji (Addl. Ar)	
	Ichalkarnji (Part Rev.)	
	Jaysingpur	B
	Malkapur	C
	Murgud	C
	Wadgaon	C
	Gadhinglaj	C
	Kurundwad	C
	Kagal	C
Satara	Satara (R)	A
	Karad	B
	Phalatan	B
	Rahimatpur	C
	Mhaswad	C
	Wai	C
	Koregaon	Non-MC
	Lonand	Non-MC
Solapur	Barshi	A
	Pandharpur	B
	Pandharpur (Ext. area)	B
	Karmala	C

Pune Division—*concld.*

District	Name of Municipal/ Non-Municipal Town	Class
Solapur	Sangola	C
	Akkalkot	C
	Akkalkot (AA)	C
	Mangalwedha	C
	Maidargi	C
	Dudhani	C
	Kurduwadi	C
	Akluj	Non M.C.
Sangli	Islampur	B
	Vita	B
	Ashta	C
	Tasgaon	C

Amaravati Division

District	Name of Municipal Councils	Class
Amravati	Achalpur	A
	Dhamangaon Railway	C
	Daryapur	C
	Chandur Rly. (partly)	C
	Warud (partly)	B
	Warud (republished)	B
	Chandur Bazar	C
	Anjangaon Surji	B
	Morshi (R+AA)	C
Akola	Akot (original area)	B
	Akot (Ext. area)	B
	Murtizapur	C
	Balapur (Partly)	C
	Balapur (republished)	C
	Telhara	C
	Patur	C
	Barshi Takali	Non M.C.
Washim	Washim	B
	Karanja	B
	Mangarularpir	C
	Risod (Partly)	C
	Risod (republished)	C
	Malegoan	Non M.C.
Buldhana	Buldhana	B
	Khamgaon	B
	Shegaon	B
	Malkapur	

Amaravati Division—*concld.*

District	Name of Municipal/ Non-Municipal Town	Class
Buldhana	Jalgoan Jamod	C
	Mehekar	C
	Lonar	C
	Deulgaon Raja (partly)	C
	Deulgoan Raja (republished)	C
	Chikhali (partly)	B
	Chikhali (republished)	B
	Sindkhed Raja	C
	Nandura	C
Yavatmal	Yavatmal	A
	Wani	B
	Pusad	B
	Pandharkavda	C
	Umarkhed	C
	Digras	C
	Darwha	C
	Ghatanji	C
	Ner Nawabpur	C

Nagpur Division

District	Name of Municipal Councils	Class
Nagpur	Umred (R)	B
	Kalmeshwar (R+AA)	C
	Kamthi	B
	Ramtek (R)	C
	Mowad (R)	C
	Katol (R)	C
	Khapa	C
	Mohapa	C
	Saoner	C
	Narkhed	C
	Bhivapur	Non M. C.
Wardha	Wardha (R)	A
	Arvi	B
	Hinganghat (R)	B
	Pulgaon	C
	Deoli	C
	Sindhi (Rly.)	C
	Sevagram	Non M.C.
Gadchiroli	Gadchiroli	B
	Desaiganj (R)	C
	Armori	Non M. C.

Nagpur Division—*concld.*

District	Name of Municipal Councils	Class
Bhandara	Bhandara (R)	B
	Tumsar	B
	Paoni	C
	Sakoli	Non M. C.
	Lakhani	Non M. C.
Chandrapur	Chandrapur (old Limit)	Mpl. Corp.
	Chandrapur (Extn. Area)	Mpl. Corp.
	Ballarpur (R)	B
	Ballarpur (EP)	B
	Bramhapuri (o)	C
	Bramhapuri (EP)	C
	Warora	B
	Mul	C
	Rajura	C
Gondia	Gondia (R)	A
	Tiroda (R)	C
	Tiroda (EP)	C
	Deori	Non M. C.

Konkan Division

District	Name of Municipal Councils	Class
Raigad	Panvel	A
	Khopoli	B
	Uran	C
	Karjat	C
	Pen	C
	Alibag	C
	Murud-Janjira	C
	Roha	C
	Shrivardhan	C
	Mahad	C
Thane	Ambarnath	A
	Kulgaon-Badalapur	B
	Jawhar	C
	Umarpada-Safala	Non M. C.
Ratnagiri	Ratnagiri	B
	Chiplun	B
	Khed	C
	Rajapur	C
Sindhudurg	Malvan	C
	Vengurla	C
	Sawantwadi	C
	Kankawali	Nagar Panchayat

Nashik Division

District	Name of Municipal Councils	Class
Nashik	Satana	C
	Sinnar	C
	Nandagaon	C
	Manmad	B
	Yeola	B
	Igatpuri	C
	Tryambakeshwar	C
	Bhagur	C
	Saptashrungigad	Non M. C.
Jalgoan	Bhusaval	A
	Chalisgaon	B
	Amalner	B
	Chopda	B
	Pachora	B
	Raver	C
	Sawada	C
	Faizpur	C
	Yawal	C
	Dharangaon	C
	Erandol	C
	Parola	C
Nandurbar	Nandurbar	B
	Shahada	B
	Navapur	C
	Taloda	C
Dhule	Shripur-Warwade	B
	Dondaicha-Warwade (Extd)	B
	Dondaicha-Warwade (R)	
Ahemadnagar	Shrirampur	B
	Sangamner	B
	Kopargoan	B
	Rahuri	C
	Rahata	C
	Deolali-Pravara	C
	Shrigonda	C
	Parthardi	C
	Shirdi	Nagar Panchayat
	Belapur	Non M. C.
	Nevasa-khurd	Non M. C.
	Shevgoan	Non M. C.

Aurangabad Division

District	Name of Municipal Councils	Class
Aurangabad	Sillod	B
	Vaijapur (Revised)	C
	Vaijapur (Addl.)	
	Paithan (Revised)	C
	Gangapur (Revised)	C
	Kannad (Original)	C
	Kannad (A.A.)	
Hingoli	Hingoli	B
	Basmatnagar	B
	Kalamnuri (R)	C
	Kalamnuri (A.A.)	C
Parbhani	Parbhani (R+A.A.)	Mpl. Corp.
	Gangakhed (R)	B
	Purna (Original)	C
	Purna (A.A.)	
	Manvat	C
	Pathri	C
	Sonpeth (R)	C
	Jintur (R)	C
	Selu	C
Latur	Latur	Mpl. Corp.
	Udgir (Revised)	B
	Ahemadpur (O)	C
	Ahemadpur (Addl.)	
	Nilanga (O)	C
	Nilanga (Addl.)	
	Ausa (R)	C
Jalna	Jalna (R)	A
	Jalna (R+A.A.)	
	Ambad (A.A.)	C
	Ambad (R)	
	Bhokardan (R.)	C
	Partur (R+A.A.)	C
Osmanabad	Osmanabad (2nd R)	B
	Bhum	C
	Kalamb (R)	C
	Naldurg (R)	C
	Tuljapur (2nd R)	C
	Murum	C
	Paranda	C
	Umerga (O)	C
	Umerga (Addl.)	C

Aurangabad Division—*concld.*

District	Name of Municipal Councils	Class
Nanded	Deglur	B
	Kinwat	C
	Dharmabad	C
	Loha	C
	Kandhar (R+A.A.)	C
	Hadgaon	C
	Mudkhed	C
	Umri (R)	C
	Biloli (R+A.A.)	C
	Kundalwadi (R)	C
	Mukhed	C
	Bhokar	C
	Naygaon	Non M.C.
	Mahur	Non. M.C.
Beed	Beed	A
	Ambajogai	B
	Parali-Waijanath	B
	Majalgoan (R+A.A.)	B
	Georai (R+A.A.)	C
	Killedharur	C
	Kej	Nagar Panchyat
	Ashti	Non M. C.
	Patoda	Non. M.C.

By order and in the name of the Governor of Maharshtra,

SUNIL MARALE,
Under Secretary to Government.



सत्यमेव जयते

GOVERNMENT OF MAHARASHTRA
URBAN DEVELOPMENT DEPARTMENT

STANDARDISED DEVELOPMENT CONTROL AND PROMOTION REGULATIONS FOR

MUNICIAL COUNCILS AND NAGAR PANCHAYATS IN MAHARASHTRA

SANCTIONED VIDE GOVERNMENT NOTIFICATION NO-TPS-1812/157/CR 71/12/REC NO 34/12 /UD 13, DT. 21st November 2013

PART II
GENERAL PLANNING AND BUILDING REQUIREMENTS

11.0. REQUIREMENTS OF SITES.

11.1. No piece of land shall be used as a site for the construction of building

(a) If the Authority considers that the site is insanitary or that it is dangerous to construct a building on it;

(b) If the site is within a distance of 9 m. from the edge of water mark of a minor watercourse (like nallah) and 15 m. from the edge of water mark of a major water course (like river) shown on Development Plan or village/city survey map or otherwise, provided that where a minorwater course passes through a low lying land without any well defined banks, the owner of the property may be permitted by the Chief Officer to restrict and or to re-align the same within the same land along with cross section as determined by the Chief Officer;

(c) If the site is not drained properly or is incapable of being well drained;

(d) If the owner of the building has not shown to the satisfaction of the Authority all the measures required to safeguard the construction from constantly getting damp;

(e)If the building is for assembly uses, for cinemas and theatres as well as for public worship which has not been previously approved by the Chief Officer;

(f) If the building is proposed on any area filled up with carcasses, excreta, filth and offensive matter till the production of certificate from the Chief Officer to the effect that it is safe from the health and sanitary point of view, to be built upon;

(g) If the use of the site is for the purpose, which in the opinion of the Authority will be a source of annoyance to the health and comfort of the inhabitants of the neighbourhood;

(h) If the plot has not been approved as a building site by the Chief Officer.

(i)If the proposed occupancy of the building on the site does not conform to the land use proposals in the development plans or Zoning Regulations, and

(j)If the level of the site is less than prescribed datum level depending on topography and drainage aspects.

(k) If it doesn't derive access from an authorised street/means of access described in these Regulations,

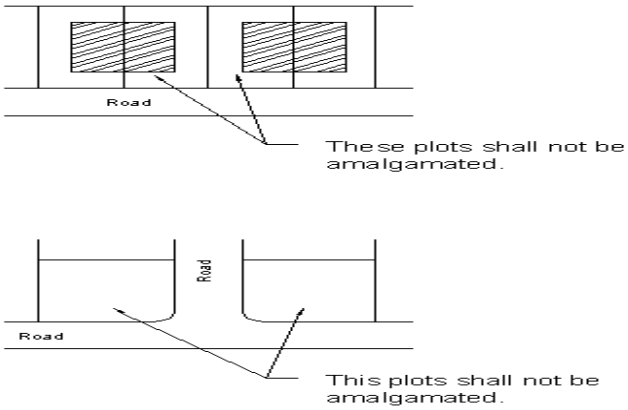
(l)If it is within the river/lake boundary and blue flood line of the river (prohibitive zone).

(m)If the site is within the boundary of Coastal Regulation Zone-1.

(n)If the site is not developable by virtue of restrictions imposed under any law or guidelines of any government department.

(o) If the site is hilly and having gradient more than 1:5.

11.2 **Distance of site from Electric Lines**: No structure including verandah or balcony shall be allowed to be erected or re-erected or any additions or alterations made to a building on a site within the distance quoted in **Table No. 3** below in accordance with the prevailing Indian Electricity Rules and its amendments from time to time between the building and any overhead electric supply line.



14. 0 LAND USE CLASSIFICATION AND PERMISSIBLE USES.

14.1 The various building uses and occupancies and premises to be permitted in the various zones are given in Part III of these Regulations. The Chief Officer may modify the specified uses given in Part III of these Regulations with the prior approval of the Director of Town Planning, Maharashtra State, Pune.

14.2 No building or premises shall be changed or converted to a use which is not in conformity with the provisions of these Regulations.

14.3 **Uses to be in Conformity with the zone**: Where the use of buildings or premises is not specifically designated on the Development Plan, it shall be in conformity with the zone in which they fall. Any lawful non-conforming use of premises existing prior to the date of enforcement of these regulations, shall continue upto a period as may be specified in the Development Plan; provided further that a non-conforming use shall not be extended or enlarged except as provided in Regulation No. 14.4 and that when a building, containing non-conforming use is pulled down or has fallen down, the use of the new building shall be in conformity with these Regulations.

14.4 **Non-Conforming Uses:-**

Any lawful non-conforming use may be allowed to be continued or expanded to the extent of 50 percent of the existing built up subject to availability of FSIas per the provisions of these regulations applicable to such use except inHill Top-Hill Slope Zone of any plan.

15.0. OPEN SPACE, SETBACKAREA AND HEIGHT LIMITATIONS

15.1 **Exterior Open Spaces -**

15.1.1 Provisions for open spaces at the front side/sides and rear of the building shall be as given in Part IV of these Regulations.

15.1.2 **Buildings Abutting Two or More Streets**: When a Building abuts two or more streets, the setbacks from the streets shall be such as if the building is fronting on each such street.

PART XI
REGULATIONS FOR SPECIAL ACTIVITIES

41.0. Mining or Quarrying Operations:-

With the prior approval of the Chief Officer, Mining or Quarrying operations may be permitted on following conditions:

i) In areas within the municipal limitssuch pits and holes created in the process of mining and quarrying should be appropriately filled up and not left open.

ii) The site shall be restored so as to make it safe either by raising a garden or in addition by planting fruit growing trees around it or by making it a water reservoir.

iii) Mining & quarrying operation should be in a controlled manner, such as starting operation initially on a site away from crowded areas and later gradually extending it to the other

iv) Hill tops and hill slopes from which rain water flows should not be allowed to be used for mining and quarrying.

v) The natural landscape and environment are not to be adversely affected..

vi) Quarrying shall be regulated in accordance with the method to be prescribed by the District Collector

vii) Regulations prescribed by the Revenue authorities regarding theresettlement and restoration of environment shall be strictly followed.

viii) Quarrying shall not be permitted within 500m from the gaothan / village settlements and from the rivers, forts, historical places and places of tourist interest and within 500 m from the High Tide Line along the coast.

ix) The conditions prescribed under Maharashtra Minor Mineral Extraction Rules and Regulations shall be observed.

42.0. Erection of mobile towers:

Erection of mobile towers shall be in accordance with the guidelines approved by the Government from time to time in this regards.

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MINISTRY OF JAL SHAKTI

(Department Of Water Resources, River Development And Ganga Rejuvenation)

(CENTRAL GROUND WATER AUTHORITY)

NOTIFICATION

New Delhi, the 24th September, 2020

S.O. 3289(E).—WHEREAS, on the directions of Hon'ble Supreme Court vide its order dated the10th December, 1996 passed in Civil writ Petition No 4677 of 1985, MC Mehta Vs Union of India, the Central Government constituted the Central Ground Water Authority (hereafter referred to as the 'Authority') vide notification number S.O. 38 (E), dated the 14th January, 1997 to exercise powers under Section 5 of the Environment (Protection) act, 1986 (29 of 1986) for the purposes of regulation and control of Ground Water management and development and to exercise certain powers and perform certain functions relating thereto;

AND WHEREAS, the Authority has been regulating ground water development and management by way of issuing 'No Objection Certificates' for ground water extraction to industries or infrastructure projects or Mining Projects etc., and framed guidelines in this connection from time to time in twenty two States and two Union territories, where ground water development is not being regulated by the State Government Union Territory administration concerned;

AND WHEREAS, some of the State Governments or, Union territories enacted legislations and issued regulatory directions or orders for regulating ground water development and management;

AND WHEREAS, the Hon'ble National Green Tribunal, New Delhi vide order dated the 15th April 2015 in OA Nos. 204/205/206 of 2014 has issued directions to the Authority to ensure that any person operating tube-well, or any means to extract ground water shall obtain permission from the Authority and shall operate the same subject to the law in force, even if such unit is existing unit or the unit is yet to be established;

AND WHEREAS, the said Hon'ble Tribunal vide its order dated the 09th July, 2015 in OA Nos. 34 and 37 of 2014 directed all industrial units which are members of the Common Effluent Treatment Plants (CETPs) to approach the Authority through State Pollution Control Board for obtaining 'No Objection Certificate' in accordance with the law;

AND WHEREAS, the aforesaid Hon'ble Tribunal vide order dated the 13th July, 2017 in OA No 200- of 2014 directed that every industry should be directed to pay for extraction of such water, that too, subject to the conditions stated in the order permitting such extraction;

AND WHEREAS, the said Hon'ble Tribunal vide its order dated the 28th August, 2018 in O.A. Nos. 176 of 2015 and 59 of 2012 respectively directed the Ministry of Water Resources, River Development and Ganga Rejuvenation to forthwith review the existing mechanism so as to ensure effective steps for conserving the groundwater resources;

AND WHEREAS, in pursuance of the directions of the Hon'ble National Green Tribunal and powers conferred by sub-section (3) of section 3 and section 5 of the Environment (Protection) Act, 1986 the Authority, with a view to protect the ground water resources had circulated the draft guidelines for grant of 'No Objection Certificate' on the 11th October, 2017 inviting comments and suggestions from all the stakeholders;

AND WHEREAS, all objections and suggestions received in response to the said draft guideline have been duly considered by the Central Government, the Authority notified the guidelines to regulate groundwater over-exploitation and to conserve the groundwater resources in the country vide notification number S.O. 6140 (E), dated the 12th December, 2018;

AND WHEREAS, the aforesaid Hon'ble Tribunal vide order dated the 03rd January 2019 in the OA No. 176 of 2015 directed that the above mentioned notification dated the 12th December, 2018 may not be given effect to as it is unsustainable if tested on 'Precautionary Principle, Sustainable development as well as Inter-generational Equity Principles' and if implemented, will result in fast depletion of groundwater and damage to water bodies and will be destructive of the fundamental right to life under Article 21 of the Constitution of India;

AND WHEREAS, the said Hon'ble Tribunal vide order dated the 11th September, 2019 constituted a committee to deliberate on steps for preventing depletion of groundwater, robust monitoring mechanism

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against unauthorised extractions and fulfillment of 'No Objection Certificate' conditions, environment compensation etc and to submit a report;

AND WHEREAS, the aforesaid committee submitted the report along-with draft guidelines to regulate groundwater extraction and groundwater conservation in Hon'ble Tribunal on the 16th March, 2020;

AND WHEREAS, the above said Hon'ble Tribunal vide order dated the 20th July, 2020 directed to comply with certain points for sustainable groundwater management while issuing 'No Objection Certificates' to commercial establishments by the Authority;

Now therefore, in pursuance of the directions of Hon'ble National Green Tribunal and the powers conferred by sub-section (3) of Section 3 read with Section 5 of the Environment (Protection) Act, 1986 (29 of 1986), the Department of Water Resources, River Development & Ganga Rejuvenation, hereby notifies the guidelines to regulate and control groundwater extraction in the country in supersession to this Ministry notification vide S.O. 6140 (E), dated the 12th December, 2018 as per the Schedule below:

SCHEDULE

Guidelines to regulate and control ground water extraction in India

(with immediate effect)

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[F. No. CGWA-21/4/2020-CGWA]

ASHISH KUMAR, Director

ANNEXURES

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Annexure IX: Glossary of technical terms used

Annexure X : Annual water audits by the industries

Guidelines to regulate and control groundwater extraction in India

Preamble and Background:

On the directions of Hon'ble Supreme Court vide its order dated 10th December, 1996 passed in Civil writ Petition No 4677 of 1985, MC Mehta Vs Union of India, the Central Government had constituted the Central Ground Water Board as Authority vide notification number S.O. 38 (E), dated the 14th January, 1997 to exercise powers under sub section (3) of section 3 of the Environment (Protection) act, 1986 (29 of 1986) for the purposes of regulation and control of Ground Water Management and Development and to exercise certain powers and perform certain functions as per the said Act.

The Authority has been regulating ground water development and management by way of issuing 'No Objection Certificates' for ground water extraction to industries or infrastructure projects or Mining Projects etc., and framed guidelines in this connection from time to time applicable in twenty two States and two Union territories, where ground water development is not being regulated by the State Government and Union territory administration concerned.

To have sustainable management of water resources in the country groundwater abstraction guidelines have been prepared to regulate groundwater extraction and conserve the scarce groundwater resources in the country.

These guidelines will come into force with immediate effect from the date of Gazette Notification and will supersede all earlier guidelines issued by the Central Ground Water Authority (CGWA).

These guidelines will have pan India applicability. Ground water abstraction in States/ Uts (which are not regulating ground water abstraction) shall continue to be regulated by Central Ground Water Authority.

Further, wherever States/ Uts have come out with their own groundwater abstraction guidelines, which are inconsistent with the CGWA guidelines, the provisions of CGWA guidelines will prevail. However, in case the guidelines followed by such States/ Uts contain some more stringent provisions than CGWA guidelines, such provisions may also be given effect to by the States/ Uts Authorities in addition to those contained in the CGWA guidelines. States may be at liberty to suggest additional conditions/ criteria based on the local hydro-geological situations which shall be reviewed by CGWA/Ministry of Jal Shakti, Government of India before acceptance.

All new/existing industries, industries seeking expansion, infrastructure projects and mining projects abstracting ground water, unless specifically exempted under Para 1.0 below, will be required to seek No Objection Certificate from Central Ground Water Authority or, the concerned State/ UT Ground Water

Authority as the case may be. The entire process of grant of No Objection Certificate shall be online through a web based application system.

Water management plans shall be prepared by all the State Ground Water Authorities/ Organizations for all Over-exploited, Critical and Semi-critical assessment units starting with Over-exploited units. Water management plans shall be reviewed and updated periodically. Water management plans, data on water availability and scarcity and policy framed in this regard shall be placed on the websites of Central Ground Water Authority/ State Ground Water Authority.

1.0 Exemptions from seeking No Objection Certificate:

Following categories of consumers shall be exempted from seeking No Objection Certificate for ground water extraction:

(i) Individual domestic consumers in both rural and urban areas for drinking water and domestic uses.

(ii) Rural drinking water supply schemes.

(iii) Armed Forces Establishments and Central Armed Police Forces establishments in both rural and urban areas.

(iv) Agricultural activities.

(v) Micro and small Enterprises drawing ground water less than 10 cum/day.

1.1 Registration of Drilling Rigs

State / Ut Governments shall be responsible for registering drilling rigs operating within their jurisdiction and for maintaining the database of wells drilled by them. Appropriate link shall be provided in CGWA portal for making the data available to CGWA.

2.0 Drinking & Domestic use for Residential apartments/ Group Housing Societies/ Government water supply agencies in urban areas

For grant of No Objection Certificate for ground water extraction, the project proponent has to furnish the details as per the guidelines issued by the CGWA in proper format as available in CGWA website. No Objection Certificate for new /existing wells shall be granted only in such cases where the local Government water supply agency is unable to supply requisite amount of water in the area.

No Objection Certificate shall be granted subject to the following specific conditions:

i) Installation of Sewage Treatment Plants shall be mandatory for all residential apartments/ Group Housing Societies where ground water requirement is more than 20 m^3/day. The water from Sewage Treatment Plants shall be utilized for toilet flushing, car washing, gardening etc.

ii) The No Objection Certificate shall be valid for a period of five years from the date of issue or till such time local Government water supply is provided to the project area, whichever is earlier. In case the project proponent receives water supply from the concerned local Government Water Supply Agency during the validity of the No Objection Certificate, intimation regarding availability of public water supply shall be sent by the project proponent to CGWA and No Objection Certificate will be cancelled by the Authority. In other cases, the project proponent will apply for renewal of No Objection Certificate, ninety days before the expiry of No Objection Certificate.

iii) Proponents shall be liable to pay ground water abstraction charges for the quantum of ground water proposed to be extracted, as per rates mentioned in Table 5.1.

Documents to be submitted with the application

a) Details of water requirement computed as per National Building Code, 2016 **(Annexure I)**, taking into account recycling/ reuse of treated water for flushing etc.

b) Affidavit on non-judicial stamp paper of Rs. 10/- by the applicant, confirming non/ inadequate availability of public water supply in case of users requiring ground water up to 10 m^3/ day for drinking/ domestic use.

c) Certificate of non-availability of water from local government water supply agency in cases requiring ground water in excess of 10 m^3/ day for drinking/ domestic use. Government water supply agencies

applying for No Objection Certificate shall submit copy of government approval of the scheme/ project proposed to be implemented.

d) Ground water quality data of existing bore well/ tube well/ dug well from any National Accreditation Board for Testing and Calibration Laboratories (NABL) accredited laboratory or Govt. approved laboratory (in case of existing projects applying for no objection certificate)

e) Proposal for rain water harvesting/ recharge within the premises as per Model Building Bye Laws issued by Ministry of Housing & Urban Affairs.

3.0 Agriculture Sector

Agriculture sector is the backbone of the Indian economy. As per Minor Irrigation Census 2013-14, 87.86% of wells are owned by marginal, small and semi-medium farmers having land holding up to 4 hectares (ha). Around 9.18 % of wells are owned by medium farmers having land holding 4 – 10 ha and 2.96% of the wells are owned by big farmers having land holding more than 10 ha.

Considering the number of ground water abstraction structures, regulation of ground water in agriculture sector through a 'command and control' strategy will prove to be an arduous task. Therefore, a participatory approach for sustainable ground water management would be more productive.

States/Uts are advised to review their free/subsidized electricity policy to farmers, bring suitable water pricing policy and may work further towards crop rotation/diversification/other initiatives to reduce over-dependence on groundwater.

Agriculture sector shall be exempted from obtaining No Objection Certificate for ground water extraction.

4.0 Commercial Use

No new major industries shall be granted No Objection Certificate in over-exploited assessment areas except as per the policy guidelines.

Availability of ground water resources shall be given due regard while considering applications for grant of No Objection Certificate for commercial use.

Commercial entities extracting ground water shall be required to submit online annual water audit report including an audit of water use as mentioned in the relevant sections. CGWA/ State Ground Water Authority (SGWA) shall publish all such audit reports online.

CGWA/ SGWAs shall engage independent agencies to verify the compliance of No Objection Certificate conditions periodically.

4.1 Industrial Use

In Over-exploited assessment units, No Objection Certificate shall not be granted for ground water abstraction to any new industry except those falling in the category of Micro, Small and Medium Enterprises (MSME). However, No Objection Certificate for drinking/ domestic use for work force, green belt use by these new industries shall be permitted. Expansion of existing industries involving increase in quantum of ground water abstraction in over-exploited assessment units shall not be permitted. No Objection Certificate shall not be granted to new packaged water industries in Overexploited areas, even if they belong to MSME category.

No Objection Certificate for ground water extraction by industries shall be granted subject to the following specific conditions:

i) No Objection Certificate shall be granted only in such cases where local government water supply agencies are not able to supply the desired quantity of water.

ii) All industries shall be required to adopt latest water efficient technologies so as to reduce dependence on ground water resources.

iii) All industries abstracting ground water in excess of 100 m^3/d shall be required to undertake annual water audit through Confederation of Indian Industries (CII)/ Federation Indian Chamber of Commerce and Industry (FICCI)/ National Productivity Council (NPC) certified auditors and submit audit reports within three months of completion of the same to CGWA. All such industries shall be

required to reduce their ground water use by at least 20% over the next three years through appropriate means.

iv) Construction of observation well(s) (piezometer)(s) within the premises and installation of appropriate water level monitoring mechanism as mentioned in Section 15 shall be mandatory for industries drawing/ proposing to draw more than 10 m^3/day of ground water and. Monitoring of water level shall be done by the project proponent. The piezometer (observation well) shall be constructed at a minimum distance of 15 m from the bore well/production well. Depth and aquifer zone tapped in the piezometer shall be the same as that of the pumping well/ wells. Detailed guidelines for design and construction of piezometers are given in **Annexure II**. Monthly water level data shall be submitted to the CGWA through the web portal.

v) The proponent shall be required to adopt roof top rain water harvesting/ recharge in the project premises. Industries which are likely to pollute ground water (chemical, pharmaceutical, dyes, pigments, paints, textiles, tannery, pesticides/ insecticides, fertilizers, slaughter house, explosives etc.) shall store the harvested rain water in surface storage tanks for use in the industry.

vi) Injection of treated/ untreated waste water into aquifer system is strictly prohibited.

vii) Industries which are likely to cause ground water pollution e.g. Tanning, Slaughter Houses, Dye, Chemical/ Petrochemical, Coal washeries, other hazardous units etc. (as per CPCB list) need to undertake necessary well head protection measures to ensure prevention of ground water pollution **(Annexure III).**

viii) All industries drawing ground water in safe, semi-critical and critical assessment units shall be required to pay ground water abstraction charges as applicable as per Tables 5.2 A and 5.3 A.

ix) All existing industries drawing ground water in over-exploited assessment units shall be liable to pay ground water restoration charges as applicable as per Tables 5.2 B and 5.3 B.

Documents to be submitted with the application

(a) An affidavit on non judicial stamp paper of Rs. 10/- regarding non availability of water supply from local government agencies in cases where ground water requirement is up to 10 m^3/day.

(b) Certificate regarding non/ partial availability of fresh water/ treated waste water supply from the local government water supply agency in cases where requirement of ground water is more than 10 m^3/day.

(c) Ground water quality data of existing bore well/ tube well/ dug well from any NABL accredited laboratory or Govt. approved laboratory (in case of existing projects applying for No Objection Certificate)

(d) Water quality data of bore well/ tube well/ dug well in respect of existing industries from NABL accredited laboratories/Government approved laboratories.

(e) Proposal for rain water harvesting/ recharge within the premises as per Model Building Bye Laws issued by Ministry of Housing & Urban Affairs.

(f) **Impact Assessment report:** All projects extracting/proposing to extract ground water in excess of 100 m^3/day in Over-exploited, Critical and Semi-critical areas shall have to mandatorily submit impact assessment report of existing/ proposed ground water withdrawal on the ground water regime and also socio-economic impacts report prepared by accredited consultants. Pro-forma for the report is given in **Annexure IV.**

4.2 Mining Projects

All existing as well as new mining projects will be required to obtain No Objection Certificate for ground water abstraction. Since mining projects are location specific, there will be no ban on grant of No Objection Certificate for abstraction of ground water for such projects in over-exploited assessment units.

No Objection Certificate for mining projects shall be granted subject to the following specific conditions:

i) It shall be mandatory for all the mining industries to ensure that water available from de-watering operations is properly treated and should be gainfully utilized for supply for irrigation, dust

suppression, mining process, recharge in downstream and for maintaining e-flows in the river system.

ii) Construction of observation well(s) (piezometers) along the periphery in the premises, for monthly ground water level monitoring, shall be mandatory for mines drawing/ proposing to draw more than 10 m^3/day of ground water. Depth and aquifer zone tapped in the piezometer shall be commensurate with that of pumping well/ wells.

iii) In addition, the proponent shall monitor ground water levels by establishing observation wells (piezometers) in the core and buffer zones as specified in the No Objection Certificate.

iv) In case of coal and other base metal mining the project proponent shall use the advance dewatering technology (by construction of series of dewatering abstraction structures) to avoid contamination of surface water.

v) In addition to this, all mining units shall also monitor the water quality of mine seepage and mine discharge through NABL accredited/ Govt. approved laboratories and the same shall be submitted at the time of self compliance.

vi) All mining projects drawing ground water in safe, semi-critical and critical assessment units shall be required to pay ground water abstraction charges as applicable as per Tables 5.4 A.

vii) All mining projects drawing ground water in over-exploited assessment units shall be liable to pay ground water restoration charges as per Table 5.4 B.

Documents to be submitted with the application

(a) Mining plan approved by the concerned Govt. agency/ department.

(b) Proposal for rain water harvesting/ recharge within the premises as per Model Building Bye Laws issued by Ministry of Housing & Urban Affairs.

(c) Comprehensive report prepared by accredited consultant on ground water conditions in both core and buffer zones of the mine, depth wise and year wise mine seepage calculations, impact assessment of mining and dewatering on ground water regime and its socio-economic impact, details of recycling, reuse and recharge, reduction of pumping with use of technology for mining and water management to minimize and mitigate the adverse impact on ground water, based on local conditions. Format for report is given in **Annexure V.**

4.3 **Infrastructure projects:**

Since infrastructure projects are location specific, grant of No Objection Certificate to such projects located in over-exploited assessment units shall not be banned. New infrastructure projects/ residential buildings may require dewatering during construction activity and/ or use ground water for construction. In both cases, applicants shall seek No Objection Certificate from CGWA before commencement of work. However, in over-exploited assessment units, use of ground water for construction activity shall be permitted only if no treated sewage water is available within 10 km radius of the site. New as well as existing Infrastructure projects shall also be required to seek No Objection Certificate for abstraction of ground water.

No 'No Objection Certificate' shall be granted for extraction of groundwater for Water Parks, Theme Parks and Amusement Parks in over-exploited assessment units.

Indicative list of Infrastructure projects is given in Annexure VI.

The No Objection Certificate for ground water abstraction will be granted subject to the following specific conditions:

i) In case of infrastructure projects that require dewatering, proponent shall be required to carry out regular monitoring of dewatering discharge rate (using a digital water flow meter) and submit the data through the web portal to CGWA/SGWA as applicable. Monitoring records and results should be retained by the proponent for two years, for inspection or reporting as required by CGWA/ SGWA.

ii) Installation of Sewage Treatment Plants (STP) shall be mandatory for new projects, where ground water requirement is more than 20 m^3/day. The water from STP shall be utilized for toilet flushing, car washing, gardening etc.

iii) For infrastructure dewatering/ construction activity, No Objection Certificate shall be valid for specific period as per the detailed proposal submitted by the project proponent.

iv) All infrastructure projects drawing ground water in safe, semi-critical and critical assessment units shall be required to pay ground water abstraction charges as applicable as per Table 5.3 A.

v) All infrastructure projects (new/ existing) drawing ground water in over-exploited assessment units shall be liable to pay ground water restoration charges as per Table 5.3 B.

Documents to be submitted with the application

(a) In cases where dewatering is involved, submission of impact assessment report prepared by an accredited consultant on the ground water situation in the area giving detailed plan of pumping, proposed usage of pumped water and comprehensive impact assessment of the same on the ground water regime shall be mandatory. The report should highlight environmental risks and proposed management strategies to overcome any significant environmental issues such as ground water level decline, land subsidence etc.

(b) An affidavit on non judicial stamp paper of Rs. 10/- regarding non availability of water from any other source in case water is required for construction in safe and semi critical areas.

(c) Certificate from a government agency regarding non availability of treated sewage water for construction within 10 km radius of the site in critical and over-exploited areas.

(d) Certificate of non-availability of water from local government water supply agency in respect of all categories of assessments units for commercial use.

(e) Proposal for rain water harvesting/ recharge within the premises as per Model Building Bye Laws issued by Ministry of Housing & Urban Affairs.

(f) Details of water requirement computed as per National Building Code, 2016 **(Annexure I)**, taking into account recycling/ reuse of treated water for flushing etc. (in case of completed infrastructure projects for commercial use).

(g) Completion certificate from the concerned agency for infrastructure projects requiring water for commercial use.

5.0 Ground water abstraction/ restoration charges

All residential apartments/ group housing societies/ Government water supply agencies in urban areas shall be required to pay ground water abstraction charges.

All industries/mining/ infrastructure projects drawing ground water in safe, semi-critical and critical assessment units will have to pay ground water abstraction charges based on quantum of ground water extraction and category of assessment unit as per details given in this guideline.

All existing mining/ infrastructure projects and existing industries including MSME drawing ground water in over-exploited assessment units will have to pay ground water restoration charges based on quantum of ground water extraction. Further, new MSME, new infrastructure and new Mining projects in over exploited areas shall also be required to pay ground water restoration charges.

Existing industries, infrastructure units and mining projects which have installed/constructed artificial recharge structures in compliance of the conditions prescribed in the groundwater guidelines prevailing at the time of grant of No Objection Certificate or its renewal shall be eligible for a rebate of 50% (fifty percent) in the ground water abstraction charges/ground water restoration charges, subject to their satisfactory performance and verification.

The revenue generated from the proposed water abstraction/ restoration charges shall be kept in a separate fund for implementation of site specific suitable demand/ supply side interventions.

5.1 **Rates of Ground water abstraction /restoration charges**

I. **Drinking and domestic use for residential apartments/ group housing societies/ Government water supply agencies in Urban areas**

All residential apartments/ Group Housing Societies requiring water only for drinking/domestic use requiring No Objection Certificate would pay ground water abstraction charges as per rates given below in **Table 5.1.**

Table 5.1 Ground Water Abstraction charges for Drinking & Domestic use.

Quantum of Groundwater withdrawal (m^3/month)	**Rate of ground water abstraction charges (Rs. per m^3)**
0-25	No charge
26-50	1.00
>50	2.00

Government water supply agencies and Government infrastructure projects shall pay Ground water abstraction Charges @ Rs. 0.50 per m^3.

II. **Packaged Drinking Water units**

Rates of ground water abstraction charges for packaged drinking water units in safe, semi-critical and critical assessment units are given in Table 5.2 A and those for ground water restoration charges in over-exploited assessment units are given in Table 5.2 B.

Table 5.2 A: Rates of ground water abstraction charges for packaged drinking water units (Rs per m^3)

S.No.	Category of area ↓ / Ground water use →	Quantum of ground water withdrawal				
		Up to 50m^3/day	51 to <200 m^3/day	200 to <1000 m^3/day	1000 to <5000 m^3/day	5000 m^3/day and above
1.	Safe	1.00	3.00	5.00	8.00	10.00
2.	Semi-critical	2.00	5.00	10.00	15.00	20.00
3.	Critical	4.00	10.00	20.00	40.00	60.00

Table 5.2 B: Rates of ground water restoration charges for packaged drinking water units (Rs per m^3)

S.No.	Category of area ↓ / Ground water use →	Quantum of ground water withdrawal				
		Up to 50 m^3/day	51 to <200 m^3/day	200 to <1000 m^3/day	1000 to <5000 m^3/day	5000 m^3/day and above
1.	Over-exploited (existing industries only)	8.00	20.00	40.00	80.00	120.00

III. **Other Industries & infrastructure projects**

Rates of ground water abstraction charges for other industries and infrastructure projects in safe, semi-critical and critical assessment units are given in Table 5.3 A and those for ground water restoration charges in over-exploited assessment units are given in Table 5.3 B.

Table 5.3 A: Rates of Ground Water abstraction charges for other industries & infrastructure projects (Rs per m^3)

S.No.	Category of area ↓ / Ground water use →	Quantum of ground water withdrawal			
		< 200 m^3/day	200 to <1000 m^3/day	1000 to <5000 m^3/day	5000 m^3/day and above
1.	Safe	1.00	2.00	3.00	5.00
2.	Semi-critical	2.00	3.00	5.00	8.00
3.	Critical	4.00	6.00	8.00	10.00

Table 5.3 B: Rates of ground water restoration charges for other industries & infrastructure projects (Rs per m^3)

S.No.	Category of area ↓ / Ground water use →	Quantum of ground water withdrawal			
		< 200 m^3/day	200 to <1000 m^3/day	1000 to <5000 m^3/day	5000 m^3/day and above
1.	Over-exploited (existing industries / new Industries as per the present Guidelines)	6.00	10.00	16.00	20.00

IV. **Mining projects**

Rates of ground water abstraction charges for mining, which are drawing ground water in safe, semi-critical and critical assessment units are given in Table 5.4 A and those for ground water restoration charges in case of projects drawing ground water in over-exploited assessment units are given in Table 5.4 B.

Table 5.4 A: Rates of ground water abstraction charges for mining (Rs. per m^3)

S.No.	Category of area ↓ / Ground water use →	Quantum of ground water withdrawal			
		< 200 m^3/day	200 to <1000 m^3/day	1000 to <5000 m^3/day	5000 m^3/day and above
1.	Safe	1.00	2.00	2.50	3.00
2.	Semi-critical	2.00	2.50	3.00	4.00
3.	Critical	3.00	4.00	5.00	6.00

Table 5.4 B: Rates of ground water restoration charges for mining (Rs. per m^3)

S.No.	Category of area ↓ / Ground water use →	Quantum of ground water withdrawal			
		< 200 m^3/day	200 to <1000 m^3/day	1000 to <5000 m^3/day	5000 m^3/day and above
1.	Over-exploited	4.00	5.00	6.00	7.00

6.0 Bulk Water Supply

All private tankers abstracting ground water and use it for supply as bulk water suppliers will now mandatorily seek No Objection Certificate for ground water abstraction. The bulk water suppliers through tankers drawing ground water in safe, semi-critical and critical assessment units shall pay groundwater abstraction charges as per the **Table-6.1 A.** The bulk water suppliers drawing ground water in over-exploited assessment units shall pay the groundwater restoration charges as per the **Table-6.1 B.** All tankers will have to install GPS based system for their monitoring of movement/area of operation.

Modalities for issue of No Objection Certificate for bulk/tanker water supplies shall be worked out in consultation with States/Uts and suitable guidelines in this regard will be framed and issued separately for the same.

Table-6.1A: Groundwater abstraction charges for Bulk/Tanker water supplies	
Category	Rate per m3 (in Rs.)
Safe	**10**
Semi Critical	**20**
Critical	**25**

Table-6.1B: Groundwater abstraction charges for Bulk/Tanker water supplies	
Category	Rate per m3 (in Rs.)
Over Exploited	**35**

7.0 Abstraction of Saline ground water

Abstraction of saline ground water in areas having either saline ground water at all depths or pockets of saline ground water in an otherwise fresh water area for use by industries/ dewatering by infrastructure/ mining projects including those located in over-exploited areas would be encouraged. Such industries shall be exempted from paying ground water abstraction charges.

The list of such assessment units having saline ground water at all depths as per the latest assessment of dynamic ground water resources will be made available by the CGWA in their website. However, due care shall be taken in respect of disposal of effluents by the units so as to protect the water bodies and the aquifers from pollution.

Detailed guidelines in this regard shall be prepared and issued separately.

8.0 Protection of Wetland Areas

The wet land areas in the country are very crucial as they are direct reflection of the presence of ground water in such areas. The protection of the wetland areas is being separately handled by the Wetland Authorities. Since ground water is very crucial for the survival of the wetland area, any excessive ground water development within the zone of wetland area would affect the volume of water in that wetland.

Projects falling within 500 m. from the periphery of demarcated wetland areas shall mandatorily submit a detailed proposal indicating that any ground water abstraction by the project proponent does not affect the protected wetland areas. Furthermore, before seeking permission from CGWA, the projects shall take consent/approval from the appropriate Wetland Authorities to establish their projects in the area.

9.0 General compliance conditions in No Objection Certificate

i. Installation of digital water flow meter (conforming to BIS/ IS standards) having telemetry system in the abstraction structure(s) shall be mandatory for all users seeking No Objection Certificate and intimation regarding their installation shall be communicated to the CGWA within 30 days of grant of No Objection Certificate through the web-portal.

ii. Proponents shall mandatorily get water flow meter calibrated on from an authorized agency once in a year.

iii. Proponents shall install roof top rain water harvesting & recharge systems in the project area.

iv. Proponents shall pay Ground Water Abstraction/ Restoration Charges based on quantum of ground water extraction as applicable as per the rates given in Section 6.

v. Construction of purpose-built observation wells (piezometers) for ground water level monitoring shall be mandatory as per Section 15. Water level data shall be made available to CGWA through web portal. Detailed guidelines for construction of piezometers are given in **Annexure-II.**

vi. Proponents shall monitor quality of ground water from the abstraction structure(s) once in a year. Water samples from bore wells/ tube wells / dug wells shall be collected during April/May every year and analysed in NABL accredited laboratories for basic parameters (cations and anions), heavy metals, pesticides/ organic compounds etc. Water quality data shall be made available to CGWA through the web portal.

vii. If the existing well becomes defunct due to mechanical failure within the validity period of No Objection Certificate, the user can construct a replacement well under intimation to CGWA on web portal. The defunct well shall be properly sealed **(Refer Annexure VII).** The user will be required to submit documentary proof in this regard. However, if the existing abstraction structures fails to yield water and he proponent desires to drill another tubewell in the same premises, prior permission of the Authority shall be required. If the replacement well is to be drilled in some different place, the proponent shall obtain fresh No Objection Certificate.

viii. Wherever feasible, requirement of water for greenbelt (horticulture) shall be met from recycled / treated waste water.

ix. In case of change of ownership, new owner of the industry will have to apply for incorporation of necessary changes in the No Objection Certificate with documentary proof within 60 days of taking over possession of the premises.

10.0 Monitoring of compliance of No Objection Certificate Conditions

To monitor the compliance of No Objection Certificate conditions, Central Ground Water Authority and State/ UT Ground Water Authorities shall take the following steps:

a. Suitable MIS will be developed for compliance monitoring.

b. District Collectors/Deputy Commissioners (DCs) /District Magistrates (DMs) are authorized to take enforcement measures like sealing of unauthorized ground water abstraction structures, disconnection of electricity, launching of prosecution against those violating the No Objection Certificate conditions and taking action for imposition of Environmental Compensation.

c. Technical officers of CGWB/ CGWA and State groundwater organizations are authorized to take actions with respect to monitoring and periodic inspections with the approval of competent authority.

d. In case of violation of any of the No Objection Certificate conditions, the proponents shall be liable to pay the penalties as per **Section 16.**

11.0 Renewal of No Objection Certificate

No objection certificate shall be renewed periodically, subject to the compliance of the conditions mentioned therein:

i. The applicant shall apply for renewal of No Objection Certificate at least ninety days prior to expiry of its validity.

ii. Application for renewal of No Objection Certificate shall be accompanied by the Compliance Report.

iii. Before granting renewal, Central Ground Water Authority or State/ Ut Authority shall satisfy itself that the conditions of No Objection Certificate have been complied with.

iv. In case of change in category of the assessment unit, renewals would be granted with conditions as laid down for new category.

v. No Objection Certificate will be renewed for the terms specified for various uses as follows:

Category	Use	Term of renewal
Critical, Semi-critical and safe	Infrastructure projects for drinking & domestic use and urban Water Supply Agencies	5 years
	Industries	3 years
	Mines	2 years
Over exploited	All users in 'Over-exploited areas'	2 years

vi. If the application for renewal is submitted in time and the CGWA/ the respective State/ Ut Authority is unable to process the application in time, No Objection Certificate shall be deemed to be extended till the date of renewal of No Objection Certificate.

vii. If the proponent fails to apply for renewal within 3 months from the date of expiry of No Objection Certificate, the proponent shall be liable to pay Environmental Compensation for the period starting from the date of expiry of No Objection Certificate till No Objection Certificate is renewed by the competent authority.

12.0 Extension of No Objection Certificate

If the proponent is unable to construct the well(s) during the validity period of No Objection Certificate for genuine reasons, the proponent will have to apply for extension of No Objection Certificate. Application for extension should be supported by documents justifying the reasons for delay. Other conditions for grant of extension of No Objection Certificate will be the same as that for fresh No Objection Certificate.

Extension of No Objection Certificate will be granted for a maximum period of two years. No further extension will be granted after the expiry of the extended period. In that case, the applicant will have to apply afresh for grant of No Objection Certificate.

13.0 Delegation of powers against illegal groundwater withdrawal

Central Ground Water Authority has appointed the District Magistrate/ District Collector/ Sub Divisional Magistrates of each Revenue District/Sub division as Authorized Officers, who have been delegated the power to seal illegal wells, disconnect electricity supply to the energised well, launch prosecution against offenders etc. including grievance redressal related to ground water in their respective jurisdictions.

In order to further decentralise and strengthen the monitoring and compliance mechanism as per the guidelines, officials of concerned Departments of Revenue and Industries of the States/Uts shall be appointed as Authorised Officers in consultation with the State/Ut Governments.

A copy of the No Objection Certificate issued by the CGWA in the No Objection Certificate Application Portal (NOCAP) will be forwarded to the respective District Magistrate/ District Collector. In case of any violation of the directions of Central Ground Water Authority and non-fulfilment of the conditions laid

down in the No Objection Certificate, the Authorised Officers will file appropriate Petition/Original Application etc under sections 15 to 21 of the Environment (Protection) Act, 1986 in appropriate Courts.

14.0 Ground Water Level Monitoring

All the project proponents (drawing ground water more than 10 cum/d) have to mandatorily construct Piezometers (observation wells) within their premises for monitoring of the ground water levels. Such a mechanism of compliance conditions has been made to ensure that every month the ground water level in the project area can be monitored and observed. In this regard the necessary criteria for monitoring of water levels through piezometers by the project proponents is given in Table 14.1.

Table 14.1 No. of Piezometers to be constructed & Type of Water Level Monitoring Mechanism

S.No.	Quantum of Ground water withdrawal (cum/d)	No. of piezometer required	Monitoring mechanism		
			Manual	DWLR	DWLR with Telemetry
1	<10	0	0	0	0
2	11-50	1	1	0	0
3	51-500	1	0	1	0
4	>500	2	0	1	1

The piezometer shall be suitably located to ensure that zone of aquifer tapped in the piezometer is the same as that of the pumping well.

15.0 Environmental Compensation

Extraction of ground water for commercial use by industries, infrastructure units and mining projects without a valid No Objection Certificate from appropriate authority shall be considered illegal and such entities shall be liable to pay Environmental Compensation for the quantum of ground water so extracted. The norms prescribed by Central Pollution Control Board (CPCB) shall be utilized for calculating the Environmental compensation as mentioned below:

EC_{GW} = Ground water consumption per day x Environmental Compensation rate (ECR_{GW}) x No. of days x Deterrence factor

where ground water consumption is in m3/day and ECR_{GW} in Rs./ cum

15.1 Rates of Environmental Compensation:

Rates of Environmental Compensation (ECR_{GW}) for various types of users in different categories of assessment units are given in Table 15.1 to 15.3.

Table 15.1 : ECR_{GW} for Packaged Drinking Water units

S.No.	Area Category	Water Consumption (cum/day)			
		<200/	200 to <1000	1000 to <5000	5000 & above
		Environmental Compensation Rate (ECR_{GW}) in Rs./m3			
	Safe	12	18	24	30
2	Semi critical	24	36	48	60
3	Critical	36	48	66	90
4	Over- exploited	48	72	96	120
Note :-Minimum EC_{GW} shall not be less than Rs 1,00,000/-					

Table 15.2: ECR_{GW} for Mining/ infrastructure dewatering projects

S.No.	Area Category	Water Consumption (cum/day)			
		<200	200 to <1000	1000 to <5000	5000 & above
		Environmental Compensation Rate (ECR_{GW}) in Rs./m3			
1	Safe	15	21	30	40
2	Semi critical	30	45	60	75
3	Critical	45	60	85	115
4	Over- exploited	60	90	120	150
Note :-Minimum EC_{Gw} shall not be less thanRs 1,00,000/-					

Table 15.3: ECR_{GW} for Industrial units

S.No.	Area Category	Water Consumption (cum/day)			
		<200	200 to <1000	1000 to <5000	5000 & above
		Environmental Compensation Rate (ECR_{GW}) in Rs./m3			
1	Safe	20	30	40	50
2	Semi critical	40	60	80	100
3	Critical	60	80	110	150
4	Over- exploited	80	120	160	200
Note :-Minimum EC_{Gw} shall not be less thanRs 1,00,000/-					

15.2 Deterrent Factors to compensate losses and environmental damage (for packaged drinking water units, mining, industries and infrastructural dewatering projects)

The following deterrent factors based on the duration of illegal ground water extraction shall be levied to compensate for the losses and environmental damages as detailed in Table 15.4.

Table 15.4: Deterrent factor based on quantum of ground water withdrawal and number of years of illegal withdrawal

S.No.	Water Consumption	Deterrence Factor		
		< 2 years	2-5 years	>5 years
1	<1000 KLD	1.00	1.00	1.25
2	1000-5000 KLD	1.00	1.00	1.50
3	>5000 KLD	1.00	1.25	2.00

Note: KLD – Kilolitre per day

16.0 Provision of Penalty

Penalty shall be imposed on the proponents for non-compliance of No Objection Certificate conditions issued by the appropriate authority. Rates of penalty proposed for non-compliance of various conditions of No Objection Certificate are given in Table 16.1.The rates of the penalty shall be reviewed periodically with the approval of competent authority in Ministry of Jal Shakti.

Table 16.1: Penalty provision for non Compliance of No Objection Certificate conditions

S. No.	**Items**	Charges in Rs.
1	Non installation/faulty Digital water Flow meter with telemetry system.	200000
2	Non disclosure/ construction of additional groundwater abstraction structures a) Non-functional Structures. b) Defunct/Abandoned Note: Given rates are for unit non-functional/defunct/abandoned structures. This shall be multiplied with total such structures to arrive at consolidated penalty.	 200000 100000
3	Reporting of fresh water zones as Brackish / Saline zones in application.	200000
4	Non Installation of Piezometer.	200000
5	Non Installation/faulty DWLR/Telemetry system	100000
6	Non Construction/Inadequate capacity of Recharge / Water conservation structures.	500000
7	Non maintenance of Recharge structures.	200000
8	Injection of treated/untreated water into the aquifer system. Note: In addition to penalty, the proponent shall bear the cost of aquifer remediation as per the provisions of Environment (Protection) Act, 1986.	1000000
9	Non Submission of Water level/Water quality Data.	50000
10	Non-maintenance of log book of daily withdrawal/non submission of Groundwater abstraction data.	50000
11	Non submission of photograph of recharge structure(s).	50000
12	Non Submission of Self Compliance report.	100000
13	Construction of groundwater abstraction structures by un authorized/unregistered Drilling Rigs (per structures).	100000
14	Non registration of water supply tankers.	500000
15	Submission of false information/ undertaking.	100000

Charges shall also be payable for correction/modification in the existing issued No Objection Certificate letter. The details of such charges are given in Table 16.2.

Table 16.2: Proposed Charges for correction/Modification in the existing issued No Objection Certificate

S. No.	**Items**	Charges in Rs.
1	Change in recharge quantum	10000
2	Change in User ID.	5000
3	Change in firm Name	5000
4	Extension of No Objection Certificate	5000
5	Issuance of duplicate No Objection Certificate	5000
6	Issuance of corrigendum to No Objection Certificate	5000
7	Any other items/corrections etc	5000

17.0 Other important Conditions (Applicable to all):

i. Sale of ground water by a person/ agency not having valid no objection certificatefrom CGWA/State Ground Water Authority is not permitted.

ii. In infrastructure projects, paved/parking area must be covered with interlocking/perforated tiles or other suitable measures to ensure groundwater infiltration/harvesting.

iii. In case of Infrastructure projects, the firm/entity shall ensure implementation of dual water supply system in the projects. Compliance of the same shall be submitted through the web portal.

iv. Non-compliance of conditions mentioned in the No Objection Certificate may be taken as sufficient reason for cancellation of no objection certificate accorded/ non-renewal of No Objection Certificate.

v. No application shall be entertained without supporting documents as specified in relevant sections.

vi. Abstraction structure(s) should be located inside the premises of project property.

vii. Self compliance of conditions laid down in the no objection certificate shall be reported by the users online in the web portal of Central Ground Water Authority/state Ground Water Authority.

viii. Processing fee prescribed, if any, from time to time shall be charged for various services.

Note:

1. Guidelines are subject to modification from time to time.

2. In case of any discrepancy between Hindi and English versions of this document including the annexures, the English version shall prevail.

Annexure I

Estimation of Water Requirements for drinking and domestic use

(Source: National Building Code 2016, BIS)

a) Residential Buildings:

Accommodations	Population
1 Bedroom dwelling unit	4
2 Bedroom dwelling unit	5
3 Bedroom dwelling unit	6
4 Bedroom dwelling unit and above	7

Notes:

1) The above figures consider a domestic household including support personnel, wherever applicable.

2) For plotted development, the population may be arrived at after due consideration of the expected number and type of domestic household units.

3) Dwelling unit under EWS category shall have population requirement of 4 and studio apartment shall have population requirement of 2.

As a general rule the following rates per capita per day may be considered for domestic and non-domestic needs:

a) For communities with populations up to 20,000:

1)	Water supply through stand post:	40 lphd (Min)
2)	Water supply through house service: connection	70 to 100 lphd

b) For communities with: 100 to 135 lphd
population 20,000 to 100,00 together with
full flushing system

c) For communities with population: 150 to 200 lphd
above 100,000 together with
full flushing system

Note—The value of water supply given as 150 to 200 litre per head per day may be reduced to 135 litre per head per day for houses for Medium Income Group (MIG) and Low Income Groups (LIG) and Economically Weaker Section of Society (EWS), depending upon prevailing conditions and availability of water.

Out of the 150 to 200 litre per head per day, 45 litre per head per day may be taken for flushing requirements and the remaining quantity for other domestic purposes.

A. **Water Requirements for Buildings Other than Residences**

Sl No.	Type of Building	Domestic litres per head/ day	Flushing Litres per head/ day	Total Consumption Litres per head/ day
1.	Factories including canteen where bath rooms are required to be provided	30	15	45
2.	Factories including canteen where no bath rooms are required to be provided	20	10	30
3.	Hospital (excluding laundry and kitchen): a) Number of beds not exceeding 100	230	110	340
	b) Number of beds exceeding 100	300	150	450
	c) Out Patient Department (OPD)	10	5	15
4.	Nurses' homes and medical quarters	90	45	135
5.	Hostels	90	45	135
6.	Hotels (up to 3 star) excluding laundry, kitchen, staff and water bodies	120	60	180
7.	Hotels (4 star and above) excluding laundry, kitchen, staff and water bodies	260	60	320
8.	Offices (including canteen)	25	20	45
9.	Restaurants and food court including water requirement for kitchen: a) Restaurants	55 per seat	15 per seat	70 per seat
	b) Food Court	25 per seat	10 per seat	35 per seat
10.	Clubhouse	25	20	45
11.	Stadiums	4	6	10

12.	Cinemas, concert halls and theatres and multiplex	5 per seat	10 per seat	15 per seat
13.	Schools/Educational institutions: a) Without boarding facilities b) With boarding facilities	25	20	45
		90	45	135
14.	Shopping and retail (mall) a) Staff	25	20	45
	b) Visitors	5	10	15
15.	Traffic Terminal stations a) Airports	40	30	70
	b) Railway stations (Junction) with bathing facility	40	30	70
	c) Railway stations (Junction) without bathing facility	30	15	45
	d) Railway stations (Intermediate) with bathing facility	25	20	45
	e) Railway stations (Intermediate) without bathing facility	15	10	25
	f) Interstate bus terminals	25	20	45
	g) Intrastate Bus Terminals/Metro Stations	10	5	15

Notes:

1. For calculating water demand for visitors, consumption of 15 litre per head per day may be taken.

2. The water demand includes requirement of patients, attendants, visitors and staff. Additional water demand for kitchen, laundry and clinical water shall be computed as per actual requirements.

3. The number of persons shall be determined by average number of passengers handled by stations, with due considerations given to the staff and vendors who are using these facilities.

4. Consideration should be given for seasonal average peak requirements.

5. The hospitals may be categorized as Category A (25 to 50 beds), Category B(51 to 100 beds), Category C (101 to 300 beds), Category D (301 to 500) and Category E (501 to 750 beds).

Annexure II

Guidelines for construction of Piezometers and monitoring of Ground Water Levels and Quality

Piezometer is a borewell/tubewell used only for measuring the water level by lowering a tape/sounder or automatic / digital water level measuring equipment. It is also used to take water sample for water quality testing whenever needed. General guidelines for installation of piezometers are as follows:

- The piezometer is to be installed/constructed at the minimum distance of 50 m from the pumping well through which ground water is being withdrawn. The diameter of the piezometer should be about four inches to six inches.

- The depth of the piezometer should be the same as that of the pumping well from which ground water is being abstracted. If, more than one pumping wells are constructed tapping aquifers at different depths, more than one piezometers shall be required to be constructed tapping different aquifers as in the pumping wells.

- The measurement of water level in piezometer should be taken, only after the pumping from the surrounding tubewells has been stopped for about four to six hours.

- The ground water quality has to be monitored once in a year during pre-monsoon (April/ May) period by industries and mines drawing ground water. Samples of ground water should be analyzed from NABL accredited laboratory.

- A permanent display board should be installed at Piezometer/ Tubewell site for providing the location, piezometer/ tubewell number, depth and zone tapped of piezometer/tubewell for standard referencing and identification.

- Any other site specific requirement regarding safety and access for measurement may be taken care off.

Annexure III

Measures to be adopted to ensure prevention from pollution in the plant premises of polluting industries/ projects

It has been observed that ground water in and around polluting industries like Tannery, Slaughter Houses, Dye, Chemical, Coalwashery, other hazardous units, etc., is polluted. In order to prevent further deterioration of ground water quality, it is essential to take all necessary measures for well head protection. All industries/ projects falling under this category are hereby directed to follow the under mentioned procedure both for existing and new category.

1. No tube well/ bore well / dug well should be constructed in the vicinity of the processing unit. Tube well/ bore well should be constructed at the place which is hygienically maintained.

2. Only Mild Steel pipe should be used for assembly/ casing and PVC (Poly Vinyl Chloride) or similar pipes should not be used. The tube well/ bore well having PVC or similar pipes should be abandoned and filled back.

3. Around the tube well/ bore well, RCC (Reinforced Concrete Cement) grouting of 3 meters (length) x 3 meters (width) x 2 meters (depth) must be provided. The pipe of the tube well/ bore well must be raised 1 meter above ground level (1 magl). The tube well/ bore well must be surrounded by RCC wall of 0.5 meter height and 1.5 meter depth to prevent any surface contamination to enter the constructed tube well/ bore well. Plan/Sectional diagram is enclosed for reference (Appendix 1 and 2).

3. The tube well/ bore well must be fitted with NRV (Non Return Valve) in order to ensure that the constructed tube well/ bore well is exclusively used for abstraction of ground water only.

4. At no point of time there should be any injection of any water or fluid into the constructed tube well/ bore well/ Piezometer.

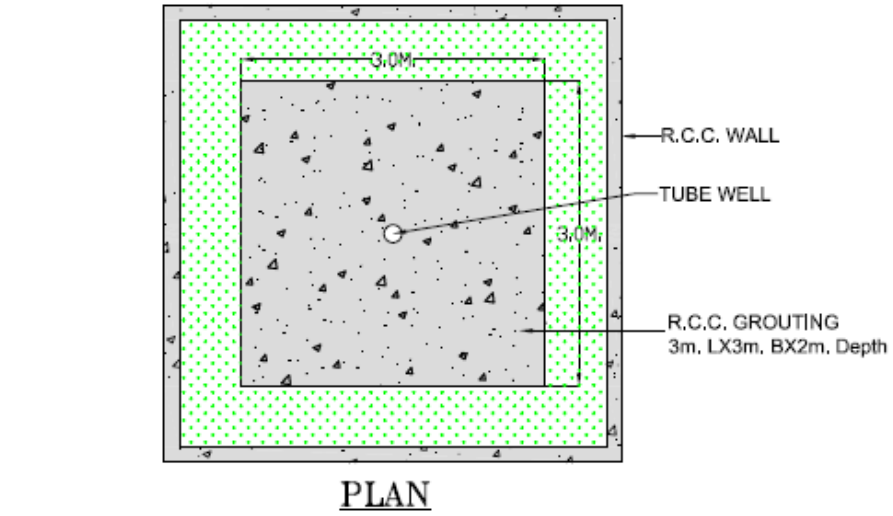
5. The industries/ projects under this category should not implement any recharge measures within the plant premises.

6. Any tube well/ bore well located/ constructed in the vicinity of STP (Sewage Treatment Plant) or ETP (Effluent Treatment Plant) should be abandoned and filled back.

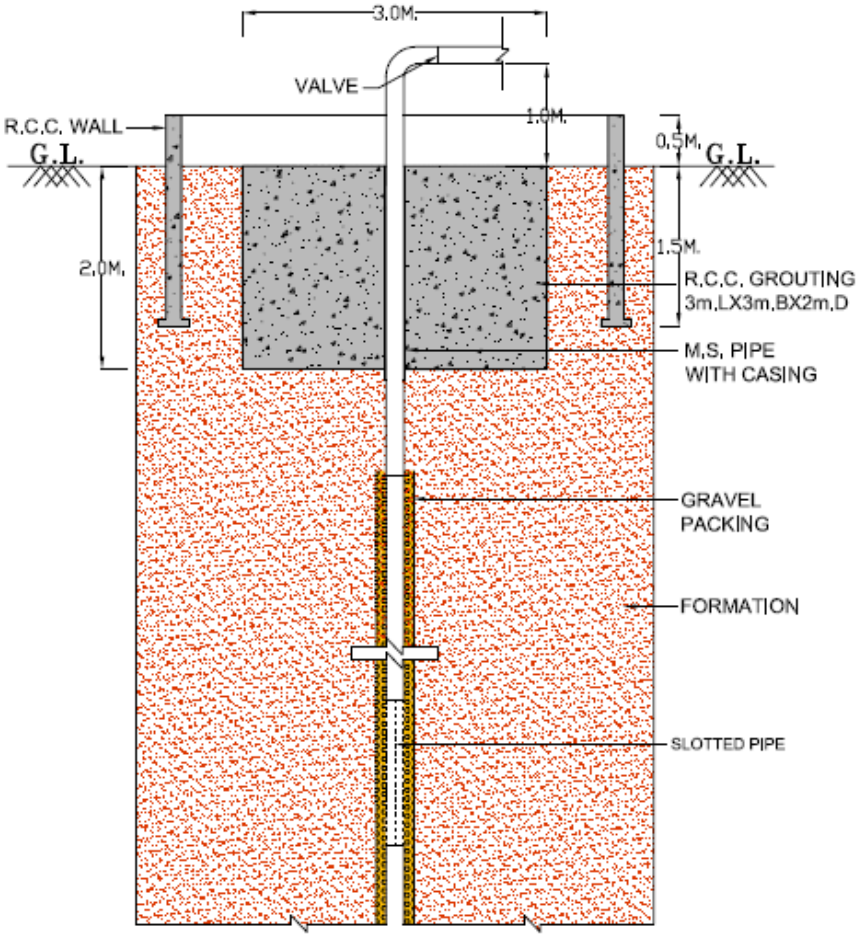
7. The piezometer to be constructed for monitoring purpose should follow the same procedure as that for tube well/ bore well for such industries/ projects.

Appendix 1

Plan/ Sectional diagram showing well head protection



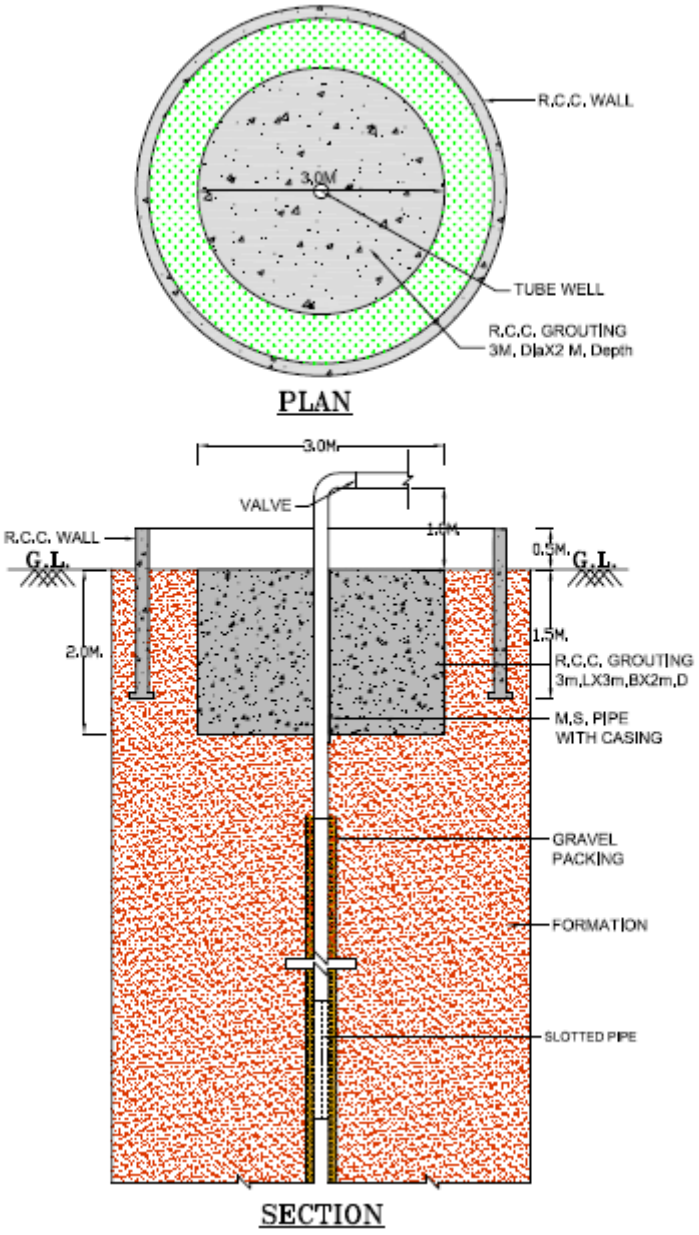
PLAN



SECTION

Appendix 2

Plan/ Sectional diagram showing well head protection



Annexure-IV

Outline of hydro-geological Report for obtaining No Objection Certificate for industries

1. Brief about the proposed project giving location details, coordinates, google/ toposheet maps, etc. demarcating the project area.

2. Ground water situation in and around the project area including water level and quality data and maps along with quality issues, if any. In case of mines, ground water conditions in both core and buffer zone should be described.

3. Details of the tubewells/ borewells proposed to be constructed. This includes the drilling depth, diameter, tentative lithological log, details of pump to be lowered, H.P. of pump, tentative discharge of tubewells/ borewells, etc. Locations to be marked on the site plan/ map. Location of proposed piezometers.

4. Details of Geophysical studies carried out in and around the project area. Ground water resources computation of the block in which the project falls.

5. Approved Mine plan in case of mines and detailed dewatering plan in case of mine/ infrastructure dewatering projects.

6. Proposed usage of pumped water in case of mining/ infrastructure dewatering projects.

7. Comprehensive assessment of the impact on the ground water regime in and around the project area highlighting the risks and proposed management strategies proposed to overcome any significant environmental issues.

8. Proposed measures for disposal of waste water by industries drawing saline water.

9. Measures to be adopted for water conservation which include recycling, reuse, treatment, etc. This includes the water balance chart being adopted by the firm along with details of water conservation methods to be adopted.

- Brief write up along with capacity and flow chart of Sewage Treatment Plants / Effluent Treatment Plants / Combined Effluent Treatment Plants existing/ proposed within the project.
- Details of water conservation measures to be adopted to reduce/ save the ground water.
- Total water balance chart showing the usage of water for various processes.

10. Any other details pertaining to the project.

Annexure V

Format of the Report on ground water conditions (for mining projects)

Introduction

Project description

Background

Objectives and scope

Regional setting

Location

Landuse

Climate

Topography and drainage

Geology –Regional and Local

General Hydrogeology (aquifer types, aquifer depth, zone tapped etc.)

Groundwater condition (In core and buffer zones)

Spatial and temporal variations in water levels Groundwater quality (Shallow and deep aquifer)

Impact of groundwater extraction on local groundwater

Hydrograph of water level/piezometer in monitoring wells

Trend analysis of historical water levels Flow net analysis (groundwater flow direction)

Year wise/ bench wise mine dewatering computation as per approved mine plan

Conclusions

Annexure VI

Indicative list of Infrastructure projects

Residential townships including commercial buildings
Office building
School
College
University
Special Economic Zone
Metro Station
Railway Station
Bus Depot
Airport
Seaport
Highway infrastructure
Fire station
Warehouse
Business Plaza
Malls & Multiplex
Hospitals
Nursing Homes
Resort
Hotel/ Restaurant/ Food Plaza
Holiday home/Guest house/ Hostels
Banquet Hall/ Marriage Gardens
IT Complex
Logistics & Cargo
Clubs
Trade Centre

Annexure -VII

Supreme Court Order in Civil Writ petition 36 of 2009 regarding measures for prevention of fatal accidents of small children due to their falling into abandoned bore wells and tube wells

In Re: Measures for prevention of fatal accidents of small children due to their falling into abandoned bore wells and tube wells

Union of India and Ors. Respondents(s)

ORDER

With this Court issuing requisite guidelines vide order dated 11th February, 2010, subject to slight modifications, nothing survives in the present writ petition.

That modification is as follows:

(i) The owner of the land/ premises, before taking any steps for constructing bore well/ tube well must inform in writing to the concerned authorities in the area, i.e., District Collector/ District Magistrate/ Sarpanch of the Gram Panchayat/ any other Statutory Authority/ concerned officers of the Department of Ground Water/ Public Health/ Municipal Corporation, as the case may be, about the construction of bore well/ tube well.

(ii) Registration of all the drilling agencies, namely, Government/ Semi Government, Private etc. should be mandatory with the district administration/ Statutory Authority wherever applicable.

(iii) Erection of signboard at the time of construction near the well with the following details:-

(a) Complete address of the drilling agency at the time of construction/ rehabilitation of well.

(b) Complete address of the user agency/owner of the well.

(iv) Erection of barbed wire fencing or any other suitable barrier around the well during construction.

(v) Construction of cement/ concrete platform measuring 0.50x0.50x0.60 meter (0.30 meter above ground level and 0.30 meter below ground level) around the well casing.

(vi) Capping of well assembly by welding steel plate or by providing a strong cap to be fixed to the casing pipe with bolts & nuts.

(vii) In case of pump repair, the tube well should not be left uncovered.

(viii) Filling of mud pits and channels after completion of works.

(ix) Filling up abandoned bore wells by clay/sand/boulders/pebbles/drill cuttings etc. from bottom to ground level.

(x) On completion of the drilling operations at a particular location, the ground conditions are to be restored as before the start of drilling.

(xi) District Collector should be empowered to verify that the above guidelines are being followed and proper monitoring check about the status of bore holes/ tube wells are being taken care through the concerned state/ Central Government agencies.

(xii) District/ Block/ Village wise status of bore wells/tube wells drilled viz. No. of wells in use, No. of abandoned bore wells/ tube wells found open, No. of abandoned bore wells/ tube wells properly filled up to ground level and balance number of abandoned bore wells/ tube wells to be filled up to ground level is to be maintained at District Level.

In rural areas, the monitoring of the above is to be done through Village Sarpanch and the Executive from the Agriculture Department.

In case of urban areas, the monitoring of the above is to be done through Junior Engineer and the Executive from the concerned Department of Ground Water/Public Health/ Municipal Corporation etc.

(xiii) If a bore well/ tube well is 'Abandoned' at any stage, a certificate from the concerned department of Ground Water/ Public Health/ Municipal Corporation/ Private Contractor etc. must be obtained by the aforesaid agencies that the 'Abandoned' bore well/tube well is properly filled upto the ground level. Random inspection of the abandoned wells is also to be done by the Executive of the concerned agency/ department. Information on all such data on the above are to b maintained in the District Collector/ Block Development Office of the State.

We are informed that the last paragraph of the earlier order dated 11th February, 2010, concerning publicity has been duly complied with.

Subject to the above, the writ petition is disposed of.

……..CJI.
[S.H. KAPADIA]

……..….J.
[K.S. RADHAKRISHNANA]

……..…….J.
[SWATANTER KUMAR]

New Delhi,
August 6, 2010

ANNEXURE VIII

List of States/Union territories where ground water extraction is being regulated by Central Ground Water Authority

1. Andaman and Nicobar Islands
2. Assam
3. Arunachal Pradesh
4. Bihar
5. Chhattisgarh
6. Dadra and Nagar Haveli and Daman and Diu
7. Gujarat
8. Haryana
9. Jharkhand
10. Madhya Pradesh
11. Maharashtra
12. Manipur
13. Meghalaya
14. Mizoram
15. Nagaland
16. Odisha
17. Punjab
18. Rajasthan
19. Sikkim
20. Tripura
21. Uttar Pradesh
22. Uttarakhand
23. Andhra Pradesh (only mining projects)
24. Telangana (only mining projects)

Annexure IX

Glossary of technical terms used

1. **Safe area**: Area categorized as SAFE from the ground water resources point of view, based on the latest ground water resources assessment carried out jointly by CGWB and State ground water organizations. Details available on the websites of NOCAP and CGWB.
2. **Semi-critical area**: Area categorized as SEMI-CRITICAL from the ground water resources point of view, based on the latest ground water resources assessment carried out jointly by CGWB and State ground water organizations. Details available on the websites of NOCAP and CGWB.
3. **Critical area**: Area categorized as CRITICAL from the ground water resources point of view, based on the latest ground water resources assessment carried out jointly by CGWB and State ground water organisations. Details available on the websites of NOCAP and CGWB.
4. **Over-exploited area**: Area categorized as OVER-EXPLOITED from the ground water resources point of view, based on the latest ground water resources assessment carried out jointly by CGWB and State ground water organisations. Details available on the websites of NOCAP and CGWB.
5. **Aquifer**: Geological formation capable of storing and transmitting ground water.
6. **Deeper Aquifer**: In areas having multiple aquifer system, the aquifer(s) occurring below the uppermost aquifer.
7. **Well**: Any structure used for the extraction of groundwater, including open wells, dug wells, bore wells, dug-cum-bore wells, tube wells, filter points, collector wells, infiltration galleries, recharge wells, or any of their combinations or variations.
8. **Government Agency**: May be Central or State Government body.
9. **Supplier**: Government/ Government approved Water Supply Agency.
10. **Mine**: Area where mining activity is taking place, or area abandoned after mining.
11. **Illegal Ground Water abstraction Structure**: Any energized abstraction structure viz. dugwell, tubewell, borewell which is being used to withdraw ground water without valid No Objection Certificate from Central Ground Water Authority.
12. **Rainwater Harvesting**: The technique or system of collection and storage of rainwater, at micro watershed scale, including roof-top harvesting, for future use or for recharge of groundwater.
13. **Mining Project**: Project which involves mining activity either open cast or underground or both.
14. **Ground Water Draft**: Quantum of ground water withdrawal.
15. **Saline Water**: Water having salinity in excess of 2500 µsiemens/cm at 25^0C.
16. **Water Table Intersection**: Intersection of the water table on excavation of the overlying material due to mining or other activities.
17. **Drinking and domestic use**: Besides drinking & domestic use of households, this category will cover drinking requirement of industries not requiring water for industrial process; drinking, washing, cleaning use etc. in case of hospitals, hotels, malls & multiplexes, institutions, offices, banquet halls, fire stations, metro stations, railway stations, airports, sea ports, stadia etc.
18. **Recycle/Reuse**: Using treated waste water for various purposes/ putting water to multiple uses.
19. **Government Department:** Either Central Government or State Government.
20. **Municipality:** Municipality, a Municipal Corporation or similar body of local urban governance by any other name.
21. **Groundwater:** Water, which exists below the surface in the zone of saturation and can be extracted through wells or any other means or emerges as springs and base flows in streams and rivers;
22. **Bgl :** Below Ground Level.
23. **BCM :** Billion cubic metres.

24. **Groundwater Abstraction structure:** Structure used to withdraw groundwater like bore well / tube well / dug well/dug cum bore well/tunnel well.

25. **Observation well or Piezometer:** A bore well/tube well used only for measuring the water level/piezometric head and to take water sample periodically but not used for groundwater abstraction.

26. **Water Audit:** A method of quantifying water use in simple or complex systems, with a view to reducing water usage and often saving money on otherwise unnecessary water use.

27. **Ground water pollution:** If concentration of any parameter in ground water exceeds the maximum permissible limit for drinking water prescribed by the Bureau of Indian Standards.

28. **Cooperative Group Housing Societies/ Builder flats**: A Housing Society is a society formed by house owners within a residential complex. The housing society formed must be formally registered with registrar of co-operatives.

29. **KLD –** Kilo Litre per day

30. $\mathbf{EC_{GW}}$ - Environmental compensation for drawing illegal ground water.

31. $\mathbf{EC_{GWR}}$ - Environmental compensation rates for drawing illegal ground water.

ANNEXURE X

Annual water audits by the industries (Source – CII)

Water audit is a systematic process of objectively obtaining a water balance by measuring flow of water from the site of water withdrawal or treatment, through the distribution system, and into areas where it is used and finally discharged. Conducting a water audit involves calculating water balance, water use and identifying ways for saving water.

Water audit involves preliminary water survey and detailed water audit. Preliminary water survey is conducted to collect background information regarding plant activities, water consumption and water discharge pattern and water billing, rates and water cess. After the analysis of the secondary data collected from the industry, detailed water audit is conducted, which involves the following steps:

- On site training and discussion with facility manager and personnel
- Water system analysis
- Quantification of baseline water map
- Monitoring and measurements using pressure and flow meters and various other devices
- Quantification of inefficiencies and leaks
- Quantification of water quality loads and discharges
- Quantification of variability in flows and quality parameters
- Strategies for water treatment and reuse or direct use

A detailed water balance is finally developed. Water quality requirement at various user areas is mapped, which helps in developing ‘recycle’ and ‘reuse’ opportunities.

The detailed water audit report contains the following:

- Water consumption and wastewater generation pattern
- Specific water use and conservation
- Complete water balance of the facility
- Water saving opportunities
- Method of implementing the proposals
- Full description and figures
- Investment required

Industries can undertake following measures for water conservation:

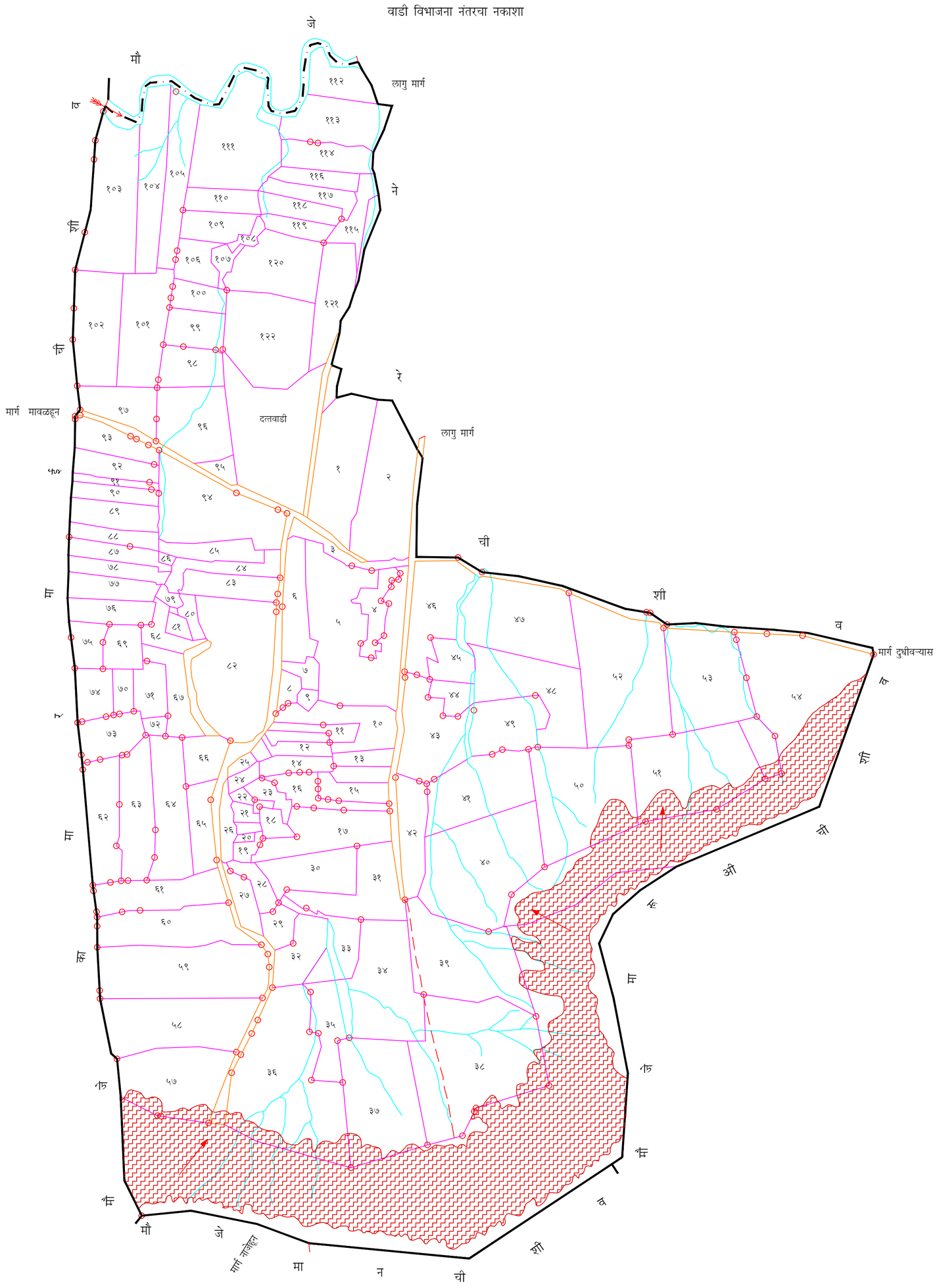
- Setting up of norms for water budgeting
- Modernization of industrial process to reduce water consumption
- Recycling water with a re-circulating cooling system
- Ozonation cooling water approach which can result in five fold reduction in blow down when compared to traditional chemical treatment
- Reduction in reuse of de-ionized water by eliminating some plenum flushes, converting from a continuous flow to an intermittent flow system and improving control on the use
- Use of waste water for gardening
- Proper processing of effluents to adhere to the norms of disposal.

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ANNEXURE-A-3 (Colly.)

वाडी विभाजना नंतरचा नकाशा



मौजे : दत्तवाडी
नेरेगांवाखालील
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खुणा	शेरा
	रस्ता : सडक, गाडीमार्ग, पायमार्ग लोहमार्ग
	नदी,नाला,तलाव
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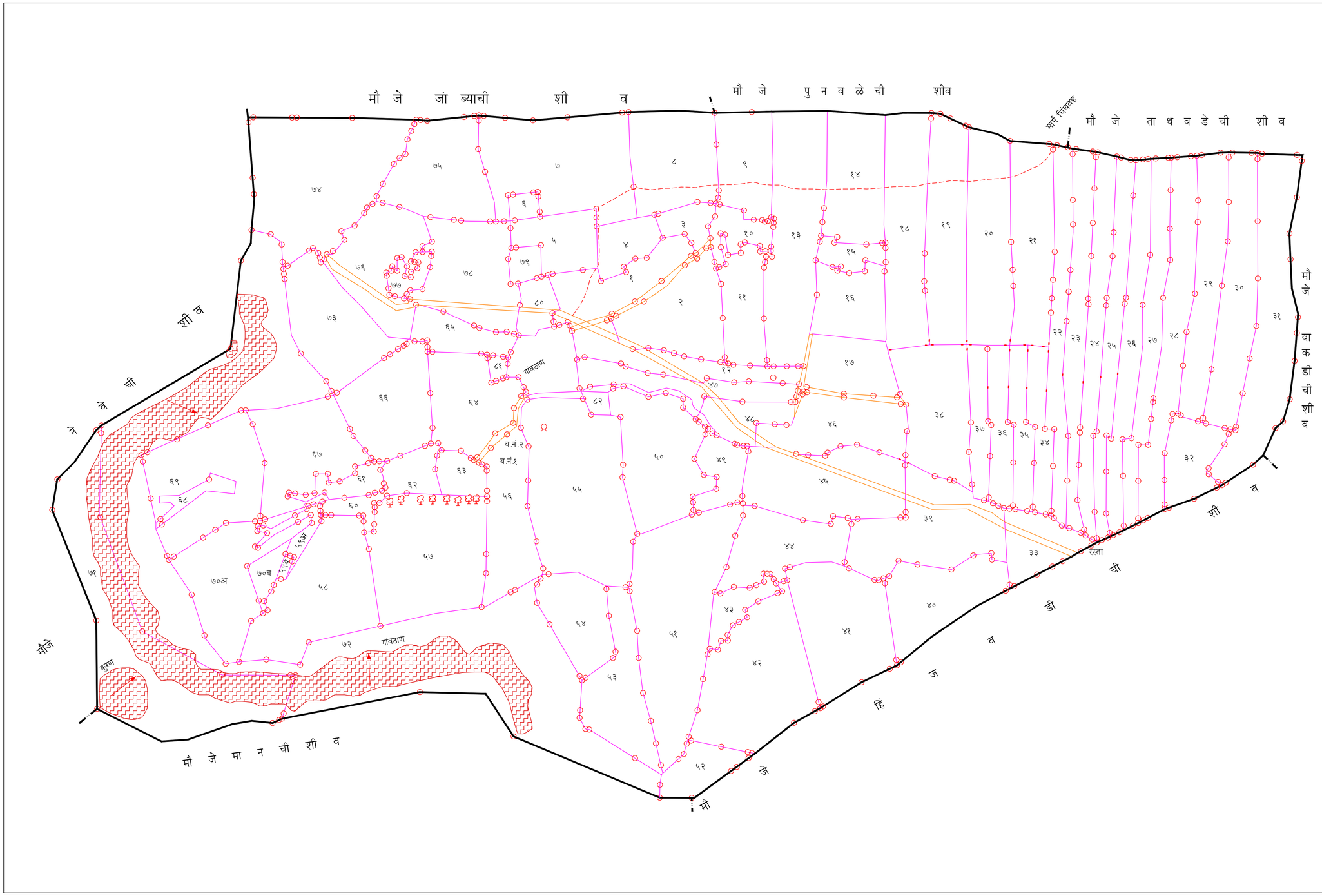
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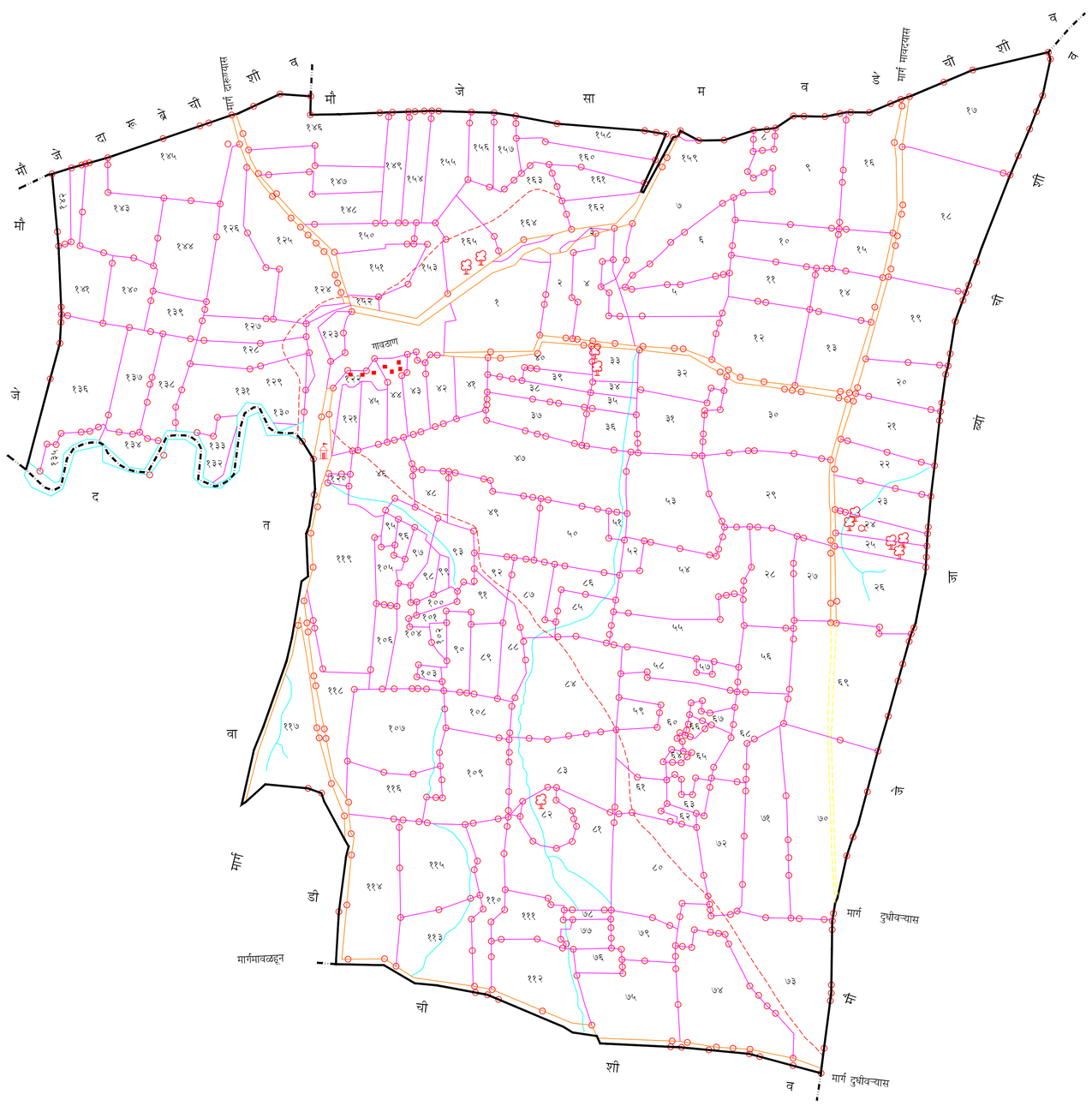
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	नदी,नाला,तलाव
	झाडे : चांच,आंबा,चिंची,वाव्हळ,पोफ, इतर झाडे
	विहीर : पक्की,कच्ची,पाण्याची मोट डोहेल, विंज, रिव्हर्सपोली, ताकी
	ओरे, टपुच
	दगड
	बाध , पंचधारा
	रस्तालुप्त
	टेलेज ग्रर्व, सुधारा, नारळीट, इतरा
	विद्युत खांब , टेली खांब
	शाळा, माध्यिमालय, कारखाना
	पोष्ट, दवाखाना, बागायेत, पंचायत
	ओपोसेट : रेलवेस्टेट, पेट्रेट, पेलोलिम इतर
	बागायेत, मेहेनत, मिश्रित, ब्यायम, सीमेत
	पेवर ब्लाकस : चारित्र,पाण्यापासे इतर
	दोरस
	खुलण
	आवाटी
	समतल
	खदान
	पाण्याचा
	ऐतिहासिक स्थळ
	मार्क स्टोनस , त्रिकानोन

वाडी विभाजन नंतरचा सर्व्हे नंबरचा नकाशा



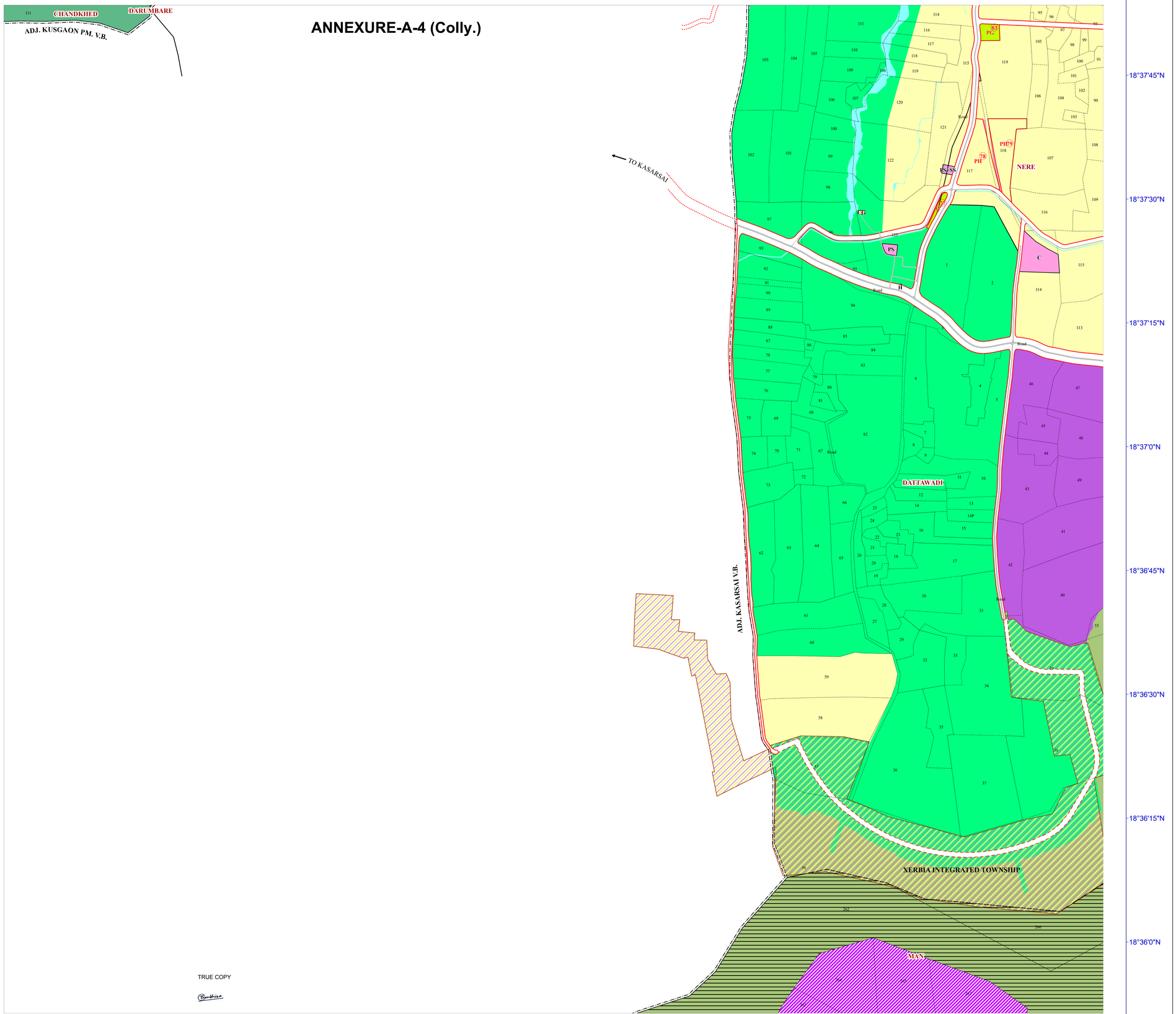
मौजे : नेरे
तालुका मुळशी
जिल्हा पुणे
सन्
प्रमाण १: १०,०००
संकेत क्र. ३०९७७

खुणा	शेरा
	रस्ता : सडक, गाडीमार्ग, पायमार्ग लोहमार्ग
	नदी,नाला,तलाव
	झाडे : संत्रा,आंबा,सिंदी,नारळ,चींच, इतर झाडे
Ⓑ Ⓒ	विहीर : पक्की,कच्ची,पायरी,मोट डीझेल, विज, निरुपयोगी, टाकी
Ⓑ Ⓣ	बोर, ट्युब
	दगड
	बांध , बंधारा
	रस्तापुल
	देऊळ ,चर्च, गुरुद्वारा, मशजीद, इदगाह
T T	विद्युत खांब , टेली खांब
S C	शाळा, महाविद्यालय, कारखाना
	घर, दवाखाना, बाजारपेठ, वसाहत
TO PO PS O	ऑफीस : टेलीफोन,पोस्ट,पोलीस,इतर
B P	कार्यालय, पेट्रोलपंप, सिनेमा, स्मारक, हॉटेल
FH IH GH	गेस्ट हाऊस : फॉरेस्ट,पाटबंधारे,इतर
	डोंगर
	कुंपण
	आबादी
	स्मशान
	खदान
	गायरान
	ऐतिहासिक स्थळ
	सर्व्हे स्टेशन, विस्तारीत

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ANNEXURE-A-4 (Colly.)



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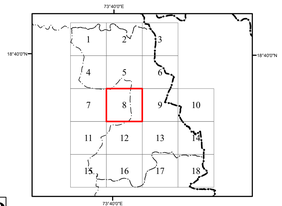
SHEET NO 8

PUNE METROPOLIS

DRAFT DEVELOPMENT PLAN OF PUNE METROPOLITAN REGION

PUBLISHED U/S 26 (1) OF M.R. & T.P. ACT 1966

URBAN GROWTH CENTRE : HINJEWADI



LEGEND

EXISTING FEATURES/BOUNDARIES

- PMR BOUNDARY
- TALUKA BOUNDARY
- VILLAGE BOUNDARY
- MUN.CORP./MUN.COUNCIL/ NAGAR PANCHAYAT BOUNDARY
- GROWTH CENTRE BOUNDARY
- SECTOR BOUNDARY
- TOWN PLANNING SCHEME
- GAOTHAN
- GUT/SURVEY BOUNDARY
- SPA BOUNDARY FOR 23 VILLAGES
- SPA BOUNDARY
- SEZ BOUNDARY
- TOD BOUNDARY
- WILDLIFE SANCTUARY
- RESTRICTIVE BOUNDARY
- WATER BODIES
- BLUE LINE

LAND USE CLASSIFICATION

- RESIDENTIAL ZONE
- COMMERCIAL ZONE
- INDUSTRIAL ZONE
- LOGISTIC ZONE
- PUBLIC SEMI-PUBLIC ZONE
- PUBLIC UTILITY ZONE
- TOURISM DEVELOPMENT ZONE
- TRAFFIC & TRANSPORTATION ZONE
- DEFENCE ZONE
- AGRICULTURE ZONE G-1
- GREEN ZONE G-2
- GREEN BELT ZONE
- AFFORESTATION ZONE
- HILL TOP-HILL SLOPE ZONE
- FOREST ZONE
- QUARRY ZONE
- RECREATIONAL ZONE

OVERLAY

- HILL STATION

- CONGESTED AREA
- PRIVATE FOREST
- INTEGRATED TOWNSHIP/ SPECIAL TOWNSHIP PROJECT

TRANSPORT

- EXISTING RAILWAY LINE
- EXISTING ROAD
- FOOT TRACK & INTERNAL ROAD
- PROPOSED RAILWAY LINE
- APPROVED ROADS IN TPS
- PROPOSED ROAD
- METRO LINE
- OVER BRIDGE
- EXISTING TUNNEL
- PROPOSED TUNNEL
- FLYOVER

EXISTING AMENITIES

- EXISTING RESIDENTIAL AMENITY
- EXISTING COMMERCIAL AMENITY
- EXISTING RECREATIONAL AMENITY
- EXISTING PSP AMENITY
- EXISTING PU AMENITY
- EXISTING TRANSPORT AMENITY

PROPOSED RESERVATIONS

- PROPOSED RESIDENTIAL RESERVATION
- PROPOSED COMMERCIAL RESERVATION
- PROPOSED RECREATIONAL RESERVATION
- PROPOSED PSP RESERVATION
- PROPOSED PU RESERVATION
- PROPOSED TRANSPORT RESERVATION

APPROVED TPS AMENITIES

- APPROVED TPS RESIDENTIAL AMENITY
- APPROVED TPS COMMERCIAL AMENITY
- APPROVED TPS RECREATIONAL AMENITY
- APPROVED TPS PSP AMENITY
- APPROVED TPS PU AMENITY
- APPROVED TPS TRANSPORT AMENITY

ABBREVIATIONS

PPS:Pre Primary School
PS:Primary School
PS Ext :- Primary School Extension
SS:Secondary School
C:College
ITI:Industrial Training Institute
IRTC:Industrial Research & Training Centre
IEC:Industrial Educational Complex
EC:Educational Complex
SRC:Study & Research Centre
SU:Sport University
U:University
HC:Health Centre
TCC:Trauma Care Centre
H:Hospital
VH:Veterinary Hospital
MCH:Hospital & Medical College
CH:Community Hall
CC:Cultural Centre
SWC:Social Welfare Centre
SCC:Socio-Cultural Centre
DC:District Court
A:Ashram
HTL:Hostle
PA:Public Amenity
CSMS:Chatrapati Sambhaji Maharaj Smarak
APRD:Agro Processing Research and Development
D:Dharmshala
PA:Public Amenity

GP:Government Purpose
AP:Authority Purpose
PH:Public Housing
HD:Housing for Dishoused
GSQ:Government Staff Quarters
RH:Rest House
POH:Police Housing
G:Garden
PG:Play ground
MPG:Multipurpose Ground
TP:Town Park
RP:Regional Park
RFD:River Front Development
SPC:Sports Complex
ST:Stadium
BDP:Biodiversity Park
AMT:Amphitheatre
FP:Forest Park
EFG:Exhibition cum Fair Ground
SC:Shopping Centre
M:Market
BC:Business Centre
TC:Town Centre
RC:Regional Centre
REC:Rural Empowerment Centre
WM:Wholesale Market
TRC:Tourist Centre
WC:Wellness Centre
SPIC:Spiritual Centre
WH:Warehouse
GO:Government Office

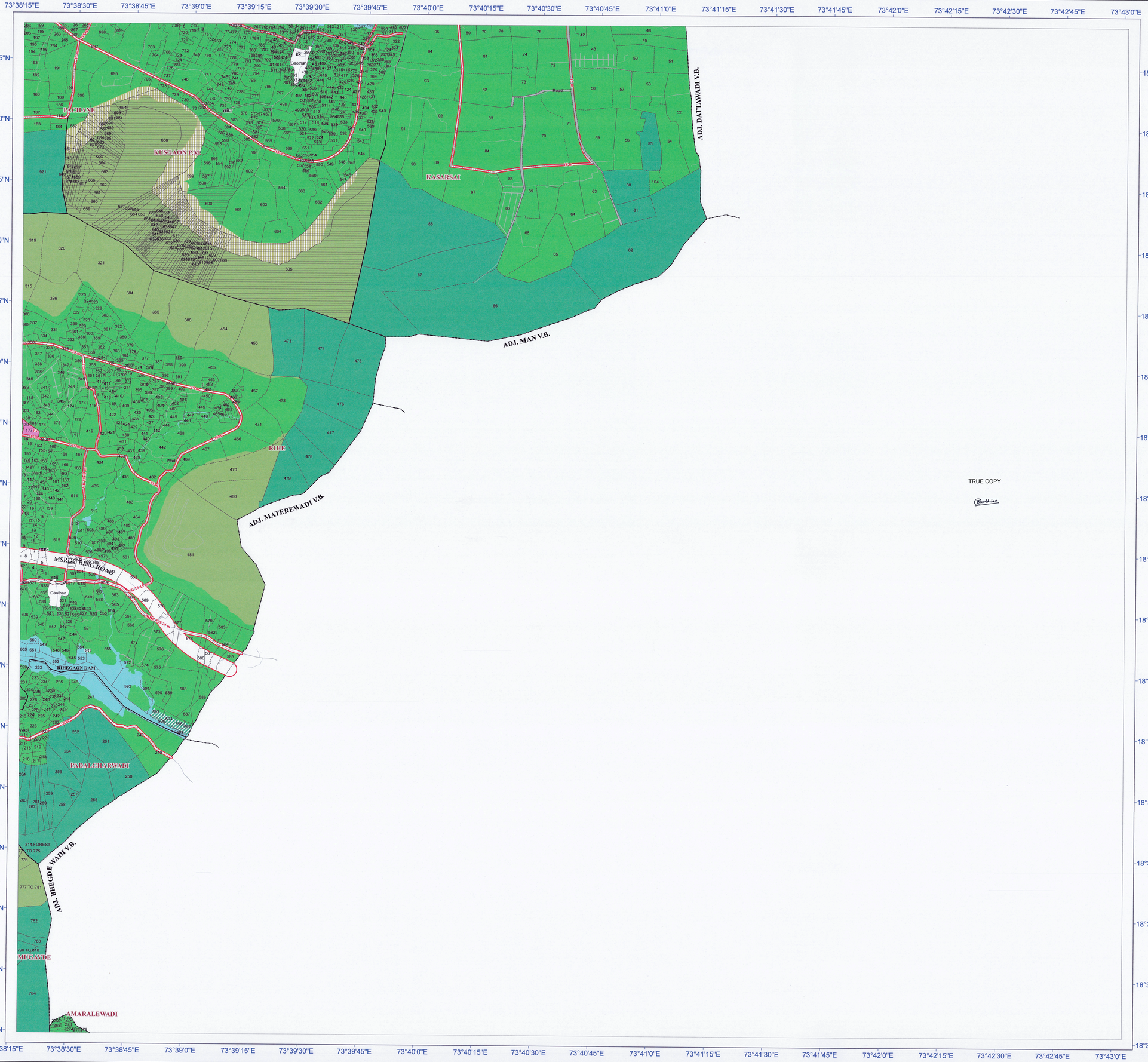
APMC:Agriculture Produce Market Committee
TEC:Tourist Entertainment Centre
ATREC:Agro Tourism Entertainment Centre
APSM:Agri Produce Sub-Marketyard
MEC:Media Entertainment Centre
AHC:Art & Heritage Centre
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STP:Sewage Treatment Plant
WTP:Water Treatment Plant
ETP:Effluent Tratement Plant
SWM:Solid Waste Management Site
FS:Fire Brigade Station
PST:Police Station
PO:Post Office
ESS:Electric Sub-Station
PRN:Prison
EP:Energy Park
BS:Bus Stand
BD:Bus Depot
MMH:Multimodal Hub
MD:Metro Depot / Car Shed
TT:Truck Terminal
RS:Railway Station
MS:Metro Station
MRTS:Mass Rapid Transit System
HP:Helipad
P:Parking
Mun.Corp:Municipal Corporation
Mun.Council:Municipal Council
TOD:Transit Oriented Development

N

SCALE1:5,000

0 90 180 360 540 720 Meters

(ABHIRAJ GIRKAR)	(Dr. SUHAS DIWASE, I.A.S.)
TOWN PLANNING OFFICER & METROPOLITAN PLANNER (PLANNING), PUNE METROPOLITAN REGION DEVELOPMENT AUTHORITY, PUNE.	METROPOLITAN COMMISSIONER & CHIEF EXECUTIVE OFFICER, PUNE METROPOLITAN REGION DEVELOPMENT AUTHORITY, PUNE.



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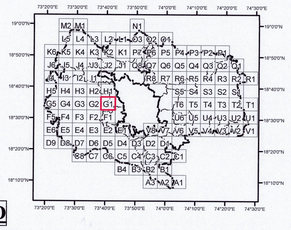
PUNE METROPOLIS

SHEET NO G1

DRAFT DEVELOPMENT PLAN OF PUNE METROPOLITAN REGION

PUBLISHED U/S 26 (1) OF M.R. & T.P. ACT 1966

RURAL AREA



LEGEND

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- VILLAGE BOUNDARY
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- GROWTH CENTRE BOUNDARY
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SWM:Solid Waste Management Site
FS:Fire Brigade Station
PST:Police Station
PO:Post Office
ESS:Electric Sub-Station
PRN:Prison
EP:Energy Park
BS:Bus Stand
BD:Bus Depot
MMH:Multimodal Hub
MD:Metro Depot / Car Shed
TT:Truck Terminal
RS:Railway Station
MS:Metro Station
MRTS:Mass Rapid Transit System
HP:Helipad
P:Parking
Mun.Corp:Municipal Corporation
Mun.Council:Municipal Council
TOD:Transit Oriented Development

N

SCALE 1:10,000

0 185 370 740 1,110 1,480 Meters

Pune Metropolitan Region Development Authority PMRDA

(ABHIRAJ GIRKAR)
TOWN PLANNING OFFICER
&
METROPOLITAN PLANNER (PLANNING),
PUNE METROPOLITAN REGION DEVELOPMENT AUTHORITY, PUNE.

(Dr. SUHAS DIWASE, I.A.S.)
METROPOLITAN COMMISSIONER
&
CHIEF EXECUTIVE OFFICER,
PUNE METROPOLITAN REGION DEVELOPMENT AUTHORITY, PUNE.

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(1997) 1 Supreme Court Cases 388

(BEFORE KULDIP SINGH AND S. SAGHIR AHMAD, JJ.)

M.C. MEHTA .. Petitioner;

Versus

KAMAL NATH AND OTHERS .. Respondents.

Writ Petition (C) No. 182 of 1996†, decided on December 13, 1996

Constitution of India — Arts. 21 and 32 — Ecology — Public Trust doctrine — Is part of the Indian law — It extends to natural resources such as rivers, forests, seashores, air etc. for the purpose of protecting the ecosystem — Lease granted by State Govt. of riparian forest land for commercial purpose to a private company having a Motel located at the bank of river Beas — Motel management interfering with natural flow of river by blocking natural relief/spill channel of the river — Held, State Govt. committed breach of public trust — Prior approval granted by Govt. of India, Ministry of Environment and Forest and lease granted in favour of the Motel quashed — Polluter Pays Principle applicable — Accordingly the polluter company liable to compensate by way of cost for restitution of environment and ecology of the area — Other directions issued — Doctrines — Public Trust

A news item appeared in Indian Express stating that a private company Span Motels Pvt. Ltd., in which the family of Kamal Nath (a former Minister for Environment and Forests) had direct link, had built a club at the bank of River Beas by encroaching land including substantial forest land which was later regularised and leased out to the company when Kamal Nath was the Minister. It was stated that the Motel used earth-movers and bulldozers to turn the course of the river. The effort on the part of the Motel was to create a new channel by diverting the river-flow. According to the news item three private companies were engaged to reclaim huge tracts of land around the Motel. The main allegation in the news item was that the course of the river was being diverted to save the Motel from future floods. The Supreme Court took notice of the news item because the facts disclosed therein, if true, were be a serious act of environmental-degradation on the part of the Motel. Disposing of the writ petition

Held:

The notion that the public has a right to expect certain lands and natural areas to retain their natural characteristic is finding its way into the law of the land. The ancient Roman Empire developed a legal theory known as the "Doctrine of the Public Trust". The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. Though the public trust doctrine under the English common law extended only to certain traditional uses such as navigation, commerce and fishing, the American Courts in recent cases expanded the concept of the public trust doctrine. The observations of the Supreme Court of California in *Mono Lake case* clearly show the judicial concern in protecting all ecologically important lands, for example fresh

† Under Article 32 of the Constitution of India

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water, wetlands or riparian forests. The observations therein to the effect that the protection of ecological values is among the purposes of public trust, may give rise to an argument that the ecology and the environment protection is a relevant factor to determine which lands, waters or airs are protected by the public trust doctrine. The Courts in United States are finally beginning to adopt this reasoning and are expanding the public trust to encompass new types of lands and waters. There is no reason why the public trust doctrine should not be expanded to include all ecosystems operating in our natural resources. Our legal system — based on English common law — includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership. Thus the Public Trust doctrine is a part of the law of the land. (Paras 23 to 25, 33, 34 and 39)

"*Public Trust Doctrine in Natural Resource Law : Effective Judicial Intervention*", Michigan Law Review, Vol. 68, part 1, p. 473, *relied on*

Illinois Central Railroad Co. v. *People of the State of Illinois*, 146 US 387 . 36 L Ed 1018 (1892); *Gould* v *Greylock Reservation Commission*, 350 Mass 410 (1966), *Sacco* v. *Development of Public Works*, 532 Mass 670; *Robbins* v. *Deptt. of Public Works*, 244 NE 2d 577; *National Audubon Society* v *Superior Court of Alpine County (Mono Lake case)*, 33 Cal 3d 419; *Phillips Petroleum Co.* v. *Mississippi*, 108 SCt 791 (1988), *relied on*

Priewev v. *Wisconsin State Land and Improvement Co* , 93 Wis 534 (1896), *Crawford County Lever and Drainage Distt. No. 1*, 182 Wis 404, *City of Milwaukee* v *State*, 193 Wis 423; *State* v *Public Service Commission*, 275 Wis 112, *referred to*

Marks v *Whitney*, 6 Cal 3d 251; *United Plainsmen* v *N.D State Water Cons Comm'n*, 247 NW 2d 457 (ND 1976), *cited*

The issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources. (Para 35)

In the present case, large area of the bank of River Beas which is part of protected forest has been given on a lease purely for commercial purposes to the Motels. The area being ecologically fragile and full of scenic beauty should not have been permitted to be converted into private ownership and for commercial gains. Therefore, the Himachal Pradesh Government committed patent breach of public trust by leasing the ecologically fragile land to the Motel management. The lease transactions are in patent breach of the trust held by the State Government. (Paras 36 and 22)

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Further, the admissions by the Motel management in various letters written to the Government, the counter-affidavits filed by the various government officers and the report placed on record by the Board clearly show that the Motel management has by their illegal constructions and callous interference with the natural flow of River Beas has degraded the environment. The Motel interfered with the natural flow of the river by trying to block the natural relief/spill channel of the river. It is now settled by the Supreme Court that one who pollutes the environment must pay to reverse the damage caused by his acts. (Paras 21 and 38)

Vellore Citizens' Welfare Forum v. *Union of India*, (1996) 5 SCC 647 : JT (1996) 7 SC 375, *followed*

Indian Council for Enviro-Legal Action v. *Union of India*, (1996) 3 SCC 212 : JT (1996) 2 SC 196, *cited*

Therefore, the Motel shall pay compensation by way of cost for the restitution of the environment and ecology of the area. The pollution caused by various constructions made by the Motel in the riverbed and the banks of River Beas has to be removed and reversed. NEERI is directed through its Director to inspect the area, if necessary, and give an assessment of the cost which is likely to be incurred for reversing the damage caused by the Motel to the environment and ecology of the area. NEERI may take into consideration the report by the Board in this respect. The Motel through its management shall show cause why pollution fine in addition be not imposed on the Motel. The Motel shall construct a boundary wall at a distance of not more than 4 metres from the cluster of rooms (main building of the Motel) towards the river basin. The boundary wall shall be on the area of the Motel which is covered by the lease. The Motel shall not encroach/cover/utilise any part of the river basin. The boundary wall shall separate the Motel building from the river basin. The river bank and the river basin shall be left open for the public use. The Motel shall not discharge untreated effluents into the river. The Himachal Pradesh Pollution Control Board is directed to inspect the pollution control devices/treatment plants set up by the Motel. If the effluent/waste discharged by the Motel is not conforming to the prescribed standards, action in accordance with law be taken against the Motel. The Himachal Pradesh Pollution Control Board shall not permit the discharge of untreated effluent into River Beas. The Board shall inspect all the hotels/institutions/factories in Kullu-Manali area and in case any of them are discharging untreated effluent/waste into the river, the Board shall take action in accordance with law. The Motel shall show cause on 18-12-1996 why pollution fine and damages be not imposed as directed by us. NEERI shall send its report to the Court by 17-12-1996. To be listed on 18-12-1996. (Para 39)

R-M/17231/C

Advocates who appeared in this case :

In person, for the Petitioner;

H.N. Salve, Senior Advocate (M.S. Vashisht, Rajiv Dutta, Shiv Pujan Singh, J.S. Attri and L.R. Rath, Advocates, with him) for the Respondents.

Chronological list of cases cited ***on page(s)***

1. (1996) 5 SCC 647 . JT (1996) 7 SC 375, *Vellore Citizens' Welfare Forum* v. *Union of India* 413*g*
2. (1996) 3 SCC 212 . JT (1996) 2 SC 196, *Indian Council for Enviro-Legal Action* v. *Union of India* 414*c-d*
3. 532 Mass 670, *Sacco* v. *Development of Public Works* 409*e-f*
4. 350 Mass 410 (1966), *Gould* v. *Greylock Reservation Commission* 408*f*
5. 275 Wis 112, *State* v. *Public Service Commission* 410*a*

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6. 247 NW 2d 457 (ND 1976), *United Plainsmen* v. *N.D. State Water Cons. Comm'n* 412*c-d*
7. 244 NE 2d 577, *Robbins* v. *Deptt. of Public Works* 409*g*
8. 146 US 387 : 36 L Ed 1018 (1892), *Illinois Central Railroad Co.* v. *People of the State of Illinois* 408*b*, 408*d-e*
9. 193 Wis 423, *City of Milwaukee* v. *State* 410*a*
10. 182 Wis 404, *Crawford County Lever and Drainage Distt. No. 1* 410*a*
11. 108 SCt 791 (1988), *Phillips Petroleum Co.* v. *Mississippi* 412*g*, 412*g-h*
12. 93 Wis 534 (1896), *Priewev* v. *Wisconsin State Land and Improvement Co.* 410*a*
13. 33 Cal 3d 419, *National Audubon Society* v. *Superior Court of Alpine County* 410*d-e*, 412*e-f*, 412*f*
14. 6 Cal 3d 251, *Marks* v. *Whitney* 411*b-c*, 411*g*

The Judgment of the Court was delivered by

KULDIP SINGH, J.— This Court took notice of the news item appearing in the *Indian Express* dated 25-2-1996 under the caption — "Kamal Nath dares the mighty Beas to keep his dreams afloat". The relevant part of the news item is as under:

> "Kamal Nath's family has direct links with a private company, Span Motels Private Limited, which owns a resort — Span Resorts — for tourists in Kullu-Manali Valley. The problem is with another ambitious venture floated by the same company — Span Club.
>
> The club represents Kamal Nath's dream of having a house on the bank of the Beas in the shadow of the snow-capped Zanskar Range. The club was built after encroaching upon 27.12 bighas of land, including substantial forest land, in 1990. The land was later regularised and leased out to the company on 11-4-1994. The regularisation was done when Mr Kamal Nath was Minister of Environment and Forests.... The swollen Beas changed its course and engulfed the Span Club and the adjoining lawns, washing it away.
>
> For almost five months now, the Span Resorts management has been moving bulldozers and earth-movers to turn the course of the Beas for a second time.
>
> The heavy earth-mover has been used to block the flow of the river just 500 metres upstream. The bulldozers are creating a new channel to divert the river to at least one kilometre downstream. The tractor-trolleys move earth and boulders to shore up the embankment surrounding Span Resorts for laying a lawn. According to the Span Resorts management, the entire reclaiming operation should be over by March 31 and is likely to cost over a crore of rupees.
>
> Three private companies — one each from Chandigarh, Mandi and Kullu — have moved in one heavy earth-mover (hired at the rate of Rs 2000 per hour), four earth-movers and four bulldozers (rates varying from Rs 650 to Rs 850 each per hour) and 35 tractor-trolleys. A security ring has been thrown all around. ... Another worrying thought is that of the river eating into the mountains, leading to landslides which are an

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occasional occurrence in this area. Last September, these caused floods in the Beas and property estimated to be worth Rs 105 crores was destroyed. ... Once they succeed in diverting the river, the Span management plans to go in for landscaping the reclaimed land. But as of today, they are not so sure. Even they confess the river may just return.

'Mr Kamal Nath was here for a short while two-three months ago. He came, saw what was going on and left. I suppose he knows what he is doing', says another executive.

The District Administration pleads helplessness. Rivers and forest land, officials point out, are not under their jurisdiction. Only the Kullu Conservator of Forests or the District Forest Officer can intervene in this case.

But who is going to bell the country's former Environment and Forests Minister?

Interestingly, a query faxed to Kamal Nath for his views on these developments fetched a reply from Mr S. Mukerji, President of the Span Motels Private Limited.

Admitting that the Nath family had 'business interests' in the company since 1981, he said, 'the company is managed by a team of professional managers and Mr Kamal Nath is not involved in the management activity of the company'.

'The Board comprises professionals, some of whom are friends and relatives of the Nath family', Mr Mukerji said. He expressed surprise that a reference had been made to Rangri and Chakki villagers 'since these villagers are at least 2/3 kilometres away and not even on the river side'.

He said the Span Club was 'not for the exclusive use of any one individual'. 'We would like to emphasize that we are only "restoring the river" to its original and natural course and are restoring our land and of those of neighbouring villagers similarly affected by the flood.'

He maintained that 'Mr Kamal Nath has definitely not been to Span Resorts in the last two months and in fact, to the best of my knowledge, has not travelled to Kullu Valley for quite some time now. ... In any case, we had never 'blocked' any channel in the vicinity of Span.' "

2. Mr Kamal Nath filed one-page counter-affidavit dated 8-6-1996. Paras 1 and 3 of the counter are as under:

"I say that I have been wrongly arrayed as a respondent in the above petition inasmuch as I have no right, title or interest in the property known as 'Span Resorts' owned by 'Span Motels Private Limited'.

I further say that the allegations made in the press reports based on which this Hon'ble Court was pleased to issue notice are highly exaggerated, erroneous, mala fide, mischievous and have been published only to harm and malign the reputation of this respondent."

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3. On behalf of Span Motels Private Limited (the Motel), Mr Banwari Lal Mathur, its Executive Director, filed counter-affidavit. Paras 2 and 3 of the counter are as under:

> "I say that Mr Kamal Nath who has been arrayed as Respondent 1 in the above writ petition has no right, title or interest in the property known as SPAN RESORTS owned by Span Motels Pvt. Ltd. or in the lands leased out to the said company by the State of Himachal Pradesh.
>
> I say that the shareholding of SPAN MOTELS PVT. LTD. is as under:

	No. of Shares held	*% Share-holding*
Mrs Leela Nath	32,560	42
EMC Projects Pvt. Ltd.	14,700	19
SHAKA Properties Pvt. Ltd.	15,000	19
SHAKA Estate & Finance Pvt. Ltd.	15,000	19
Capt. Alok Chandola	250	01
	77,510	100

4. It was not disputed before us by Mr Harish Salve, learned counsel appearing for Mr Kamal Nath, that almost all the shares in the Motel are owned by the family of Mr Kamal Nath. We do not wish to comment on the averment made on oath by Mr Kamal Nath that he has "no right, title or *interest* in the property known as Span Resorts owned by Span Motels Private Limited".

5. Mr B.L. Mathur filed an additional counter-affidavit dated 30-7-1996 on behalf of the Motel. The counter-affidavit mentioned above states that government land measuring 40 bighas 3 biswas situated alongside Kullu-Manali Road on the bank of River Beas was granted on lease to the Motel for a period of 99 years with effect from 1-10-1972 to 1-10-2071. The lessee was granted permission to enter and occupy the said area for the purpose of putting up a Motel and for installing ancillaries in due course as may be subsequently approved by the lessor. We may refer to paras 6 and 7 of the lease deed dated 29-9-1972 which are as under:

> "The lessee shall not dig deep pits of trenches in the said land, which may lead to the danger of erosion and shall make good the lessor defects caused by their acts of defaults within one month of notice by the lessor.
>
> In the event of said land being required by lesser for any other purpose, whatsoever the lessor will be entitled to terminate this lease at any time by giving six months' notice in writing to the lessee and the lessee shall not be entitled to any compensation whatsoever on account of such termination."

6. The current management (Shri Kamal Nath's family) took over the Motel in the year 1981. Fresh lease was signed on 29-11-1981. The new lease was for the same period from 1972 to 2071. Paras 4 and 5 of the additional affidavit are as under:

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"I say that the Motel commenced operations in 1975. There are over 800 trees in this area of 40 bighas. The Motel has two clusters with 8 dwelling units of 3 rooms each. The rooms are nowhere near the river — the distance between the cluster of rooms and the beginning of the river basin is about 10 metres — actually the river is another 30 metres therefrom. Thus, the effective distance between the edge of the river and the cluster of rooms is 40 metres.

I say that in the peak of the flood, the river did not come closer than 10 metres to the rooms and did not, therefore, pose any danger to the rooms, particularly there are no problems qua rooms as the rooms are on a higher level — at least 5-7 metres at their closest point."

Along with the additional affidavit the correspondence between the Motel and the Government has been annexed. In a letter dated 19-10-1988 addressed to the Chief Minister, Himachal Pradesh, the Motel gave details of the flood-damage during the year 1988 and finally requested the Government for the following steps:

"Further it is imperative that the Government take immediate steps to stop erosion of the land under lease to us. It would appear that strong concrete blackened retaining walls will be necessary to be placed at appropriate points to protect the landmass around us."

7. The Motel addressed letter dated 30-8-1989 to the Divisional Forest Officer, Kullu. The relevant part of the letter is as under:

"When we acquired our land on lease, there were no clear demarcations of the surrounding areas and boundaries. There has existed a stretch of waste and 'banjar' (Class III) forest land in a longitudinal strip along the river bank admeasuring about 22.2 bighas, contiguous and adjacent to our leased land. Over the years, and especially after the *severe flood erosion* last year, we have built extensive stone, cemented and wire-mesh-crated embankments all along the river banks at considerable expense and cost. We have also gradually and painstakingly developed this entire waste and 'banjar' area, beautified and landscaped it, planted ornamental, fruiting and varied forest trees extensively such that it blends with our estate and with the surrounding flora and environment in a harmonious manner. A revenue map along with all Revenue Department records covering this entire area, is forwarded enclosed herewith for your reference and perusal.

We are aware that in accordance with the Forest Conservation Act of 1980, the use of forest land by private agency even for natural development and afforestation scheme, requires alternative matching compensatory afforestation land areas to be surrendered by the concerned party, after due approval of the Government. In view of this statutory precondition, we wish to submit that we can immediately surrender to the Government nearly 28 bighas and 13 biswas of private agricultural cultivated land located at Village MAJHACH, (Burua), MANALI, in exchange for the above-mentioned 22.2 bighas of Class III

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banjar forest land adjoining our land in Village Baragran Bihal, which we request for transfer to our company in lieu of the land we are willing to surrender. The specific revenue maps and records concerning this area of land at Village Majhach, are also enclosed herewith for your kind perusal."

It is obvious from the contents of the letter quoted above that the Motel had encroached upon an additional area of 22.2 bighas adjoining to the leasehold area. Apart from that the Motel had built extensive stone, cemented and wire-mesh-crated embankments all along the river banks. The Motel was keen to have the encroached land by way of exchange/lease. A request to that effect was repeated in the letter dated 12-9-1989 addressed to the Divisional Forest Officer, Kullu. The Motel again repeated its request for lease of the additional land by the letter dated 9-7-1991. The said letter further stated as under:

"We would also like to mention that the banjar land adjoining our hotel, referred to in para 1 above, lies along the bank of River Beas which erodes it every year. About ten years ago almost 4 bighas of this land were washed away and the onflowing water has posed a serious threat to our hotel buildings and adjoining area. To protect our property we were compelled to erect deep protection embankments along the banjar land in question at huge cost the details of which will be sent to you shortly. If our proposal is accepted for the exchange of land it will become possible for us to take further steps to protect this land."

8. The Divisional Forest Officer, Kullu sent reply dated 12-1-1993 which stated as under:

"In this connection it is intimated that at present we are not having funds to put crates and spurs along the river side near your hotel to check the soil erosion, as indicated in your letter referred to above. In order to protect your property from the damage, you can carry out such works at your level, subject to the condition that the ownership of the land would vest with Forest Department and the Department would not be liable to pay any amount incurred for the purpose by you at a later stage and you would not claim any right on government property."

The above-quoted letter can be of no consequence because much before the said letter the Motel had built extensive stone, cemented and wire-mesh-crated embankments all along the river bank. This is obvious from the contents of the letter dated 30-8-1989 (quoted above).

9. The Motel addressed a letter dated 21-6-1993 to the Chief Secretary, Himachal Pradesh wherein it is clearly stated that the adjoining land measuring 22 bighas and 3 biswas had been reclaimed by the Motel. The relevant part of the letter is as under:

"Adjoining our Resort and contiguous to our leased land is a stretch of Class III — banjar forest land in a longitudinal strip along the river bank admeasuring 22 bighas and 3 biswas. This was a stony piece of land and used to get flooded every year during monsoons and often got

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washed away and reduced in size by river erosion year by year. This land was reclaimed by us and protected by an embankment and filling from the river side."

The said letter further states as under:

"Similarly on the river side part of our leased land there used to be floods and erosion every year. If we would have let this continue, the leased land would have also got reduced every year. In order to protect our leased land and to save damage to our hotel property, we at our own considerable expense and cost built stone and wire-mesh-crated embankment all along the river bank. This not only protected our hotel land but also the forest land....

In 1988 there were severe floods when every portion of leased land got washed away. It became imperative for us at considerable expense to build an embankment on the river front along the leased property. In order to build an embankment on the river front along the leased property the washed away area and part of the river bank had to be filled at huge cost. Once the river bed and the washed away area was filled, the choice before us was either to put soil on it and grow grass and trees to secure it or let it remain unsecured and aesthetically displeasing. We chose the former. As a result of land-filling and embankment our leased area when measured will obviously show an increase. This increase is not an encroachment but reclamation with the objective of protecting the leased property."

10. In the letter dated 7-8-1993 addressed to the Divisional Forest Officer, the Motel again asked for lease of adjoining area. The relevant part of the letter is as under:

"We had explained in our previous letters dated 21-6-1993 and 23-7-1993 (copies of which have been sent to you with our letter dated 5-8-1993) the circumstances under which we had to spend enormous sum of money in protecting and reclaiming the forest land adjoining our Resort. It had become necessary for us to undertake this reclamation and protection work by filling the land from the river bed, constructing embankments, retaining walls and crating etc. in order to protect the land leased by the Government to our Span Resort and property thereon but we were unable to complete the entire work as we were restrained from carrying on with the work under undue allegations of encroachment on the forest land....

In order to expedite the process of commencing protection work on an urgent basis on the forest land, we propose that the forest land be given to us on long lease coterminous with the lease of the land granted by the Government for our Span Resorts. This could be done by a supplementary lease as it is imperative to save the land under the original lease.

All we have done is to reclaim and protect the land from erosion by constructing crates, retaining walls and embankments along River Beas

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by investing huge amounts which unfortunately have all been washed away due to floods and now requires reconstruction to save the forest land and our adjoining property from total destruction."

11. The Government of India, Ministry of Environment and Forests by the letter dated 24-11-1993 addressed to the Secretary, Forest, Government of Himachal Pradesh, Shimla conveyed its prior approval in terms of Section 2 of the Forest (Conservation) Act, 1980 for leasing to the Motel 27 bighas and 12 biswas of forest land adjoining to the land already on lease with the Motel. A lease deed dated 11-4-1994 regarding the said land was executed between the Himachal Government and the Motel. The additional affidavit filed by the Motel refers to the prior approval granted by the Government of India as under:

> "In the Ministry of Environment and Forests, the proposal was cleared by the Secretary and forwarded to the Forest Advisory Committee bypassing the Minister concerned. The Forest Advisory Committee cleared the proposal subject to severe restrictions — and also certain restrictions which are not normally imposed in such cases. The proposal was then cleared at the level of the Prime Minister and by a letter of 24-11-1993, approval was communicated to the State Government and SMPL."

12. It may be mentioned that Mr Kamal Nath was the Minister-in-charge, Department of Environment and Forests at the relevant time. What is sought to be conveyed by the above-quoted paragraph is that Mr Kamal Nath did not deal with the file. The correspondence between the Motel and the Himachal Government referred to and quoted by us shows that from 1988 the Motel had been writing to the Government for the exchange/lease of the additional forest land. It is only in November 1993 when Mr Kamal Nath was the Minister, in charge of the Department that the clearance was given by the Government of India and the lease was granted. Surely it cannot be a coincidence.

13. This Court took notice of the news item — quoted above — because the facts disclosed therein, if true, would be a serious act of environmental-degradation on the part of the Motel. It is not disputed that in September 1995 the swollen Beas engulfed some part of the land in possession of the Motel. The news item stated that the Motel used earth-movers and bulldozers to turn the course of the river. The effort on the part of the Motel was to create a new channel by diverting the river-flow. According to the news item three private companies were engaged to reclaim huge tracts of land around the Motel. The main allegation in the news item was that the course of the river was being diverted to save the Motel from future floods. In the counter-affidavit filed by the Motel, the allegations in the news item have been dealt with in the following manner:

> "*(I)* If the works were not conducted by the Company, it would in future eventually cause damage to both banks of the river, under natural flow conditions.

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(*m*) By dredging the river, depth has been provided to the river channel thus enhancing its capacity to cope with large volume of water.

(*n*) The wire crates have been put on both banks of the river. This has been done to strengthen and protect the banks from erosion and NOT as any form of river diversion. It is not necessary to divert the river because simply providing greater depth and removing debris deposits enhances the capacity of the river to accommodate greater water flow.

(*o*) I further state that the nearly 200 metres of wire crates which have been put on the left bank of the river (the river bank on the opposite side of SPAN) is in the interest of the community and nearby residents/villages. This left bank crating protects the hillside where RANGRI, CHAKKI and NAGGAR are located.

(*s*) After the floods, it was observed, that the boulders and rubble deposits were obstructing and hindering the flow of the river and thus, it was the common concern of the Company as well as of the Panchayat of Village BARAGRAN BIHAL to carry out dredging measures to provide free flow of the river water.

(*t*) Accordingly alleviation measures conducted by the Company and the villagers of BARAGRAN BIHAL were as under:

(*i*) *Dredging of debris deposit*: Debris deposits in river basin which had collected due to the floods were removed by dredging. This deepens the channel and thus allows larger flow of water.

(*ii*) *Strengthening of both banks with wire crates*: Wire crates are the common method of protection of bank erosion. Accordingly wire crates were put along the opposite side (left bank) to protect the landslide of the hillside wire on which Village RANGRI is perched, Wire crating was also put on the Resort side of the river (right bank) to strengthen and protect the bank against erosion. All the wire crating runs along the river flow and not as an obstruction or for any diversion.

* * *

(*w*) It is further submitted that whereas the report mischievously refers to villagers of Rangri, Chakki and Naggar nowhere does it take into account the very real problems of villagers of Baragran Bihal which is located immediately on the right bank near the SPAN Resort who were seriously affected by the floods. Chakki, Rangri and Naggar villages have not at all been affected by the floods and there is no remote possibility of these villages being affected due to the flood-protection works conducted by the Company."

In the additional affidavit filed by the Motel the facts pleaded are as under:

"(*ii*) it had become necessary for them to undertake this reclamation and protection work by filling the land from river bed, constructing embankments, retaining walls and crates, etc. in order to protect the land leased by the Government to the Resort and the property thereon.

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* * *

(*vii*) The forest land which is susceptible to heavy river erosion by floods involves high cost for its protection from getting washed away every year and would be protected by construction of embankments and filling from the river side by the Company. ... local community of Kullu and Manali and surrounding villages will benefit."

14. Mr G.D. Khachi, Under Secretary (Revenue), Government of Himachal Pradesh in the counter-affidavit filed in this Court stated as under:

"(*iii*) That subsequently, a piece of land measuring 21-09 bighas was encroached by M/s Span Motels. On coming to the notice of the Government of such encroachment, the Government of Himachal Pradesh in Revenue Department took action and reportedly got the encroached land vacated, and the possession of which has been taken over by the Forest Department.

That on 21-22 July, 1992, the then Chief Secretary to the Government of Himachal Pradesh visited the site who drew the inference that M/s Span Motels Ltd. were still using the encroached land. The copy of note on inspection of the then Chief Secretary is annexed as R-1.

That immediately on receipt of the recommendations of the then Chief Secretary (Annexure R-I), the Department of Forest started working at the site but in the meantime, it was decided to lease out a piece of land measuring 27-12 bighas which includes the said encroached land measuring 21-09 bighas. The lease granted by the Government of Himachal Pradesh in Revenue Department vide letter No. Rev. D(G)6-53/93, dated 5-4-1994 is annexed as Annexure R-II after obtaining the approval of Government of India, Ministry of Environment and Forest, New Delhi vide letter No. 9-116/93-ROC, dated 24-11-1993 (copy annexed as Annexure R-III) for the purpose of protecting earlier leased land.

That the developmental activities which was being undertaken by M/s Span Motels Ltd. came to the knowledge of the Government from the news item which appeared in the Press and field officers of all the departments concerned took an exercise to carry out the inspection and reported the matter to the Government."

15. C.P. Sujaya, Financial Commissioner-cum-Secretary (Irrigation and Public Health), Government of Himachal Pradesh in her counter-affidavit filed in this Court, inter alia, stated as under:

"Admitted to the extent that the Span Resorts management had deployed heavy earth-moving machinery to reclaim their land and to divert/channelise the course of river to its course which it was following prior to 1995 floods by dredging and raising of earthen and wire-crated embankments.

The flow of river has been changed/diverted by dredging/raising of wire-crated embankments and creating channel from a point u/s of Span

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Resorts to d/s of Span Resorts. The approximate length of channel is about 1000 metres.

Admitted to the extent that Villages Rangri and Chakki are located on left bank of River Beas. However, channelization of river has been done slightly away from the toe of foothills except for the last about 500 metres where it is running along the foothills.

The hill on which Villages Rangri and Chakki are situated consists of small boulders embedded in sandy strata and is quite fragile/unstable in nature. Therefore, this reach of river is prone to landslides in the normal course also. However, it is feared that flow of river along the foothills may hasten/aggravate the process of landslides. The Span Management has provided wire-crated embankment in a reach of about 90 metres on left bank and about 270 metres on right bank to channelise the flow and also to reclaim part of land on right bank of River Beas.

Admitted to the extent that the diversion/channelization of river has been done to restore it to its course of pre-1995 floods and in doing so, by raising the earthen and wire-crated embankments, some land of villagers situated on right bank of River Beas has also been reclaimed along with land of Span Resort."

16. This Court by the order dated 6-5-1996 directed the Central Pollution Control Board (the Board) through its Member Secretary to inspect the environments around the area in possession of the Motel and file a report. This Court further ordered as under:

"Meanwhile we direct that no construction of any type or no interference in any manner with the flow of the river or with the embankment of the river shall be made by the Span Management."

17. Pursuant to this Court's order dated 6-5-1996 the Board filed its report along with the affidavit of Dr S.P. Chakrabarti, Member Secretary of the Board. It is stated in the affidavit that a team comprising Dr Bharat Singh, Former Vice-Chancellor and Professor Emeritus, University of Roorkee, Dr S.K. Ghosh, Senior Scientist and former Head, Division of Plant Pathology (NF), Kerala Forest Research Institute, Peechi, Trichur and Dr S.P. Chakrabarti, Member Secretary, Board was constituted. The team inspected the area and prepared the report. Para 4.2 of the report gives details of the construction done by the Motel prior to 1995 floods. The relevant part of the paragraph is as under:

"To protect the newly-acquired land, SMPL took a number of measures which include construction of the following as shown in Fig. 2:

(*a*) 8 nos. studs of concrete blocks 8 m long and 20 m apart on the eastern face of the club island on the upstream side,

(*b*) 150 m long stepped wall also on the eastern face of club island on the downstream side,

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(*c*) A 2 m high bar of concrete blocks at the entry at the spill channel, and

(*d*) Additional 8 nos. studs also 8 m long and 20 m apart on the right bank of River Beas in front of the restaurant of the SMPL.

While (*a*) & (*b*) were aimed at protecting the club island from the main current, (*c*) was to discourage larger inflow into the spill channel. Item (*d*) was meant to protect the main resort land of SMPL if heavy flow comes into the spill channel.

The works executed in 1993 were bank protection works, and were not of a nature so as to change the regime or the course of river. A medium flood again occurred in 1994. Partly due to the protection works, no appreciable damage occurred during this flood. The main current still continues on the left bank."

18. The happening of events in the vicinity of the Motel during the 1995 flood and the steps taken by the Motel have been stated in the report as under:

"A big slip occurred on the hillside on the left bank, at a distance about 200 m upstream from the point where division into main and spill channels was occurring, on the afternoon of September 4, 1995. This partially blocked the main left side channel which was relatively narrow at this location. This presumably triggered the major change of course in the river, diverting the major portion of the flow into spill channel towards the right and almost over the entire land area of the club island. The entire club building and the plantation as well as the protection works built in 1993 were washed away. Heavy debris was deposited on this land. Damage occurred on the right bank also but the buildings of the main SMPL resort remained more or less unaffected. A large hotel and many buildings on the right bank, almost adjacent to SMPL in the downstream were also washed away. The bar of blocks at the upstream end of the spill channel as well as most of the studs on this channel were also washed away. Some remnants of five downstream studs could be seen at the time of the visit. After the passage of 1995 flood, SMPL have taken further steps to protect their property as shown in Fig. 3. These are as follows:

1. The left side channel (the main channel), which had become less active, has been dredged to increase its capacity. Wire crate revetments (A, B & C) on both banks of this channel have been made to direct the flow through this channel. These revetments and earth restoration work done would curtail the entry of water into the right side relief/spill channel which had developed into the main channel during the flood. A relatively small channel (the relief/spill channel) still exists and carries very little flow. Bulk of the flow is now going into the left bank channel.

On the left bank, there are steep unstable slopes at higher elevations left after the slides during the flood. These are likely to

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slip in any case, and if so happens, may block the left channel again. This land belongs to some villagers from Rangri. The left bank channel is again sub-dividing into two streams (D) and the small stream is flowing close to the toe of the hills for a distance of about 500 to 600 m before it turns towards midstream. Some of the dredged material is piled on the right bank and some on the divide between the main channel and the subsidiary channel on the left. Slips can be seen in this reach of 500-600 m even now, and erosion at toe may aggravate sliding tendency. SMPL has also put 190 m wire crates (C) as protection against erosion of this bank, which may be helpful up to moderate flood conditions.

The dredging and channelisation of the left bank channel, though aimed at protecting SMPL land, should normally keep high intensity of flow away from both banks in moderate floods. This should thus not be a cause of concern. In high floods, the water would spill or spread beyond this channel. Due to restriction of entry in the right relief/spill channel, though the works may not withstand a high flood, there may be a tendency for more flow towards the left bank. However, the river is presently in a highly unstable regime after the 1995 extraordinary floods, and it is difficult to predict its behaviour if another high flood occurs in the near future."

The conclusion given by the inspecting team in the report are as under:

"6.4 M/s Span Motels Private Limited had taken some flood-control measures at the immediate upstream by construction of wire crates (Fig. 3) on both sides (A, B and C) and also dredged the main channel of the river by blasting the big boulders and removing the debris. The flood-control measures, taken by them on the right bank of the main channel and at the mouth of relief channel after the 1993 flood, were also washed off. There is no sign of any boundary of the premises of the newly-acquired land.

6.5 The mouth of the natural relief/spill channel has been blocked by construction of wire crate and dumping of boulders (A & B). The area has almost been levelled. Although a little discharge was observed due to seepage through boulders and flowing through the remnants of the relief channel to the downstream, the channel is blocked by a stonewall across the channel (F) at the downstream of M/s SMPL by a private property owner who has even constructed two wells (E) on the bed of the channel. This indicates the intention of the occupiers of the right bank properties in the concerned stretch in favour of filling up of the natural spill/relief channel.

6.6 M/s Span Motels has not consulted any Flood Control Expert as it appeared from the way of construction of the wire crate. No proper revetment was done while crating. As such, these cratings may not last long.

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6.7 In the process of channelising the main course, the main stream has been divided into two, one of which goes very near to the left bank (G) because of which fresh land slip in future is not ruled out.

6.8 The relief channel is supposed to be the government land. Construction of any sort to block the natural flow of water is illegal and no permission has been taken from the department concerned.

6.9 The lease agreement of 1994 had the clause for protection of the land but it should have been done not by blocking the flood spill/relief channel.

6.10 Relief channel is the shortest path between the two bends. Any future slip on left bank due to training of discharge at its foot may cause flood on the right bank where the leasehold land (1994) exists.

6.11 No new construction should be allowed in this flood-prone area except flood-protection measures. No economic activity should be undertaken in the aforementioned stretch.

6.12 Since newly-acquired land of M/s SMPL is located on the flood plain sandwiched between the main channel and the relief/spill channel, the land may be de-leased and the Forest Department take care of plantation in the area after adequate flood-control measures are taken by the Irrigation Department. This is necessitated in view of the fact that the left bank opposite SMPL is very steep (almost vertical) and is subjected to potential threat of land slip to block the channel and cause change of course of the river flow again.

6.13 Even if land slips occur, the impact will be local, limited only to the stretch of Beas River near SMPL .

6.14 The river is presently in a highly unstable regime after 1995 extraordinary floods, and it is difficult to predict its behaviour if another high flood occurs in the near future. A long-term planning for flood control in Kullu Valley needs to be taken up immediately with the advice of an organisation having expertise in the field, and permanent measures shall be taken to protect the area so that recurrence of such a heavy flood is mitigated permanently."

19. On a careful examination of the counter-affidavits filed by the parties, the report placed on record by the Board and other material placed on record, the following facts are established:

1. The leasehold area in possession of the Motel is a part of the protected forest land owned by the State Government.

2. The forest land measuring 27 bighas and 12 biswas leased to the Motel by the lease deed dated 11-4-1994 is situated on the right bank of the river and is separated from the Motel by a natural relief/spill channel of the river.

3. A wooden bridge on the spill channel connects the main Motel land and the land acquired under the 1994 lease deed.

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4. 22.2 bighas out of the land leased to the Motel in 1994 was encroached upon by the Motel in the years 1988/89.

5. Prior to the 1995 floods the Motel constructed 8 studs of concrete blocks 8 m long and 20 m apart on the upstream bank of the river, 150 m long stepped wall on the downstream side of the river and 2 m high bar of concrete blocks at the entry of the spill channel and additional 8 studs 8 m long and 20 m apart on the right bank of River Beas in front of the restaurant of the Motel.

6. After the 1995 floods the Motel has dredged the left side channel (the main channel) of the river to increase its capacity. Wire crate revetments on both banks of the main channel of river have been made to direct the flow through the said channel. This has been done with a view to curtail the entry of water into the right side relief/spill channel.

7. The Motel has constructed 190 m wire crates on the bank of the river (upstream). The dredged material is piled up on the banks of the river. The dredging and channelising of the left bank has been done on a large scale with a view to keep high intensity of flow away from the Motel.

8. The dredging of the main channel of river was done by blasting the big boulders and removing the debris.

9. The mouth of the natural relief/spill channel has been blocked by wire crates and dumping of boulders.

10. The construction work was not done under expert advice.

11. The construction work undertaken by the Motel for channelising the main course has divided the main stream into two, one of which goes very near to the left bank because of which, according to the report, fresh land slip in future cannot be ruled out.

20. The report further indicates that the relief channel being part of the natural flow of the river no construction of any sort could be made to block the said flow. According to the report no permission whatsoever was sought for the construction done by the Motel. The Board in its report has further opined that the clause in the lease agreement for protection of land did not permit the Motel to block the flood spill/relief channel of the river. The report categorically states that no new construction should be allowed in this flood-prone area and no economic activities should be permitted in the said stretch. It has been finally recommended by the inspection team that the land acquired by the Motel under the 1994 lease deed is located on the flood plain, sandwiched between the main channel and the relief/spill channel and as such it should be de-leased so that the Forest Department may take care of the plantation in the area and also preserve the ecologically fragile area of River Beas.

21. Mr Harish Salve vehemently contended that whatever construction activity was done by the Motel on the land under its possession and on the area around, if any, was done with a view to protect the leasehold land from floods. According to him the Divisional Forest Officer by the letter dated

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12-1-1993 — quoted above — permitted the Motel to carry out the necessary works subject to the conditions that the department would not be liable to pay any amount incurred for the said purpose by the Motel. We do not agree. It is obvious from the correspondence between the Motel and the Government, referred to by us, that much before the letter of the Divisional Forest Officer dated 12-1-1993, the Motel had made various constructions on the surrounding area and on the banks of the river. In the letter dated 30-8-1989 addressed to the Divisional Forest Officer, Kullu — quoted above — the Motel management admitted that "over the years, and especially after the severe flood erosion last year, we have built extensive stone, cemented and wire-mesh-crated embankments all along the river banks at considerable expense and cost. We have also gradually and painstakingly developed this entire waste and banjar area". The "Banjar area" referred to in the letter was the adjoining area admeasuring 22.2 bighas which was not on lease with the Motel at that time. The admissions by the Motel management in various letters written to the Government, the counter-affidavits filed by the various government officers and the report placed on record by the Board clearly show that the Motel management has by their illegal constructions and callous interference with the natural flow of River Beas has degraded the environment. We have no hesitation in holding that the Motel interfered with the natural flow of the river by trying to block the natural relief/spill channel of the river.

22. The forest lands which have been given on lease to the Motel by the State Government are situated at the bank of River Beas. Beas is a young and dynamic river. It runs through Kullu Valley between the mountain ranges of the Dhauladhar in the right bank and the Chandrakheni in the left. The river is fast-flowing, carrying large boulders, at the times of flood. When water velocity is not sufficient to carry the boulders, those are deposited in the channel often blocking the flow of water. Under such circumstances the river stream changes its course, remaining within the valley but swinging from one bank to the other. The right bank of River Beas where the Motel is located mostly comes under forest, the left bank consists of plateaus, having steep bank facing the river, where fruit orchards and cereal cultivation are predominant. The area being ecologically fragile and full of scenic beauty should not have been permitted to be converted into private ownership and for commercial gains.

23. The notion that the public has a right to expect certain lands and natural areas to retain their natural characteristic is finding its way into the law of the land. The need to protect the environment and ecology has been summed up by David B. Hunter (University of Michigan) in an article titled *An ecological perspective on property : A call for judicial protection of the public's interest in environmentally critical resources* published in Harvard Environmental Law Review, Vol. 12 1988, p. 311 is in the following words:

> "Another major ecological tenet is that the world is finite. The earth can support only so many people and only so much human activity before limits are reached. This lesson was driven home by the oil crisis

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of the 1970s as well as by the pesticide scare of the 1960s. The current deterioration of the ozone layer is another vivid example of the complex, unpredictable and potentially catastrophic effects posed by our disregard of the environmental limits to economic growth. The absolute finiteness of the environment, when coupled with human dependency on the environment, leads to the unquestionable result that human activities will at some point be constrained.

> '[H]uman activity finds in the natural world its external limits. In short, the environment imposes constraints on our freedom; these constraints are not the product of value choices but of the scientific imperative of the environment's limitations. Reliance on improving technology can delay temporarily, but not forever, the inevitable constraints. There is a limit to the capacity of the environment to service ... growth, both in providing raw materials and in assimilating by-product wastes due to consumption. The largesse of technology can only postpone or disguise the inevitable.'

Professor Barbara Ward has written of this ecological imperative in particularly vivid language:

> 'We can forget moral imperatives. But today the morals of respect and care and modesty come to us in a form we cannot evade. We cannot cheat on DNA. We cannot get round photosynthesis. We cannot say I am not going to give a damn about phytoplankton. All these tiny mechanisms provide the preconditions of our planetary life. To say we do not care is to say in the most literal sense that "we choose death".'

There is a commonly-recognized link between laws and social values, but to ecologists a balance between laws and values is not alone sufficient to ensure a stable relationship between humans and their environment. Laws and values must also contend with the constraints imposed by the outside environment. Unfortunately, current legal doctrine rarely accounts for such constraints, and thus environmental stability is threatened.

Historically, we have changed the environment to fit our conceptions of property. We have fenced, plowed and paved. The environment has proven malleable and to a large extent still is. But there is a limit to this malleability, and certain types of ecologically important resources — for example, wetlands and riparian forests — can no longer be destroyed without enormous long-term effects on environmental and therefore social stability. To ecologists, the need for preserving sensitive resources does not reflect value choices but rather is the necessary result of objective observations of the laws of nature.

In sum, ecologists view the environmental sciences as providing us with certain laws of nature. These laws, just like our own laws, restrict our freedom of conduct and choice. Unlike our laws, the laws of nature cannot be changed by legislative fiat; they are imposed on us by the

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natural world. An understanding of the laws of nature must therefore inform all of our social institutions."

24. The ancient Roman Empire developed a legal theory known as the "Doctrine of the Public Trust". It was founded on the ideas that certain common properties such as rivers, seashore, forests and the air were held by Government in trusteeship for the free and unimpeded use of the general public. Our contemporary concern about "the environment" bear a very close conceptual relationship to this legal doctrine. Under the Roman law these resources were either owned by no one (*res nullious*) or by every one in common (*res communious*). Under the English common law, however, the Sovereign could own these resources but the ownership was limited in nature, the Crown could not grant these properties to private owners if the effect was to interfere with the public interests in navigation or fishing. Resources that were suitable for these uses were deemed to be held in trust by the Crown for the benefit of the public. Joseph L. Sax, Professor of Law, University of Michigan — proponent of the Modern Public Trust Doctrine — in an erudite article "*Public Trust Doctrine in Natural Resource Law : Effective Judicial Intervention*", Michigan Law Review, Vol. 68, Part 1 p. 473, has given the historical background of the Public Trust Doctrine as under:

> "The source of modern public trust law is found in a concept that received much attention in Roman and English law — the nature of property rights in rivers, the sea, and the seashore. That history has been given considerable attention in the legal literature, need not be repeated in detail here. But two points should be emphasized. First, certain interests, such as navigation and fishing, were sought to be preserved for the benefit of the public; accordingly, property used for those purposes was distinguished from general public property which the sovereign could routinely grant to private owners. Second, while it was understood that in certain common properties — such as the seashore, highways, and running water — 'perpetual use was dedicated to the public', it has never been clear whether the public had an enforceable right to prevent infringement of those interests. Although the State apparently did protect public uses, no evidence is available that public rights could be legally asserted against a recalcitrant government."

25. The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. According to Professor Sax the Public Trust Doctrine imposes the following restrictions on governmental authority:

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"Three types of restrictions on governmental authority are often thought to be imposed by the public trust: first, the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public; second, the property may not be sold, even for a fair cash equivalent; and third the property must be maintained for particular types of uses."

26. The American law on the subject is primarily based on the decision of the United States Supreme Court in *Illinois Central Railroad Co.* v. *People of the State of Illinois*[1]. In the year 1869 the Illinois Legislature made a substantial grant of submerged lands — a mile strip along the shores of Lake Michigan extending one mile out from the shoreline — to the Illinois Central Railroad. In 1873, the Legislature changed its mind and repealed the 1869 grant. The State of Illinois sued to quit title. The Court while accepting the stand of the State of Illinois held that the title of the State in the land in dispute was a title different in character from that which the State held in lands intended for sale. It was different from the title which the United States held in public lands which were open to pre-emption and sale. It was a title held in trust — for the people of the State that they may enjoy the navigation of the water, carry on commerce over them and have liberty of fishing therein free from obstruction or interference of private parties. The abdication of the general control of the State over lands in dispute was not consistent with the exercise of the trust which required the Government of the State to preserve such waters for the use of the public. According to Professor Sax the Court in *Illinois Central*[1] "articulated a principle that has become the central substantive thought in public trust litigation. When a State holds a resource which is available for the free use of the general public, a court will look with considerable scepticism upon any governmental conduct which is calculated either to relocate that resource to more restricted uses or to subject public uses to the self-interest of private parties".

27. In *Gould* v. *Greylock Reservation Commission*[2] the Supreme Judicial Court of Massachusetts took the first major step in developing the doctrine applicable to changes in the use of lands dedicated to the public interest. In 1886 a group of citizens interested in preserving Mount Greylock as an unspoiled natural forest, promoted the creation of an association for the purpose of laying out a public park on it. The State ultimately acquired about 9000 acres, and the legislature enacted a statute creating the Greylock Reservation Commission. In the year 1953, the legislature enacted a statute creating an Authority to construct and operate on Mount Greylock an Aerial Tramway and certain other facilities and it authorised the Commission to lease to the Authority any portion of the Mount Greylock Reservation. Before the project commenced, five citizens brought an action against both the Greylock Reservation Commission and the Tramway Authority. The

1 146 US 387 : 36 L Ed 1018 (1892)
2 350 Mass 410 (1966)

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plaintiffs brought the suit as beneficiaries of the public trust. The Court held both the lease and the management agreement invalid on the ground that they were in excess of the statutory grant of the authority. The crucial passage in the judgment of the Court is as under:

> "The profit-sharing feature and some aspects of the project itself strongly suggest a commercial enterprise. In addition to the absence of any clear or express statutory authorization of as broad a delegation of responsibility by the Authority as is given by the management agreement, we find no express grant to the Authority or power to permit use of public lands and of the Authority's borrowed funds for what seems, in part at least, a commercial venture for private profit."

Professor Sax's comments on the above-quoted paragraph from *Gould* decision are as under:

> "It hardly seems surprising, then, that the court questioned why a State should subordinate a public park, serving a useful purpose as relatively undeveloped land, to the demands of private investors for building such a commercial facility. The court, faced with such a situation, could hardly have been expected to have treated the case as if it involved nothing but formal legal issues concerning the State's authority to change the use of a certain tract of land.... *Gould*, like *Illinois Central*, was concerned with the most overt sort of imposition on the public interest: commercial interests had obtained advantages which infringed directly on public uses and promoted private profits. But the Massachusetts court has also confronted a more pervasive, if more subtle, problem — that concerning projects which clearly have some public justification. Such cases arise when, for example, a highway department seeks to take a piece of parkland or to fill a wetland."

28. In *Sacco* v. *Development of Public Works*[3], the Massachusetts Court restrained the Department of Public Works from filling a great pond as part of its plan to relocate part of State Highway. The Department purported to act under the legislative authority. The court found the statutory power inadequate and held as under:

> "the improvement of public lands contemplated by this section does not include the widening of a State highway. It seems rather that the improvement of public lands which the legislature provided for ... is to preserve such lands so that they may be enjoyed by the people for recreational purposes."

29. In *Robbins* v. *Deptt. of Public Works*[4], the Supreme Judicial Court of Massachusetts restrained the Public Works Department from acquiring Fowl Meadows, "wetlands of considerable natural beauty ... often used for nature study and recreation" for highway use.

3 532 Mass 670
4 244 NE 2d 577

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30. Professor Sax in the article (Michigan Law Review) refers to *Priewev* v. *Wisconsin State Land and Improvement Co.*[5], *Crawford County Lever and Drainage Distt. No. 1*[6], *City of Milwaukee* v. *State*[7], *State* v. *Public Service Commission*[8] and opines that "the Supreme Court of Wisconsin has probably made a more conscientious effort to rise above rhetoric and to work out a reasonable meaning for the public trust doctrine than have the courts of any other State".

31. Professor Sax stated the scope of the public trust doctrine in the following words:

> "If any of the analysis in this Article makes sense, it is clear that the judicial techniques developed in public trust cases need not be limited either to these few conventional interests or to questions of disposition of public properties. Public trust problems are found whenever governmental regulation comes into question, and they occur in a wide range of situations in which diffused public interests need protection against tightly organized groups with clear and immediate goals. Thus, it seems that the delicate mixture of procedural and substantive protections which the courts have applied in conventional public trust cases would be equally applicable and equally appropriate in controversies involving air pollution, the dissemination of pesticides, the location of rights of way for utilities, and strip mining of wetland filling on private lands in a State where governmental permits are required."

32. We may at this stage refer to the judgment of the Supreme Court of California in *National Audubon Society* v. *Superior Court of Alpine County*[9]. The case is popularly known as "*the Mono Lake case*". Mono Lake is the second largest lake in California. The lake is saline. It contains no fish but supports a large population of brine shrimp which feed vast numbers of nesting and migrating birds. Islands in the lake protect a large breeding colony of California gulls, and the lake itself serves as a haven on the migration route for thousands of birds. Towers and spires of tura (*sic*) on the north and south shores are matters of geological interest and a tourist attraction. In 1940, the Division of Water Resources granted the Department of Water and Power of the City of Los Angeles a permit to appropriate virtually the entire flow of 4 of the 5 streams flowing into the lake. As a result of these diversions, the level of the lake dropped, the surface area diminished, the gulls were abandoning the lake and the scenic beauty and the ecological values of Mono Lake were imperilled. The plaintiffs environmentalist — using the public trust doctrine — filed a law suit against Los Angeles Water Diversions. The case eventually came to the California Supreme Court, on a Federal Trial Judge's request for clarification of the

5 93 Wis 534 (1896)
6 182 Wis 404
7 193 Wis 423
8 275 Wis 112
9 33 Cal 3d 419

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State's public trust doctrine. The Court explained the concept of public trust doctrine in the following words:

" 'By the law of nature these things are common to mankind — the air, running water, the sea and consequently the shores of the sea.' (Institutes of Justinian 2.1.1) From this origin in Roman law, the English common law evolved the concept of the public trust, under which the sovereign owns 'all of its navigable waterways and the lands lying beneath them as trustee of a public trust for the benefit of the people.' "

The Court explained the purpose of the public trust as under:

"The objective of the public trust has evolved in tandem with the changing public perception of the values and uses of waterways. As we observed in *Marks* v. *Whitney*[10], '[p]ublic trust easements (were) traditionally defined in terms of navigation, commerce and fisheries. They have been held to include the right to fish, hunt, bathe, swim, to use for boating and general recreation purposes the navigable waters of the State, and to use the bottom of the navigable waters for anchoring, standing, or other purposes. We went on, however, to hold that the traditional triad of uses — navigation, commerce and fishing — did not limit the public interest in the trust res. In language of special importance to the present setting, we stated that '[t]he public uses to which tidelands are subject are sufficiently flexible to encompass changing public needs. In administering the trust the State is not burdened with an outmoded classification favouring one mode of utilization over another. There is a growing public recognition that one of the important public uses of the tidelands — a use encompassed within the tidelands trust — is the preservation of those lands in their natural state, so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favourably affect the scenery and climate of the area.'

Mono Lake is a navigable waterway. It supports a small local industry which harvests brine shrimp for sale as fish food, which endeavour probably qualifies the lake as a 'fishery' under the traditional public trust cases. The principal values plaintiffs seek to protect, however, are recreational and ecological — the scenic views of the lake and its shore, the purity of the air, and the use of the lake for nesting and feeding by birds. Under *Marks* v. *Whitney*[10], it is clear that protection of these values is among the purposes of the public trust."

The Court summed up the powers of the State as trustee in the following words:

"Thus, the public trust is more than an affirmation of State power to use public property for public purposes. It is an affirmation of the duty of the State to protect the people's common heritage of streams, lakes, marshlands and tidelands, surrendering that right of protection only in

10 6 Cal 3d 251

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rare cases when the abandonment of that right is consistent with the purposes of the trust...."

The Supreme Court of California, inter alia, reached the following conclusion:

"The State has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible. Just as the history of this State shows that appropriation may be necessary for efficient use of water despite unavoidable harm to public trust values, it demonstrates that an appropriative water rights system administered without consideration of the public trust may cause unnecessary and unjustified harm to trust interests. (*See* Johnson, 14 U.C. Davis L. Rev. 233, 256-57/; Robie, *Some Reflections on Environmental Considerations in Water Rights Administration*, 2 Ecology L.Q. 695, 710-711 (1972); Comment, 33 Hastings L.J. 653, 654.) As a matter of practical necessity the State may have to approve appropriations despite foreseeable harm to public trust uses. In so doing, however, the State must bear in mind its duty as trustee to consider the effect of the taking on the public trust (see *United Plainsmen* v. *N.D. State Water Cons. Comm'n*[11] at pp. 462-463, and to preserve, so far as consistent with the public interest, the uses protected by the trust."

The Court finally came to the conclusion that the plaintiffs could rely on the public trust doctrine in seeking reconsideration of the allocation of the waters of the Mono basin.

33. It is no doubt correct that the public trust doctrine under the English common law extended only to certain traditional uses such as navigation, commerce and fishing. But the American Courts in recent cases have expanded the concept of the public trust doctrine. The observations of the Supreme Court of California in *Mono Lake case*[9] clearly show the judicial concern in protecting all ecologically important lands, for example fresh water, wetlands or riparian forests. The observations of the Court in *Mono Lake case*[9] to the effect that the protection of ecological values is among the purposes of public trust, may give rise to an argument that the ecology and the environment protection is a relevant factor to determine which lands, waters or airs are protected by the public trust doctrine. The Courts in United States are finally beginning to adopt this reasoning and are expanding the public trust to encompass new types of lands and waters. In *Phillips Petroleum Co.* v. *Mississippi*[12] the United States Supreme Court upheld Mississippi's extension of public trust doctrine to lands underlying non-navigable tidal areas. The majority judgment adopted ecological concepts to determine which lands can be considered tide lands. *Phillips Petroleum case*[12] assumes importance because the Supreme Court expanded the public trust doctrine to identify the tide lands not on commercial considerations but

11 247 NW 2d 457 (ND 1976)
12 108 SCt 791 (1988)

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on ecological concepts. We see no reason why the public trust doctrine should not be expanded to include all ecosystems operating in our natural resources.

34. Our legal system — based on English common law — includes the public trust doctrine as part of its jurisprudence. The State is the trustee of all natural resources which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, airs, forests and ecologically fragile lands. The State as a trustee is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership.

35. We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources.

36. Coming to the facts of the present case, large area of the bank of River Beas which is part of protected forest has been given on a lease purely for commercial purposes to the Motels. We have no hesitation in holding that the Himachal Pradesh Government committed patent breach of public trust by leasing the ecologically fragile land to the Motel management. Both the lease transactions are in patent breach of the trust held by the State Government. The second lease granted in the year 1994 was virtually of the land which is a part of the riverbed. Even the Board in its report has recommended de-leasing of the said area.

37. This Court in *Vellore Citizens' Welfare Forum* v. *Union of India*[13] explained the "Precautionary Principle" and "Polluters Pays Principle" as under: (SCC pp. 658-59, paras 11-13)

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

13 (1996) 5 SCC 647 : JT (1996) 7 SC 375

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

(*i*) Environmental measures — by the State Government and the statutory authorities — must anticipate, prevent and attack the causes of environmental degradation.

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

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

'The Polluter Pays Principle' has been held to be a sound principle by this Court in *Indian Council for Enviro-Legal Action* v. *Union of India*[14]. The Court observed: (SCC p. 246, para 65)

> '... we are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country'.

The Court ruled that: (SCC p. 246, para 65)

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

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

The Precautionary Principle and the Polluter Pays Principle have been accepted as part of the law of the land."

38. It is thus settled by this Court that one who pollutes the environment must pay to reverse the damage caused by his acts.

39. We, therefore, order and direct as under:

14 (1996) 3 SCC 212 : JT (1996) 2 SC 196

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1. The public trust doctrine, as discussed by us in this judgment is a part of the law of the land.

2. The prior approval granted by the Government of India, Ministry of Environment and Forest by the letter dated 24-11-1993 and the lease deed dated 11-4-1994 in favour of the Motel are quashed. The lease granted to the Motel by the said lease deed in respect of 27 bighas and 12 biswas of area, is cancelled and set aside. The Himachal Pradesh Government shall take over the area and restore it to its original-natural conditions.

3. The Motel shall pay compensation by way of cost for the restitution of the environment and ecology of the area. The pollution caused by various constructions made by the Motel in the riverbed and the banks of River Beas has to be removed and reversed. We direct NEERI through its Director to inspect the area, if necessary, and give an assessment of the cost which is likely to be incurred for reversing the damage caused by the Motel to the environment and ecology of the area. NEERI may take into consideration the report by the Board in this respect.

4. The Motel through its management shall show cause why pollution fine in addition be not imposed on the Motel.

5. The Motel shall construct a boundary wall at a distance of not more than 4 metres from the cluster of rooms (main building of the Motel) towards the river basin. The boundary wall shall be on the area of the Motel which is covered by the lease dated 29-9-1981. The Motel shall not encroach/cover/utilise any part of the river basin. The boundary wall shall separate the Motel building from the river basin. The river bank and the river basin shall be left open for the public use.

6. The Motel shall not discharge untreated effluents into the river. We direct the Himachal Pradesh Pollution Control Board to inspect the pollution control devices/treatment plants set up by the Motel. If the effluent/waste discharged by the Motel is not conforming to the prescribed standards, action in accordance with law be taken against the Motel.

7. The Himachal Pradesh Pollution Control Board shall not permit the discharge of untreated effluent into River Beas. The Board shall inspect all the hotels/institutions/factories in Kullu-Manali area and in case any of them are discharging untreated effluent/waste into the river, the Board shall take action in accordance with law.

8. The Motel shall show cause on 18-12-1996 why pollution fine and damages be not imposed as directed by us. NEERI shall send its report by 17-12-1996. To be listed on 18-12-1996.

40. The writ petition is disposed of except for limited purpose indicated above.

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(1999) 6 Supreme Court Cases 464

(BEFORE S.B. MAJMUDAR AND D.P. WADHWA, JJ.)

M.I. BUILDERS PVT. LTD. .. Appellant;

Versus

RADHEY SHYAM SAHU AND OTHERS .. Respondents.

Civil Appeals Nos. 9323-25 of 1994†, decided on July 26, 1999

A. **Constitution of India — Arts. 14, 21, 298 & 299 and 136 — Distribution of State largesse — Disposal of municipal property — *Municipal Corporation's agreement with private builder* — Wednesbury unreasonableness — Public purpose and public interest — Municipal Corporation's action contrary to — Park of historical importance (Jhandewala Park, Lucknow) located in congested commercial-cum-residential area (Aminabad) handed over by the Corporation to a private builder (appellant) under an agreement for construction of an air-conditioned underground shopping complex (Palika Bazar) on the pretext of decongesting the area without inviting tender and without obtaining any project report — Decision of the Corporation and procedure adopted by it in entrusting the project to the builder contrary to statutory provisions — Decision not an informed objective decision — Maintenance of the park because of its historical importance and environmental necessity being a public purpose, decision was also prejudicial to the public purpose — Corporation's agreement with the builder totally one-sided in favour of builder — Pursuant to the agreement Corporation divested of its control over the park — Held, Corporation's action unreasonable, arbitrary, unfair and opposed to public policy, public interest and public trust doctrine — An example of bad governance — Judicial review therefore called for — Construction being unauthorised and illegal it must be demolished irrespective of whatever expenditure incurred by the builder — Since statute also requires the Corporation to provide parking lots, a portion of the construction can be converted into underground parking lot — Directions issued accordingly — Municipalities — U.P. Municipal Corporation Act, 1959 (2 of 1959) — Town Planning — U.P. Regulation of Buildings Operations Act, 1958 (34 of 1958) — U.P. Urban Planning and Development Act, 1973 (11 of 1973) — U.P. Parks, Playgrounds and Open Spaces (Preservation and Regulation) Act, 1975 (55 of 1975) — Doctrines — *Doctrine of public trust***

B. **Town Planning — Unauthorised construction — Court should order demolition of such construction even though builder invested considerable amount — This dictum is almost bordering rule of law — Exercise of judicial discretion in moulding the relief is not called for in such cases as that would encourage and perpetuate the illegality — Enquiry should be ordered to find how unauthorised construction came about and to bring the offenders to book — Public Accountability — Constitution of India, Art. 136 — Relief — Judicial process — Exercise of judicial discretion has to be in accordance with law and set legal principles**

† From the Judgment and Order dated 23-8-1994 of the Allahabad High Court in WPs Nos. 39, 92 and 94 of 1994

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On 6-7-1993 notice was issued for meeting of Lucknow Nagar Mahapalika, also called Nagar Nigam or Corporation, for 12-7-1993 with agenda including "other subjects, subject to the permission of Presiding Officer". In the meeting under that head a resolution was passed constituting a High Power Committee under the Chairmanship of Nagar Pramukh and delegating it the Mahapalika's rights of disposal, allotment, transfer etc. of its properties and of finalising the conditions of allotment and agreement etc. The High Power Committee in its meeting took decision about construction of an underground air-conditioned shopping complex (Palika Bazar) in Jhandewala Park (also known as Aminuddaula Park), a park of historical importance situated in the heart of Aminabad, a bustling commercial-cum-residential locality in the city of Lucknow. The park acquired by the State Government in the year 1913 was given to the Mahapalika for its management. The project was decided to be got executed by the appellant builder, M.I. Builders Pvt. Ltd. The draft of the contract to be entered into between the Mahapalika and M.I. Builders was also approved. Under clause (2) of the agreement it was for the builder to make a construction at its own cost and then to realise the cost with profit not exceeding more than 10% of the investment in respect of each shop. It was not ascertainable as to how much cost the builder was likely to incur and how long it would continue to be in possession of the shopping complex. Full freedom had been given to the builder to lease out the shops as per its own terms and conditions to persons of its choice on behalf of the Mahapalika and the Mahapalika was bound by these terms and conditions. The builder had also been given the right to sign the agreement on behalf of the Mahapalika on the terms and conditions which the builder might deem fit and proper. The builder was only required to give a copy of the agreement to the Mahapalika after its execution and both the Mahapalika and the builder would remain bound by the terms of that agreement. Since there was no project report it was not known as to how many shops the builder would construct and of what sizes. The Mahapalika was allowed to charge Rs 5000 per shop for every second and subsequent transfer of shops by the builder but what amount was to be charged for the first transfer or subsequent transfers was left to the sole discretion of the builder. By the construction it became more like a terrace park; certainly a park of a different nature. By construction of underground shopping complex irreversible changes were made.

The decision of the High Power Committee was put before the Executive Committee and the General Body of the Mahapalika for the purpose of "information" and both these bodies stamped their approval. There were, however, six recitals to the agreement dated 4-11-1993 which cannot be correlated to any discussion in any of the meetings of the Mahapalika, the Executive Committee or the High Power Committee. Thereupon three writ petitions were filed in the High Court against the decision of the Mahapalika permitting the appellant to construct the underground shopping complex in the Park and the agreement dated 4-11-1993. The High Court by a common judgment held that the Mahapalika's decision was illegal, arbitrary and unconstitutional. The High Court set aside and quashed the relevant resolutions of the Mahapalika permitting such construction and also the agreement dated 4-11-1993. Writ of mandamus was issued to the Mahapalika to restore back the park to its original position within a period of three months from the date of the judgment and till that was done, to take adequate safety measures and to provide

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necessary safeguard and protection to the public, the users of the park. The appellant as well as the Mahapalika filed appeals before the Supreme Court. However, the appeals by the Mahapalika were subsequently allowed to be withdrawn by order dated 6-2-1997. The Mahapalika also revoked the sanctioned building plans. During the course of hearing of the writ petitions when the High Court had directed maintenance of status quo, only digging in some part of the park had been done and there was no construction. When the matter came before the Supreme Court, it passed an order on 14-10-1994 directing "that the appellant shall be permitted to construct an underground shopping complex by raising its own funds without collecting any additional funds from individuals or concerns to whom the promise of allotment of shop is made". The appellant was directed to file an undertaking in the Court to the above effect as also to the effect that "if the Court directs removal of the shopping complex in the event of failure of the appeals, the shopping complex will have to be removed at the appellant's cost without claiming anything in return". It is contended by the appellant that after the aforesaid interim order, it got necessary building plans sanctioned by the Mahapalika and started construction. The respondents, however, filed an application complaining that the construction was in violation of the building plans and was also against the provisions of the U.P. Urban Planning and Development Act, 1973. To ascertain the nature of construction being carried out at that time the Supreme Court appointed a Local Commissioner. These applications were then disposed of. By a subsequent order dated 7-5-1997 the Court stopped further construction. Dismissing the appeals of the builder with costs and agreeing with the conclusions of the High Court, the Supreme Court

Held :

There are two distinct areas of challenge in the present case — (*1*) the agreement is a fraud on power, prime land has been given for a song by the Mahapalika. The fact that the scheme was so lucrative could be seen from the fact that all the shops less 5% were booked within six days of the advertisement appearing in December 1993. Public interest and the public exchequer have been sacrificed. The Mahapalika is divested of its control over the project though notionally not for ever but the builder, on the other hand, has control over the project for all times to come, and (*2*) construction is in contravention of the provisions of law as contained in the Development Act. The project has been entrusted to the builder in violation of the provisions of the Act. The decision taken by the Mahapalika was not on proper consideration and was not an informed objective decision. Judicial review is permissible if the impugned action is against law or in violation of the prescribed procedure or is unreasonable, irrational or mala fide. The High Court rightly exercised its power of judicial review in the present case. It has examined the manner in which the decision was made by the Mahapalika. The second principle laid down in *Tata Cellular case*, (1994) 6 SCC 651 applies in all respects. The High Court held that the maintenance of the park because of its historical importance and environmental necessity was in itself a public purpose and, therefore, the construction of an underground market in the garb of decongesting the area was wholly contrary and prejudicial to the public purpose. By allowing the construction the Mahapalika had deprived its residents as also others of the quality of life to which they were entitled under the Constitution and the Act. The agreement smacks of arbitrariness, unfairness and favouritism. The

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agreement was opposed to public policy. It was not in public interest. The whole process of law was subverted to benefit the builder. The Mahapalika and its officers forgot their duty towards the citizens and acted in a most brazen manner. (Paras 71 and 69)

Tata Cellular v. *Union of India*, (1994) 6 SCC 651, *followed*

The competence of M/s M.I. Builders to undertake the project is not doubted when now it is seen that proper construction has been made but before taking the decision to award the contract to it nobody knew its credentials. The question is why was it not necessary to invite tenders for the project of such a high cost? Why was it thought that it was only M.I. Builders in the country who could undertake the job? Why was the project report not obtained to know the cost of the project? Why could it not be thought that there could be any other person who could undertake the job at a lesser cost and in an equally competent manner? Public interest has certainly been given a go-by. There was some undercurrent flowing to award the contract to M.I. Builders. In these circumstances, the dictum contained in *Kasturi Lal Lakshmi Reddy case* becomes inapplicable. No advantage can be drawn by the builder from the decision of the Supreme Court in *G.B. Mahajan case* as here the whole process of awarding contract to M.I. Builders has been gone through in an unabashed manner and in flagrant violation of law with the sole purpose of conferring benefit on it. (Para 72)

Kasturi Lal Lakshmi Reddy v. *State of J&K*, (1980) 4 SCC 1; *G.B. Mahajan* v. *Jalgaon Municipal Council*, (1991) 3 SCC 91, *distinguished*

No consideration should be shown to the builder or any other person where construction is unauthorised. This dicta is now almost bordering the rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such a discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorised construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles. (Para 73)

In this case the builder got an interim order from the Supreme Court and on the strength of that order got sanction of the plan from the Mahapalika and no objection from LDA. It has no doubt invested considerable amount on the construction which is 80% complete and by any standard is a first class construction. Why should the builder take such a risk when the interim order was specific that the builder will make construction at its own risk and will not claim any equity if the decision in the appeal goes against it? The builder is not an innocent player in this murky deal when it was able to get the resolutions of the Mahapalika in its favour and the impugned agreement executed. Now, construction of shops will bring in more congestion and with that the area will get more polluted. Any commercial activity now in this unauthorised construction will put additional burden on the locality. The primary concern of the Court is to eliminate the negative impact the underground shopping complex will have on the environmental conditions in the area and the congestion that will aggravate on account of increased traffic and people visiting the complex.

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There is no alternative to this except to dismantle the whole structure and restore the park to its original condition leaving a portion constructed for parking as required under clause (*ix-a*) of Section 114 of the U.P. Municipal Corporation Act, 1959. (Paras 74 and 80)

While directing demolition of unauthorised construction, the Court should also direct an enquiry as to how the unauthorised construction came about and to bring the offenders to book. It is not enough to direct demolition of unauthorised construction, where there is clear defiance of law. In the present case, but for the observation of the High Court, the Supreme Court would certainly have directed an enquiry to be made as to how the project was conceived and how the agreement dated 4-11-1993 came to be executed. (Para 81)

There are four blocks under construction. In Block 1 there are shops at the level minus 9'6". In Block 2 there are shops on the upper basement level 9'6". There is no lower basement level. The third block is currently designed to have shops at the upper basement level and parking at the lower basement level. The upper basement level can be converted to have parking at that level too since the structural configuration will permit the same. The fourth block is only partially developed with just a separate ramp going down to the first basement level and a few columns with their foundations standing from the lower basement level. This fourth block is currently dug up. (Paras 75 to 79)

Following directions are therefore issued:

1. Blocks 1, 2 and 4 of the underground shopping complex shall be dismantled and demolished and on these places the park shall be restored to its original shape.

2. In Block 3 partition walls and if necessary columns in the upper basement shall be removed and this upper basement shall be converted into a parking lot. Flooring should be laid at the lower basement level built to be used as a parking lot. Ramp shall be constructed adjacent to Block 3 to go to upper and lower basement levels for the purpose of parking of vehicles. Further to make Block 3 functional as a separate unit walls shall be constructed between Block 2 and Block 3 and also Block 3 and Block 4.

3. Dismantling and demolishing of these structures in Blocks 1, 2 and 4 and putting Block 3 into operation for parking shall be done by the Mahapalika at its own cost. Necessary services like sanitation, electricity etc. in Block 3 shall be provided by the Mahapalika.

4. The Mahapalika shall be responsible for maintaining the park and Block 3 for parking purposes in a proper and efficient manner.

5. M.I. Builders Pvt. Ltd., the appellant, is divested of any right, title or interest in the structure built by it under or over the park. It shall have no claim whatsoever against the Mahapalika or against any other person or authority.

6. Block 3 shall vest in the Mahapalika free from all encumbrances. Licence of M.I. Builders to enter into the park and the structure built therein is cancelled of which possession is restored to the Mahapalika with immediate effect. No obstruction or hindrance shall be caused to the Mahapalika by anyone in discharge of its functions as directed by this order.

7. Restoration of the park and operation of Block 3 for parking purposes shall be completed by the Mahapalika within a period of 12 months from today and the report filed in the Registry of this Court. (Para 82)

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Ramana Dayaram Shetty v. *International Airport Authority of India*, (1979) 3 SCC 489; *CST* v. *Thomas Stephen and Co. Ltd.*, (1988) 2 SCC 264, 266 : 1988 SCC (Tax) 190; *M.C. Mehta* v. *Kamal Nath*, (1997) 1 SCC 388; *Sachidanand Pandey* v. *State of W.B.*, (1987) 2 SCC 295; *Rashbihari Panda* v. *State of Orissa*, (1969) 1 SCC 414; *State of Haryana* v. *Jage Ram*, (1983) 4 SCC 556; *Ram and Shyam Co.* v. *State of Haryana*, (1985) 3 SCC 267; *Chenchu Rami Reddy* v. *Govt. of A.P.*, (1986) 3 SCC 391; *Badri Prasad* v. *Nagarmal*, AIR 1959 SC 559 : 1959 Supp (1) SCR 769, 774; *K. Ramadas Shenoy* v. *Chief Officers, Town Municipal Council*, (1974) 2 SCC 506 : (1975) 1 SCR 680, 685; *Virender Gaur* v. *State of Haryana*, (1995) 2 SCC 577, 582; *Pleasant Stay Hotel* v. *Palani Hills Conservation Council*, (1995) 6 SCC 127, 139; *Cantonment Board, Jabalpur* v. *S.N. Awasthi*, 1995 Supp (4) SCC 595, 596; *Pratibha Coop. Housing Society Ltd.* v. *State of Maharashtra*, (1991) 3 SCC 341; *G.N. Khajuria (Dr)* v. *Delhi Development Authority*, (1995) 5 SCC 762; *Manju Bhatia* v. *New Delhi Municipal Council*, (1997) 6 SCC 370 : JT (1997) 5 SC 574; *Ram Awatar Agarwal* v. *Corpn. of Calcutta*, (1999) 6 SCC 532; *Short* v. *Poole Corpn.*, 1926 Ch 66 : 1925 All ER Rep 74; *Rhyl Urban District Council* v. *Rhyl Amusements Ltd.*, (1959) 1 All ER 257 at 264 I (Ch D): 1959 (1) WLR 465 at 472, *referred to*

Suggested Case Finder Search Text (*inter alia*) :

(1)	largess* or park or parks
(2)	construction (unauthorised or illegal)

C. **Municipalities — U.P. Municipal Corporation Act, 1959 (2 of 1959) — S. 114 — Obligatory duties of Corporation — Corporation allowing a builder to construct an underground shopping complex in a park — Held, S. 114 violated because of non-compliance with obligatory duty to maintain parks — However, the underground construction can be converted into a parking lot which being also an obligatory duty of the Corporation — But that can be done only after proper consideration of relevant factors such as the locality, its population etc. — Town Planning — U.P. Parks, Playgrounds and Open Spaces (Preservation and Regulation) Act, 1975 (55 of 1975)**

D. **Municipalities — Parks — Municipal Corporation's duty to maintain — Public trust doctrine — Applicability — Corporation is trustee for proper maintenance of parks — Corporation allowing a builder to construct an underground shopping complex in a park — Held, thereby true nature of the park destroyed and consequently the public trust doctrine as expounded in *Span Resorts case* violated — Doctrine a part of Indian law and has grown from Art. 21 — Constitution of India, Art. 21 — Ecology — Doctrines — Public trust doctrine — Town Planning — U.P. Parks, Playgrounds and Open Spaces (Preservation and Regulation) Act, 1975 (55 of 1975)**

Held :

By allowing underground construction the Mahapalika has deprived itself of its obligatory duties to maintain the park as required under Section 114 of the U.P. Municipal Corporation Act, 1959. But then one of the obligatory functions of the Mahapalika under Section 114 is also to construct and maintain parking lots. To that extent some area of the park could be used for the purpose of constructing an underground parking lot. But that can only be done after proper study has been made of the locality, including density of the population living in the area, the floating population and other certain relevant considerations. This study was never done. (Para 50)

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The Mahapalika is the trustee for the proper management of the park. When the true nature of the park, as it existed, is destroyed it would be violative of the doctrine of public trust as expounded by the Supreme Court in *Span Resort case*. Public trust doctrine is part of Indian law. This public trust doctrine in our country has grown from Article 21 of the Constitution. (Paras 50 and 51)

M.C. Mehta v. *Kamal Nath (Span Resort case)*, (1997) 1 SCC 388, *followed*

Illinois Central Railroad Co. v. *Illinois*, 146 US 387 : 36 L Ed 1018 (1892), *referred to*

Environmental Law and Policy: Nature, Law, and Society by Plater Abrams Goldfarb (*American Casebook Series, 1992*) under the Chapter on Fundamental Environmental Rights, in Section 1 (*The Modern Rediscovery of the Public Trust Doctrine*), *referred to*

Thus by allowing construction of underground shopping complex in the park the Mahapalika has violated not only Section 114 of the Act but also the public trust doctrine. (Para 52)

Suggested Case Finder Search Text (*inter alia*) :

"public trust" doctrine

E. **Municipalities — U.P. Municipal Corporation Act, 1959 (2 of 1959) — Ss. 91, 119 and 105 — Meetings and delegation of function — Notice issued on July 6 for meeting of the Corporation on July 12 — Agenda of the meeting including "Other subjects, subject to the permission of Presiding Officer" — Under that topic Corporation deciding to constitute a High Power Committee under the chairmanship of Nagar Pramukh and to delegate its functions to the Committee — Committee in its meeting deciding to hand over a park of historical importance situated in a congested commercial-cum-residential area to a builder for construction of an underground shopping complex in it — Decision of the High Power Committee placed before Executive Committee and general body for information and both the bodies giving their approval — Held, constitution of High Power Committee and delegation of function were wholly illegal — Such an important project which involved crores of rupees could not have been considered under the topic "other subjects" — There was also no material to support discussion on the subject of construction of underground complex — Entire process was violative of mandatory provisions of Ss. 91 and 119 and was not mere irregularity so as to be protected under S. 105**

Held :

There is no authority with the Mahapalika to constitute a High Power Committee and to delegate its functions to that Committee. There was no agenda at any time in any of the meetings of the Mahapalika for consideration of the underground shopping complex. Such an important matter, where the cost of the project was likely to run into crores of rupees, could not have been considered under the topic "Other Subjects, Subject to the Permission of the Presiding Officer". The Corporations had no time to apply their minds. When the agenda did not include the subject of construction of underground shopping complex nor was there any material to support the discussion on the subject of construction of underground shopping complex it could not have been considered in the meetings of the Mahapalika and the Executive Committee. There were no proposals, no documents, no plan, no study, no project report or feasibility report on the basis of which the Mahapalika could have given a green signal for construction of the underground shopping complex. There was no discussion and no informed decision. The Mahapalika completely abdicated its

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functions. In the present case it is not mere irregularity or defect in the procedure so as to be protected under Section 105 of the Act but the whole procedure is in clear breach of Sections 91 and 119 of the Act which are mandatory.

(Paras 53 and 54)

Myurdhwaj Coop. Group Housing Society Ltd. v. *Presiding Officer, Delhi Coop. Tribunal*, (1998) 6 SCC 39, *distinguished*

F. **Municipalities — U.P. Municipal Corporation Act, 1959 (2 of 1959) — S. 136(2) — Requirement to obtain sanction of State Govt. in case estimated cost of project approved by Corporation exceeds Rs 10 lakhs — Applies not only where the project cost was to be incurred by the Corporation but irrespective of who incurs the cost in the first instance**

G. **Municipalities — U.P. Municipal Corporation Act, 1959 (2 of 1959) — Ss. 131, 132, 133 and 136 — Contract — Wednesbury unreason-ableness — Agreement entered into by Corporation with a private builder for construction of an underground shopping complex in a park of historical importance situated in the heart of a congested commercial-cum-residential area — Thereby land of immense value handed over to the builder for a song in violation of public trust doctrine and master plan of the city — Agreement wholly one-sided in favour of the builder completely ousting the Corporation — Terms of the agreement such that no person of ordinary prudence shall ever enter into such an agreement — Agreement also in violation of provisions of the Act — Held, agreement illegal, unreasonable, atrocious, irrational and arbitrary — Constitution of India, Art. 14 — Administrative Law — Judicial review — Wednesbury unreasonableness**

H. **Interpretation of Statutes — Subsidiary rules — Mandatory or directory — When statute specifically provides that a body corporate has to act in a particular manner and in no other manner, it is a mandatory provision which has to be strictly complied with — This principle is applicable to meetings of Municipal Corporation and execution of contracts on its behalf — Municipalities — Meetings**

I. **Evidence Act, 1872 — S. 115 — Estoppel — There is no estoppel against a statute**

Held:

The agreement dated 4-11-1993 was not executed as required by Section 133 of the Act. (Para 56)

Further, though the estimated cost of the project approved by Mahapalika was more than Rs 10 lakhs, no sanction of the State Govt., as required under Section 136(2), was obtained. The submission that this provision would apply only if the project cost was to be incurred by the Mahapalika cannot be accepted. It is the cost of the project that matters and not who incurs the cost in the first instance. The agreement dated 4-11-1993 is, therefore, not a valid contract and not binding on the Mahapalika. As held in *H.S. Rikhy case* where a statute makes a specific provision that a body corporate has to act in a particular manner and in no other, that provision of law being mandatory and not directory has to be strictly followed. This principle will apply both as regards holding of meeting of the Mahapalika and execution of contract on its behalf. This judgment is also an authority for the proposition that there is no estoppel against a statute.

(Para 56)

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H.S. Rikhy (Dr) v. *New Delhi Municipal Committee*, AIR 1962 SC 554, *followed*

Not only the clauses of the agreement are unreasonable for the Mahapalika but they are atrocious. No person of ordinary prudence shall ever enter into such an agreement. A trustee, which the Mahapalika is, has to be more cautious in dealing with its properties. Valuable land in the heart of a commercial area has been handed on a platter to the builder for it to exploit and to make runaway profits. The agreement is completely one-sided favouring the builder. A land of immense value has been handed over to it to construct an underground shopping complex in violation of the public trust doctrine and the Master Plan for the city of Lucknow. The Master Plan of the city of Lucknow could not have envisaged Jhandewala Park as a site available for commercial exploitation considering the density and congestion in the area. The Mahapalika has no right to step in even if there is any violation by the builder of the terms of the agreement or otherwise. The Mahapalika, though considered to be the owner of the land, is completely ousted and divested of the land for a period which is not definite and which depends wholly on the discretion of the builder. It cannot be said that the construction of the underground shopping complex is by the builder as an agent of the Mahapalika. The concept of agency is totally missing in the present case. Rather the deal is from principal to principal. The agreement dated 4-11-1993 is not a valid one. The agreement defies logic. It is outrageous. It crosses all limits of rationality. The Mahapalika has certainly acted in a fatuous manner in entering into such an agreement. (Paras 57, 58, 61 to 63 and 59)

Wade on Administrative Law, 7th Edn., p. 399, *relied on*

Akadasi Padhan v. *State of Orissa*, AIR 1963 SC 1047 : 1963 Supp (2) SCR 691, 722; *W. (an infant), Re*, 1971 AC 682 : (1971) 2 All ER 49, *relied on*

Suggested Case Finder Search Text (*inter alia*) :

wednesbury

J. **Municipalities — U.P. Municipal Corporation Act, 1959 (2 of 1959) — Ss. 128 and 129 — Applicability — Where Corporation grants licence to a builder to construct an underground shopping complex of a permanent nature and to hold on to the same for an indefinite period and then under an agreement authorises the builder to lease out the shops on the Corporation's behalf, held, the transaction will fall within the expression "otherwise dispose of any interest in the property" in S. 128 — Hence Ss. 128 and 129 will be attracted — On facts, the agreement contravened Ss. 128 and 129**

K. **Easements Act, 1882 — Ss. 60(b) and 62(f) — Revocability of licence — Licence granted by Municipal Corporation to a builder to construct an underground shopping complex in a park — It being a work of permanent character for execution of which the builder having incurred expenses, the licence would be irrevocable under S. 60(b) — But licence was to be deemed to be revoked under S. 62(f) when as per agreement, licensee will recover his full costs plus the agreed percentage of profit on the investment made by him**

Held :

Granting licence to the builder to construct underground shopping complex of a permanent nature and to hold on to the same for a period which is not definite and then under the impugned agreement authorising the builder to lease out the shops on behalf of the Mahapalika, is a dubious method adopted to

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subvert the provisions of Section 128 which apply as well in the case of lease and thus the transaction will also be covered by the expression "otherwise dispose of any interest in the property". It is, therefore, difficult to accept the argument of the builder that the transaction is outside Section 128 of the Act. (Para 68)

Licence has been granted to the builder to enter upon the park and to execute a work of permanent character and incur expenses in the execution of the work, thus making the licence irrevocable, under Section 60(*b*) of the Easements Act. However, the licence is deemed to be revoked under Section 62(*f*) of the Easements Act after the happening of a certain event which in this case is when the builder has recovered the whole of his investment plus 10% of the profit. When this purpose is achieved by the licensee is anybody's guess. Not only that, the licensee, i.e., the builder is then authorised to lease out the shops so constructed on behalf of the Mahapalika. The result would be that to the builder the provisions of Section 129 of the Act cannot be thus made applicable. The provisions of Section 129 of the Act have, therefore, been flouted. The impugned agreement dated 4-11-1993 is bad having been executed also in contravention of the requirement of Section 129 of the Act. (Paras 67 and 68)

Chevalier I.I. Iyyappan v. *Dharmodayam Co.*, AIR 1966 SC 1017 : (1963) 1 SCR 85, *relied on*

Suggested Case Finder Search Text (*inter alia*) :

licence revok*

L. **Town Planning — U.P. Urban Planning and Development Act, 1973 (11 of 1973) — Ss. 14 & 3(e) — Development by builder — Construction of underground shopping complex in a park — Sanction of the building plan not obtained from the Development Authority — Held, construction was illegal**

Held :

When the "development" is by the builder the provisions of Section 14 of the Development Act would apply. There is no sanction of the building plan of the underground shopping complex by LDA. Construction is, therefore, per se illegal. Even after the interim order of the Supreme Court allowing construction, plans were not got sanctioned from LDA, which would be the authority under the Development Act. Sanction of the building plan by the Mahapalika would, therefore, be meaningless. Even then, there were no sanctioned drawings. (Para 61)

Suggested Case Finder Search Text (*inter alia*) :

building* sanction

M. **Practice and Procedure — Estoppel — Municipal Corporation being a continuing body it can be estopped from changing its stand — But where the Corporation, finding that it acted against statutory provisions, changes its stand in accordance with the law, estoppel will not operate against it — Evidence Act, 1872, S. 115**

Held :

Action of the Mahapalika in agreeing to the construction of underground shopping complex in contravention of the provisions of the Act and then entering into an agreement with the builder against settled norms was wholly illegal and has been held to be so by the High Court. No doubt the Mahapalika is a continuing body and it will be estopped from changing its stand in the given

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case. But when the Mahapalika finds that its action was contrary to the provisions of law by which it was constituted there could certainly be no impediment in its way to change its stand. There cannot be any estoppel operating against the Mahapalika. (Para 66)

Union of India v. *Anglo Afghan Agencies Ltd.*, AIR 1968 SC 718 : (1968) 2 SCR 366; *Ganges Mfg. Co.* v. *Souraymull*, ILR (1880) 5 Cal 669, 678 : 5 CLR 533, *distinguished*

Suggested Case Finder Search Text (*inter alia*) :

estoppel (contrary or breach or violat*)

N. **Administrative Law — Judicial review — Action of State or its instrumentality, which is illegal, in contravention of prescribed procedure, unreasonable, irrational or mala fide, is open to judicial review — Bad governance sets bad example — Court can interfere in such cases — Constitution of India, Arts. 226, 32 and 136**

Held :

Every decision of the authority except the judicial decision is amenable to judicial review and reviewability of such a decision cannot now be questioned. However, a judicial review is permissible if the impugned action is against law or in violation of the prescribed procedure or is unreasonable, irrational or mala fide. Bad governance sets a bad example. That is what exactly happened in the present case. (Para 59)

State of Bombay v. *Laxmidas Ranchhoddas*, AIR 1952 Bom 468, 475 (para 12) : 54 Bom LR 681, *approved*

In the present case a decision to construct underground shopping complex by M.I. Builders had already been taken and the whole process was gone into to confer undue benefit on M.I. Builders and the bogie of congestion was introduced to justify the action of the Mahapalika. It is wholly illegal and smacks of arbitrariness, unreasonableness and irrationality. It is a case where the High Court rightly interfered in exercise of its powers of judicial review keeping in view the principles laid down by this Court in *Tata Cellular case*. (Paras 64 and 59)

Tata Cellular v. *Union of India*, (1994) 6 SCC 651, *applied*

R-M/ATZ/21379/C

Suggested Case Finder Search Text (*inter alia*) :

"administrative law" judicial review

Advocates who appeared in this case :

M.L. Verma, Arun Jaitley, Dushyant Dave, G.L. Sanghi and Raju Ramachandran, Senior Advocates (Ms Nisha Bagchi, Vikas Mehta, Ms Indu Malhotra, S.V. Deshpande, Ashok Srivastava, Pradeep Misra, R.C. Verma, C. Sidharatha, M.K. Srivastava, A.K. Goel, Additional Advocate General for U.P., R.B. Misra, Kamlendra Misra and Uday Umesh Lalit, Advocates, with them) for the appearing parties.

Chronological list of cases cited ***on page(s)***

1. (1999) 6 SCC 532, *Ram Awatar Agarwal* v. *Corpn. of Calcutta* 510*a-b*, 514*d*
2. (1998) 6 SCC 39, *Myurdhwaj Coop. Group Housing Society Ltd.* v. *Presiding Officer, Delhi Coop. Tribunal* 519*a*
3. (1997) 6 SCC 370 : JT (1997) 5 SC 574, *Manju Bhatia* v. *New Delhi Municipal Council* 510*a-b*, 514*a*
4. (1997) 1 SCC 388, *M.C. Mehta* v. *Kamal Nath* 506*e*, 506*f*, 517*b-c*
5. (1995) 6 SCC 127, 139, *Pleasant Stay Hotel* v. *Palani Hills Conservation Council* 510*a*, 511*g*

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6. (1995) 5 SCC 762, *G.N. Khajuria (Dr)* v. *Delhi Development Authority* 510*a*, 513*a-b*
7. (1995) 2 SCC 577, 582, *Virender Gaur* v. *State of Haryana* 510*a*, 511*a-b*
8. 1995 Supp (4) SCC 595, 596, *Cantonment Board, Jabalpur* v. *S.N. Awasthi* 510*a*, 512*e*
9. (1994) 6 SCC 651, *Tata Cellular* v. *Union of India* 482*b-c*, 500*a-b*, 523*a-b*, 528*b-c*
10. (1991) 3 SCC 341, *Pratibha Coop. Housing Society Ltd.* v. *State of Maharashtra* 510*a*, 512*f*
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12. (1988) 2 SCC 264, 266 : 1988 SCC (Tax) 190, *CST* v. *Thomas Stephen and Co. Ltd.* 498*e-f*
13. (1987) 2 SCC 295, *Sachidanand Pandey* v. *State of W.B.* 507*b-c*
14. (1986) 3 SCC 391, *Chenchu Rami Reddy* v. *Govt. of A.P.* 507*e-f*
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16. (1983) 4 SCC 556, *State of Haryana* v. *Jage Ram* 507*e-f*
17. (1980) 4 SCC 1, *Kasturi Lal Lakshmi Reddy* v. *State of J&K* 494*g*, 507*e-f*, 528*g-h*
18. (1979) 3 SCC 489, *Ramana Dayaram Shetty* v. *International Airport Authority of India* 495*d*, 507*e*
19. (1974) 2 SCC 506 : (1975) 1 SCR 680, 685, *K. Ramadas Shenoy* v. *Chief Officers, Town Municipal Council* 509*g-h*, 510*b*
20. 1971 AC 682 : (1971) 2 All ER 49, *W. (an infant), Re* 521*d*
21. (1969) 1 SCC 414, *Rashbihari Panda* v. *State of Orissa* 507*e*
22. AIR 1968 SC 718 : (1968) 2 SCR 366, *Union of India* v. *Anglo Afghan Agencies Ltd.* 497*b*, 497*d*, 525*f*
23. AIR 1966 SC 1017 : (1963) 1 SCR 85, *Chevalier I.I. Iyyappan* v. *Dharmodayam Co.* 526*a-b*
24. AIR 1963 SC 1047 : 1963 Supp (2) SCR 691, 722, *Akadasi Padhan* v. *State of Orissa* 505*d-e*, 505*e*, 524*a*
25. AIR 1962 SC 554, *H.S. Rikhy (Dr)* v. *New Delhi Municipal Committee* 504*a*, 520*b-c*
26. AIR 1959 SC 559 : 1959 Supp (1) SCR 769, 774, *Badri Prasad* v. *Nagarmal* 509*f-g*
27. (1959) 1 All ER 257 at 264 I (Ch D): 1959 (1) WLR 465 at 472, *Rhyl Urban District Council* v. *Rhyl Amusements Ltd.* 498*f*
28. AIR 1952 Bom 468, 475 (para 12) : 54 Bom LR 681, *State of Bombay* v. *Laxmidas Ranchhoddas* 523*b-c*, 523*c*
29. 1926 Ch 66 : 1925 All ER Rep 74, *Short* v. *Poole Corpn.* 522*a*
30. 146 US 387 : 36 L Ed 1018 (1892), *Illinois Central Railroad Co.* v. *Illinois* 517*g-h*
31. ILR (1880) 5 Cal 669, 678 : 5 CLR 533, *Ganges Mfg. Co.* v. *Sourujmull* 497*b-c*, 497*c*, 525*f-g*

The Judgment of the Court was delivered by

D.P. WADHWA, J.— These appeals are directed against the judgment dated 23-8-1994 of a Division Bench of the High Court of Judicature at Allahabad (Lucknow Bench). By a common judgment in three writ petitions, the High Court speaking through Shobha Dixit, J. held that the decision of the Lucknow Nagar Mahapalika ("the Mahapalika" for short), also now called the Nagar Nigam or the Corporation, permitting M.I. Builders Pvt. Ltd. (the appellant herein) to construct an underground shopping complex in Jhandewala Park (also known as Aminuddaula Park) situated at Aminabad Market, Lucknow, was illegal, arbitrary and unconstitutional. The High Court set aside and quashed the relevant resolutions of the Mahapalika permitting such construction and also the agreement dated 4-11-1993 entered into between the Mahapalika and the appellant for the purpose. Writ of

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mandamus was issued to the Mahapalika to restore back the park to its original position within a period of three months from the date of the judgment and till that was done, to take adequate safety measures and to provide necessary safeguard and protection to the public, the users of the park. The High Court had noticed that the fact that the park was of historical importance was not denied by the Mahapalika and also the fact that preservation or maintenance of the park was necessary from the environmental angle and that the only reason advanced by the Mahapalika for construction of the underground commercial complex was to ease the congestion in the area. The High Court, however, took judicial notice of the conditions prevailing at Aminabad Market. It said it was so crowded that it was bursting from all its seams. Construction of the underground shopping complex in question would only complicate the situation and that the present scheme would further congest the area. It said that the public purpose, which is alleged to be served by construction of the underground commercial complex, seemed totally illusory.

2. Aggrieved by the impugned judgment of the High Court, the appellant has come to this Court. The Mahapalika also felt aggrieved and filed appeals (Civil Appeals Nos. 9326-28 of 1994) but these appeals by the Mahapalika were subsequently allowed to be withdrawn by order dated 6-2-1997. There is controversy as to how the Mahapalika which had earlier justified its action later turned round and sought to withdraw the appeals. The order allowing withdrawal of the appeals by the Mahapalika is as under:

"IAs Nos. 10 to 12

in

Civil Appeals Nos. 9326-28 of 1994

Nagar Mahapalika Appellant;

Versus

Radhey Shyam Sahu & others Respondents.

ORDER

Taken on board.

The learned counsel for the appellant seeks leave to withdraw the appeals and states that Mr S.V. Deshpande who appears for the other side has no objection to the withdrawal. The appeals will, therefore, stand disposed of as withdrawn with no order as to costs.

sd/-
..., CJI

New Delhi, sd/-
6-2-1997 ..., J."

3. The Mahapalika also cancelled the building plans. This action of the Mahapalika was the subject-matter of criticism by the appellant as to how a duly sanctioned plan could be revoked without any notice to the appellant. We may, at this stage, itself reproduce the relevant portion of the resolution

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dated 6-8-1996 of the Mahapalika for withdrawal of its appeals which is as under:

"The Lucknow Bench of Hon'ble High Court of Allahabad has declared the agreement dated 4-11-1993 executed between the Nagar Mahapalika, Lucknow and M.I. Builders, Karamat Market, Lucknow in respect of construction of underground Palika Bazar and multi-storeyed parking on Jhandewala Park Aminabad, Lucknow as invalid and not in the public interest vide their judgment dated 23-8-1994.

The Hon'ble High Court rendered the abovesaid judgment by accepting the writ petitions preferred by several elected Sabhasads of the then Nagar Mahapalika and the citizens.

On the directions of the then Nagar Pramukh Shri Akhilesh Das, who wanted to cause undue profit to M.I. Builders against the interest of the Nagar Mahapalika now the Nagar Nigam, Lucknow, the citizens of Lucknow, the Nagar Nigam, Lucknow filed Special Leave Petitions Nos. 17223-25 of 1994 in the Hon'ble Supreme Court against the judgment of the Hon'ble High Court.

It is proposed that in the interest of the citizens of Lucknow and the Lucknow Nagar Nigam the pending Special Leave Petitions Nos. 17223-25 of 1994 in the Hon'ble Supreme Court be withdrawn and the Nagar Nigam, Lucknow be further directed to oppose the special leave petition filed by M/s M.I. Builders in the Hon'ble Supreme Court against the judgment dated 23-8-1994 of Lucknow Bench of Hon'ble High Court of Allahabad.

Unanimously decided that the aforesaid resolution be passed and accordingly the action may be taken."

4. The letter revoking the sanctioned building plans is dated 17-4-1997 and is as under:

"To,
M/s M.I. Builders (P) Ltd.,
Karamat Market,
Nishatganj, Lucknow.

Sir,

Vide this office letter No. 223/Sa.Sa.A./95 dated 23-1-1995 the building plans for construction of underground shopping and parking complex at Jhandewala Park, Aminabad were sanctioned.

After taking legal advice by the Hon'ble Nagar Pramukh from the standing counsel of the Nagar Nigam and Additional Advocate General the earlier sanctioned building plans have been revoked vide order dated 17-4-1997. As such these have no legal sanctity.

Please be informed.

Yours faithfully,
sd/-
S.K. Gupta,
Mukhya Nagar Adhikari.

17-4-1997

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Copy to:

The Vice Chairman, Lucknow Development Authority, for information.

sd/-
S.K. Gupta,
Mukhya Nagar Adhikari."

5. There were three writ petitions before the High Court and during the course of hearing of those petitions the High Court had directed maintenance of status quo. At that time, it would appear that only digging in some part of the park had been done and there was no construction. When the matter came before this Court, by order dated 14-12-1994 the Court passed the following order:

"Exemption from filing official translation is allowed.

Liberty to add the omitted parties in the cause title.

Leave granted.

We have heard counsel on the question of grant of interim relief.

Printing dispensed with.

The operation of the impugned order of the High Court is stayed on the following conditions:

Taking all the facts and circumstances into consideration and having regard to the fact that it may not be possible for this Court to hear the appeal within a short time having regard to the pressure of work and pendency of old cases, we direct that the appellant shall be permitted to construct an underground shopping complex by raising its own funds without collecting any additional funds from individuals or concerns to whom the promise of allotment of shop is made. To clarify the matter, we say that the funds can be raised from agencies other than those to whom the shops are ultimately allotted. It will be made clear to the agencies from whom the funds are raised that they will not be entitled to allotment of shops. The appellant will maintain accounts and file an undertaking to the above effect in this Court within two weeks from today. In addition the undertaking will contain a statement to the effect that in the event the appeals fail, the appellant will not raise questions as to equity or the ground on its having invested a huge amount and will be totally amenable to such directions and orders that this Court may make in regard to the maintenance or otherwise of the shopping complex. In other words, if the Court directs removal of the shopping complex in the event of failure of the appeals, the shopping complex will have to be removed at the appellant's cost without claiming anything in return. The construction will be so carried out that the open space will remain available for the public and the entire complex will be so constructed that it will be an underground one except for the ingress and egress

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portions of the complex. The total area to be constructed on the surface of the plot shall not exceed 10% of the plot.

SLPs (C) Nos. 17223-25 of 1994

Exemption from filing official translation is allowed.

Leave granted.

Tag on with appeals arising from SLPs (C) Nos. 16907-09 of 1994 in which interim orders have already been made."

6. It is contended by the appellant that after the aforesaid interim order, it got necessary building plans sanctioned by the Mahapalika and started construction. The respondents, however, filed an application complaining that the construction was in violation of the building plans and was also against the provisions of the U.P. Urban Planning and Development Act, 1973 (for short "the Development Act"). To ascertain the nature of construction being carried out at that time this Court appointed a Local Commissioner. These applications were then disposed of by passing the following order:

"*IAs Nos. 10-12*

The Commissioner, Mr Justice Loomba, a retired Judge of the High Court of Allahabad has, pursuant to this Court's order, submitted his Report dated 15-2-1996. In para 3 of the Report he identifies the points on which the Report was required and then proceeds to indicate the actual physical condition in regard to the construction of the market and states that the entire market is being constructed underground and not above the ground and that the total area on the surface of the market for the ingress and egress (with *chabutras*) and light purposes etc. does not exceed 10 per cent of the plot and is about 9.74 per cent of the area in which the market is being constructed. He, however, notes that the level of the park at the periphery appears to be higher than the estimated average level of the original park by about 3.21 feet = 3 feet 2.5 inches as worked out on the basis of available old signs and that the same does not appear to be in any manner offensive and is of no consequence. He also points out that the park made on the market area is and will be available for the public in the form of park less the structures made on the surface, which as pointed out above, does not exceed the permissible limit of 10 per cent of the total plot area. He also states that the chabutras constructed on the back of the structures will also be available to the public and may serve as benches in the park. In view of this Report which precisely indicates the actual physical condition existing on the date of the Report and the plan appended thereto which shows beyond any manner of doubt that the entire construction is underground, the total surface area does not exceed the permissible limit of 10 per cent and the raising of the height on the periphery is of no consequence because it does not in any manner affect the surface area. We, therefore, accept the Report of the learned Judge and see no merit in these IAs."

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7. The Court, however, did not go into other issues raised in the applications. By a subsequent order dated 7-5-1997 the Court stopped further construction.

8. Before we consider the details of the case we may note in brief the contentions of the parties:

The petitioners (now the respondents) in the writ petitions submitted that the park was not only of great historical significance but its maintenance was necessary from the environmental point of view as mandated by law. Admittedly, the park is the only open space in the Aminabad Market, which is an overcrowded commercial and residential area of the city. Possession of the park was handed over to the appellant (M.I. Builders) in violation of the provisions of law to construct an underground shopping complex and underground parking with the ostensible purpose of decongesting the area. It is not that the encroachers would be removed from the area as the underground shops were not allotted to any one of them. They would nevertheless remain at the places occupied by them. Challenge to the action of the Mahapalika in allowing construction was on the grounds:

1. It was against the public purpose to construct an underground market in the garb of decongesting the area of the encroachers to destroy a park of historical importance and of environmental necessity. It would be in breach of Articles 21, 49, 51-A(*g*) of the Constitution as the existing park which is the only open space in the busiest commercial area in the heart of the city of Lucknow can be destroyed and the citizens, particularly the residents of the area, would be deprived of the quality of life to which they are entitled under the law and to maintain ecology of the area.

2. It is in violation of the statutory provisions as contained in the U.P. Nagar Mahapalika Adhiniyam, 1959 (now called the Uttar Pradesh Municipal Corporation Adhiniyam, 1959 — by amending Act 12 of 1994) (for short "the Act"), the U.P. Regulation of Buildings Operations Act, 1958 (for short "the Building Act"), the Uttar Pradesh Urban Planning and Development Act, 1973 (for short "the Development Act") and also the Uttar Pradesh Parks, Playgrounds and Open Spaces (Preservation and Regulation) Act, 1975 (for short "the Parks Act").

3. No tenders were invited by the Mahapalika before entering into the agreement with the builder. This was against the established procedure and thus it acted arbitrarily in the matter of disposing and dealing with its immovable property which was of immense value. The agreement is wholly one-sided and gives undue advantage to the builder at the cost of the Mahapalika.

4. The agreement between the Mahapalika and the builder smacks of arbitrariness, is unfair and gives undue favour to the builder and this was done with mala fide motives of personal gain by the authorities of the Mahapalika particularly the Mukhya Nagar Adhikari (Chief Executive Officer) and the Adhyaksh (the Mayor).

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5. The resolution of the Mahapalika by which it has agreed to enter into the agreement with the builder was against the provisions of the Act which were mandatory.

6. The whole action of the Mahapalika was against public interest. The Lucknow Development Authority (for short LDA) which was constituted under the Development Act and was responsible for development in the area which would mean construction of the underground shopping complex and underground parking lot was sidelined and no sanction was obtained from the Vice-Chairman in accordance with the provisions of the Development Act.

9. The builder as well as the Mahapalika filed their respective counter-affidavits in the High Court opposing the writ petitions. No counter-affidavit was filed either by the State or by LDA though they were parties in the writ petitions. The Chief Executive Officer and the Mayor were impleaded by name as the respondents in the writ petitions and allegations of mala fides and favouritism made against them but none of them chose to file any counter-affidavit controverting those allegations. In the High Court a very strange scenario emerged and that was that though the stand of the Mahapalika and LDA as spelled out from the documents was at variance with each other, yet both were represented by one counsel. The builder was represented by the Advocate General of the State while the State was represented by its Standing Counsel. Before us though the Mahapalika earlier supported the builder as noted above and also filed appeals against the impugned judgment but subsequently it reversed its stand, withdrew its appeals and filed an affidavit supporting the impugned judgment of the High Court. The State Government and LDA also filed their affidavits supporting the judgment of the High Court with full vigour though as seen earlier before the High Court they were just mute spectators. We may also note that in reply to the applications IAs Nos. 10 and 11 in this Court the Mahapalika lent its support to the builder. This action of the Mahapalika changing its stand midstream was subjected to severe criticism by the appellant and it was stated that there was estoppel by deed in the case and the Mahapalika could not go back on its earlier stand.

10. The impugned judgment has been challenged by the builder on the following grounds:

(*a*) There was no disposal of the property by the Mahapalika in favour of the builder and therefore the provisions of Section 128 of the Act were inapplicable. Even assuming it was so, the provisions of Sections 129 and 132 of the Act stood complied with.

(*b*) There was no arbitrariness or unreasonableness vitiating the agreement between the Mahapalika and the builder particularly in view of the express finding of the High Court that there was no lack of bona fides and that it was not disputed that the builder was competent to execute the job. This was having regard to special features of the construction and further on account of the fact that no party had come

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forward at any time to execute the project. In such a situation omission to invite tenders would not vitiate the agreement particularly when the proposal for construction of the project by the builder was widely known.

(*c*) In view of its stand before the High Court and in the special leave petition of the builder and its own appeals filed in this Court it is not open to the Mahapalika to advance any contention or take a stand contrary to what had been taken earlier.

(*d*) The High Court exceeded its jurisdiction as it did not apply the correct parameters of its power of judicial review as laid by this Court in *Tata Cellular* v. *Union of India*[1] and other cases and the High Court went wrong in going into the question of expediency and wisdom of the proposed project.

(*e*) The Mahapalika could not revoke the building plan without notice to the builder and without hearing it in the matter.

11. This last submission we need not go into — the question if cancellation of the sanctioned building plans by the Mahapalika was valid — as that was not the issue before the High Court.

12. The Mahapalika is a body corporate constituted under the Act. The Act provides for various functions of the Mahapalika and how these are to be performed. Its various authorities are described in Section 5 which is as under:

"5. *Corporation authorities*.—The Corporation authorities charged with carrying out the provisions of this Act for each city shall be—

(*a*) the Corporation;

(*aa*) the Ward Committees;

(*b*) an Executive Committee of the Corporation;

(*bb*) the Nagar Pramukh;

(*c*) a Development Committee of the Corporation;

(*d*) a Mukhya Nagar Adhikari 'and an Apar Mukhya Nagar Adhikari' appointed for the Corporation under this Act; and

(*e*) in the event of the Corporation establishing or acquiring electricity supply or public transport undertaking or other public utility services, such other committee or committees of the Corporation as the Corporation may with the previous sanction of the State Government establish with respect thereto."

13. Chapter II provides for constitution of various committees and Chapter III for proceedings of the Mahapalika, Executive Committee, Development Committee and other committees. In view of the applicability of the Development Act, 1973, the Executive Committee of the Mahapalika has ceased to be in operation to that extent. Under Section 91 falling in this chapter, a list of the business to be transacted at every meeting except an adjourned meeting, shall be sent to each member of the Mahapalika or of

1 (1994) 6 SCC 651

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other committees at least ninety-six hours in the case of a meeting of the Corporation before the date fixed for the meeting and seventy-two hours in the case of a meeting of any such committee and

"no business, except as provided in sub-section (2), shall be brought or transacted at any meeting other than a business of which notice has been given".

Sub-section (2) is as under:

"91. (2) Any member of the Corporation or of a committee referred to in sub-section (1), as the case may be, may send or deliver to the Mukhya Nagar Adhikari notice of any resolution with a copy thereof proposed to be moved by him at any meeting of which notice has been sent under sub-section (1). The notice shall be sent or delivered at least forty-eight hours in the case of a meeting of the Corporation and twenty-four hours in the case of a meeting of any committee before the date fixed for the meeting and thereupon the Mukhya Nagar Adhikari shall with all possible despatch cause to be circulated such resolution to every member in such manner as he may think fit. Any resolution so circulated may, unless the meeting otherwise decides, be considered and disposed of thereat."

14. Under Section 95 of the Act, the Mahapalika may from time to time by special resolution constitute a special committee to enquire into and report upon any matter connected with its powers, duties or functions. Every such special committee shall conform to any instruction that may be given to it by the Mahapalika. The report of the special committee shall, as soon as may be practicable, be laid before the Mahapalika which may thereupon take such action as it thinks fit or may refer back the matter to the special committee for such further investigation and report as it may direct. Section 97 provides for constitution of sub-committees by the Executive Committee or any committee appointed under clause (*e*) of Section 5 and any such sub-committee shall possess such powers and perform such duties and functions as the committee appointing it may from time to time delegate or confer. Section 105 of the Act provides that no act done or proceedings taken under this Act shall be called in question in any court on the ground merely of any defect or irregularity in procedure not affecting the substance. Under Section 119 of the Act falling under Chapter V which prescribes the duties and powers of the Mahapalika and its authorities, there is provision for delegation of functions which we reproduce, in relevant part, as under:

"119. *Delegation of functions.*—(1) Subject to the other provisions of this Act and the rules thereunder and subject to such conditions and restrictions as may be specified by the Corporation—

(*a*) the Corporation may delegate to the Executive Committee or to the Mukhya Nagar Adhikari any of its functions under this Act other than those specified in Part A of Schedule I;"

15. It is not necessary to refer to Part A of Schedule I mentioned in Section 119 as none of the functions of the Corporation on which there is prohibition has been delegated. Under Section 119, reproduced above, delegation can only be to the Executive Committee or to the Mukhya Nagar Adhikari and to no other person or authority or committee. Sections 421, 422

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and 423 of the Act were referred to contend that it is only for the Mahapalika itself to establish private markets. These sections fall in Chapter XVI dealing with regulation of markets, slaughterhouses, certain trades and acts, etc.

16. Chapter VI of the Act deals with property and contracts. Under Section 125 falling in this chapter, the Mahapalika has power to acquire, hold and dispose of property or any interest therein whether within or without the limits of the city. Under sub-section (3) of Section 125 any immovable property which may be transferred to the Corporation by the Government shall be held by it, subject to such conditions including resumption by the Government on the occurrence of a specified contingency and shall apply to such purpose as the Government may impose or specify while making the transfer. Section 128 deals with power of the Mahapalika to dispose of the property. As to what are the provisions governing disposal of property these are mentioned in Section 129. Sections 128 and 129, in relevant part, are as under:

"128. *Power to dispose of property.*—(1) The Corporation shall, for the purpose of this Act, and subject to the provisions thereof and rules made thereunder, have power to sell, let on hire, lease, exchange, mortgage, grant or otherwise dispose of any property or any interest therein acquired by or vested in the Corporation under this Act:

Provided that no property transferred to the Corporation by the Government shall be sold, let on hire, exchanged or mortgaged or otherwise conveyed in any manner contrary to the terms of the transfer except with the prior sanction of the State Government.

129. *Provisions governing disposal of property.*—With respect to the disposal of property belonging to the Corporation the following provisions shall have effect, namely:

(1) Every disposal of property belonging to the Corporation shall be made by the Mukhya Nagar Adhikari on behalf of the Corporation.

(2) * * *

(3) The Mukhya Nagar Adhikari may with the sanction of the Executive Committee dispose of by sale, letting out on hire or otherwise any moveable property belonging to the Corporation, of which the value does not exceed five thousand rupees; and may with the like sanction grant a lease of any immovable property belonging to the Corporation, including any such right as aforesaid, for any period exceeding one year or sell or grant a lease in perpetuity of any immovable property belonging to the Corporation the value of premium whereof does not exceed fifty thousand rupees or the annual rental whereof does not exceed three thousand rupees.

(4) The Mukhya Nagar Adhikari may with the sanction of the Corporation lease, sell, let out on hire or otherwise convey any property, moveable or immovable, belonging to the Corporation.

(5) * * *

(6) The sanction of the Executive Committee or of the Corporation under sub-section (3) or sub-section (4) may be given either generally or in any class of cases or specially in any particular case.

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(7) The aforesaid provisions of this section and the provisions of the rules shall apply to every disposal of property belonging to the Corporation made under or for any purposes of this Act."

17. Sections 131, 132 (in relevant part) and 133 prescribe the manner of execution of contract and these are as under:

"131. *Powers of Corporation to the making of contracts.*—Subject to the provisions of this Act, the Corporation shall have power to enter into contracts which may be necessary or expedient under or for any purposes of this Act.

132. *Certain provisions relating to the execution of contracts.*—(1) All contracts referred to in Section 131 including contracts relating to the acquisition and disposal of immovable property or any interest therein made in connection with the affairs of the Corporation under this Act, shall be expressed to be made, for and on behalf of the Corporation, and all such contracts and all assurances of property made in exercise of that power shall be executed, for and on behalf of the Corporation, by the Mukhya Nagar Adhikari or by such other officer of the Corporation as may be authorised in writing by the Mukhya Nagar Adhikari either generally or for any particular case or class of cases.

(2)-(3) * * *

(4) No contract involving an expenditure exceeding five lakh rupees shall be made by Mukhya Nagar Adhikari unless it has been sanctioned by the Corporation.

(5)-(6) * * *

133. *Manner of execution.*—(1) Every contract entered into by the Mukhya Nagar Adhikari on behalf of the Corporation shall be entered into in such manner and form as would bind him if it were made on his own behalf and may in like manner and form be varied or discharged:

Provided that—

(*a*) the common seal of the Corporation shall be affixed to every contract which, if made between private persons, would require to be under seal, and

(*b*) every contract for the execution of any work or the supply of any materials or goods which will involve an expenditure exceeding two thousand and five hundred rupees shall be in writing, shall be sealed with the seal of the Corporation and shall specify—

(*i*) the work to be done or the materials or goods to be supplied as the case may be;

(*ii*) the price to be paid for such work, materials or goods; and

(*iii*) the time or times within which the contract or specified portion thereof shall be carried out.

(2) The common seal of the Corporation shall remain in the custody of the Mukhya Nagar Adhikari and shall not be affixed to any contract or other instrument except in the presence of a Sabhasad, who shall attach his signature to the contract or instrument in token that the same was sealed in his presence.

(3) The signature of the said Sabhasad shall be distinct from the signature of any witness to the execution of such contract or instrument.

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(4) No contract executed otherwise than as provided in the section shall be binding on the Corporation."

18. The relevant part of Section 136 on which some arguments were addressed, is reproduced hereunder:

"136. *Estimates exceeding rupees fifty thousand.*—(1) Where a project is framed for the execution of any work or series of works the entire estimated cost of which exceeds fifty thousand rupees—

(*a*) the Mukhya Nagar Adhikari shall cause a detailed report to be prepared including such estimates and drawings as may be requisite and forward the same to the Executive Committee who shall submit the same before the Mahapalika with its suggestions, if any;

(*b*) the Mahapalika shall consider the report and the suggestions and may reject the project or may approve it either in its entirety or subject to modifications."

[By the amending Act 12 of 1994 w.e.f. 30-5-1994 the amounts in sub-sections (1) and (2) of Section 136 are now respectively 5 lakhs and 10 lakhs† of rupees.]

19. Part IX of the Constitution was inserted by the Constitution (74th Amendment) Act, 1992. Article 243-W under this part prescribes the powers, authorities and responsibilities of municipalities etc. It provides, in relevant part, that the legislature of a State may, by law, endow the committee or the municipality such powers and authority with respect to performance of functions and the implementation of schemes as may be entrusted to it including those matters listed in the Twelfth Schedule. If we refer to the Twelfth Schedule, Entries 8, 12 and 17 would be relevant and are as under:

"8. Urban forestry, protection of the environment and promotion of ecological aspects.

* * *

12. Provision of urban amenities and facilities such as parks, gardens, playgrounds.

* * *

17. Public amenities including street lighting, parking lots, bus-stops and public conveniences."

20. Keeping this aspect in view, the Act was amended and some of the relevant duties of the Mahapalika, which are obligatory as given in Section 114, are as under:

"114. *Obligatory duties of the Corporation.*—It shall be incumbent on the Corporation to make reasonable and adequate provision, by any means or measures which it is lawfully competent to it to use or to take, for each of the following matters, namely,—

* * *

(*viii*) guarding from pollution water used for human consumption and preventing polluted water from being so used;

(*ix*) the lighting of public streets, Corporation markets and public buildings and other public places vested in the Corporation;

† **Ed.**: Substitution in sub-section (2) was made by U.P. Act 3 of 1987, S. 8

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(*ix-a*) the construction and maintenance of parking lots, bus-stops and public conveniences;

* * *

(*xxx*) planting and maintaining trees on roadsides and other public places;

* * *

(*xxxiii-a*) promoting urban forestry and ecological aspects and protection of the environment;

* * *

(*xli*) providing urban amenities and facilities such as parks, gardens and playgrounds."

21. The Development Act is in force and it is not disputed that the whole of the city of Lucknow has been declared as development area within the meaning of Section 3 of this Act. "Development" is defined in clause (*e*) of Section 2 of the Act and it is as under:

"2. (*e*) 'development', with its grammatical variations, means the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in any building or land, and includes redevelopment;"

22. The Lucknow Development Authority (LDA) has been constituted under Section 4 of the Development Act. Chapter III of the Development Act provides for preparation of Master Plan and zonal development plan for the development area. Section 13 provides for the procedure for amendment of the Master Plan or zonal development plan. Section 14 provides for development of land in development area and this section is as under:

"14. *Development of land in the developed area.*—(1) After the declaration of any area as development area under Section 3, no development of land shall be undertaken or carried out or continued in that area by any person or body (including a department of Government) unless permission for such development has been obtained in writing from the Vice-Chairman in accordance with the provisions of this Act.

(2) After the coming into operation of any of the plans in any development area no development shall be undertaken or carried out or continued in that area unless such development is also in accordance with such plans.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the following provisions shall apply in relation to development of land by any department of any State Government or the Central Government or any local authority—

(*a*) when any such department or local authority intends to carry out any development of land it shall inform the Vice-Chairman in writing of its intention to do so, giving full particulars thereof, including any plans and documents, at least 30 days before undertaking such development;

(*b*) in the case of a department of any State Government or the Central Government, if the Vice-Chairman has no objection it should inform such department of the same within three weeks from the date of receipt by it under clause (*a*) of the department's intention, and if the

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Vice-Chairman does not make any objection within the said period the department shall be free to carry out the proposed development;

(*c*) where the Vice-Chairman raises any objection to the proposed development on the ground that the development is not in conformity with any Master Plan or zonal development plan prepared or intended to be prepared by it, or on any other ground, such department or the local authority, as the case may be, shall—

(*i*) either make necessary modifications in the proposal for development to meet the objections raised by the Vice-Chairman; or

(*ii*) submit the proposals for development together with the objections raised by the Vice-Chairman to the State Government for decision under clause (*d*);

(*d*) the State Government, on receipt of proposals for development together with the objections of the Vice-Chairman, may either approve the proposals with or without modifications or direct the department or the local authority, as the case may be, to make such modifications as proposed by the Government and the decision of the State Government shall be final;

(*e*) the development of any land begun by any such department or subject to the provisions of Section 59 by any such local authority before the declaration referred to in sub-section (1) may be completed by that department or local authority with compliance with the requirement of sub-sections (1) and (2)."

23. The Development Act also contains provision for penalties and the power of LDA to demolish buildings and to stop development in case of contravention of the provisions of this Act. When the Development Act is in operation, then under Section 59 of this Act, certain functions of the U.P. Municipal Corporation Act, 1959 become inoperative so far as these are relevant for the purpose:

"59. *Repeal etc., and Savings.*—(1)(*a*) The operation of clause (*c*) of Section 5, Sections 54, 55 and 56, clause (*xxxiii*) of Section 114, sub-section (3) of Section 117, clause (*c*) of sub-section (1) of Section 119...."

24. The provisions of the U.P. Regulation of Buildings Operation Act, 1958 also become inoperative by virtue of Section 59 of the Development Act.

25. The Parks Act provides for preservation and regulation of parks, playgrounds and open spaces in the State of Uttar Pradesh. The Parks Act applies to an area included in every Nagar Mahapalika under the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959. It is not disputed that this Act is now in force (w.e.f. 1-2-1995). Park has been defined in clause (*b*) of Section 2 of the Act to mean a piece of land on which there are no buildings or of which not more than one-twentieth part is covered with buildings, and the whole or the remainder of which is laid out as a garden with trees, plants or flower beds or as a lawn or as a meadow and maintained as a place for the resort of the public for recreation, air or light. The Act provides for maintenance of parks and prohibits construction of building, except with the

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previous sanction of the authority concerned, which is likely to affect the utility of the park.

26. As to how the impugned agreement dated 4-11-1993 came to be executed between the Mahapalika and the builder we now consider the proceedings of the Mahapalika, the Executive Committee and its sub-committee called the High Power Committee.

27. On 6-7-1993 notice was issued for meeting of the Mahapalika for 12-7-1993 with the following agenda:

"*1.* Discussions on the accepted proposals passed by the Executive Committee on 27-5-1993 and 27-6-1993.

2. Discussions on the various proposals.

3. Other subjects, subject to the permission of Presiding Officer."

There were no details regarding Agenda Item 3, which, it is said, pertained to Palika Bazaar, i.e., the underground shopping complex. On that day the following resolution constituting the High Power Committee for disposal of the properties of the Mahapalika was passed under the aforesaid Agenda Item 3:

"The full details, maps, conditions of allotment in respect of Shri Rafi Ahmad Kidwai Nagar Yojna and Rajajipuram Vistar Yojna may be prepared at the earliest. And for this act a committee may be constituted under the chairmanship of the Nagar Pramukh in which two Hon'ble Sabhasad and three officers be appointed. For nominating the members, the Nagar Pramukh may be authorised. The powers of disposing of the entire land, allotment and transfer in respect of both the schemes shall be vested in the above Committee.

It was also decided that the Committee constituted under the chairmanship of the Nagar Pramukh shall have the rights of disposing of all the properties, allotment, transfer etc. situated within the limits of the Nagar Mahapalika and the above Committee shall have the right to give the final shape to the conditions of allotment and agreement etc. In this manner this sub-committee is authorised to exercise the aforementioned rights of the Mahapalika conditions of allotment and agreement etc. In this manner this sub-committee is authorised to exercise the aforementioned rights of the Mahapalika."

28. Meeting of the High Power Committee so constituted under the aforesaid resolution of the Mahapalika, was held on 13-10-1993 and was adjourned to 19-10-1993. In the meeting of the High Power Committee held on 19-10-1993, presided over by Mr Akhilesh Das, Nagar Pramukh as Chairman, there is discussion regarding construction of the underground air-conditioned Palika Bazaar at Aminabad Jhandewala Park on the lines of Palika Bazaar in New Delhi. It was recorded that the Vice-Chairman, Lucknow Development Authority by his Letter No. 279/Architect dated 16-10-1993 intimated that as per the Master Plan, the land use of Aminabad Jhandewala Park is commercial. The draft of the contract to be entered into

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between the Mahapalika and M.I. Builders was approved. The minutes ended with the recording as under:

"Amended and final draft of the contract was read by the advocate before the Committee. On this, the opinion of the members was asked for by the Chairman on which all the members were unanimous and that all the members after discussing over the suggestions and conditions set out by the Mahapalika advocate took this decision that the prescribed project may be got executed by M.I. Builders Pvt. Ltd. And the Mukhya Nagar Adhikari should be authorised for conducting all the forthcoming actions and formalities.

The Hon'ble Chairman also directed that the entire proceedings may be presented for information in the meeting of the Executive Committee dated 20-10-1993 and meeting of the Mahapalika house held on 21-10-1993.

sd/-	sd/-
B.K. Singh Yadav,	Sushil Dubey,
Sabhasad,	Member.
Mukhya Nagar Adhikari,	
Member.	
sd/-	sd/-
G.C. Goyal,	D.K. Doal,
Architect,	Member,
Member.	U.P. Nagar Adhikari.
sd/-	sd/-
Akhilesh Das,	Laxmi Narain,
Nagar Pramukh,	Sabhasad,
Chairman of the Committee.	Member."

29. In view of the directions of the High Power Committee the matter was placed before the Executive Committee on 20-10-1993 which passed the following resolution:

"RESOLUTION NO. 85

As per the decision taken in the meeting dated 12-7-1993 of the Mahapalika, sub-committee constituted under the chairmanship of the Hon'ble Nagar Pramukh was entrusted with the powers of developing, leasing and to transfer the immovable property of the Mahapalika. In exercise of these powers, the sub-committee, keeping in view the grave problem of encroachment and parking in Aminabad submitted the proposal of the Hon'ble Members namely Shri Kalraj Misra (President Bhartiya Janta Party U.P.) and Shri Ejaz Rizvi, Ex-Minister for the construction of an air-conditioned Palika Bazaar and parking place in Jhandewala Park (Aminabad Park) on the pattern of Delhi Bazaar, with a parking place for about 1000 vehicles through M/s M.I. Builders Pvt.

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Ltd. presented before the Executive Committee for information which was welcomed by all and the proposal was approved."

30. Thereafter, the matter came to be placed before the Mahapalika in its meeting dated 21-10-1993 and the following minutes were recorded:

"In view of the decision taken by the General House of the Mahapalika dated 12-7-1993, a sub-committee under the chairmanship of the Mayor was entrusted to transfer, to develop and to give on lease immovable properties of the Mahapalika. In exercise of these powers, the sub-committee, keeping in view the grave problem of encroachment and parking in Aminabad submitted the proposal of Shri Kalraj Misra (President), Bhartiya Janta Party U.P. and Shri Ejaz Rizvi (Ex-Minister) for construction of an air-conditioned Palika Bazaar and parking place in Jhandewala Park (Aminuddaula Park) on the pattern of Delhi (air-conditioned) Palika Bazaar and a parking in which there should be a provision for parking of about 1000 vehicles through M.I. Builders Pvt. Ltd. presented before the House for information which was welcomed and a unanimous resolution was passed and the Nagar Pramukh was congratulated for this important work."

31. It will be advantageous to reproduce the impugned agreement dated 4-11-1993, which is executed between the Mahapalika and the builder:

"WHEREAS, Party 1 is an absolute owner of the plot of land situated at Aminabad popularly known as Jhandewala Park measuring about 2,45,000 sq. ft and bounded as below:

NORTH — Chhedilal Dharamshala Road.

SOUTH — Ganga Prasad Road.

EAST — Road locating Central Bank of India.

WEST — Road locating Hyder Hussain building.

More specifically mentioned in the site plan attached herewith.

WHEREAS, Party 1 is a body constituted under the U.P. Nagar Mahapalika Adhiniyam (Act 2 of 1959), managing the parks, roads streetlights and other such maintenance of amenities in the city.

WHEREAS, owing to high increase in urban population (according to 1991 census, Lucknow urban agglomeration has a population of 16,69,204) because of the migratory character of rural population to urban areas which is too congested due to overflow of population, the city is also being faced overwhelmingly with day-to-day problem of encroachment causing much of acrimony perpetrating high guilts and discreet errors.

WHEREAS, Party 1 remained ever conscious to keep the city hygienically sound free from all adverse effects but the problem of encroachment is no less than a headache for the Lucknow Nagar Mahapalika which has emerged like a growing nightmare and become unmanageable for the Lucknow Nagar Mahapalika owing to its limited and scanty resources and flow of supplementary income. The eagerness

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of the Nagar Mahapalika to maintain proper roads, construction of new roads with streetlighting and the cleanliness drive during monsoon for removing sand and silt from the *nallahs* is too often inadequately met by the Local Bodies Department of the Government as the schedule of new demands for providing requisite funds is not available timely as well as sufficiently. This is one of the major hindrances in keeping the functioning of the Lucknow Nagar Mahapalika at a low ebb.

WHEREAS, considering the above points M/s M.I. Builders Private Limited had prepared a viable and constructive proposal keeping in view the interest of the Lucknow Nagar Mahapalika in all respects and the same was submitted to the Lucknow Nagar Mahapalika as it dealt exhaustively with the benefits that will be oriented after its implementation to the Lucknow Nagar Mahapalika as well as to the Lucknow populace. The proposal was found beneficial to the Nagar Mahapalika Lucknow as well as to the general public. The proposal which will be known as PALIKA BAZAAR if given affect will be a source of control over the traffic and will reduce the congestion in the vicinity.

WHEREAS, the aforesaid proposal was accepted by the Lucknow Nagar Mahapalika in its meeting thereby procuring a no-objection certificate from the Lucknow Development Authority under Section 14 of the Urban Building Planning and Development Act, 1973 for constructing the PALIKA BAZAAR on the land mentioned above 279/vastuvid dated 16-10-1993.

NOW this agreement witnesseth as under:

1. That Party 2 shall construct the said PALIKA BAZAAR according to the plan (attached herewith) with respect to which no-objection certificate has been obtained by Party 1 from the prescribed authority.

2. That PALIKA BAZAAR shall be constructed by Party 2 at his own cost and Party 2 shall be entitled to realise the cost of construction with reasonable profit which in any case shall not be more than 10% with respect to each shop as may be fixed by Party 2 in lieu of construction and when the project of Palika Bazaar is completed and cost of construction has been realised the "PALIKA BAZAAR" shall be handed over to the Lucknow Nagar Mahapalika as its owner.

3. That Party 2 shall also provide air-conditioning facility in the PALIKA BAZAAR at his own cost as well as the installation of the plant and construction of the infrastructure in this regard.

4. That Party 2 shall have the right to fix the amount of cost of construction while the rent of the shops shall be at the rate of Rs 2.50p. only per sq. ft and 50p. will be charged as lease rent as 1/5th of the rent of covered area and Rs 300 per shop for maintenance subject to enhancement of the air-conditioning plant, maintenance of the complex as well as the electric charges.

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5. That Party 2 shall be at liberty to lease out the shops as per its own terms and conditions to the persons of their choice on behalf of Party 1 which shall be binding on Party 1 but the conditions as mentioned in para 4 as aforesaid in this agreement regarding rent shall remain in force.

6. That Party 2 shall also have the right to sign the agreement if necessary on behalf of Party 1 as the person authorised by Party 1 on the terms and conditions which Party 2 may deem fit and proper and the copy of the agreement shall be given to Party 1 after its execution and the terms of the deed shall be binding upon both the parties of this deed provided Party 2 executes only that much of agreement which number of shops are available in Palika Bazaar and in any case shall not exceed the same but the rent of the shops shall remain the same as mentioned above.

7. That the construction of PALIKA BAZAAR shall start within three months from the date of registration of this agreement and shall be completed within three years from the date of its start.

8. That Party 2 shall have the right to publicise the project and take advances from the buyers and to give them proper allotment receipts.

9. That Party 1 shall cooperate in all manner in the constructional work activities of Party 2 and shall extend all its cooperation and help as and when needed by Party 2 from time to time.

10. That Party 1 shall be responsible for helping and assisting Party 2 in completing the project and Party 1 shall also be exclusively responsible for getting the electric sewer and water connection from the department concerned for the above project at the cost of Party 2.

11. That Party 1 shall help Party 2 in getting the project completed and meeting all the needs and requirements in completing the project.

12. That in case there is any obstruction from the Mahapalika or legal proceedings resulting in the non-completion or carrying out of the constructional work of the project resulting in the non-completion or stoppage of the work, Party 1 shall be responsible for all the losses and damages that may accrue to Party 2.

13. That Party 2 shall not allot the 5% shops before completion of parking and other services of the complex to ensure the proper compliance with the agreement and further ensure the quality of construction.

14. That Party 2 shall give the bank a guarantee of Rs 25,00,000 (Rs twenty-five lakhs) for its performance within 3 months from the date of registration of this agreement but this clause is subject to all necessary cooperation of Party 1.

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15. That Party 1 shall charge Rs 5000 per shop for every second and subsequent transfer of the shops.

16. That after the completion of the project Party 2 shall hand over the entire documents in original to Party 1 for keeping the final records.

17. That in case of any disputes or differences arising out of the project between the parties to the agreement, the same shall be referred for arbitration to the mutually appointed arbitrator who shall in all cases be the retired Justice of Hon'ble High Court or its equivalent and his award shall be binding upon both the parties.

18. That the agreement between Party 2 and the shopkeeper shall be duly approved by the Nagar Mahapalika Lucknow and Party 2 has made that agreement available to Party 1 and Party 1 has approved the said agreement.

19. That all the legal expenses in executing this agreement shall be borne only by Party 2.

IN WITNESS WHEREOF, the parties of this deed have signed the deed on the day and the year mentioned hereinbelow in the presence of the following witnesses and the terms of this agreement shall be binding upon the legal heirs, successors, assignees and legal representatives.

Lucknow	sd/-
dated:	Party 1
4-11-1993.	for M.I. Builders Pvt. Ltd.
WITNESSES	sd/-
Managing Director	Party 2
1. sd/-	Drafted by:
2. sd/-	sd/-
	Arvind Razdan
	(Advocate)
	Civil Court, Lucknow"

32. Mr Soli Sorabjee, learned counsel for the builder submitted that the agreement was not against public interest and could not have been revoked by the Mahapalika. He said the petitioners in the writ petitions did not bring forward any contractor who could say that he was more competent than M.I. Builders to execute the job and at a cost less than that to be incurred by M.I. Builders. He said the case of the builder was covered by a judgment of this Court in *Kasturi Lal Lakshmi Reddy* v. *State of J&K*[2]. In this case the State of J&K awarded a contract to the second respondent for tapping of 10 to 12 lakh blazes annually for extraction of resin from the inaccessible chir forests in the State for a period of 10 years. This was in accordance with the policy of the State Government and it was agreed upon that a part of resin so extracted would be delivered to the State for running the State-owned

2 (1980) 4 SCC 1

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industry and the rest would be retained by the second respondent for establishing and running its own factory in the State. The petitioners in the writ petition assailed the order of the State Government on the following main three grounds: (SCC pp. 10-11, para 9)

> "*9.* (*A*) That the order is arbitrary, mala fide and not in public interest, inasmuch as a huge benefit has been conferred on the 2nd respondents at the cost of the State.
>
> (*B*) The order creates monopoly in favour of the 2nd respondents who are a private party and constitute unreasonable restriction on the right of the petitioners to carry on tapping contract business under Article 19(1)(*g*) of the Constitution.
>
> (*C*) The State has acted arbitrarily in selecting the 2nd respondents for awarding tapping contract, without affording any opportunity to others to compete for obtaining such contract and this action of the State is not based on any rational or relevant principle and is, therefore, violative of Article 14 of the Constitution as also of the rule of administrative law which inhibits arbitrary action by the State."

33. This Court, after examining the whole facts of the case and applying the parameters laid down in *Ramana Dayaram Shetty* v. *International Airport Authority of India*[3] negatived all the pleas raised by the petitioners. Referring to its earlier decision in *International Airport Authority of India case*[3] this Court had observed that there are two limitations imposed by law which structure and control the discretion of the Government in giving largesse. The first is in regard to the terms on which largesse may be granted and the other is in regard to the persons who may be recipients of such largesse. Then the Court said as under: (SCC pp. 11-12, para 11)

> "*11.* So far as the first limitation is concerned, it flows directly from the thesis that, unlike a private individual, the State cannot act as it pleases in the matter of giving largesse. Though ordinarily a private individual would be guided by economic considerations of self-gain in any action taken by him, it is always open to him under the law to act contrary to his self-interest or to oblige another in entering into a contract or dealing with his property. But the Government is not free to act as it likes in granting largesse such as awarding a contract or selling or leasing out its property. Whatever be its activity, the Government is still the Government and is subject to restraints inherent in its position in a democratic society. The constitutional power conferred on the Government cannot be exercised by it arbitrarily or capriciously or in an unprincipled manner; it has to be exercised for the public good. Every activity of the Government has a public element in it and it must therefore, be informed with reason and guided by public interest. Every action taken by the Government must be in public interest; the Government cannot act arbitrarily and without reason and if it does, its action would be liable to be invalidated. If the Government awards a

3 (1979) 3 SCC 489

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contract or leases out or otherwise deals with its property or grants any other largesse, it would be liable to be tested for its validity on the touchstone of reasonableness and public interest and if it fails to satisfy either test, it would be unconstitutional and invalid."

The Court said that the State of J&K, in view of its policy of industrialisation, was interested in the setting up of the factory by the second respondents, particularly since the second respondents had two factories for manufacture of resin, turpentine oil and other derivatives and they possessed a large experience in the processing of resin and reprocessing of resin, turpentine oil and other derivatives. The Court considered the nature of the contract and observed that it was obvious that, in view of the policy of the State Government, no resin would be auctioned in the open market and in this situation, it would be totally irrelevant to import the concept of market price with reference to which the adequacy of the price charged by the State to the second respondents could be judged. If the State was simply selling resin, there could be no doubt that the State must endeavour to obtain the highest price subject, of course, to any other overriding considerations of public interest and in that event, its action in giving resin to a private individual at a lesser price would be arbitrary and contrary to public interest. But, where the State has, as a matter of policy, stopped selling resin to outsiders and decided to allot it only to industries set up within the State for the purpose of encouraging industrialisation, there could be no scope for complaint that the State was giving resin at a lesser price than that which could be obtained in the open market. The yardstick of price in the open market would be wholly inept because in view of the State policy, there would be no question of any resin being sold in the open market.

34. After examining this judgment it is difficult to appreciate the argument of Mr Sorabjee as to how the principles laid in this case can be applicable to the present case.

35. To substantiate his argument that there was "estoppel by pleading" against the Mahapalika Mr Sorabjee referred to the stand of the Mahapalika as reflected in the proceedings before the High Court as well as in this Court. It was also pointed out that in the counter-affidavit filed by the State Government in the High Court it supported the builder. There was no "disposal of property" by the Mahapalika within the meaning of Section 128 of the Act. Resolution of the Mahapalika to enter into the agreement with the builder was validly passed. The project was the brainchild of M.I. Builders and the nature of the transaction was such that it was unconventional and there is no universal rule that tender be invited in every case. There was no secrecy. Everything was done in the open and discussed freely at various stages. In the affidavit dated 8-1-1994 of Mr B.K. Singh, Chief Executive Officer of the Mahapalika filed in the High Court he had explained why it was necessary to have the project executed in order to avoid congestion in Aminabad commercial area. In the affidavit dated 19-10-1995 of Mr T.K. Doval, Upnagar Adhikari which was filed in answer to IAs Nos. 10-12 of 1995, complaining breach of this Court's order dated 14-12-1994, again the

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earlier stand of the Mahapalika was reaffirmed. Mr Sorabjee criticised the action of the Mahapalika in withdrawing its appeals in this Court on 6-2-1997 on mere mentioning in the Court. He said the plan, which had been sanctioned by order dated 23-1-1995, was revoked illegally on 17-4-1997 without any notice to the builder. There is, however, resolution of the Mahapalika dated 6-8-1996 filed by Mr S.K. Gupta, Mukhya Nagar Adhikari of the Mahapalika opposing the present appeals by the builder. The Mahapalika took a somersault and gave a complete go-by to its earlier stand. That there could be estoppel by pleadings reference was made to a decision of this Court in *Union of India* v. *Anglo Afghan Agencies Ltd.*[4] approving the earlier decision of the Calcutta High Court in *Ganges Mfg. Co.* v. *Sourujmull*[5] (ILR at p. 678). Mr Sorabjee said a party could not change its stand even if it was legally wrong in its earlier stand as otherwise it could be a negation of everything.

36. In *Ganges Mfg. Co.* v. *Sourujmull*[5] a Division Bench of the Calcutta High Court held that:

> "A man may be estopped not only from giving particular evidence, but from doing any act or relying upon any particular argument or contention, which the rules of equity and good conscience prevent him from using as against his opponent."

37. In *Union of India* v. *Anglo Afghan Agencies Ltd.*[4] in a certain scheme called the Export Promotion Scheme incentives were provided to the exporters for woollen goods. M/s Indo-Afghan Agencies Ltd. exported woollen goods to Afghanistan of FOB value of over Rs 5 crores. The Deputy Director in the Office of the Textile Commissioner, Bombay, issued to them an import entitlement certificate for about Rs 2 crores only. When representations were made to the Government for grant of import entitlement certificate for full FOB value, it produced no response and writ petition under Article 226 of the Constitution was filed in the High Court. The High Court allowed the writ petition. In the appeal filed by the Union of India to this Court various contentions were raised. This Court said:

> "Under our jurisprudence the Government is not exempt from liability to carry out the representation made by it as to its future conduct and it cannot on some undefined and undisclosed ground of necessity or expediency fail to carry out the promise solemnly made by it, nor claim to be the judge of its own obligation to the citizen on an ex parte appraisement of the circumstances in which the obligation has arisen."

And further:

> "The defence of executive necessity was not relied upon in the present case in the affidavit filed on behalf of the Union of India. It was also not pleaded that the representation in the Scheme was subject to an implied term that the Union of India will not be bound to grant the import certificate for the full value of the goods exported if they deem it

4 AIR 1968 SC 718 : (1968) 2 SCR 366
5 ILR (1880) 5 Cal 669, 678 : 5 CLR 533

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inexpedient to grant the certificate. We are unable to accede to the contention that the executive necessity releases the Government from honouring its solemn promises relying on which citizens have acted to their detriment. Under our constitutional set-up, no person may be deprived of his right or liberty except in due course of and by authority of law: if a member of the executive seeks to deprive a citizen of his right or liberty otherwise than in exercise of power derived from the law — common or statute — the courts will be competent to, and indeed would be bound to, protect the rights of the aggrieved citizen."

It was also held:

"We hold that the claim of the respondents is appropriately founded upon the equity which arises in their favour as a result of the representation made on behalf of the Union of India in the Export Promotion Scheme, and the action taken by the respondents acting upon that representation under the belief that the Government would carry out the representation made by it. On the facts proved in this case, no ground has been suggested before the Court for exempting the Government from the equity arising out of the acts done by the exporters to their prejudice relying upon the representation."

38. Mr Sorabjee then referred to Section 128 of the Act and to the expression "disposal" and also to Sections 129(4), 131 and 132 of the Act. According to him there was no disposal of any property and no interest in the land had been transferred by the Mahapalika to the builder. In this connection reference was made to the agreement dated 4-11-1993. Reference was also made to the counter-affidavit filed earlier by Mr B.K. Singh, Mukhya Nagar Adhikari, wherein he had stated that the property vested in the Mahapalika and that there was no disposal or transfer of any interest in the property to the builder. As to what is meant by the expression "disposed of" reference was made to another decision of this Court in *CST* v. *Thomas Stephen and Co. Ltd.*[6] (SCC at p. 266). This judgment was of course in the context of sale of goods. Reference was also made to a decision at 1959 (1) WLR 465 at 472‡ to contend that "disposal" means disposal absolutely.

39. If it was necessary to call tender reference was made to a decision of this Court in *G.B. Mahajan* v. *Jalgaon Municipal Council*[7] where tender was invited to construct the building but authority was given to the developer to grant occupancy rights. In this case, this Court considered the scope of judicial review in the case of contractual transaction of the Government, its policy decision and the right of the Government on its instrumentality to evolve any method for execution of the project. In this case the respondent Jalgaon Municipal Council entered into a contract with a private developer/builder for construction of a commercial complex. The project

6 (1988) 2 SCC 264, 266 : 1988 SCC (Tax) 190

‡ *Rhyl Urban District Council* v. *Rhyl Amusements Ltd.*, (1959) 1 All ER 257 at 264-I (Ch D): 1959 (1) WLR 465 at 472

7 (1991) 3 SCC 91

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contemplated its execution by the developer on a self-financing basis subject to handing over the administrative building of the complex to the Municipal Council free of cost and allotting some shops at a fixed rate/free of cost to certain specified persons while having the right to dispose of the remaining accommodation at its own discretion and to retain the premia received by way of reimbursement of its financial outlays plus profits. The execution of the project was challenged on the ground that it was unconventional and thus untenable. This Court said that the Government or its instrumentality have policy option to adopt any method or technique for management of the project provided the same is within the constitutional and legal limits. This Court held that the project was not ultra vires the powers of the Municipal Council and such a case was not open to judicial review. The following main contentions were raised apprising the project: (SCC Headnote)

"(*a*) That the scheme of financing of the project was unconventional and was not one that was, as a matter of policy, open and permissible to a governmental authority. The Municipal Authority could either have put up the construction itself departmentally or awarded the execution of the whole project to a building contractor. The method of financing and execution of the project are ultra vires the powers of the Municipal Authority under the Act.

(*b*) That the terms of the agreement with the developer that the latter be at liberty to dispose of the occupancy rights in the commercial complex in such manner and on such terms as it may choose would amount to an impermissible delegation of the statutory functions of the Municipal Council under Section 272 of the Act to the developer.

(*c*) That the project, in effect, amounted to and involved the disposal of municipal property by way of a long-term lease with rights of sub-letting in favour of the developer violative of Section 92 of the 'Act'.

(*d*) That the scheme is arbitrary and unreasonable and is violative of Article 14 of the Constitution. The project is patently one intended to and does provide for an unjust enrichment of Respondent 6 at public expense."

40. This Court negatived all these contentions. It said that the project, otherwise legal, does not become any the less permissible by reason alone that the local authority, instead of executing the project itself, had entered into an agreement with a developer for its financing and execution. This Court did not find any violation of any provisions of the Maharashtra Municipalities Act, 1965 governing the Municipal Council. On the question of reasonableness this Court said that a thing is not unreasonable in the legal sense merely because the court thinks it is unwise. Then this Court said: (SCC Headnote)

"The contention regarding impermissible delegation is not tenable. The developer to the extent he is authorised to induct occupiers in respect of the area earmarked for him merely exercises, with the consent of the Municipal Council, a power to substitute an occupier in his own place.

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This is not impermissible when it is with the express consent of the Municipal Council. It would be unduly restrictive of the statutory powers of the local authority if a provision enabling the establishment of markets and disposal of occupancy rights therein are hedged in by restrictions not found in the statute."

41. Reference was then made to a decision of this Court in *Tata Cellular* v. *Union of India*[1] where this Court considered the scope of judicial review and adduced the following principles: (SCC pp. 687-88, para 94)

"*94.* (*1*) The modern trend points to judicial restraint in administrative action.

(*2*) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(*3*) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(*4*) The terms of *the invitation to tender* cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(*5*) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(*6*) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure."

42. Lastly, Mr Sorabjee said that after this Court allowed the builder to construct, in upholding the judgment of the High Court, equities would have to be balanced. Of course, it would be a different matter if the appeals were to be allowed, he said.

43. Fifty prospective allottees of the shops, who had made payment to M.I. Builders for allotment of shops before the High Court granted order of stay, filed an application in this Court seeking permission to intervene in these appeals. We heard Mr Salve, learned Senior Counsel who appeared for them. We record his submissions as under:

1. It is not in the public interest to dismantle the shops if the Court ultimately upholds the judgment of the High Court.

2. Advertisement was made by the builder on 24-12-1993 offering to allot the shops and required each of the prospective allottees to pay

1 (1994) 6 SCC 651

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Rs 25,000 with an application for allotment. 500 such applications were received out of which 380 applications were accompanied with a cheque of Rs 25,000 each. The remaining 120 prospective allottees deposited the amount of Rs 25,000 each by means of cash. When, however, possession of the area was handed over to the builder it was found that it was less than that agreed earlier and that the total number of shops to be constructed would be now 263 in number. Shops were of two sizes of 10 x 15 ft and 10 x 20 ft.

3. Question raised now is: if by putting in possession any interest in land was created in favour of the builder? Could it be said that there was a charge created in favour of the builder on the property including the land and the structure built upon it till the builder got the whole of the amount invested by it plus 10% of the profit over and above that? No interest in the land was created in favour of the builder. The agreement was something like a lien on a property of an unpaid creditor as understood in law. The builder in that situation would have the right to possession till it was paid its dues. As per the terms of the contract the builder would retain the property by way of security till it was paid but it could not claim to have any interest in the property. It is like an unpaid creditor. When the term "disposed of" is used it means that the full title had passed but when we say any interest in the property is passed then we mean a slice of that title has passed.

4. The agreement though is silent as to what is the legal right of the builder on the land, it grants merely a right to the builder to enter upon the land and to build upon it as per its terms. The provisions of Section 128 of the Act are not attracted.

5. It is a moot point if in a public interest litigation the petitioner can tell the court to consider a document whether it is favourable or not. The court cannot use a magnifying glass to see whether any interest had been created and then to strike down the agreement being violative of Section 128 of the Act. Ultimately it boils down to the intention of the parties otherwise it will be straining the point too far which is not permissible.

6. If this Court decides to uphold the judgment of the High Court the applicants would request that the relief be moulded. In public law relief can be moulded even where the court finds irregularity or illegality to deny relief. That can be done under Article 142 of the Constitution. After all what the High Court has found was that the resolution was not properly considered before passing the same; that the requirements of the provisions of Sections 128 and 129 of the Act were not adhered to; and that the tenders were not invited in order to favour the builder.

7. It is not the case of the writ petitioners that any extraordinary advantage was conferred on the builder or that funds of the taxpayers have been drained out. If it was a hospital or an industry or a dangerous building it would be imperative that the building be pulled down but here construction is made underground to remove congestion and the only

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complaint of the petitioners was that it would create more congestion. Therefore, a mere irregularity or even illegality would not result in destroying the construction, particularly, when there is no clear finding of any mala fide by the High Court. It is not that any other builder has been aggrieved by the action of the Mahapalika and had come forward to complain. In fact one of the persons who himself is a party to the resolution was one of the petitioners. In the administrative law there is an authority that relief could be moulded. There is no affidavit of the Lucknow Development Authority that building was in any way dangerous. The shopping complex and the parking lot, which has been built upon, is for public good and an order of demolition would not be in the general public interest. Discretion should be used not to invalidate the whole process even if the provisions of Sections 128 and 129 were violated. Some mechanism could be evolved so that fair price for the shops and use of the parking lot is fixed and the case of every prospective allottee could be examined and so also perhaps the terms of the agreement between the builder and the Mahapalika. It would be an extraordinary order if demolition is ordered.

44. Reference was made to *Wade on Administrative Law*, 7th Edn., p. 720 and to *de Smith on Judicial Review of Administrative Action*, 5th Edn., p. 271 to support the contention that relief could be moulded in law. In Wade's treatise the following part is relevant:

> "The freedom with which the court can use its discretion to mould its remedies to suit special situations is shown by two decisions already encountered. One was the case where the House of Lords refused mandamus to a police probationer wrongly induced to resign, although he made out a good case for that remedy, in order not to usurp the powers of the Chief Constable, and instead granted him an unusual form of declaration to the effect that he was entitled to the remedies of unlawful removal from office except for reinstatement. The other was the case of the Takeover Panel, where in fact no relief was granted but the Court of Appeal explained the novel way in which remedies should be employed in future cases, with the emphasis on declaration rather than certiorari and on 'historic rather than contemporaneous' relief. The same freedom to mould remedies exists in European community law, where the European Court of Justice may declare non-retroactivity when holding some act or regulation to be void."

In de Smith it is as under:

> "The principle that failure to observe formal or procedural rules in the administrative process may be venial if no substantial prejudice has been caused to those immediately affected now appears in a number of statutory contexts, but it is too early to say that it has established itself as a general principle of law in contexts where the enabling Act is silent on the point, though some of the cases on the effect of disregarding statutory time-limits point vaguely in this direction.

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Administrative inconvenience

Is administrative inconvenience a proper reason for rebutting the presumption that a decision which violates a statutory provision is unlawful (and therefore that the provision is, in the circumstances not 'mandatory')? Administrative inconvenience is an accepted criterion in relation to remedies provided by the courts in judicial review. For example, where a series of commercial transactions have been undertaken in reliance upon the impugned decision the court may, in its discretion, fail to quash that decision in view of the administrative chaos that would result from such a remedy. Judicial discretion is employed here to balance fairness to the individual against the general public interest. The task, however, of deciding the force of a statutory provision does not involve judicial discretion. It involves the faithful construction of the objects and purposes of an act of Parliament in the context of the particular decision. Although aspects of public policy may play a part in this exercise, it would be wrong of the courts to impute any general implication that Parliament may intend administrative inconvenience to excuse in advance the violation of its statutes. Such an implication invites careless administration and assumes that the legislature would too easily excuse a breach of its statutes. It is suggested, therefore, that administrative inconvenience is not normally a proper criterion to guide the question of whether a statutory provision is 'mandatory'."

45. Mr Sorabjee and Mr Salve were opposed by a formidable cohort of lawyers. Mr N.M. Ghatate appeared for the Corporators who filed writ petition in the High Court and were present themselves in the meetings of the Mahapalika on 12-7-1993 and 21-10-1993; Mr G.L. Sanghi appeared for the Mahapalika; Mr Adarsh Goel for the State of U.P.; Mr Arun Jaitley for LDA; and Mr Dushyant Dave for Amrit Puri, who had separately filed the writ petition. Their submissions can be summarised as under:

1. There was no proper convening of the meetings of the Executive Committee and the Mahapalika, which granted approval to the construction of underground shopping complex. There was also no such agenda in the meeting of the Mahapalika. Constitution of the High Power Committee by the Mahapalika was itself not legal. Regulations had been framed under the Act for conduct of the meetings. Under Section 91 of the Act the requirement is four days' notice for the General Body meeting of the Mahapalika and three days' notice for the meeting of the Executive Committee. Regulation 7 prescribes as to how the business of the meeting is to be conducted, as to which item is to be taken up first and the rest in seriatim. Regulation 7*(f)* requires that resolution of the Executive Committee should be separately circulated to the members and the business respecting that should not be transacted in the heading "Any Other Business with Permission of the Chair". Under Regulation 30 it is necessary for a resolution to be valid that there should be a proposer and a seconder.

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2. The impugned agreement was not executed as per the requirement of Section 133 of the Act and on that account it is not binding on the Mahapalika. Reliance was placed on a decision of this Court in *H.S. Rikhy (Dr)* v. *New Delhi Municipal Committee*[8]. In this case the question for consideration before this Court was whether the provisions of Section 8 of the Delhi and Ajmer Rent Control Act, 1952 (the Rent Act) applied to the transactions between the appellants and the New Delhi Municipal Committee (the Committee) constituted under the Punjab Municipal Act, 1911. The Committee had constructed a market and allotted the shops and flats by inviting tenders in pursuance of an advertisement. On an application filed under Section 8 of the Rent Act by an allottee, an objection was raised by the Committee that there was no relationship of landlord and tenant between the parties. The High Court held that there was no relationship of landlord and tenant between the parties inasmuch as there was no "letting", there being no properly executed lease. In coming to the conclusion that there was no valid lease between the parties, the High Court relied upon the provisions of Section 47 of the Punjab Municipal Act. The High Court negatived the contention that the Committee was estopped from questioning the status of the applicants as tenants, having all along admittedly accepted rent from them. On an appeal against the judgment of the High Court to this Court, it was held that use of the term "rent" cannot preclude the landlord from pleading that there was no relationship of landlord and tenant. The question must, therefore, depend upon whether or not there was a relationship of landlord and tenant in the sense that there was a transfer of interest by the landlord in favour of the tenant. This Court said that in its opinion the Rent Act applied only that species of "letting" by which the relationship of landlord and tenant is created, that is to say, by which an interest in the property, however limited in duration, is created. This Court referred to the provisions of Section 47 of the Punjab Municipal Act which is as under:

> "47. (1) Every contract made by or on behalf of the Committee of any Municipality of the First Class whereof the value or amount exceeds one hundred rupees, and every contract made by or on behalf of the Committee of any Municipality of the Second and Third Class whereof the value or amount exceeds fifty rupees, shall be in writing, and must be signed by two members, of whom the President or a Vice-President shall be one, and countersigned by the Secretary:
>
> Provided that, when the power of entering into any contract on behalf of the Committee has been delegated under the last foregoing section, the signature or signatures of the member or members to whom the power has been delegated shall be sufficient.
>
> (2) Every transfer of immovable property belonging to any committee must be made by an instrument in writing, executed by the

8 AIR 1962 SC 554

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President or Vice-President, and by at least two other Members of Committee, whose execution thereof shall be attested by the Secretary.

(3) No contract or transfer of the description mentioned in this section executed otherwise than in conformity with the provisions of this section shall be binding on the Committee."

This Court said that in order that the transfer of the property in question should be binding on the Committee, it was essential that it should have been made by an instrument in writing, executed by the President or the Vice-President and at least two other members of the Committee, and the execution by them should have been attested by the Secretary and if these conditions are not fulfilled, the contract of transfer shall not be binding on the Committee. It was observed that the provisions of Section 47(3) are mandatory and not merely directory. Finally considering the argument that the Committee is estopped by its conduct from challenging the enforceability of the contract this Court said:

"The answer to the argument is that where a statute makes a specific provision that a body corporate has to act in a particular manner, and in no other, that provision of law being mandatory and not directory, has to be strictly followed."

3. It was the appellant, the builder, who was building the underground shopping complex. It was not undertaking the construction as an agent of the Mahapalika. In this connection reference was made to a decision of this Court in *Akadasi Padhan* v. *State of Orissa*[9] (SCR at p. 722). It was, therefore, mandatory that the building plan be approved by LDA.

In *Akadasi Padhan* v. *State of Orissa*[9] the State of Orissa acquired a monopoly in the trade of kendu leaves. Prior to this the petitioner used to carry on extensive trade in the sale of kendu leaves. He filed a petition under Article 32 of the Constitution complaining restrictions put on his fundamental rights. In the course of discussion this Court said: (SCR Headnote)

"When the State carries on any trade, business or industry it must inevitably carry it on either departmentally or through its officers appointed for that purpose. In the very nature of things, the State cannot function without the help of its servants or employees and that inevitably introduces the concept of agency in a narrow and limited sense. There are some trades or businesses in which it may be inexpedient to undertake the work of trade or business departmentally or with the assistance of State servants. In such cases, it is open to the State to employ the services of agents, provided the agents work on behalf of the State and not for themselves."

9 AIR 1963 SC 1047 : 1963 Supp (2) SCR 691, 722

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The Court then said:

> "It is true that an agent is entitled to commission in commercial transactions, and so, the fact that a person earns commission in transactions carried on by him on behalf of another would not destroy his character as that other person's agent. Cases of del credere agents are not unknown to commercial law. But we must not forget that we are dealing with agency which is permissible under Article 19(6)(*ii*), and as we have already observed, agency which can be legitimately allowed under Article 19(6)(*ii*) is agency in the strict and narrow sense of the term; it includes only agents who can be said to carry on the monopoly at every stage on behalf of the State for its benefit and not for their own benefit at all. All that such agents would be entitled to would be remuneration for their work as agents. That being so, the extended meaning of the word 'agent' in a commercial sense on which the learned Attorney General relies is wholly inapplicable in the context of Article 19(6)(*ii*)."

4. The Mahapalika had disposed of the land in favour of the builder in contravention of the provisions relating to disposal of property under Sections 128 and 129 of the Act. If the substance of the impugned agreement is looked into it is the transfer of interest in land by the Mahapalika to the builder.

5. Even Section 128 of the Act was not applicable as the land was a park which could not be disposed of by the Mahapalika. As a matter of fact the Mahapalika was the trustee of the park and the doctrine of public trust, which was applicable in India as held by this Court in *M.C. Mehta* v. *Kamal Nath*[10] (known as *Span case*) was applicable to the park in question. The Mahapalika, therefore, could only manage the park and could not alienate it or convert it into something different from the park. The park was held by the Mahapalika on trust for the citizens of Lucknow.

In *M.C. Mehta* v. *Kamal Nath*[10] the case which is also known as "*Span Resorts case*" owned by Span Motels Pvt. Ltd., this Court observed, that public trust doctrine, as discussed in the judgment, is a part of the law of the land. The Court gave various directions even cancelling the lease granted in favour of the Motel and directing the Motel to pay compensation by way of cost for restitution of the environment and ecology of the area. The judgment was cited to reaffirm the argument for preservation of ecology, which is an important factor in preserving Jhandewala Park.

6. Section 114 of the Act provides for obligatory duties of the Mahapalika and one such obligatory function is to maintain public places, parks and to plant trees. This cannot now be done as the park has been dug and construction made underground. By allowing underground construction the Mahapalika has deprived itself of its obligatory duties

10 (1997) 1 SCC 388

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which cannot be permitted. Irreversible changes have been made. Qualitatively it may still be a park but it is a park of a different nature inasmuch as trees cannot be planted. Now it is like a terrace park. Though the Park Act came into operation w.e.f. 1-2-1995 and the construction of the underground shopping complex had started in January 1995 after the interim order of this Court but since the construction was made subject to the final order of this Court the provisions of the Park Act will have to be considered while deciding the matter.

7. Contract of such a magnitude could not have been awarded to the builder without calling for tenders. There was no ground to depart from the settled norms. Decision of this Court in *Sachidanand Pandey* v. *State of W.B.*[11] is no authority for the proposition that it was not necessary to invite tenders. That was a case relating to development of tourism industry in the State of West Bengal. The case did not lay any rule but was an exception thereto. In that case a lease was granted by the State Government to the Taj Group of Hotels for construction of a five star hotel. This was challenged on various grounds in a writ petition filed under the banner of PIL. The writ petition was dismissed by the learned Single Judge of the High Court. On appeal, the Division Bench confirmed the judgment of the learned Single Judge. The matter then came to this Court under Article 136 of the Constitution and leave was granted. One of the questions raised was regarding the lease which was granted by the State Government without inviting tenders or holding a public auction. This Court posed the question if in pursuing the socio-economic objective, the State is bound to invite tenders or hold a public auction. The Court referred to various judgments of this Court in *Rashbihari Panda* v. *State of Orissa*[12]; *R.D. Shetty* v. *International Airport Authority of India*[3]; *Kasturi Lal Lakshmi Reddy* v. *State of J&K*[2]; *State of Haryana* v. *Jage Ram*[13]; *Ram and Shyam Co.* v. *State of Haryana*[14]; and *Chenchu Rami Reddy* v. *Govt. of A.P.*[15] Then this Court observed as under: (SCC p. 330, paras 40-41)

> "*40.* On a consideration of the relevant cases cited at the bar the following propositions may be taken as well established. State-owned or public-owned property is not to be dealt with at the absolute discretion of the executive. Certain precepts and principles have to be observed. Public interest is the paramount consideration. One of the methods of securing the public interest, when it is

11 (1987) 2 SCC 295
12 (1969) 1 SCC 414
3 (1979) 3 SCC 489
2 (1980) 4 SCC 1
13 (1983) 4 SCC 556
14 (1985) 3 SCC 267
15 (1986) 3 SCC 391

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considered necessary to dispose of a property, is to sell the property by public auction or by inviting tenders. Though that is the ordinary rule, it is not an invariable rule. There may be situations where there are compelling reasons necessitating departure from the rule but then the reasons for the departure must be rational and should not be suggestive of discrimination. Appearance of public justice is as important as doing justice. Nothing should be done which gives an appearance of bias, jobbery or nepotism.

41. Applying these tests, we find it is impossible to hold that the Government of West Bengal did not act with probity in not inviting tenders or in not holding a public auction but negotiating straightway at arm's length with the Taj Group of Hotels."

This Court also found that on the commercial and financial aspect of the lease even on a prima facie view, there appears to be nothing wrong or objectionable in the "net sales" method. The "net sales" method is a fairly well-known method adopted in similar situations. It is profit-oriented and appears to be in the best interest of the Government of West Bengal.

8. There was collusion among certain members of the Mahapalika, its officers and the builder. Even the conduct of the lawyer of the Mahapalika was commented upon adversely. It was not necessary for the Mahapalika to file a separate appeal against the impugned judgment of the High Court. These members of the Mahapalika equated themselves with the builder. The lawyer of the Mahapalika drafted the agreement dated 4-11-1993 between the Mahapalika and the builder. He also filed special leave petitions on behalf of the Mahapalika which have since been withdrawn. All the fees of the lawyer of the Mahapalika for attending the meetings of the Mahapalika, drafting the agreement, preparing special leave petitions, etc. were paid by the builder though that was shown to be done at the instance of the Mahapalika. There is on the record of the Mahapalika a letter of the builder that there was a collusion among the Mahapalika, the builder, the lawyers and the officers of the Mahapalika, the Architect of the Mahapalika, who approved the layout plan and was also the Architect of LDA. After the layout plan was submitted to LDA the Architect of the Mahapalika himself okayed the layout plan as Architect of LDA, which was then approved by the Vice-Chairman of LDA.

9. A body corporate cannot be made to remain bound by its earlier decision if that decision is found to be contrary to law. There could not be any estoppel against the statute particularly when the whole project is against public interest. The State Government was right in changing its stand. The State Government considered the whole matter and on the representations received from the public decided to accept the judgment of the High Court.

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10. The agreement is a fraud on the power of the Mahapalika. Prime land has been given to the builder for a song. The fact that the scheme was so lucrative could be seen that all shops to be constructed less 5% were booked within six days of the advertisement appearing in December 1993. Public interest and public exchequer have been sacrificed. The Mahapalika divested itself of its control over the project. The agreement is wholly one-sided favouring the builder. It is unjust, unreasonable and irrational.

11. The builder had already collected Rs 25,000 from each of the prospective allottees at the time of registration when it was originally planned to construct 500 shops. There were no building plans in existence. Collecting of this amount by the builder is of no consequence in deciding the present appeals. It is now stated that 263 shops had been constructed though the builder collected earnest money for 500 shops. In spite of the judgment of the High Court the builder did not care to refund the earnest money so collected. Its conduct does not entitle it to any consideration. No proper study was undertaken before the Mahapalika granted its approval for construction of the underground shopping complex. There were no building plans when the agreement was entered into.

12. The narrow consideration that a few crores of rupees have been spent on the construction cannot come into consideration when the construction is in clear violation of the Act, the Development Act and Article 21 of the Constitution. That crores of rupees have been spent is an argument which is advanced in every other case of unauthorised construction.

13. There is no alternative to the construction which is unauthorised and illegal and is to be dismantled. The whole structure built is in contravention of the provisions of law as contained in the Development Act. The decision to award contract and the agreement itself was unreasonable. The construction of the underground shopping complex, if allowed to stand, would perpetuate an illegality. The Mahapalika could not be allowed to benefit from the illegality. A decision of this Court in *Badri Prasad* v. *Nagarmal*[16] (SCR at p. 774) was referred to, to contend that the Court could not exclude from its consideration a public statute and since the construction of the underground shopping complex was wholly illegal it had to be dismantled. No question of moulding a relief can arise as the builder made the construction on the basis of the interim order of this Court and at its own risk. Various decisions of this Court in support of these contentions where demolition of unauthorised construction was ordered, were referred to, these being (1) *K. Ramadas Shenoy* v. *Chief Officers, Town Municipal Council*[17] (SCR at p. 685);

16 AIR 1959 SC 559 : 1959 Supp (1) SCR 769, 774
17 (1974) 2 SCC 506 : (1975) 1 SCR 680, 685

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(2) *Virender Gaur* v. *State of Haryana*[18] (SCC at p. 582); (3) *Pleasant Stay Hotel* v. *Palani Hills Conservation Council*[19] (SCC at p. 139); (4) *Cantonment Board, Jabalpur* v. *S.N. Awasthi*[20] (SCC at p. 596); (5) *Pratibha Coop. Housing Society Ltd.* v. *State of Maharashtra*[21]; (6) *G.N. Khajuria (Dr)* v. *Delhi Development Authority*[22]; (7) *Manju Bhatia* v. *New Delhi Municipal Council*[23]; and (8) an unreported decision of this Court in *Ram Awatar Agarwal* v. *Corpn. of Calcutta*[24].

In *K. Ramadas Shenoy* v. *Chief Officers, Town Municipal Council*[17] the respondent was granted by a resolution of the Municipal Committee to construct a cinema theatre at a place where the earlier respondent was granted licence for the construction of Kalyan Mantap-cum-Lecture Hall. In a petition under Article 226 of the Constitution the High Court held that the cinema theatre could not be constructed in a place other than specified localities without proper sanction but since the third respondent had spent a large sum of money it did not quash the impeached resolution of the Municipal Committee. The appellant contended before this Court that the Town Planning Scheme forbade the cinema building at the place asked for and, therefore, the resolution of the Municipal Committee was invalid. This Court observed as under: (SCC pp. 513-14, paras 28-29)

> "*28.* An illegal construction of a cinema building materially affects the right to or enjoyment of the property by persons residing in the residential area. The Municipal Authorities owe a duty and obligation under the statute to see that the residential area is not spoilt by unauthorised construction. The Scheme is for the benefit of the residents of the locality. The Municipality acts in aid of the Scheme. The rights of the residents in the area are invaded by an illegal construction of a cinema building. It has to be remembered that a scheme in a residential area means planned orderliness in accordance with the requirements of the residents. If the scheme is nullified by arbitrary acts in excess and derogation of the powers of the Municipality the courts will quash orders passed by Municipalities in such cases.
>
> *29.* The Court enforces the performance of statutory duty by public bodies as obligation to rate payers who have a legal right to demand compliance by a local authority with its duty to observe statutory rights alone. The Scheme here is for the benefit of the

18 (1995) 2 SCC 577, 582
19 (1995) 6 SCC 127, 139
20 1995 Supp (4) SCC 595, 596
21 (1991) 3 SCC 341
22 (1995) 5 SCC 762
23 (1997) 6 SCC 370 : JT (1997) 5 SC 574
24 (1999) 6 SCC 532
17 (1974) 2 SCC 506 : (1975) 1 SCR 680, 685

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public. There is special interest in the performance of the duty. All the residents in the area have their personal interest in the performance of the duty. The special and substantial interest of the residents in the area is injured by the illegal construction."

In *Virender Gaur* v. *State of Haryana*[18] the Municipal Committee, Thanesar, District Kurukshetra in the State of Haryana framed a Town Planning Scheme, which was sanctioned by the Government. In the Scheme certain land vested in the Municipality. The State Government sanctioned allotment of that land to the Punjab Samaj Sabha on payment of a price at the rates specified therein. When the Punjab Samaj Sabha after getting sanction started construction the appellants filed writ petition in the Punjab and Haryana High Court, which was, however, dismissed. It was submitted before this Court that the purpose of the Scheme was to reserve the land in question for open spaces for the better sanitation, environment and the recreational purposes of the residents in the locality and that the Government had no power to lease out the land to the Punjab Samaj Sabha. Reversing the judgment of the High Court this Court said that after the writ petition was filed by the appellants the Punjab Samaj Sabha instead of awaiting the decision on merits proceeded with the construction in post-haste and expended the money on the construction. "Therefore", the Court said (at SCC pp. 583-84, para 12)

> "we do not think that it would be a case to validate the actions deliberately chosen, as a premium, in not granting the necessary relief. It was open to the Punjab Samaj Sabha to await the decision and then proceed with the construction. Since the writ petition was pending, it was not open to them to proceed with the construction and then to plead equity in their favour. Under these circumstances, we will not be justified in upholding the action of the State Government or the Municipality in allotting the land to Punjab Samaj Sabha to the detriment of the people in the locality and in gross violation of requirements of the Scheme. Any construction made by Punjab Samaj Sabha should be pulled down and it must be brought back to the condition in which it existed prior to allotment. The Municipality is directed to pull down the construction within four weeks from today. They should place the report on the file of the Registry of the action taken in the matter".

In *Pleasant Stay Hotel* v. *Palani Hills Conservation Council*[19] the question was whether the impugned government orders were lawfully and validly made and, if so, whether they could regularise the unauthorised construction. The High Court quashed the impugned government orders and issued certain directions. This Court observed as

18 (1995) 2 SCC 577, 582
19 (1995) 6 SCC 127, 139

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under and then referred the matter to the High Court for certain clarifications: (SCC p. 139, para 28)

> "In our considered opinion the most eloquent and patent fact that must tilt the scale in this dispute in favour of the Council is that the Hotel has admittedly made a residential construction of seven floors even though their sanctioned plan was only for two floors. That necessarily means that five floors of the building have been constructed illegally and unauthorisedly. It is not surprising therefore that the entire endeavour of the Hotel now is to protect the two floors constructed above the road level and to yield to any workable formula. It is in that context that the Hotel, without prejudice to its rights and contentions, had suggested that the entire structure of seven floors might be allowed to remain and, for that purpose it was prepared to give an undertaking that they would not use the five floors below the road level for any residential purpose but utilise it only for keeping air-conditioning plant and other attendant purposes for running the Hotel on the two floors above the road level. The Council, however, vehemently opposed the above suggestion on the ground that acceptance thereof would mean giving judicial imprimatur to utter and flagrant breach of statutory provisions to which the Hotel resorted to in spite of repeated opportunities given and reminders issued to retrace their steps and any sympathy shown to the Hotel would be wholly misplaced. We need not, however, dilate on this aspect of the matter as it appears to us that there is some confusion as to the nature of the above-quoted direction, given by the High Court and it requires to be clarified."

In *Cantonment Board, Jabalpur* v. *S.N. Awasthi*[20] this Court observed that construction made in contravention of law would not be a premium to extend equity so as to facilitate violation of the mandatory requirements of law. Here the Cantonment Board had granted permission for construction of a building which was later on cancelled as the resolution of the Board granting permission was suspended by the GOC-in-Chief.

In *Pratibha Coop. Housing Society Ltd.* v. *State of Maharashtra*[21] this Court came down heavily on the housing society which made construction in violation of the Floor Space Index. This Court said that such unlawful construction was made by the Housing Board in clear and flagrant violation and disregard of FSI and upheld the order of demolition of eight floors as ordered by the Bombay Municipal Corporation. While dismissing the special leave petition this Court observed as under: (SCC pp. 345-46, para 7)

> "Before parting with the case we would like to observe that this case should be a pointer to all the builders that making of

20 1995 Supp (4) SCC 595, 596
21 (1991) 3 SCC 341

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unauthorised constructions never pays and is against the interest of the society at large. The rules, regulations and bye-laws are made by the Corporations or development authorities taking in view the larger public interest of the society and it is the bounden duty of the citizens to obey and follow such rules which are made for their own benefits."

In *Dr G.N. Khajuria* v. *Delhi Development Authority*[22] the appellants were some of the residents of Sarita Vihar Colony, developed by the Delhi Development Authority (DDA). It was contended that DDA permitted a nursery school to be opened in a certain park in complete violation of the provisions of the Delhi Development Act, 1957. After considering the provisions of the Delhi Development Act and the Master and Zonal Development Plans this Court said that the site at which the school was allowed to be opened was a park. It further held that it was not open to DDA to carve out any space meant for a park for a nursery school. This Court said that the allotment for opening the nursery school was misuse of power and it cancelled the allotment. This Court observed that the construction put up by the allottee, even though permanent, was of no relevance as the same has been done on a plot of land allotted to it in contravention of law. As to the submission that dislocation from the present site would cause difficulty to the tiny tots, this Court said that the same has been advanced only to get sympathy from the Court inasmuch as the children, for whom the nursery school is meant, would travel to any other nearby place where such a school would be set up by the allottee or by any other person. Six months' time was granted to the allottee to make alternative arrangements as it thinks fit to shift the school so that the children are not put to any disadvantageous position. Then, this Court observed as under: (SCC p. 766, para 10)

> "*10.* Before parting, we have an observation to make. The same is that a feeling is gathering ground that where unauthorised constructions are demolished on the force of the order of courts, the illegality is not taken care of fully inasmuch as the officer of the statutory body who had allowed the unauthorised construction to be made or make illegal allotments go scot-free. This should not, however, have happened for two reasons. First, it is the illegal action/order of the officer which lies at the root of the unlawful act of the citizen concerned, because of which the officer is more to be blamed than the recipient of the illegal benefit. It is thus imperative, according to us, that while undoing the mischief which would require the demolition of the unauthorised construction, the delinquent officer has also to be punished in accordance with law. This, however, seldom happens. Secondly, to take care of the injustice completely, the officer who had misused his power has also to be properly punished. Otherwise, what happens is that the officer, who

22 (1995) 5 SCC 762

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made the hay when the sun shined, retains the hay, which tempts others to do the same. This really gives fillip to the commission of tainted acts, whereas the aim should be opposite."

In *Manju Bhatia* v. *New Delhi Municipal Council*[23] the builder, after obtaining requisite sanction to build 8 floors, constructed more floors, sold the flats and gave possession to the respective buyers. Subsequently it was found that the builder constructed the building in violation of the building regulations and consequently the flats on the top four floors were ordered to be demolished. The demolition was challenged in the High Court by way of a writ petition, which was dismissed. Special leave to appeal to this Court was also dismissed. The question before this Court was whether the appellants, who had purchased the flats without the builder informing them of the illegal construction, should be compensated for the loss suffered by them. The High Court in the impugned judgment directed the return of the amount plus the escalation charges. All this was on a suit brought by the appellants. This Court noticed that the escalated price as on the date was around Rs 1.5 crores per flat. Taking into consideration the totality of the circumstances this Court directed the builder to pay Rs 60 lakhs including the amount paid by the allottees.

In an unreported decision of this Court in *Ram Awatar Agarwal* v. *Corpn. of Calcutta*[24] an unauthorised construction in the city of Calcutta was allowed to be demolished by the Corporation of Calcutta. It was a multi-storeyed building. The Court observed as under:

> "We share the feeling of the Deputy City Architect when he states in para 18 of his affidavit that this is a case in which an unscrupulous builder took advantage of the Court's order up to a point of time and after he failed in the legal process up to this Court the tenants were set up to delay the inevitable and thus in this matter the unauthorised structure, hazardous and unsafe, has stood all these years. We have, therefore, no manner of doubt that this is a case in which exemplary costs should be awarded."

46. At the conclusion of the arguments and in order to decide the matter fully and finally but without prejudice to the respective contentions of the parties, we wanted to know the nature of construction so far as carried out; the cost thereof; the area meant for shopping and parking separately; and if the plans were in accordance with the Development Act and Rules. This was particularly so when by an interim order of this Court construction was allowed though with certain clear stipulations.

47. Prof. T.S. Narayanaswamy, Ex-Head of the Department of Building Engineering and Management, School of Planning and Management, New Delhi was appointed as Local Commissioner for the purpose. He was asked to report on the following aspects of the construction:

23 (1997) 6 SCC 370 : JT (1997) 5 SC 574
24 (1999) 6 SCC 532

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"*1.* What is the extent of construction put up by the appellant underground in the aforesaid part?

a *2.* What is the nature of the said construction?

3. What cost can be said to have been incurred by the appellant in the construction uptil now?

4. What further costs, if any, are required to be incurred for completion of the project with parking provisions?

b *5.* What will be the extent of the cost required to be incurred if the structures existing on the spot are required to be demolished and the land is to be restored to its original position?

6. Whether the present structures are put up by the appellant in accordance with the building plans sanctioned by the Nagar Nigam?

c *7.* Whether the present structures comply with the building requirements as per the provisions governing the Lucknow Development Authority?

8. Whether the structures existing on the spot are safe and sound and not likely to create any health hazard, if they are allowed to be retained on spot?

d *9.* Whether the existing structures with suitable alterations can be used for parking of vehicles and/or for putting up other amenities like public convenience etc.?

10. If the land earmarked for parking in the building plans submitted to the Nagar Nigam by the appellant, and which land is dug up at present, is restored to its original position, is it feasible to use the existing structures for parking of vehicles and for putting up other amenities?

e *11.* What are the existing general conditions of the locality and the area around the park?"

48. It is not necessary to examine the report of the Local Commissioner in detail except to note that:

f *1.* extent of work carried out is approximately 80% of the civil and structural work, about 30% of the finishing work and 20% of the services' support work;

2. it is a "first class" permanent construction;

3. cost of construction of the work so far executed is approximately Rs 3.52 crores and the cost of work still to be done is approximately Rs 2.97 crores;

g *4.* dismantling of the construction so far made and restoration of the park would cost Rs 98,10,181 less Rs 22,19,550 salvage value;

5. though there is a letter of approval of confirmation having been given, there are no sanctioned drawings (the Chief Architect of the Mahapalika said that sanctioned drawings were "missing" from his files);

h *6.* the Lucknow Development Authority (LDA) did not play any role in sanctioning the project except the layout plan (Layout plan was

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forwarded to LDA by the Chief Architect of the Mahapalika who was also officiating as the Chief Architect of LDA at that time. In other words, the approval of the layout at the LDA level was recommended by the same person who forwarded it from the Mahapalika.);

7. the Master Plan could not have envisaged the park as a site available for commercial exploitation, given the density and congestion of the surrounding area;

8. structure as designed is safe from the structural engineering viewpoint;

9. air pollution levels of the park and the surrounding areas would go up by a substantial amount as a result of underground shopping complex-cum-parking; and

10. there is a lot of crowding during day hours (9.00 a.m. to 6.00 p.m.) leading to generally slow movement of traffic and occasional traffic hold-ups. A high decibel level thanks to vehicles and moving people and vendors. A lot of solid waste collection at the end of the day and generally a high level of pollution as a result.

By and large the report of Prof. Narayanaswamy has found acceptance by all the parties.

49. Mr M.L. Verma, learned Senior Advocate who appeared for M.I. Builders after the report of Prof. Narayanaswamy, submitted that the report of the Local Commissioner insofar as it gives the cost incurred on the constructions is not correct and so also the cost required to be incurred for completion of the project. His argument was that the cost so far incurred was in fact more than what the Local Commissioner said and that the cost required for completion of the project was less than that arrived at by the Local Commissioner. We, however, do not find merit in his submission as we find that the Local Commissioner has applied the same principles while arriving at the cost so far incurred and the cost to be incurred for completion of the project. We, therefore, accept the report of the Local Commissioner in its entirety. But to what effect we shall presently see.

50. Jhandewala Park, the park in question, has been in existence for a great number of years. It is situated in the heart of Aminabad, a bustling commercial-cum-residential locality in the city of Lucknow. The park is of historical importance. Because of the construction of underground shopping complex and parking it may still have the appearance of a park with grass grown and path laid but it has lost the ingredients of a park inasmuch as no plantation now can be grown. Trees cannot be planted and rather while making underground construction many trees have been cut. Now it is more like a terrace park. Qualitatively it may still be a park but it is certainly a park of a different nature. By construction of underground shopping complex irreversible changes have been made. It was submitted that the park was acquired by the State Government in the year 1913 and was given to the Mahapalika for its management. This has not been controverted. Under Section 114 of the Act it is the obligatory duty of the Mahapalika to maintain

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public places, parks and plant trees. By allowing underground construction the Mahapalika has deprived itself of its obligatory duties to maintain the park which cannot be permitted. But then one of the obligatory functions of the Mahapalika under Section 114 is also to construct and maintain parking lots. To that extent some area of the park could be used for the purpose of constructing an underground parking lot. But that can only be done after proper study has been made of the locality, including density of the population living in the area, the floating population and other certain relevant considerations. This study was never done. The Mahapalika is the trustee for the proper management of the park. When the true nature of the park, as it existed, is destroyed it would be violative of the doctrine of public trust as expounded by this Court in *Span Resort case*[10]. Public trust doctrine is part of Indian law. In that case the respondent who had constructed a motel located at the bank of River Beas interfered with the natural flow of the river. This Court said (at SCC p. 413, para 35) that the issue presented in that case illustrated

> "the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change".

51. In the treatise *Environmental Law and Policy: Nature, Law, and Society* by Plater Abrams Goldfarb (American Casebook Series, 1992) under the Chapter on Fundamental Environmental Rights, in Section 1 (*The Modern Rediscovery of the Public Trust Doctrine*) it has been noticed that "long ago there developed in the law of the Roman Empire a legal theory known as the 'doctrine of the public trust' ". In America public trust doctrine was applied to public properties, such as shore lands and parks. As to how that doctrine works it was stated:

> "The scattered evidence, taken together, suggests that the idea of a public trusteeship rests upon three related principles. First, that certain interests 'like the air and the sea' have such importance to the citizenry as a whole that it would be unwise to make them the subject of private ownership. Second, that they partake so much of the bounty of nature, rather than of individual enterprise, that they should be made freely available to the entire citizenry without regard to economic status. And, finally, that it is the principal purpose of a Government to promote the interests of the general public rather than to redistribute public goods from broad public uses to restricted private benefit...."

With reference to a decision in *Illinois Central Railroad Co.* v. *Illinois*[25] it was stated that

10 *M.C. Mehta* v. *Kamal Nath*, (1997) 1 SCC 388
25 146 US 387 : 36 L Ed 1018 (1892)

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"the Court articulated in that case the principle that has become the central substantive thought in public trust litigation. When a State holds a resource which is available for the free use of the general public, a court will look with considerable scepticism upon any governmental conduct which is calculated either to reallocate the resource to more restricted uses or to subject public uses to the self-interest of private parties".

This public trust doctrine in our country, it would appear, has grown from Article 21 of the Constitution.

52. Thus by allowing construction of underground shopping complex in the park the Mahapalika has violated not only Section 114 of the Act but also the public trust doctrine.

53. If we now refer to the provisions of law relating to notice of meetings and business of the Mahapalika and its committees it is apparent that these provisions were not adhered to. There is no authority with the Mahapalika to constitute a High Power Committee and to delegate its functions to that High Power Committee. There was no agenda at any time in any of the meetings of the Mahapalika for consideration of the underground shopping complex. There were no proposals, no documents, no plan, no study, no project report or feasibility report on the basis of which the Mahapalika could have given a green signal for construction of the underground shopping complex. There was no discussion and no informed decision. The Mahapalika completely abdicated its functions. The Mahapalika delegated its functions to the High Power Committee in contravention of the Act. Constitution of the High Power Committee itself was wholly illegal. The High Power Committee took the decision to hand over the park to the builder for construction of the underground shopping complex and also approved the terms of the agreement dated 4-11-1993. The decision of the High Power Committee was put before the Executive Committee and the General Body of the Mahapalika for the purpose of "information" and both these bodies stamped their approval. As noted above there was no agenda for consideration of these resolutions of the Executive Committee of the Mahapalika. The Corporators had no time to apply their minds. Such an important matter, where the cost of the project was likely to run into crores of rupees, could not have been considered under the topic "Other Subjects, Subject to the Permission of the Presiding Officer". Section 105 of the Act protects any act done or proceeding taken on account of any defect or irregularity in procedure not affecting the substance. In the present case it is not mere irregularity or defect in the procedure but the whole procedure is in clear breach of Sections 91 and 119 of the Act which are mandatory.

54. The law mandates that not only the notice of the date and the time of the meeting but the notice of the business to be transacted at such meeting should be given at least 4 clear days before the date of the meeting for the Mahapalika and 3 days for the Executive Committee. When the agenda did not include the subject of construction of underground shopping complex nor was there any material to support the discussion on the subject of

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construction of underground shopping complex it could not have been considered in the meetings of the Mahapalika and the Executive Committee.

55. In *Myurdhwaj Coop. Group Housing Society Ltd.* v. *Presiding Officer, Delhi Coop. Tribunal*[26] the appellant was a housing cooperative society registered under the Delhi Cooperative Societies Act, 1972 and the Delhi Cooperative Societies Rules, 1973. In the meeting of the General Body of the Society, it was decided that only those who have deposited minimum amount specified by the general meeting would be allotted flats and the others would be accommodated on the flats to be constructed on the additional land in Phase II construction. Respondent 3 who was one of the original members of the Society challenged the decision of the general meeting. One of the contentions raised was that decision of the General Body which relegated her and other such members to Phase II was not on the agenda. This Court said a General Body can always with the approval of the House in the meeting of its members take up any other matter not covered by the agenda on that account and that no illegality could be held. This Court also observed that Section 28 of the Delhi Cooperative Societies Act, 1972 vests final authority in the General Body of a cooperative society. It has wide powers including residuary power except those not delegated to any other authority under the Act, the rules and its bye-laws. In other words, its power, if any, is only restricted by the Act, the rules, the bye-laws and any order having force of law. This decision is of no help to the appellant as in the present case we are considering the statutory provisions for holding the meetings of the Mahapalika and the Executive Committee which have been violated.

56. The agreement dated 4-11-1993 has not been executed as required under Section 133 of the Act. The resolution of the High Power Committee, which was placed before the Mahapalika and the Executive Committee for information, required that "the prescribed project may be got executed by M.I. Builders Pvt. Ltd. and the Mukhya Nagar Adhikari should be authorised for conducting all the forthcoming actions and formalities". Now, the Mahapalika has power to enter into contracts (Section 131). Under sub-section (1) of Section 132 a contract shall be expressed to be made, for and on behalf of the Mahapalika, and shall be so executed for and on behalf of the Mahapalika. Under sub-section (4), no contract involving an expenditure exceeding five lakh rupees shall be made by the Mukhya Nagar Adhikari (Chief Executive Officer) unless it has been sanctioned by the Mahapalika. Proviso (*a*) to Section 133(1) requires the common seal of the Mahapalika to be affixed on every contract. The common seal shall be affixed only in the presence of a Corporator (Sabhasad) who shall attach his signatures to the contract in token that the same was sealed in his presence. The signature of the Corporator shall be distinct from the signature of any witness to the execution of such contract [sub-sections (2) and (3) of Section 133]. Under sub-section (4) of Section 133 no contract executed otherwise than as

26 (1998) 6 SCC 39

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provided in the section shall be binding on the Mahapalika. The impugned agreement is thus not executed in accordance with the requirements of law. Further, under sub-section (2) of Section 136 where the Mahapalika approves the project and the entire estimated cost exceeds rupees ten lakhs, the project report shall be submitted to the State Government and it is for the State Government to reject or sanction the project with or without modifications. Till that is done no work shall be commenced. No such sanction of the State Government was obtained in the present case. It was submitted that this provision would apply only if the project cost was to be incurred by the Mahapalika. We do not think it is so. It is the cost of the project that matters and not who incurs the cost in the first instance. The agreement dated 4-11-1993 is, therefore, not a valid contract and not binding on the Mahapalika. As held in *H.S. Rikhy case*[8] where a statute makes a specific provision that a body corporate has to act in a particular manner and in no other, that provision of law being mandatory and not directory has to be strictly followed. This principle will apply both as regards holding of meeting of the Mahapalika and execution of contract on its behalf. This judgment is also an authority for the proposition that there is no estoppel against a statute.

57. We may now examine some of the terms of the agreement dated 4-11-1993. There are six recitals to the agreements which cannot be correlated to any discussion in any of the meetings of the Mahapalika, the Executive Committee or the High Power Committee. Under clause (2) of the agreement it is for the builder to make a construction at its own cost and then to realise the cost with profit not exceeding more than 10% of the investment in respect of each shop. Nobody knows how much cost the builder is likely to incur and how long it will continue to be in possession of the shopping complex. Full freedom has been given to the builder to lease out the shops as per its own terms and conditions to persons of its choice on behalf of the Mahapalika and the Mahapalika shall be bound by these terms and conditions. The builder has also been given the right to sign the agreement on behalf of the Mahapalika on the terms and conditions which the builder may deem fit and proper. The builder is only required to give a copy of the agreement to the Mahapalika after its execution and both the Mahapalika and the builder shall remain bound by the terms of that agreement. Since there is no project report nobody knows how many shops the builder would construct and of what sizes. The Mahapalika is allowed to charge Rs 5000 per shop for every second and subsequent transfer of shops by the builder but what amount is to be charged for the first transfer or subsequent transfers is left to the sole discretion of the builder. A bare glance at the terms of the agreement shows that not only the clauses of the agreement are unreasonable for the Mahapalika but they are atrocious. No person of ordinary prudence shall ever enter into such an agreement. A trustee, which the Mahapalika is, has to be more cautious in dealing with its properties. Valuable land in the heart of a commercial area has been handed on a platter to the builder for it to exploit

8 *H.S. Rikhy (Dr)* v. *New Delhi Municipal Committee*, AIR 1962 SC 554

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and to make runaway profits. As a matter of fact on examining the terms of the agreement we find that the Mahapalika has been completely ousted from the underground shopping complex for an indefinite period. It has completely abdicated its functions.

58. To repeat, the agreement is completely one-sided favouring the builder. A land of immense value has been handed over to it to construct an underground shopping complex in violation of the public trust doctrine and the Master Plan for the city of Lucknow. The Mahapalika has no right to step in even if there is any violation by the builder of the terms of the agreement or otherwise. The Mahapalika, though considered to be the owner of the land, is completely ousted and divested of the land for a period which is not definite and which depends wholly on the discretion of the builder. On the question of reasonableness reference may be made to *Wade on Administrative Law*, 7th Edn., p. 399. The learned author observed that:

> "The court must strive to apply an objective standard which leaves to the deciding authority the full range of choices which the legislature is presumed to have intended. Decisions which are extravagant or capricious cannot be legitimate."

Quoting Lord Hailsham, L.C. in *W. (an infant), Re*[27] where he said:

> "Two reasonable persons can perfectly reasonably come to opposite conclusions on the same set of facts without forfeiting their title to be regarded as reasonable."

The following passage from the treatise would be relevant:

> "This is not therefore the standard of 'the man on the Clapham omnibus'. It is the standard indicated by a true construction of the Act which distinguishes between what the statutory authority may or may not be authorised to do. It distinguishes between proper use and improper abuse of power. It is often expressed by saying that the decision is unlawful if it is one to which no reasonable authority could have come. This is the essence of what is now commonly called 'Wednesbury unreasonableness', after the now famous case in which Lord Greene, M.R. expounded it as follows:
>
> > 'It is true that discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology used in relation to exercise of statutory discretions often use the word 'unreasonable' in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often is said, to be acting 'unreasonably'.

27 1971 AC 682 : (1971) 2 All ER 49

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Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority. Warrington, L.J. in *Short* v. *Poole Corpn.*[28] gave the example of the red-haired teacher, dismissed because she had red hair. This is unreasonable in one sense. In another it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith; and, in fact, all these things run into one another.'

This has become the most frequently cited passage (though most commonly cited only by its nickname) in administrative law. It explains how 'unreasonableness', in its classic formulation, covers a multitude of sins. These various errors commonly result from paying too much attention to the mere words of the Act and too little to its general scheme and purpose, and from the fallacy that unrestricted language naturally confers unfettered discretion.

Unreasonableness has thus become a generalised rubric covering not only sheer absurdity or caprice, but merging into illegitimate motives and purposes, a wide category or errors commonly described as 'irrelevant considerations', and mistakes and misunderstandings which can be classed as self-misdirection, or addressing oneself to the wrong question. But the language used in the cases shows that, while the abuse of discretion has this variety of differing legal facets, in practice the courts often treat them as distinct. When several of them will fit the case, the court is often inclined to invoke them all. The one principle that unites them is that powers must be confined within the true scope and policy of the Act.

Taken by itself, the standard of unreasonableness is nominally pitched very high: 'so absurd that no sensible person could ever dream that it lay within the powers of the authority' (Lord Greene, M.R.); 'so wrong that no reasonable person could sensibly take that view' (Lord Denning, M.R.), 'so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it' (Lord Diplock). It might seem from such language that the deliberate decisions of ministers and other responsible public authorities could almost never be found wanting. But, as may be seen in the following pages, there are abundant instances of legally unreasonable decisions and actions at all levels. This is not because ministers and public authorities take leave of their senses, but because the courts in deciding cases tend to lower the threshold of unreasonableness to fit their more exacting ideas of administrative good behaviour."

59. When we keep in view the principles laid by this Court in its various judgments and which we have noticed above. it has to be held that the agreement dated 4-11-1993 is not a valid one. The agreement defies logic. It

28 1926 Ch 66 : 1925 All ER Rep 74

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is outrageous. It crosses all limits of rationality. The Mahapalika has certainly acted in a fatuous manner in entering into such an agreement. It is a case where the High Court rightly interfered in exercise of its powers of judicial review keeping in view the principles laid down by this Court in *Tata Cellular* v. *Union of India*[1]. Every decision of the authority except the judicial decision is amenable to judicial review and reviewability of such a decision cannot now be questioned. However, a judicial review is permissible if the impugned action is against law or in violation of the prescribed procedure or is unreasonable, irrational or mala fide. On the principle of good governance reference was made to a decision of the Division Bench of the Bombay High Court in *State of Bombay* v. *Laxmidas Ranchhoddas*[29] (AIR Bom at p. 475) (para 12). It was submitted that bad governance sets a bad example. That is what exactly happened in the present case.

60. In *State of Bombay* v. *Laxmidas Ranchhoddas*[29] a Division Bench of the High Court was considering the argument that the writ of mandamus being discretionary, the Court should consider whether it should not put a limitation upon its own powers and jurisdiction. It was submitted that it was impossible for any State to function if there was a constant interference by the High Court in the executive acts performed by the officers of the State. Chagla, C.J., speaking for the Court, said:

> "It may be that interference by the High Court may result in inconvenience or difficulty in administration. But what we have to guard against is a much greater evil. When we find in the modern State wide powers entrusted to Government, powers which affect the property and person of the citizen, it is the duty of the courts to see that those wide powers are exercised in conformity with what the legislature has prescribed. We are not oblivious of the fact that in order that the modern State should function the Government must be armed with very large powers. But the High Court does not interfere with the exercise of those powers. The High Court only interferes when it finds that those powers are not exercised in accordance with the mandate of the legislature. Therefore, far from interfering with the good governance of the State, the Court helps the good governance by constantly reminding the Government and its officers that they should act within the four corners of the statute and not contravene any of the conditions laid down as a limitation upon their undoubtedly wide powers. Therefore, even from a practical point of view, even from the point of view of the good governance of the State, we think that the High Court should not be reluctant to issue its prerogative writ whenever it finds that the sovereign legislature has not been obeyed and powers have been assumed which the legislature never conferred upon the executive."

1 (1994) 6 SCC 651

29 AIR 1952 Bom 468, 475 (para 12) : 54 Bom LR 681

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61. It cannot be said that the construction of the underground shopping complex is by the builder as an agent of the Mahapalika. The concept of agency is totally missing in the present case. Rather the deal is from principal to principal. Reference may be made to the decision of this Court in *Akadasi Padhan case*[9] quoted above. When the "development" is by the builder the provisions of Section 14 of the Development Act would apply. There is no sanction of the building plan of the underground shopping complex by LDA. Construction is, therefore, per se illegal. Even after the interim order of this Court allowing construction, plans were not got sanctioned from LDA, which would be the authority under the Development Act. Sanction of the building plan by the Mahapalika would, therefore, be meaningless. Even then, there were no sanctioned drawings. It has been pointed out that the process of sanction appeared to be ad hoc and skeletal. When construction started LDA issued a show-cause notice to the Mahapalika but then in view of the interim order made by this Court the show-cause notice was subsequently withdrawn. It was stated that against the order withdrawing the show-cause a revision was filed by Mr Amrit Puri, a writ petitioner to the State Government, which was stated to be still pending.

62. It is not disputed that there is a Master Plan applicable to the city of Lucknow. This Master Plan is prepared under the Development Act. It was submitted by the builder that the park could be exploited for commercial purposes as Aminabad has been shown to be a commercial area. No doubt Aminabad is a commercial area but that does not mean that the park can be utilised for commercial purposes. Rather using the park for commercial purposes would be against the Master Plan. However, in the letter dated 16-10-1993 the Vice-Chairman, LDA to the Mahapalika did say:

> "I am to inform you in this regard that the land use of Jhandewala Park situated in Aminabad is a commercial one as per the Master Plan. This Department has no objection on the layout plan submitted accordingly."

63. How this letter came to be written one may notice the sequence. The High Power Committee meets on 13-10-1993 and is adjourned to 19-10-1993. Mr G.C. Goyal is Architect of the Mahapalika and he forwarded the layout plan to LDA. Mr Goyal is also officiating as Architect of LDA. Approval of the layout plan by LDA is dated 16-10-1993, which is 3 days before the next meeting of the High Power Committee. This approval of the layout at LDA was recommended by the same person who forwarded it from the Mahapalika and in a great hurry. In the Master Plan for the city of Lucknow, it is Aminabad area which is commercial and that would not mean that the park can be put to commercial use. By letter dated 23-11-1993, LDA objected to the construction being undertaken in the park without obtaining permission/no-objection from it and required the construction to stop. The Mahapalika in turn by its letter sent on the following day to the builder informed it of the objection raised by LDA and that before starting any

9 *Akadasi Padhan* v. *State of Orissa,* AIR 1963 SC 1047 : 1963 Supp (2) SCR 691, 722

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construction the permission/no-objection of LDA as required under Sections 14 and 15 of the Development Act was necessary. It does appear to us that the Master Plan of the city of Lucknow could not have envisaged Jhandewala Park as a site available for commercial exploitation considering the density and congestion in the area.

64. The reason for the construction of underground shopping complex given was that it would remove the congestion in the area. We have the report of the Local Commissioner, which says that it would rather lead to more congestion. We think Mr Dave is right in his submission that a decision to construct underground shopping complex by M.I. Builders had already been taken and that the whole process was gone into to confer undue benefit on M.I. Builders and the bogie of congestion was introduced to justify the action of the Mahapalika. It is wholly illegal and smacks of arbitrariness, unreasonableness and irrationality.

65. We may also note the argument of Mr Adarsh Goel who said that Jhandewala Park was acquired by the State in the year 1913 and was given to the Mahapalika for its management. He said that under Section 41 of the Development Act read with Section 5 of the U.P. Regulation of Building Operations Act a government order was issued on 18-8-1986 by the State Government whereby the use of a park for any other use was prohibited. This direction of the State Government was incorporated in the Master Plan for the city of Lucknow and of course violated by allowing construction of an underground shopping complex.

66. Action of the Mahapalika in agreeing to the construction of an underground shopping complex in contravention of the provisions of the Act and then entering into an agreement with the builder against settled norms was wholly illegal and has been held to be so by the High Court. No doubt the Mahapalika is a continuing body and it will be estopped from changing its stand in the given case. But when the Mahapalika finds that its action was contrary to the provisions of law by which it was constituted there could certainly be no impediment in its way to change its stand. There cannot be any estoppel operating against the Mahapalika. The principles laid down in *Union of India* v. *Anglo Afghan Agencies Ltd.*[4] and of the Calcutta High Court in *Ganges Mfg. Co.* v. *Sourujmull*[5] cannot apply to the facts of the present case.

67. Section 128 of the Act confers powers on the Mahapalika to sell, let out, hire, lease, exchange, mortgage, grant otherwise dispose of any property or any interest therein acquired by or vested in the Mahapalika. The appellant and the intervenors said that there was no disposal of any property and no interest in the land had been transferred by the Mahapalika to the builder. The respondent, as noted above, contended to the contrary. Under Section 54 of the Transfer of Property Act, 1882 agreement to sell does not create any

4 AIR 1968 SC 718 : (1968) 2 SCR 366
5 ILR (1880) 5 Cal 669, 678 : 5 CLR 533

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interest in land. We are not concerned with this provision. Reference may, however, be made to Sections 60(*b*) and 62(*f*) of the Easements Act, 1882. Though the licence under Section 60(*b*) is irrevocable but it can be revoked after the happening of a certain event which is when the builder has recovered the whole of his investment plus 10% of the profit. Reference may be made to a decision of this Court in *Chevalier I.I. Iyyappan* v. *Dharmodayam Co.*[30] In this case an argument was raised by the appellant that he had been granted a licence and acting upon the licence he had executed a work of permanent character and incurred expenses in the execution thereof and, thereafter, under Section 60(*b*) of the Easements Act, 1882 the licence was irrevocable. This Court said:

> "In our opinion no case of licence really arises but if it does what is the licence which the appellant obtained and what is the licence which he is seeking to plead as a bar. The licence, if it was a licence, was to construct the building and hand it over to the respondent Company as trust property. There was no licence to create another kind of trust which the appellant has sought to create. It cannot be said therefore that there was an irrevocable licence which falls under Section 60(*b*) of the Act. Even such a licence is deemed to be revoked under Section 62(*f*) of that Act where the licence is granted for a specific purpose and the purpose is attained or abandoned or becomes impracticable. In the present case the purpose for which the licence was granted has either been abandoned or has become impracticable because of the action of the appellant."

[*The Indian Easements Act, 1882*: Sections 52, 53, 60(*b*) and 62(*f*):

> "52. Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a licence.
>
> 53. A licence may be granted by anyone in the circumstances and to the extent in and to which he may transfer his interests in the property affected by the licence.
>
> * * *
>
> 60. A licence may be revoked by the grantor, unless—
>
> (*a*) * * *
>
> (*b*) the licensee, acting upon the licence, has executed a work of a permanent character and incurred expenses in the execution.
>
> * * *
>
> 62. A licence is deemed to be revoked—
>
> (*a*) to (*e*) * * *
>
> (*f*) where the licence is granted for a specified purpose and the purpose is attained or abandoned, or becomes impracticable;]"

68. We find force in the submissions of the respondents that by granting licence to the builder to construct underground shopping complex of a

30 AIR 1966 SC 1017 : (1963) 1 SCR 85

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permanent nature and to hold on to the same for a period which is not definite and then under the impugned agreement the builder having been authorised to lease out the shops on behalf of the Mahapalika, it is a dubious method adopted to subvert the provisions of Section 128 which apply as well in the case of lease and thus the transaction will also be covered by the expression "otherwise dispose of any interest in the property". It is, therefore, difficult to accept the argument of the builder that the transaction is outside Section 128 of the Act. Now, first licence has been granted to the builder to enter upon the park and to execute a work of permanent character and incur expenses in the execution of the work, thus making the licence irrevocable. However, the licence is deemed to be revoked after the licensee has recovered his full cost on the construction plus 10% of the profit on the investment made by him. When this purpose is achieved by the licensee is anybody's guess. Not only that the licensee, i.e., the builder is then authorised to lease out the shops so constructed on behalf of the Mahapalika. The result would be that to the builder the provisions of Section 129 of the Act cannot be thus made applicable. In such a situation for the builder to contend that the transaction is not covered by Section 128 and, therefore, Section 129 will not apply is certainly incredulous. The provisions of Section 129 of the Act have, therefore, been flouted. The impugned agreement dated 4-11-1993 is bad having been executed also in contravention of the requirement of Section 129 of the Act.

69. The facts and circumstances when examined point to only one conclusion that the purpose of constructing the underground shopping complex was a mere pretext and the dominant purpose was to favour M.I. Builders to earn huge profits. In depriving the citizens of Lucknow of their amenity of an old historical park in the congested area on the specious plea of decongesting the area the Mahapalika and its officers forgot their duty towards the citizens and acted in a most brazen manner.

70. The proposition of construction of underground shopping complex was so lucrative and the land so valuable that the Mahapalika itself could have done it by collecting earnest money from the prospective allottees. But then nobody cared to examine this aspect and a plea was also advanced that the Mahapalika had no finance to undertake the project. If one refers to the agreement, the builder itself devised a self-financing scheme and it had not to spend anything from its own pocket. On mere booking of the shops the builder could collect rupees one crore twenty-five lakhs and would have collected more money with the progress of the construction at various stages. A public body would not sequester away its property by devising new methods.

71. Thus there are two distinct areas of challenge in the present case — (*I*) the agreement is a fraud on power, prime land has been given for a song by the Mahapalika. The fact that the scheme is so lucrative could be seen from the fact that all the shops less 5% were booked within six days of the advertisement appearing in December 1993. Public interest and the public

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exchequer have been sacrificed. The Mahapalika is divested of its control over the project though notionally not for ever but the builder, on the other hand, has control over the project for all times to come, and (2) construction is in contravention of the provisions of law as contained in the Development Act. The project has been entrusted to the builder in violation of the provisions of the Act. The decision taken by the Mahapalika was not on proper consideration and was not an informed objective decision. Judicial review is permissible if the impugned action is against law or in violation of the prescribed procedure or is unreasonable, irrational or mala fide. As said earlier the High Court rightly exercised its power of judicial review in the present case. It has examined the manner in which the decision was made by the Mahapalika. The second principle laid down in *Tata Cellular case*[1] applies in all respects. The High Court held that the maintenance of the park because of its historical importance and environmental necessity was in itself a public purpose and, therefore, the construction of an underground market in the garb of decongesting the area was wholly contrary and prejudicial to the public purpose. By allowing the construction the Mahapalika had deprived its residents as also others of the quality of life which they were entitled to under the Constitution and the Act. The agreement smacks of arbitrariness, unfairness and favouritism. The agreement was opposed to public policy. It was not in public interest. The whole process of law was subverted to benefit the builder. We agree with the findings and conclusions of the High Court.

72. The High Court in its impugned judgment has not doubted the capacity of M.I. Builders to undertake the project but then that is not the issue. The question is why was it not necessary to invite tenders for the project of such a high cost? Why was it thought that it was only M.I. Builders in the country who could undertake the job? Why was the project report not obtained to know the cost of the project? Why could it not be thought that there could be any other person who could undertake the job at a lesser cost and in an equally competent manner? Public interest has certainly been given a go-by. There was some undercurrent flowing to award the contract to M.I. Builders. The High Court said "lest we are taken amiss we wish to make it clear that we do not doubt either the bona fides of the authorities or the competence of the respondents M/s M.I. Builders to enter into the impugned agreement but we are of the view...." The competence of M/s M.I. Builders to undertake the project is not doubted when now it is seen that proper construction has been made but before taking the decision to award the contract to it nobody knew its credentials. No attempt was made whatsoever to consider if there was any other person more competent for the job or if of equal competence could offer better terms. In these circumstances, the dictum contained in the case of *Kasturi Lal Lakshmi Reddy* v. *State of J&K*[2] becomes inapplicable. No advantage can be drawn by

1 *Tata Cellular* v. *Union of India*, (1994) 6 SCC 651

2 (1980) 4 SCC 1

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the builder from the decision of this Court in *G.B. Mahajan case*[7] as here the whole process of awarding contract to M.I. Builders has been gone through in an unabashed manner and in flagrant violation of law with the sole purpose of conferring benefit on it. All said and done, we fail to understand the certificate given by the High Court about the bona fides of the authorities in awarding the contract to M/s M.I. Builders. The officers of the Mahapalika, who were impleaded as the respondents by name, did not file any replies to contradict the allegations made against them. Rather it appears that it was a fit case where the High Court should have directed an enquiry to be made as to how the project came to be awarded to M.I. Builders including the conduct of the lawyers.

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

74. In the present case we find that the builder got an interim order from this Court and on the strength of that order got sanction of the plan from the Mahapalika and no objection from LDA. It has no doubt invested considerable amount on the construction which is 80% complete and by any standard is a first class construction. Why should the builder take such a risk when the interim order was specific that the builder will make construction at its own risk and will not claim any equity if the decision in the appeal goes against it? When the interim order was made by this Court the Mahapalika and the State Government were favouring the builder. As a matter of fact the Mahapalika itself filed appeals against the impugned judgment of the High Court. Perhaps that gave hope to the builder to go ahead with the construction and to take the risk of getting the construction demolished and restoring the park to its original condition at its own cost. The builder did not foresee the change in stand not only of the Mahapalika but also of the State Government. It also, as it would appear, overrated its capacity to manage

7 *G.B. Mahajan* v. *Jalgaon Municipal Council*, (1991) 3 SCC 91

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with the State Government to change the land use of the park. The builder is not an innocent player in this murky deal when it was able to get the resolutions of the Mahapalika in its favour and the impugned agreement executed. Now, construction of shops will bring in more congestion and with that the area will get more polluted. Any commercial activity now in this unauthorised construction will put additional burden on the locality. The primary concern of the Court is to eliminate the negative impact the underground shopping complex will have on the environmental conditions in the area and the congestion that will aggravate on account of increased traffic and people visiting the complex. There is no alternative to this except to dismantle the whole structure and restore the park to its original condition leaving a portion constructed for parking. We are aware that it may not be possible to restore the park fully to its original condition as many trees have been chopped off and it will take years for the trees now to be planted to grow. But a beginning has to be made.

75. There are four blocks under construction. Services like air-conditioning, firefighting, water supply, sanitary installation, necessary pumps for drainage and sewerage, etc. are yet to be installed and completed.

76. In Block 1 there are shops at the level minus 9'6". These shops are divided by partition walls. There is a big hall with pillars below these shops at a level of minus 19'6".

77. In Block 2 there are shops on the upper basement level 9'6". There is no lower basement level.

78. The third block is currently designed to have shops at the upper basement level and parking at the lower basement level. The upper basement level can be converted to have parking at that level too since the structural configuration will permit the same. Flooring on the lower basement is yet to be laid. There can thus be parking both on the upper basement and the lower basement. This parking place for vehicles would lead to decongestion of the roads surrounding the park which are otherwise choked with the parked vehicles in its entire periphery.

79. The fourth block is only partially developed with just a separate ramp going down to the first basement level and a few columns with their foundations standing from the lower basement level. This fourth block is currently dug up. However, to facilitate the movement of the vehicles to the two levels of parking in the third block a new ramp shall be constructed adjacent to and contiguous to the third block.

80. We have noted above that under clause (*ix-a*) of Section 114 of the Act, it is incumbent on the Mahapalika to make reasonable and adequate provisions by any means or measures which it is lawfully competent to use or to take for the construction and maintenance of parking lots, bus-stops and public convenience.

81. A number of cases come to this Court pointing to unauthorised constructions taking place at many places in the country by builders in

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connivance with the corporation/municipal officials. In a series of cases, this Court has directed demolition of unauthorised constructions. This does not appear to have any salutary effect in cases of unauthorised construction coming to this Court. While directing demolition of unauthorised construction, the court should also direct an enquiry as to how the unauthorised construction came about and to bring the offenders to book. It is not enough to direct demolition of unauthorised construction, where there is clear defiance of law. In the present case, but for the observation of the High Court, we would certainly have directed an enquiry to be made as to how the project was conceived and how the agreement dated 4-11-1993 came to be executed.

82. We direct as under:

1. Blocks 1, 2 and 4 of the underground shopping complex shall be dismantled and demolished and on these places the park shall be restored to its original shape.

2. In Block 3 partition walls and if necessary columns in the upper basement shall be removed and this upper basement shall be converted into a parking lot. Flooring should be laid at the lower basement level built to be used as a parking lot. Ramp shall be constructed adjacent to Block 3 to go to upper and lower basement levels for the purpose of parking of vehicles. Further to make Block 3 functional as a separate unit walls shall be constructed between Block 2 and Block 3 and also Block 3 and Block 4.

3. Dismantling and demolishing of these structures in Blocks 1, 2 and 4 and putting Block 3 into operation for parking shall be done by the Mahapalika at its own cost. Necessary services like sanitation, electricity etc. in Block 3 shall be provided by the Mahapalika.

4. The Mahapalika shall be responsible for maintaining the park and Block 3 for parking purposes in a proper and efficient manner.

5. M.I. Builders Pvt. Ltd., the appellant, is divested of any right, title or interest in the structure built by it under or over the park. It shall have no claim whatsoever against the Mahapalika or against any other person or authority.

6. Block 3 shall vest in the Mahapalika free from all encumbrances. Licence of M.I. Builders to enter into the park and the structure built therein is cancelled of which possession is restored to the Mahapalika with immediate effect. No obstruction or hindrance shall be caused to the Mahapalika by anyone in discharge of its functions as directed by this order.

7. Restoration of the park and operation of Block 3 for parking purposes shall be completed by the Mahapalika within a period of 12 months from today and the report filed in the Registry of this Court.

83. With the directions aforesaid, the appeals are dismissed with costs.

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given by the respondent tenant in the original application for leave to contest and the present application after order of eviction was passed. On a reading of these two applications, we find that the same defence was taken by the tenant after the order of eviction was passed and therefore, we do not think that such reason can be considered to be a special reason within the meaning of Order 37 Rule 4 of the Code for allowing the tenant to defend the proceedings if Order 37 Rule 4 of the Code applies to a special Act.

32. For all the reasons aforesaid, the order of eviction passed by the Additional Rent Controller on 28-2-2001 stands restored, the impugned order of the High Court as well as the order of the Additional Rent Controller, Delhi, are set aside and the application filed by the landlord under Section 14(1)(*e*) of the Rent Act stands allowed.

33. Considering the facts and circumstances of the present case, we grant time to the respondent tenant to vacate the tenanted premises within a period of six months from this date provided the respondent tenant files an usual undertaking in this Court within one month. In the event, if no undertaking is filed within a month mentioned hereinabove, it will be open for the appellant landlord to proceed and take delivery of possession in accordance with law.

34. The appeal is thus allowed. There will be no order as to costs.

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(BEFORE V.S. SIRPURKAR AND DEEPAK VERMA, JJ.)

PRIYANKA ESTATES INTERNATIONAL PRIVATE LIMITED AND OTHERS .. Appellants;

Versus

STATE OF ASSAM AND OTHERS .. Respondents.

Civil Appeals No. 8026 of 2009† with Nos. 8025 of 2009‡, 8027 of 2009††, 8028 of 2009†‡ and 8029-32 of 2009‡†, decided on December 3, 2009

A. **Town Planning — Unauthorised additional construction — Construction in violation of sanctioned plan and approval — Demolition of, when warranted — Held, unlawful constructions are against public interest and hazardous to safety of occupiers and residents of multistoreyed buildings — If constructions are in absolute violation of sanctioned or approved plans, the necessary consequence is demolition — Courts not to approve of such illegal activities**

† Arising out of SLP (C) No. 14480 of 2006. From the Judgment and Order dated 28-7-2006 of the Gauhati High Court in WPs Nos. 5018, 5146 of 2002 and 2747 of 2006

‡ Arising out of SLP (C) No. 15546 of 2006

†† Arising out of SLP (C) No. 15547 of 2006

†‡ Arising out of SLP (C) No. 16898 of 2006

‡† Arising out of SLPs (C) Nos. 28291-94 of 2009

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— Appellant was permitted to construct residential-cum-commercial complex up to 5½ floors — Permission for construction of additional floors beyond 5½ floors was rejected being contrary to building bye-laws — Further, permissible ratio of height of building was that it could be no more than twice the width of road, and road width was 38 ft, so building could not be raised more than 76 ft — In appeal, Standing Appellate Committee (SAC) directed Commissioner, Guwahati Municipal Corporation (GMC) to consider grant of permission, but same was not considered by Commissioner, GMC — Despite no permission, builder continued construction up to 8 floors under pretext of stay obtained from High Court against notices of demolition by GMC — PIL against — High Court allowed PIL upholding demolition of additional floors beyond sanctioned plan — Sustainability

— Contention that construction was not illegal since proposed width of road is 50 ft and height of building was only 93 ft and also SAC granted sanction for construction of additional floors — Additionally, purchasers of flats in unsanctioned floors contended violation of principles of natural justice since individual notices were not issued

— Held, building bye-laws stipulate that "existing width" of road to be considered for grant of sanction, but not its "proposed width" — Order of SAC is not sanction since Commissioner, GMC is only authorised to sanction and approve building plan — Further, individual notices to flat-owners not required in view of public notice in newspapers issued by GMC to all proposed purchasers to ensure that completion and occupancy certificate duly issued, had been obtained by the builder before purchasing flats — Also, construction of additional floors fall beyond compoundable items — Hence, construction of said additional floors in violation of sanctioned plan was illegal and liable to be demolished — However, as constructions on 5th floor beyond permission fall under compoundable items in terms of building bye-laws, GMC directed to consider representations in accordance with law in a time-bound manner — Guwahati Municipal Corporation Act, 1971 — Ss. 337, 416 and 438 — Guwahati Metropolitan Development Authority Act, 1985, S. 88

(Paras 37 to 44 and 50 to 56)

B. **Town Planning — Guwahati Metropolitan Development Authority Act, 1985 — S. 88 — Demolition of unauthorised construction — Notice to purchasers of illegal flats for demolition — Individual notices, requirement if any — Notice to public at large, when sufficient (Para 39)**

C. **Town Planning — Unauthorised construction — Demolition of — Purchasers of illegal flats, right against demolition — Individual rights — When to yield to public rights — An individual has a right, including a fundamental right, within a reasonable limit — However, if it encroaches on public rights leading to public inconvenience, held, it is to be curtailed to that extent — Jurisprudence — Conceptual Jurisprudence — Entitlements — Rights — Individual vis-à-vis public rights — Balancing of — Constitution of India — Pt. III (Paras 56 and 57)**

D. **Town Planning — Unauthorised construction — Duty of citizens against — Held, rules, regulations and bye-laws are made taking in view larger public interest of society — It is bounden duty of citizens to obey and follow them (Para 56)**

Corpn. of Calcutta v. *Mulchand Agarwala*, AIR 1956 SC 110 : 1956 Cri LJ 285; *Syed Muzaffar Ali* v. *MCD*, 1995 Supp (4) SCC 426; *Muni Suvrat-Swami Jain S.M.P. Sangh* v.

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Arun Nathuram Gaikwad, (2006) 8 SCC 590; *Municipal Corpn., Ludhiana* v. *Inderjit Singh*, (2008) 13 SCC 506; *Olga Tellis* v. *Bombay Municipal Corpn.*, (1985) 3 SCC 545; *S.L. Kapoor* v. *Jagmohan*, (1980) 4 SCC 379; *M.I. Builders (P) Ltd.* v. *Radhey Shyam Sahu*, (1999) 6 SCC 464; *Friends Colony Development Committee* v. *State of Orissa*, (2004) 8 SCC 733; *Royal Paradise Hotel (P) Ltd.* v. *State of Haryana*, (2006) 7 SCC 597; *Mahendra Baburao Mahadik* v. *Subhash Krishna Kanitkar*, (2005) 4 SCC 99, *relied on*

E. **Town Planning — Unauthorised construction — Demolition of — Purchasers of illegally constructed flats — Indemnity against loss caused — Compensation — Relief to affected parties — Considerations — In present case, Supreme Court restraining itself from awarding compensation under Art. 142, but gave liberty to affected parties to exhaust remedy available under law — Constitution of India — Art. 142 — Exercise of power under — Compensation — Contract Act, 1872 — Ss. 17 to 19, 23 and 73 — Contract and Specific Relief — Contractual Obligations and Rights — Implied obligations — Statutorily implied obligations — Consumer Protection — Services — Housing — Transfer of Property Act, 1882, Ss. 55(1)(a), (b) & (c)**

Held :

The jurisdiction and power of courts to indemnify a citizen for injuries suffered due to such unauthorised or illegal construction having been erected by builder/coloniser is required to be compensated by them. An ordinary citizen or a common man is hardly equipped to match the might and power of the builders. In the case in hand, a number of occupiers were put in possession of the respective flats by the builder/developer constructed unauthorisedly in violation of the laws. Thus, looking to the matter from all angles, ultimately the flat owners are going to be the greater sufferers rather than the builder who has already pocketed the price of the flat. It is a sound policy to punish the wrongdoer and it is in that spirit that the courts have moulded the reliefs of granting compensation to the victims in exercise of the powers conferred on it. In doing so, the courts are required to take into account not only the interest of the petitioners and the respondents but also the interest of public as a whole with a view that public bodies or officials or builders do not act unlawfully and do perform their duties properly. In the case in hand, admittedly, at no point of time was the builder able to show to its prospective purchasers the occupancy certificate or completion certificate issued by the authorities concerned.

(Paras 57 to 60)

The instant case is not a case of breach of contract. It is a clear case of breach of the obligation undertaken to erect the building in accordance with building regulations and failure to truthfully inform the warranty of title and other allied circumstances**. Even though invocation of the jurisdiction under Article 142 of the Constitution of India so as to do complete justice between the parties and to direct awarding of reasonable/suitable compensation/interest to the flat owners, whose flats are ultimately going to be demolished, was considered but, ultimately it was decided not to, for variety of reasons and on account of various disputed questions that may be posed in the matter. However, liberty is granted to those, whose flats are ultimately going to be demolished, to exhaust the remedy that may be available to them in accordance with law.

(Paras 61 and 62)

[Ed.**: But would not the latter obligation identified by the Court be a statutorily implied obligation in the contract in light of Ss. 55(1)(*a*), (*b*) & (*c*) of the Transfer of Property Act, 1882? Another line of analysis would be that the latter obligation is one imposed by law *anterior* to the entering into of the contract to purchase the flat, in which case the

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remedy of the purchaser would be to seek rescission of the contract for fraud or misrepresentation *vide* Ss. 17 and 18, respectively, or a declaration that it is void for being illegal *vide* S. 23 of the Contract Act, 1872, and based thereon seek refund of all payments made with interest. There would probably also be a cause of action in the tort of deceit and/or the tort of breach of statutory duty and the right to sue for damages based thereon. *See* generally the discussion on the distinction between suing for breach of contract on the one hand, and rescission of the contract due to vitiation of the consent on the other hand, in the *Preface* to Vol. 13, *Complete Digest of Supreme Court Cases*, 2nd Edn., pp. I-7 to I-12.]

Appeals dismissed N-D/44331/C

Advocates who appeared in this case :

L. Nageswara Rao, Shekhar Naphade, Mukul Rohatgi, Vijay Hansaria, Anoop G. Chaudhari, Ms June Chaudhari, Ms Milly Hazarika and Ramji Srinivasan, Senior Advocates [P.I. Jose, Anupam Mishra, Ms Kajori Roy, Vivek Kafari Ray, Dhruv Mehta, Yashraj Singh Deora, Mohit, T.S. Sabarish (for M/s K.L. Mehta & Co.), Shankar Divate, Kamal Mohan Gupta, Manish Goswami (for M/s Map & Co.), Jagjit Singh Chhabra, H. Baruah, Balbir Dosanjh, Rameshwar Prasad Goyal, Jitendra Kumar, Ranjan K. Pandey, Galib Kabir, M/s Corporate Law Group (NP) and Rauf Rahim, Advocates] for the appearing parties.

Chronological list of cases cited ***on page(s)***

1. (2008) 13 SCC 506, *Municipal Corpn., Ludhiana* v. *Inderjit Singh* 41*b*
2. (2006) 8 SCC 590, *Muni Suvrat-Swami Jain S.M.P. Sangh* v. *Arun Nathuram Gaikwad* 41*a*
3. (2006) 7 SCC 597, *Royal Paradise Hotel (P) Ltd.* v. *State of Haryana* 41*d-e*
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9. (1980) 4 SCC 379, *S.L. Kapoor* v. *Jagmohan* 41*d*
10. AIR 1956 SC 110 : 1956 Cri LJ 285, *Corpn. of Calcutta* v. *Mulchand Agarwala* 40*e-f*

The Judgment of the Court was delivered by

DEEPAK VERMA, J.— Leave granted. The principal question that emerges for consideration in these appeals is whether to sustain the order of demolition as passed by the Gauhati High Court vide impugned judgment and order or to put an imprimatur of this Court to the unauthorised constructions raised by Priyanka Estates International (P) Ltd. (Appellant 1 herein) beyond 5½ floors. Facts material for deciding the said appeals are mentioned hereinbelow.

2. For the sake of convenience, the facts appearing in SLP (C) No. 14480 of 2006 titled as *Priyanka Estates International (P) Ltd.* v. *State of Assam* are taken into consideration. Appellant 1 is a company of which Appellants 2 and 3 are Directors.

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3. Appellant 1 herein purchased an open piece of land approximately admeasuring 4.62 kathas from one Smt Nandita Banerjee on 9-8-1999 by registered deed of sale. Prior to execution of sale, the vendor of Appellant 1 applied to Guwahati Metropolitan Development Authority (hereinafter referred to as "GMDA") for grant of "no-objection certificate" for sale of land. The said permission was accorded on 17-7-1999 mentioning therein that permission is granted for "residential-cum-commercial use" of the said plot and that the proposed width of the road abutted by plot is approximately 50 feet.

4. Pursuant to the said permission, sale deed was executed in favour of Appellant 1, whereafter it applied to Guwahati Municipal Corporation (hereinafter referred to as "GMC") on 16-11-1999 for according permission for construction of basement, ground, mezzanine; first, second, third, fourth and half of fifth floors. The permission was accorded to Priyanka Estates International (P) Ltd. on 3-2-2000 by GMC for construction of basement, ground floor, mezzanine up to fourth floor and half on the 5th floor. For first floor to fourth, the floor area permissible was 7283 sq ft but on fifth floor, the permissible floor area was fixed at half of it i.e. 3817 sq ft only. It was granted on certain conditions as mentioned in the sanction dated 3-2-2000.

5. Thereafter, on 8-2-2000, Appellant 1 applied for grant of permission for construction of remaining part of 5th, 6th, 7th and 8th floors. This permission was refused by GMC on 27-3-2000 on the following grounds:

> "(*i*) Maximum allowable height of building can be 76' and proposed height would be 93'.
>
> (*ii*) The margin on both sides and rear is less than required norms.
>
> (*iii*) FAR is exceeded than allowable 300.
>
> (*iv*) The structural certificate is not submitted."

So, to the proposal for 5th (part) 6th, 7th and 8th floor building, permission was rejected.

6. Feeling aggrieved by the said rejection by GMC, the appellants preferred an appeal under Section 438 of the Guwahati Municipal Corporation Act, 1971 (hereinafter referred to as "the Act") before the Standing Appellate Committee (in short "SAC"). This came to be disposed of on 5-5-2000 with the following directions:

> "In view of the above discussion as well as observation, in our considered opinion, the appellant's case deserves consideration. Accordingly, we hold that the appellant be accorded permission as sought for. We hereby set aside the impugned order, as aforesaid, passed by the Commissioner, GMC, the respondent.
>
> In the result, the appeal is allowed."

7. Since despite the fact that SAC had allowed the appeal of the appellants with regard to construction of 5th (part), 6th, 7th and 8th floors, no formal permission was still accorded by the Commissioner, GMC to it, they moved further application on 28-8-2001 before the Administrator-cum-Minister, Guwahati Development Department, as it appears by that time,

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GMC had been dissolved. The said appeal was considered by the Administrator-cum-Minister and the appeal verdict was reviewed on 29-5-2002 with certain conditions as mentioned hereinbelow:

"(*i*) To obtain NOC from the State Fire Department;

(*ii*) Submit affidavit regarding the structural certificate;

(*iii*) Compulsory covered parking and private service system like drainage, sewage, storm drain, water supply, etc.;

(*iv*) No further FAR beyond 487.00;

(*v*) To submit completion certificate and obtain occupancy certificate from GMC;

(*vi*) To pay a penal charge to the Corporation amounting to Rs 10,00,000.00 (ten lakhs);

(*vii*) Your building is liable for instant demolition at your own risk and cost in case of non-compliance with the above."

8. However, it appears that without compliance with the aforesaid conditions fully and without getting actual sanction for construction of building beyond 5½ floors from the Commissioner of GMC, the appellants continued with the construction activities and tried to complete the same.

9. Guwahati Metropolitan Development Authority (already referred to as "GMDA") now came into picture and issued notice to Appellant 2 on 2-2-2001 to show cause and to give explanation as to without grant of proper sanction under the GMDA Act, how the construction work is progressing.

10. Another notice by GMDA was issued to Appellant 2 on 5-9-2001 asking to remove/demolish the building/construction/development or the portion erected by them which is in violation of the provisions of the Guwahati Metropolitan Development Authority Act (for short "the Development Act"). No replies to the aforesaid two notices were sent by the appellants herein on the ground that the same were not received.

11. The last and final notice in this regard was issued by GMDA on 18-2-2002 mentioning therein with regard to the earlier two notices sent on 2-2-2001 and 5-9-2001 and finally asking the appellants to remove the construction within three days from the receipt of this last notice failing which, necessary action as per the provisions of the Development Act will be initiated without giving further intimation. The appellants replied to the said last notice on 18-2-2002 mentioning therein that they had not received the earlier two letters but mentioned that permission has been granted by GMC on 3-2-2000, and is still operative, which clarified the position of construction of the building beyond 5½ floors also but did not actually present any sanctioned or approved plans/maps beyond 5½ floors.

12. Not being satisfied with the reply to the show-cause notice, submitted by the appellants, the respondents proceeded to issue another notice to Appellant 2 on 3-5-2002, with a categorical statement that construction over and above 6th and 7th floors was wholly illegal, without due sanction and therefore, the same be removed/demolished. It appears that, thereafter, some correspondence between the parties continued.

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13. Finally, on 31-7-2002 by two orders, the Commissioner, GMC informed Appellant 1 that plans submitted by them are insufficient for the following reasons and requested it to furnish the required materials as under and to forthwith stop the construction:

"*1.* Affidavit for structural design as per format in the building bye-laws.

2. NOC from the State Fire Department.

3. Declaration in affidavit to maintain the FAR within 487."

The appellants, therefore, were constrained to move the High Court challenging the said order dated 31-7-2002 by filing WP (C) No. 5018 of 2002 purportedly under Articles 226 and 227 of the Constitution of India.

14. Further order of demolition came to be issued to Appellant 2 by GMDA on 30-5-2006, clearly mentioning therein that no sanction was obtained by the appellants under Sections 24 and 25 of the Development Act and had actually violated the provisions of building bye-laws of Guwahati Municipal Corporation (for short "building bye-laws"), in the following manner:

"*1.* FAR of the building is 490 which exceeds allowable FAR 300.

2. Maximum floor height 93' exceeds allowable height 76' in this road.

3. Since the building is for mixed use with residential at top floors, setback required is 15' side to 20' rear, which is not maintained.

4. Balcony projection is allowed, maximum ¼ of the building length in any side, which is not maintained.

5. Two staircases and lift on opposite direction is required which is not available in the building as per building plan.

6. Construction of building is going on despite our order to stop construction."

The said order further directed demolition of the building beyond the sanctioned plan dated 3-2-2000. The appellants, therefore, challenged the said order dated 30-5-2006 issued by the Chief Executive Officer, GMDA by filing another WP (C) No. 2747 of 2006.

15. In WP (C) No. 5018 of 2002, (earlier WP filed in the Gauhati High Court) an order of status quo came to be passed on 12-8-2002 and it further directed that the Municipal Authority shall take no steps to pull down the building and the operation of the letter dated 31-7-2002 was stayed. It appears that pursuant to the said order, the appellants continued with the construction activities presumably on the ground that the order of status quo is against the respondents in the writ petition and not against the appellants. Thus, Sanatan Dharam Sabha, Guwahati filed an application seeking permission to be impleaded in the said petition and also bringing to its notice that despite the order of maintenance of status quo, the appellants are continuing with the construction. Thus, another order clarifying the earlier order came to be passed by the High Court on 20-9-2002 whereby a categorical direction was issued that no further construction over the said land shall be made and all construction activities should come to a standstill

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immediately. It appears that only after passing the said order, the appellants stopped the construction work.

16. Sanatan Dharam Sabha along with three residents of Panbazar locality of Guwahati City filed WP (C) No. 5146 of 2002 in the Gauhati High Court against the action of GMC and GMDA granting permission to the appellant, M/s Priyanka Estates for multistoreyed building in question and prayed for its demolition.

17. Thus, all the three petitions, i.e. WP (C) No. 5018 of 2002, WP (C) No. 2747 of 2006 and WP (C) No. 5146 of 2002 were consolidated for the purpose of analogous hearing and have been disposed of by a Division Bench of the Gauhati High Court vide impugned judgment and order dated 28-7-2006. Vide impugned judgment, the writ petitions preferred by the appellants herein numbered as 5018 of 2002 and 2747 of 2006 having been found devoid of merit and substance were dismissed but WP (C) No. 5146 of 2002 filed by Sanatan Dharam Sabha has been allowed to the extent indicated in the impugned order.

18. Feeling aggrieved and dissatisfied with the aforesaid judgment and order, civil appeal arising out of SLP (C) No. 14480 of 2006 titled, *Priyanka Estates International (P) Ltd.* v. *State of Assam* has been filed by the builder and its Directors; civil appeals arising out of SLP (C) No. 15546 of 2006 titled, *Vishal Saraf* v. *State of Assam* and civil appeal arising out of SLP (C) No. 15547 of 2006 titled, *Suresh Kumar Harlalka* v. *State of Assam* have been filed by the owners of flats on 7th floor and civil appeal arising out of SLP (C) No. 16898 of 2006 titled, *Sarla Devi Lahoty* v. *State of Assam* has been filed by the owner of one flat on 6th floor. Insofar as civil appeals arising out of SLP (C) Nos. 28291-28294 of 2009 titled, *Shyam Sunder Agarwala* v. *State of Assam* are concerned, the same have been filed by the owner of one flat on 5th floor only. Since the matters were common and identical challenging primarily the order passed by the Division Bench of the High Court and pertained to the same building claiming identical reliefs, these appeals have been heard together. Perused the records.

19. Mr Shekhar Naphade, learned Senior Counsel, Mr Mukul Rohatgi, learned Senior Counsel with Mr Shankar Divate, Mr Dhruv Mehta, Mr Yashraj Singh Deora, Advocates, Mr Vijay Hansaria, learned Senior Counsel with Mr P.I. Jose and Mr Kamal Mohan Gupta, Advocates appeared for the appellants in the aforesaid appeals. Mr L. Nageswara Rao, learned Senior Counsel with Ms Millie Hazarika and Mr Manish Goswami appeared for the respondents.

20. The respondents have contended that for construction of any building, permission from GMC is a condition precedent and unless such permission is granted no construction can be raised. It has further been submitted that such construction has to be as per the sanctioned plan approved by GMC and no deviation from such approved plan can be made. According to them, Appellant 1 was admittedly granted permission for construction of 5½ storeyed building, apart from basement, ground and mezzanine floor vide order dated 3-2-2000, thereafter, no further permission

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has been granted for raising any construction on remaining part of the 5th floor and upwards. The order of SAC dated 5-5-2000 setting aside the order of the Commissioner, GMC dated 27-3-2000 rejecting the permission to raise construction on part of the 5th floor up to 8th floor was itself illegal, beyond the jurisdiction and competence of SAC as it violated the building bye-laws.

21. In view of the admitted position that the width of the road is only 38 feet and under the building bye-laws, maximum allowable height can be double the width of the road i.e. 76 feet but in the instant case SAC has allowed construction up to 93 feet, which contravenes the building bye-laws, therefore, such an order of SAC has no legal force and cannot be basis for construction beyond 76 feet, allowable under building bye-laws.

22. It has been submitted by them that the order of SAC dated 5-5-2000 lost its force and sanctity after the communication dated 29-5-2002 was issued by GMC by which the appellants were asked to comply with certain conditions before granting any permission for construction of a building for remaining part of the 5th floor and above. It has also been contended that even though the order passed in the appellants' writ petition was to maintain status quo but taking advantage thereof, they continued with the construction and only on subsequent order being passed on 20-9-2002, the construction activities were stopped but by that time the appellants had already raised construction up to 8th floor, in flagrant violation of the building bye-laws.

23. They have also contended that GMDA passed an order under Section 88 of the Development Act for demolition of construction for remaining part of the 5th floor and above and that too after issuance of notices to the appellants and giving reasonable opportunity to them to show cause. The appellants were aware that construction beyond 5½ floor was without due sanction and approval, thus, obviously illegal, yet they continued with the same. They further submitted that there was no violation of principles of natural justice. It was contended that Appendix III of the building bye-laws provides for compoundable and non-compoundable items. It is evident therefrom that construction of extra floor falls in the category of non-compoundable items meaning thereby if extra floor is constructed without due sanction/approval, then, it would be beyond the purview of compoundable items. As regards violation of principles of natural justice, they have contended that before passing the order of demolition, notices were issued to the appellants to show cause, as required under Section 88 of the Development Act but they did not take any action thereon.

24. Whenever the respondents asked for sanctioned/approved plans for construction beyond 5½ floors, the appellants only showed them the plans which were sanctioned and/or approved for construction of, only up to 5½ floors. It was also contended by them that even up to that stage the appellants had failed to show any approved sanctioned plans and maps allowing them to construct beyond the permissible limit of 5½ floors. Thus, they have contended that the building constructed beyond 5½ floors is absolutely illegal, unauthorised and without any sanctioned plans, thus liable to be demolished.

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25. In order to understand the various provisions of the Act, it is necessary to know the import of the relevant sections of the Act material for deciding the appeals.

26. Section 327 of the Act prohibits any person from erecting or re-erecting any building without written permission from the Corporation. Section 328 provides for submission of an application by a person interested to erect or re-erect a building to the Corporation for approval of the site together with site plan with land title document, elevation and sections of the building, specification of the work and also containing such particulars as may be required by bye-laws in that behalf. Section 329 empowers the Commissioner of GMC to refuse such permission and to disapprove the site on the grounds formulated in Section 330. Section 331 provides for the grounds on which permission to erect or re-erect the building can be refused by GMC. Section 332 empowers the Commissioner to direct modification of the sanctioned plan. Section 333 stipulates the period within which erection or re-erection is to be completed.

27. Section 337 empowers the Commissioner to require the removal or alteration of the work which may not be in conformity with bye-laws, etc. Section 416 of the Act empowers GMC to formulate different bye-laws including the bye-laws relating to the building. Section 438 of the Act provides for appeal from the order passed by the Commissioner including the order refusing to grant permission to construct or reconstruct a building to SAC. Sub-section (3) of Section 438 of the Act empowers the State Government to call for the records of any matter from the Corporation and to pass such orders as may be deemed necessary after examination of such records.

28. It is necessary to refer to Section 88 of the Development Act which reads as under:

> "88. *Power of demolition of building.*—(1) Where any development has been commenced or is being carried on or has been completed in contravention of the Master Plan or development scheme or without the permission, approval or sanction referred to in Section 25 and Section 30 of the Act or in contravention of any conditions subject to which such permission, approval or sanction has been granted, the authority may in addition to any prosecution that may be instituted under the Act, make an order directing that such development shall be removed by demolition, filling or otherwise by the owner, occupier, manager or by any person at whose instance the development has been commenced or is being carried out or has been completed within such period not being less than five days and more than thirty days from the date on which a copy of the order of removal with brief statement of the reasons thereof has been delivered to the owner, occupier and manager or the person at whose instance the development has been commenced or is being carried out or has been completed as may be specified in the order and on his failure to comply with the order, the authority may remove or cause to be removed the development and the expenses of such removal shall be recovered from the owner, occupier, manager or any person at whose instance the development was commenced or was being carried out or was completed as arrears of land revenue;

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provided that no such order shall be made unless the owner, occupier, manager or the person concerned has been given a reasonable opportunity to show cause why the order shall not be made.

(2) The provisions of this section shall be in addition to and not in derogation of any other provision relating to demolition of buildings contained in any other law for the time being in force.

(3) No compensation shall be claimed by any person for any damage which he may sustain in consequence of the removal of any development under this section or the discontinuance of the development under Section 87 of this Act."

29. Mr Shekhar Naphade, learned Senior Counsel for the appellants firstly strenuously contended before us that NOC dated 17-7-1999 granted by GMDA clearly stipulated that the plot purchased by the appellants would fall in the category of "residential-cum-commercial use" and width of the road abutted by the plot is proposed to be 50 feet. Thus, according to him, the height of the building can be 100 feet, being the double of the width of the road. Since the height of the building of the appellants even after construction up to 8th floor is only 93 feet, the part of the building beyond 5½ floors is not liable to be demolished. It was also contended by him that initial permission was granted by GMC whereas notices of demolition have been issued by GMDA which appears to be absolutely contrary and against the provisions of law. It was also contended that the respondents have failed to prove that any notices were sent to them on 2-2-2001 or 5-9-2001 by GMDA as it has been categorically mentioned by the appellants pursuant to the third notice received by them and replied to.

30. It was also argued that in the light of specific order passed by SAC, conscious decision has been taken by the Government and denial of hearing itself would amount to prejudice, consequently, violation of principles of natural justice. If the Commissioner was dissatisfied with the modification of his order by SAC then as provided under sub-section (2) of Section 438 of the Act, he was required to make a reference to the Corporation within 60 days thereof which he failed to do. He was, therefore, bound by the appellate order of SAC and could not have superimposed his own views or conditions.

31. Mr Mukul Rohatgi, learned Senior Counsel appearing for Shyam Sunder Agarwala submitted that he is the owner of part of the 5th floor which has not been sanctioned. According to Mr Mukul Rohatgi half of the 5th floor has already been sanctioned and even if the width of the road abutted to the building is taken as 38 feet, the height allowed would be 76 feet. Thus, it will have no height problem. At the most, the only objection can be with regard to FAR which objection can be waived as the same falls within compoundable items.

32. Shri Shyam Sunder Agarwala had purchased the said flat on 18-4-2005 for a total amount of Rs 9,43,850. It has also been contended that after purchase of the said flat his name has been mutated in the Corporation records. He is paying property tax, water tax, etc. which the Corporation is accepting. Thus, for this reason also it is not liable to be demolished. He further contended that two parallel bodies, that is, GMC and GMDA cannot

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take action for demolition of the building as the permission was accorded by GMC whereas notices of demolition have been issued by GMDA. Thus, according to him, whole procedure is illegal and void, thus liable to be quashed.

33. In the light of this, it has been contended that Section 88 of the Development Act could not be put into service against the appellants as the same amounts to violation of principles of natural justice as no notice has been served on the said appellant.

34. Mr Vijay Hansaria, learned Senior Counsel appearing for other appellants submitted that they are the owners of Flat Nos. 7A/7C and 7D having purchased on 14-6-2004 and 3-1-2005 for a sum of Rs 17,72,460 and Rs 9,43,850 respectively. He has reiterated that Section 88 of the Development Act has not been complied with inasmuch as no opportunity to show cause has been given to these appellants, thus violation of principles of natural justice is writ large from the record. The Commissioner had no other alternative but to abide by the appellate order of SAC and in any case it should have been treated as deemed sanction.

35. Shri Kamal Mohan Gupta, learned counsel appearing for Sarla Devi Lahoty, the owner of a flat on 6th floor has also reiterated the aforesaid arguments already advanced by M/s Shekhar Naphade, Vijay Hansaria and Mukul Rohatgi. Additionally, he has submitted that Sarla Devi Lahoty purchased a flat on 27-12-2004 for Rs 8,63,010, after making due inquiries with regard to sanction of building plans, etc. Thus, she would be a bona fide purchaser for value and for any acts of omission or commission said to have been committed by builder Priyanka Estates International (P) Ltd. this appellant cannot be put to any loss.

36. After having gone through the record carefully, the crux of the matter is whether Priyanka Estates International (P) Ltd. is in possession of any approved or sanctioned plan beyond 5½ floors i.e. for the remaining 3½ floors or not. If not, then what is the effect thereof?

37. It is clear from the record that the only plan approved was on 3-2-2000 for 5½ floors by GMC. The order dated 5-5-2000 passed by SAC also does not give them blanket permission to construct up to 8th floor.

38. It is also to be seen that the respondents have come to the conclusion and have fairly conceded before us that plan or sanction approved by either of the two authorities, that is, GMC or GMDA will hold good and permission from both the authorities simultaneously would not be required for the same, if it has already been accorded by any one of the authorities. On the strength of this, we can safely proceed that if no permission under Sections 24 and 25 of the Development Act was obtained by Priyanka Estates International (P) Ltd. then it would not be detrimental to the interest of the appellants, provided there is sanction and approval of plans by the Corporation for remaining 3½ floors i.e. beyond 5½ floors.

39. Here, it is pertinent to point out that the respondents had also issued a public notice on 2-7-2002, published in local newspaper in vernacular giving general warning and information to all proposed purchasers of flats that

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unless the builder is able to show completion certificate and occupancy certificate duly issued by authorities, no one should enter into agreement to purchase flat/flats from the builder. It is, therefore, to be construed that public notice will hold good even with regard to adherence to the requirement of Section 88 of the Development Act, if individual person had not been noticed by the authorities.

40. Clause (*a*) of Building Bye-law 37 stipulates that for the purpose of calculation of building height, existing width of the road shall be taken into account and not the proposed width. Even if the proposed width is 40 feet or 50 feet, it will not make any difference because it clearly contemplates that what is to be taken into consideration is the existing width of the road. There is nothing on record to show that the existing width of the road is more than 38 feet. Thus, at the most, the construction could have been only up to the height of 76 feet, provided there was sanction granted by either of the two authorities.

41. Appendix III of building bye-laws deals with penalties to be levied for violation of provisions of Master Plan/Zoning Plan Regulations and Bye-laws. Certain items are compoundable items but certain items fall in the category of non-compoundable items. However, addition of extra floor falls in the category of non-compoundable items. Thus, in any case anything that has been constructed beyond 5th floor would be non-compoundable and same cannot be compounded at all. In other words, minor deviations from the sanctioned plan should be confined only to FAR permissible but should not extend to the extra floor. For better appreciation of the aforesaid provision the same is reproduced hereinbelow:

"*Appendix III*

Penalties to be levied for violations of provisions of Master Plan/Zoning Plan Regulations and Bye-laws.

(*i*) All provisions of Bye-laws except items given below shall not be compounded/regularised and shall have to be rectified by alteration/demolition at the risk and cost of owner.

Compoundable items:

(1)	Coverage	—	maximum of 15%
(2)	FAR	—	maximum of 10%
(3)	Setback	—	up to 2' 6"
(4)	Open space	—	maximum 10% reduction
(5)	Total height of building	—	1.5%

Non-compoundable items:

(1) Use of building
(2) Addition of extra floor
(3) Parking norms
(4) Projection/encroachment of public land."

Critical and analytical perusal of the same would show that addition of extra floor falls within the ambit of non-compoundable items.

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42. The order of SAC cannot be construed as an order of sanction as it is not a semblance of permission. It was not the end of the matter because necessary sanction or permission could have been granted only by the Municipal Commissioner and not by the appellate authority. Admittedly, even after passing of the order by SAC in appeal, there was no further sanction by the Municipal Commissioner or by the Chief Executive Officer of the Development Authority granting permission to raise the height of the building up to 8th floor.

43. Thus, looking to the matter from all angles, we are of the opinion that construction of the building beyond 5½ floors was not only illegal, unauthorised and without any sanction or approval of plans but was also against the spirit of the appellate order of SAC. Thus, except for directing the respondent authorities to demolish the 6th, 7th and 8th floors, we are left with no alternative.

44. As regards construction of two flats on remaining half of 5th floor, Mr L. Nageswara Rao, learned Senior Counsel for the respondent authorities fairly conceded that on suitable representations being made by the occupants, their cases can be considered afresh to find out if the same would fall within the category of compoundable items or not. If the same are found within the category of compoundable items then necessary order by the respondents in this regard would be passed otherwise order of demolition would follow for them also. Thus, on the promise of Senior Advocate Mr L. Nageswara Rao, we hope and trust, suitable orders would be passed by the Authorities as regards the two flats on the 5th floor are concerned, within two months from the date of submission of the representations.

45. Even though various authorities had been placed before us by the learned counsel appearing for parties, it is not required to deal with them in extenso. However, a cursory reference to the same would meet the ends of justice.

46. Mr Shekhar Naphade has placed reliance on *Corpn. of Calcutta* v. *Mulchand Agarwala*[1] to contend that it should be a last resort to direct demolition of a building and if it falls within the compoundable limit then it should not be directed to be demolished. To advance contentions further in this regard, reliance has been placed on para 4 of an order of this Court in *Syed Muzaffar Ali* v. *MCD*[2] which is reproduced hereunder: (SCC p. 427)

> "*4.* However, it is to be pointed out that the mere departure from the authorised plan or putting up a construction without sanction does not ipso facto and without more necessarily and inevitably justify demolition of the structure. There are cases and cases of such unauthorised constructions. Some are amenable to compounding and some may not be. There may be cases of grave and serious breaches of the licensing provisions or building regulations that may call for the extreme step of demolition."

1 AIR 1956 SC 110 : 1956 Cri LJ 285
2 1995 Supp (4) SCC 426

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47. Reliance has also been placed on yet another judgment of this Court in *Muni Suvrat-Swami Jain S.M.P. Sangh* v. *Arun Nathuram Gaikwad*[3] which dealt with Section 351 of the Bombay Municipal Corporation Act to hold that if execution of work has commenced contrary to provisions of the Act, then to give notice to the person carrying on the construction work to show cause why it should not be pulled down, is a must. The use of the word "shall" would signify that it is mandatory to issue notice and then to pass any order. Lastly, a recent judgment of this Court in *Municipal Corpn., Ludhiana* v. *Inderjit Singh*[4] has been pressed into service. This also deals primarily with the requirement of issuance of show-cause notice to the person who had raised construction, so as to enable the said party to show cause, if the construction has been made in total violation of the sanctioned map or it falls within the category of compoundable items.

48. Mr Vijay Hansaria has placed reliance on the famous oft quoted judgment of this Court in *Olga Tellis* v. *Bombay Municipal Corpn.*[5] which dealt with plight of the pavement dwellers, who were in unauthorised possession and were sought to be evicted. He sought to contend that the fundamental rule of principles of natural justice should have been followed before passing the order of demolition. Further, with regard to opportunity of hearing he has placed reliance on a judgment of this Court in *S.L. Kapoor* v. *Jagmohan*[6].

49. On the other hand, Mr L. Nageswara Rao has placed reliance on various judgments of this Court viz. *M.I. Builders (P) Ltd.* v. *Radhey Shyam Sahu*[7]; *Friends Colony Development Committee* v. *State of Orissa*[8]; *Royal Paradise Hotel (P) Ltd.* v. *State of Haryana*[9] and *Mahendra Baburao Mahadik* v. *Subhash Krishna Kanitkar*[10] to contend that where constructions have been made in absolute and flagrant violation of the sanctioned plan then the only alternative is to direct demolition of the same.

50. It is not necessary to deal with the aforesaid judgments of this Court in greater detail as the consistent ratio decidendi of this Court is that if the constructions are in absolute violation of sanctioned or approved plans and are not likely to fall in the category of compoundable items, then the necessary consequence is to order its demolition and seal of approval for such illegal activities is not required to be given by this Court.

51. It is pertinent to mention here that hearing of the appeals had commenced on 22-10-2009 and had almost concluded on 28-10-2009. But on the said date, Mr Anoop George Chaudhari and Ms June Chaudhari, learned Senior Counsel appeared with Mr Kamal Mohan Gupta for Sarla Devi

3 (2006) 8 SCC 590
4 (2008) 13 SCC 506
5 (1985) 3 SCC 545
6 (1980) 4 SCC 379
7 (1999) 6 SCC 464
8 (2004) 8 SCC 733
9 (2006) 7 SCC 597
10 (2005) 4 SCC 99

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Lahoty and submitted that they would be replying to the arguments advanced by learned counsel for the respondents. Though not approved as a healthy practice, yet we granted them permission. It was submitted by them that if cases of two flat owners on the 5th floor are to be considered so as to find out whether the constructions raised by the builder in their cases would fall within the compoundable items or not, then the case of Sarla Devi Lahoty should also be directed to be considered on a suitable representation being made by her, as her flat is situated on the 6th floor. It was contended that even after taking the height of 6th floor, it would not cross the maximum height of 76 feet looking to the width of the existing road.

52. However, the said contention cannot be accepted as construction of an extra floor does not fall within the category of compoundable items which is manifest from Appendix III of the building bye-laws of the Corporation reproduced hereinabove.

53. However, with regard to two flats on 5th floor, a direction can be given to the respondents to consider their cases if they submit their representations within a period of 30 days hereof. The respondents would examine whether their cases fall within the compoundable items/limit or not. In case, the respondents come to the conclusion that these two flats constructed on 5th floor fall within the compoundable limit, then necessary orders be passed in this regard, after charging compounding fees as may be applicable to the facts of the case, in accordance with law, otherwise, they would also face the wrath of demolition.

54. Even a conjoint reading of the order dated 5-5-2000 passed by SAC and the Order dated 29-5-2002 of the Administrator-cum-Minister makes it clear as noonday that it does not clothe the appellants to continue with the construction work beyond 5½ floors as these orders were passed subject to fulfilling certain conditions contained therein. It is obvious that what would ultimately constitute a sanctioned and duly approved map would be the one approved by the Commissioner as he alone has authority to do so. The appellants have failed to produce any such duly approved map.

55. It is a matter of common knowledge that illegal and unauthorised constructions beyond the sanctioned plans are on rise, may be due to paucity of land in big cities. Such activities are required to be dealt with by firm hands otherwise builders/colonisers would continue to build or construct beyond the sanctioned and approved plans and would still go scot-free. Ultimately, it is the flat owners who fall prey to such activities as the ultimate desire of a common man is to have a shelter of his own. Such unlawful constructions are definitely against the public interest and hazardous to the safety of occupiers and residents of multistoreyed buildings. To some extent both parties can be said to be equally responsible for this. Still the greater loss would be of those flat owners whose flats are to be demolished as compared to the builder.

56. Even though on earlier occasions also, under similar circumstances, there have been judgments of this Court which should have been a pointer to all the builders that raising unauthorised construction never pays and is

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against the interest of society at large, but, no heed has been given to it by the builders. Rules, regulations and bye-laws are made by Corporations or by Development Authorities, taking in view the larger public interest of the society and it is a bounden duty of the citizens to obey and follow such rules which are made for their benefit. If unauthorised constructions are allowed to stand or given a seal of approval by court then it is bound to affect the public at large. An individual has a right, including a fundamental right, within a reasonable limit, it inroads the public rights leading to public inconvenience, therefore, it is to be curtailed to that extent.

57. The jurisdiction and power of courts to indemnify a citizen for injuries suffered due to such unauthorised or illegal construction having been erected by builder/coloniser is required to be compensated by them. An ordinary citizen or a common man is hardly equipped to match the might and power of the builders.

58. In the case in hand, it is noted that a number of occupiers were put in possession of the respective flats by the builder/developer constructed unauthorisedly in violation of the laws. Thus, looking to the matter from all angles it cannot be disputed that ultimately the flat owners are going to be the greater sufferers rather than the builder who has already pocketed the price of the flat.

59. It is a sound policy to punish the wrongdoer and it is in that spirit that the courts have moulded the reliefs of granting compensation to the victims in exercise of the powers conferred on it. In doing so, the courts are required to take into account not only the interest of the petitioners and the respondents but also the interest of public as a whole with a view that public bodies or officials or builders do not act unlawfully and do perform their duties properly.

60. In the case in hand, admittedly, at no point of time was Appellant 1, Priyanka Estates International (P) Ltd. able to show to its prospective purchasers the occupancy certificate or completion certificate issued by the authorities concerned. The same could not even be shown to us and without it, Appellant 1 could not have embarked into sale of flats as it was mandatorily required.

61. The instant case is not a case of breach of contract. It is a clear case of breach of the obligation undertaken to erect the building in accordance with building regulations and failure to truthfully inform the warranty of title and other allied circumstances.

62. Even though at the first instance, we thought of invoking this Court's jurisdiction conferred under Article 142 of the Constitution of India so as to do complete justice between the parties and to direct awarding of reasonable/suitable compensation/interest to the flat owners, whose flats are ultimately going to be demolished, but, with a heavy heart, we have restrained ourselves from doing so, for variety of reasons and on account of various disputed questions that may be posed in the matter. However, we grant liberty to those, whose flats are ultimately going to be demolished, to exhaust the remedy that may be available to them in accordance with law.

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(2013) 5 Supreme Court Cases 336

(BEFORE G.S. SINGHVI AND S.J. MUKHOPADHAYA, JJ.)

DIPAK KUMAR MUKHERJEE . . Appellant;

Versus

KOLKATA MUNICIPAL CORPORATION AND OTHERS . . Respondents.

Civil Appeal No. 7356 of 2012†, decided on October 8, 2012

A. **Local Government — Town Planning — Illegal/Unauthorised constructions/Development/Encroachment — Demolition of illegal construction, directed — Refund of amounts taken from bona fide purchasers with interest — Penal costs — Illegal/Unauthorised constructions, reiterated, affect planned development of the area meant for public benefit, cause public hazard and violate fundamental rights of other citizens**

— Construction of multi-storeyed building in violation of sanctioned plan and Municipal Corporation Act and Municipal Corporation Building Rules — Construction continued by builder despite stop-work notice issued by competent authority of Municipal Corporation, demolition order issued by Mayor-in-Council after giving notice and opportunity of hearing and demolition of part of unauthorised structure — After completion of unauthorised construction, application moved by builder before Corporation for its regularisation under S. 400(1) of Municipal Corporation Act and seeking benefit under R. 25(2)(b) of Municipal Corporation Building Rules — Held, Corporation must demolish unauthorised construction within a month — Builder not entitled to benefit under R. 25(2) because disputed construction was in violation of sanctioned plan and notices issued by Corporation and also because application for regularisation was made after completion of unauthorised construction — Direction given by High Court to competent authority of Corporation to pass appropriate order after giving opportunity of hearing to builder cannot be sustained — Builder apart from being guilty of violating sanctioned plan, Act and Rules, also guilty of cheating bona fide purchasers of unauthorised portion of construction — Therefore, builder must refund cost of flats, etc. with interest @ 18% to bona fide purchasers and must also pay costs of Rs 25 lakhs for violation of sanctioned plan and continuation of illegal construction — Detailed directions issued to ensure compliance — Calcutta Municipal Corporation Act, 1980 (59 of 1980) — Ss. 400(1) and 401-A — Calcutta Municipal Corporation Building Rules, 1990 — R. 25(2) — Transfer of Property Act, 1882 — Ss. 55(1)(a) and 55(2) — Consumer Protection — Services — Housing — Fraud by builder in selling unauthorised flats — Relief — Consumer Protection Act, 1986, Ss. 14 and 2(1)(o) & (g)

† Arising out of SLP (C) No. 23780 of 2011. From the Judgment and Order dated 2-5-2011 of the Division Bench of the Calcutta High Court in FMA No. 2320 of 2011

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B. **Constitution of India — Art. 21 — Urban environment and ecology — Maintenance of balance with requirements of development — Illegal constructions directed to be demolished — Regularisation thereof, refused**

C. **Constitution of India — Art. 136 — Penal costs, when warranted**

Allowing the appeal, the Supreme Court

Held :

Illegal and unauthorised constructions of buildings and other structures not only violate the municipal laws and the concept of planned development of the particular area but also affect various fundamental and constitutional rights of other persons. The common man feels cheated when he finds that those making illegal and unauthorised constructions are supported by the people entrusted with the duty of preparing and executing master plan/development plan/zonal plan. The failure of the State apparatus to take prompt action to demolish such illegal constructions has convinced the citizens that planning laws are enforced only against poor and all compromises are made by the State machinery when it is required to deal with those who have money power or unholy nexus with the power corridors. Therefore, there should be no judicial tolerance of illegal and unauthorised constructions by those who treat the law to be their subservient. (Paras 8 and 9)

While preparing master plans/zonal plans, the Planning Authority takes into consideration the prospectus of future development and accordingly provides for basic amenities like water and electricity lines, drainage, sewerage, etc. Unauthorised construction of buildings not only destroys the concept of planned development which is beneficial to the public but also places unbearable burden on the basic amenities and facilities provided by the public authorities. At times, construction of such buildings becomes hazardous for the public and creates traffic congestion. Therefore, it is imperative for the public authorities concerned not only to demolish such construction but also impose adequate penalty on the wrongdoer. (Para 29)

K. Ramadas Shenoy v. *Town Municipal Council, Udipi*, (1974) 2 SCC 506; *Virender Gaur* v. *State of Haryana*, (1995) 2 SCC 577; *Pleasant Stay Hotel* v. *Palani Hills Conservation Council*, (1995) 6 SCC 127; *Cantonment Board, Jabalpur* v. *S.N. Awasthi*, 1995 Supp (4) SCC 595; *Pratibha Coop. Housing Society Ltd.* v. *State of Maharashtra*, (1991) 3 SCC 341; *G.N. Khajuria* v. *DDA*, (1995) 5 SCC 762; *Manju Bhatia* v. *NDMC*, (1997) 6 SCC 370; *M.I. Builders (P) Ltd.* v. *Radhey Shyam Sahu*, (1999) 6 SCC 464; *Friends Colony Development Committee* v. *State of Orissa*, (2004) 8 SCC 733; *Shanti Sports Club* v. *Union of India*, (2009) 15 SCC 705 : (2009) 5 SCC (Civ) 707; *Priyanka Estates International (P) Ltd.* v. *State of Assam*, (2010) 2 SCC 27 : (2010) 1 SCC (Civ) 283, *applied*

Since Respondent 7 has not disputed that the building was constructed in violation of the sanctioned plan and the Mayor-in-Council passed order for demolition of the disputed construction, the direction given by the Division Bench of the High Court to the competent authority of the Corporation to pass appropriate order after giving opportunity of hearing to Respondent 7 cannot be sustained. Respondent 7 cannot take benefit of Rule 25 because the disputed construction was in clear violation of the sanctioned plan and the notices issued by the competent authority of the Corporation and also because the application was made after completion of the construction. (Paras 21 and 27)

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Respondent 7 is guilty not only of violating the sanctioned plan and the relevant provisions of the 1980 Act and the Rules framed thereunder but also of cheating those who purchased portions of unauthorised construction under a bona fide belief that Respondent 7 had constructed the building as per the sanctioned plan. With the demolition of unauthorised construction some of such persons will become shelterless. It is, therefore, necessary that Respondent 7 is directed to compensate them by refunding the cost of the flat, etc., with interest. Respondent 7 must also pay for raising construction in violation of the sanctioned plan. (Para 28)

With a view to ensure that the illegal construction raised by Respondent 7 is pulled down without delay, it is directed that Respondent 7 shall pay the price of the flats, etc. to the purchasers with interest @ 18% per annum from the date of payment. The occupiers of illegal/unauthorised construction shall vacate such portions of the building within the next one month. Within the next one month, the Corporation shall demolish unauthorised construction after taking adequate precautionary measures. Respondent 7 shall pay cost of Rs 25,00,000 for brazen violation of the sanctioned plan and continuance of illegal construction despite "stop-work notice". The amount of cost shall be deposited with the Kolkata State Legal Service Authority within three months and the same be utilised for providing legal aid in deserving cases. (Para 30)

Reports showing compliance with the aforesaid directions be filed by the Corporation and Respondent 7 in the Registry of the High Court within six months. Thereafter, the matter be placed before the Single Judge who had passed the order dated 28-7-2010. If the Single Judge finds that any of the aforesaid directions has not been implemented then he shall initiate proceedings against the defaulting officers and/or Respondent 7 under the Contempt of Courts Act, 1971 and pass appropriate order. (Para 31)

Dipak Kumar Mukherjee v. *Kolkata Municipal Corpn.*, WP No. 13815 of 2010, order dated 28-7-2010 (Cal), *referred to*

Purusottam Lalji v. *Ratan Lal Agarwalla*, AIR 1972 Cal 459, *cited*

R-D/50953/CV

Advocates who appeared in this case :

Bhaskar P. Gupta and Kalyan Bandopadhyay, Senior Advocates (Partha Sil, L.C. Agrawala, Abhijeet Chatterjee and Abhijit Sengupta, Advocates) for the appearing parties.

Chronological list of cases cited ***on page(s)***

1. (2010) 2 SCC 27 : (2010) 1 SCC (Civ) 283, *Priyanka Estates International (P) Ltd.* v. *State of Assam* 339*d-e*, 343*f*, 350*f*
2. WP No. 13815 of 2010, order dated 28-7-2010 (Cal), *Dipak Kumar Mukherjee* v. *Kolkata Municipal Corpn.* 345*e-f*, 356*f-g*
3. (2009) 15 SCC 705 : (2009) 5 SCC (Civ) 707, *Shanti Sports Club* v. *Union of India* 339*d*, 342*c*
4. (2004) 8 SCC 733, *Friends Colony Development Committee* v. *State of Orissa* 339*d*, 340*e-f*, 350*f*
5. (1999) 6 SCC 464, *M.I. Builders (P) Ltd.* v. *Radhey Shyam Sahu* 339*d*
6. (1997) 6 SCC 370, *Manju Bhatia* v. *NDMC* 339*d*
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9. (1995) 2 SCC 577, *Virender Gaur* v. *State of Haryana* 339*c-d*
10. 1995 Supp (4) SCC 595, *Cantonment Board, Jabalpur* v. *S.N. Awasthi* 339*c-d*
11. (1991) 3 SCC 341, *Pratibha Coop. Housing Society Ltd.* v. *State of Maharashtra* 339*c-d*, 340*c-d*
12. (1974) 2 SCC 506, *K. Ramadas Shenoy* v. *Town Municipal Council, Udipi* 339*c*, 339*d-e*
13. AIR 1972 Cal 459, *Purusottam Lalji* v. *Ratan Lal Agarwalla* 347*e-f*

The Judgment of the Court was delivered by

G.S. SINGHVI, J.— Leave granted.

2. In the last four decades, the menace of illegal and unauthorised constructions of buildings and other structures in different parts of the country has acquired monstrous proportion. This Court has repeatedly emphasised the importance of planned development of the cities and either approved the orders passed by the High Court or itself gave directions for demolition of illegal constructions as in *K. Ramadas Shenoy* v. *Town Municipal Council, Udipi*[1], *Virender Gaur* v. *State of Haryana*[2], *Pleasant Stay Hotel* v. *Palani Hills Conservation Council*[3], *Cantonment Board, Jabalpur* v. *S.N. Awasthi*[4], *Pratibha Coop. Housing Society Ltd.* v. *State of Maharashtra*[5], *G.N. Khajuria* v. *DDA*[6], *Manju Bhatia* v. *NDMC*[7], *M.I. Builders (P) Ltd.* v. *Radhey Shyam Sahu*[8], *Friends Colony Development Committee* v. *State of Orissa*[9], *Shanti Sports Club* v. *Union of India*[10] and *Priyanka Estates International (P) Ltd.* v. *State of Assam*[11].

3. In *K. Ramadas Shenoy* v. *Town Municipal Council, Udipi*[1] the resolution passed by the Municipal Committee authorising construction of a cinema theatre was challenged on the ground that the site was earmarked for the construction of Kalyan Mantap-cum-Lecture Hall and the same could not have been used for any other purpose. The High Court held that the cinema theatre could not be constructed at the disputed site but declined to quash the resolution of the Municipal Committee on the ground that the theatre owner had spent huge amount. While setting aside the High Court's order, this Court observed: (SCC pp. 513-14, paras 28-29)

> "*28.* An illegal construction of a cinema building materially affects the right to or enjoyment of the property by persons residing in the residential area. The Municipal Authorities owe a duty and obligation

1 (1974) 2 SCC 506
2 (1995) 2 SCC 577
3 (1995) 6 SCC 127
4 1995 Supp (4) SCC 595
5 (1991) 3 SCC 341
6 (1995) 5 SCC 762
7 (1997) 6 SCC 370
8 (1999) 6 SCC 464
9 (2004) 8 SCC 733
10 (2009) 15 SCC 705 : (2009) 5 SCC (Civ) 707
11 (2010) 2 SCC 27 : (2010) 1 SCC (Civ) 283

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under the statute to see that the residential area is not spoilt by unauthorised construction. The Scheme is for the benefit of the residents of the locality. The Municipality acts in aid of the Scheme. The rights of the residents in the area are invaded by an illegal construction of a cinema building. It has to be remembered that a scheme in a residential area means planned orderliness in accordance with the requirements of the residents. If the scheme is nullified by arbitrary acts in excess and derogation of the powers of the Municipality the courts will quash orders passed by Municipalities in such cases.

29. The Court enforces the performance of statutory duty by public bodies as obligation to rate payers who have a legal right to demand compliance by a local authority with its duty to observe statutory rights alone. The Scheme here is for the benefit of the public. There is special interest in the performance of the duty. All the residents in the area have their personal interest in the performance of the duty. The special and substantial interest of the residents in the area is injured by the illegal construction."

4. In *Pratibha Coop. Housing Society Ltd.* v. *State of Maharashtra*[5] this Court approved the order passed by Bombay Municipal Corporation for demolition of the illegally constructed floors of the building and observed: (SCC pp. 345-46, para 7)

"*7*. … Before parting with the case we would like to observe that this case should be a pointer to all the builders that making of unauthorised constructions never pays and is against the interest of the society at large. The rules, regulations and bye-laws are made by the Corporations or development authorities taking in view the larger public interest of the society and it is the bounden duty of the citizens to obey and follow such rules which are made for their own benefits."

5. In *Friends Colony Development Committee* v. *State of Orissa*[9] this Court noted that a large number of illegal and unauthorised constructions were being raised in the city of Cuttack and made the following significant observations: (SCC pp. 742-44, paras 20 & 22-24)

"*20. … Builders violate with impunity the sanctioned building plans and indulge in deviations much to the prejudice of the planned development of the city and at the peril of the occupants of the premises constructed or of the inhabitants of the city at large. Serious threat is posed to ecology and environment and, at the same time, the infrastructure consisting of water supply, sewerage and traffic movement facilities suffers unbearable burden and is often thrown out of gear.* Unwary purchasers in search of roof over their heads and purchasing flats/apartments from builders, find themselves having fallen prey and become victims to the designs of unscrupulous builders. The builder conveniently walks away having pocketed the money leaving behind the

5 (1991) 3 SCC 341
9 (2004) 8 SCC 733

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unfortunate occupants to face the music in the event of unauthorised constructions being detected or exposed and threatened with demolition. Though the local authorities have the staff consisting of engineers and inspectors whose duty is to keep a watch on building activities and to promptly stop the illegal constructions or deviations coming up, they often fail in discharging their duty. Either they don't act or do not act promptly or do connive at such activities apparently for illegitimate considerations. If such activities are to stop some stringent actions are required to be taken by ruthlessly demolishing the illegal constructions and non-compoundable deviations. The unwary purchasers who shall be the sufferers must be adequately compensated by the builder. The arms of the law must stretch to catch hold of such unscrupulous builders. …

* * *

22. In all developed and developing countries there is emphasis on planned development of cities which is sought to be achieved by zoning, planning and regulating building construction activity. Such planning, though highly complex, is a matter based on scientific research, study and experience leading to rationalisation of laws by way of legislative enactments and rules and regulations framed thereunder. Zoning and planning do result in hardship to individual property owners as their freedom to use their property in the way they like, is subjected to regulation and control. The private owners are to some extent prevented from making the most profitable use of their property. But for this reason alone the controlling regulations cannot be termed as arbitrary or unreasonable. The private interest stands subordinated to the public good. It can be stated in a way that power to plan development of city and to regulate the building activity therein flows from the police power of the State. The exercise of such governmental power is justified on account of it being reasonably necessary for the public health, safety, morals or general welfare and ecological considerations; though an unnecessary or unreasonable intermeddling with the private ownership of the property may not be justified.

23. The municipal laws regulating the building construction activity may provide for regulations as to floor area, the number of floors, the extent of height rise and the nature of use to which a built-up property may be subjected in any particular area. The individuals as property owners have to pay some price for securing peace, good order, dignity, protection and comfort and safety of the community. Not only filth, stench and unhealthy places have to be eliminated, but the layout helps in achieving family values, youth values, seclusion and clean air to make the locality a better place to live. Building regulations also help in reduction or elimination of fire hazards, the avoidance of traffic dangers and the lessening of prevention of traffic congestion in the streets and roads. Zoning and building regulations are also legitimised from the point of view of the control of community development, the prevention of overcrowding of land, the furnishing of recreational facilities like parks

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and playgrounds and the availability of adequate water, sewerage and other governmental or utility services.

24. Structural and lot area regulations authorise the municipal authorities to regulate and restrict the height, number of storeys and other structures; the percentage of a plot that may be occupied; the size of yards, courts and open spaces; the density of population; and the location and use of buildings and structures. All these have in our view and do achieve the larger purpose of the public health, safety or general welfare. So are front setback provisions, average alignments and structural alterations. Any violation of zoning and regulation laws takes the toll in terms of public welfare and convenience being sacrificed apart from the risk, inconvenience and hardship which is posed to the occupants of the building." (emphasis supplied)

6. In *Shanti Sports Club* v. *Union of India*[10] this Court approved the order of the Delhi High Court which had declared the construction of sports complex by the appellant on the land acquired for planned development of Delhi to be illegal and observed: (SCC pp. 743-44, paras 74-75)

"*74.* In the last four decades, almost all cities, big or small, have seen unplanned growth. In the 21st century, the menace of illegal and unauthorised constructions and encroachments has acquired monstrous proportions and everyone has been paying heavy price for the same. Economically affluent people and those having support of the political and executive apparatus of the State have constructed buildings, commercial complexes, multiplexes, malls, etc. in blatant violation of the municipal and town planning laws, master plans, zonal development plans and even the sanctioned building plans. In most of the cases of illegal or unauthorised constructions, the officers of the municipal and other regulatory bodies turn blind eye either due to the influence of higher functionaries of the State or other extraneous reasons. Those who construct buildings in violation of the relevant statutory provisions, master plan, etc. and those who directly or indirectly abet such violations are totally unmindful of the grave consequences of their actions and/or omissions on the present as well as future generations of the country which will be forced to live in unplanned cities and urban areas. The people belonging to this class do not realise that the constructions made in violation of the relevant laws, master plan or zonal development plan or sanctioned building plan or the building is used for a purpose other than the one specified in the relevant statute or the master plan, etc., such constructions put unbearable burden on the public facilities/amenities like water, electricity, sewerage, etc. apart from creating chaos on the roads. The pollution caused due to traffic congestion affects the health of the road users. The pedestrians and people belonging to weaker sections of the society, who cannot afford the luxury of air-conditioned cars, are the worst victims of pollution. They suffer from skin diseases of different

10 (2009) 15 SCC 705 : (2009) 5 SCC (Civ) 707

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types, asthma, allergies and even more dreaded diseases like cancer. It can only be a matter of imagination how much the Government has to spend on the treatment of such persons and also for controlling pollution and adverse impact on the environment due to traffic congestion on the roads and chaotic conditions created due to illegal and unauthorised constructions. This Court has, from time to time, taken cognizance of buildings constructed in violation of municipal and other laws and emphasised that no compromise should be made with the town planning scheme and no relief should be given to the violator of the town planning scheme, etc. on the ground that he has spent substantial amount on construction of the buildings, etc....

75. Unfortunately, despite repeated judgments by this Court and the High Courts, the builders and other affluent people engaged in the construction activities, who have, over the years shown scant respect for regulatory mechanism envisaged in the municipal and other similar laws, as also the master plans, zonal development plans, sanctioned plans, etc., have received encouragement and support from the State apparatus. As and when the courts have passed orders or the officers of local and other bodies have taken action for ensuring rigorous compliance with laws relating to planned development of the cities and urban areas and issued directions for demolition of the illegal/unauthorised constructions, those in power have come forward to protect the wrongdoers either by issuing administrative orders or enacting laws for regularisation of illegal and unauthorised constructions in the name of compassion and hardship. Such actions have done irreparable harm to the concept of planned development of the cities and urban areas. It is high time that the executive and political apparatus of the State take serious view of the menace of illegal and unauthorised constructions and stop their support to the lobbies of affluent class of builders and others, else even the rural areas of the country will soon witness similar chaotic conditions."

7. In *Priyanka Estates International (P) Ltd.* v. *State of Assam*[11] this Court refused to order regularisation of the illegal construction raised by the appellant and observed: (SCC p. 42, para 55)

"*55.* It is a matter of common knowledge that illegal and unauthorised constructions beyond the sanctioned plans are on rise, may be due to paucity of land in big cities. Such activities are required to be dealt with by firm hands otherwise builders/colonisers would continue to build or construct beyond the sanctioned and approved plans and would still go scot-free. Ultimately, it is the flat owners who fall prey to such activities as the ultimate desire of a common man is to have a shelter of his own. Such unlawful constructions are definitely against the public interest and hazardous to the safety of occupiers and residents of multi-storeyed buildings. To some extent both parties can be said to be equally

11 (2010) 2 SCC 27 : (2010) 1 SCC (Civ) 283

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responsible for this. Still the greater loss would be of those flat owners whose flats are to be demolished as compared to the builder."

8. What needs to be emphasised is that illegal and unauthorised constructions of buildings and other structures not only violate the municipal laws and the concept of planned development of the particular area but also affect various fundamental and constitutional rights of other persons. The common man feels cheated when he finds that those making illegal and unauthorised constructions are supported by the people entrusted with the duty of preparing and executing master plan/development plan/zonal plan. The reports of demolition of hutments and jhuggi jhopris belonging to the poor and disadvantaged section of the society frequently appear in the print media but one seldom gets to read about demolition of illegally/unauthorisedly constructed multi-storeyed structures raised by economically affluent people. The failure of the State apparatus to take prompt action to demolish such illegal constructions has convinced the citizens that planning laws are enforced only against poor and all compromises are made by the State machinery when it is required to deal with those who have money power or unholy nexus with the power corridors.

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

10. The appellant is an enlightened resident of Kolkata. He succeeded in convincing the learned Single Judge of the Calcutta High Court to order demolition of unauthorised construction of multi-storeyed building by Respondent 7, M/s Unique Construction on the plot owned by Respondent 8, Sarjun Prasad Shaw but could not persuade the Division Bench to affirm the order of the learned Single Judge and this is the reason why he has approached this Court.

11. Mohammad Shahid (the sole proprietor-cum-attorney of Respondent 7) entered into an agreement with Respondent 8 for development of plot bearing No. 8/1F, Gopal Doctor Road, Kolkata. The building plan submitted by Respondent 7 for construction of two-storeyed building was sanctioned by the Corporation on 11-4-1990 and five years' time was given for completing the construction. When the site was inspected by the officers of the Corporation in October 2009, they found that Respondent 8 had raised unauthorised construction by erecting RCC column up to 3rd floor along with staircase in deviation of the sanctioned plan. Thereupon, stop-work

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notice was issued by the Executive Engineer (Civil), Building under Section 401 of the 1980 Act. However, instead of stopping the construction, Respondent 7 added one more floor. This brazen defiance of law by Respondent 7 led to the issuance of notices dated 15-10-2009 and 10-11-2009 under Sections 400(1) and 401-A respectively. Simultaneously, a report was submitted by the Deputy Chief Engineer (Building) to the Director General (Building-II), for demolition of the unauthorised construction on the ground that structural stability of the illegal construction was doubtful and existence of the same was dangerous to the lives of the people. The issue was then considered by the Mayor-in-Council on 14-1-2010 and it was decided to demolish the unauthorised construction. Accordingly, about 600 sq ft out of the total constructed area measuring 1500 sq ft was demolished on 4-2-2010.

12. In the meanwhile, the appellant filed WP No. 23741 of 2009 in the High Court for issue of a direction to the Corporation to demolish the illegal construction by Respondent 7. The same was disposed of by the learned Single Judge on 3-3-2010 with the direction that the objection raised by the appellant against the unauthorised construction be decided by the competent authority after hearing the affected parties. Simultaneously, it was ordained that no illegal construction be carried out in the premises in question.

13. Notwithstanding the decision of the Mayor-in-Council and the order of the High Court, Respondent 7 continued with the construction of the building, albeit in violation of the sanctioned plan. Therefore, the appellant filed a fresh writ petition which came to be registered as WP No. 13815 of 2010 for demolition of the unauthorised construction and for issue of a direction to the Corporation not to issue completion certificate in favour of Respondents 7 and 8. The second writ petition was disposed of by the learned Single Judge vide order dated 28-7-2010[12], the relevant portions of which are extracted below:

> "It appears from the submissions that the construction has been raised up to ground plus fourth floor which is beyond the sanctioned plan. It is evident from the photocopies of the records that it was resolved on 14-1-2010 in the MIC meeting of the Corporation that as the person responsible continued with the unauthorised construction which might lead to an accident, appropriate action towards demolition of the unauthorised construction should be taken forthwith under Section 400(8) of the Calcutta Municipal Corporation Act, 1980 with the help of the local administration.
>
> Since admittedly, unauthorised construction has been raised, that is, construction has been carried out beyond the sanctioned plan, I direct the Director General (Building-II), Kolkata Municipal Corporation and the Executive Engineer (Civil), Building Department, Borough-IX, Respondents 3 and 4 respectively, to demolish the unauthorised structure,

12 *Dipak Kumar Mukherjee* v. *Kolkata Municipal Corpn.*, WP No. 13815 of 2010, order dated 28-7-2010 (Cal)

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as resolved, within eight weeks from the date of communication of this order. During such demolition, if need be Respondents 3 and 4 are at liberty to seek assistance of the Officer-in-charge, Watgunge Police Station, Kolkata, Respondent 6 shall render all assistance in implementing the order of this Court."

14. Immediately thereafter, Mohammad Shahid submitted an application dated 13-8-2010 for regularisation of the unauthorised portion of the building under Section 400(1) of the 1980 Act. That application reads as under:

Dated: 13-8-2010

"To
The Executive Engineer (Civil),
Building Department Br.-IX,
Kolkata Municipal Corporation,
11, Belvedere Road, Kolkata 700 027.

Sub.: Regularisation of additional floor over sanctioned building.

Re: Pre: No. 8/1F, Gopal Doctor Road,
Ward No. 76, Br.-IX.

Dear Sir,

I, Md. Shahid, attorney of the abovementioned premises, am submitting herewith one copy of ammonia print of five-storeyed building plan. The said building was sanctioned for two storeys, and additional three more storeys have been constructed for accommodation of existing tenants and our family members.

Now I do request and pray to your good self to regularise the unauthorised portion of the said building under Section 400(1). For that I am ready to pay the penalty and charges for the same.

Hope your honour would extend your cooperation in this respect and oblige me.

Thanking you.

Yours faithfully,
sd/-
Md. Shahid"

15. Simultaneously, Respondent 7 challenged the order of the learned Single Judge by filing an appeal. During the pendency of the appeal, Mohammad Shahid filed an additional affidavit dated 16-9-2010, Paras 5 to 10 whereof are reproduced below:

"*5.* I state that a plan dated 11-4-2009 vide building Permit No. 2009090004 was sanctioned for Premises No. 8/1F, Gopal Doctor Road, Kidderpore, Kolkata 700 023, by Kolkata Municipal Corporation, for erection of a two-storeyed building, covering a sanctioned area measuring about 145.82 sq m. The proposed FAR for the said plan was 0.99 over land measuring about 145.927 sq m. But the building has been

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constructed up to five storeys. Presently, the total constructed cover area for the five-storeyed building is measuring about 559.57 sq m and the present FAR is 3.83.

6. I say that according to clause (*b*) sub-rule (2) of Rule 25 of the Calcutta Municipal Corporation Building Rules, 1990, 'if during the erection or execution of work any external deviation beyond the sanctioned covered space is intended to be made and which does not violate the provisions of the Act or the said Rules, the person erecting such construction, prior to carrying out such erection or execution of works, submit, in accordance with the provisions of the said Rules, a revised plan incorporating the deviation intended to be carried out, for obtaining necessary sanction thereof'.

7. I further say that clause (*b*) sub-rule (2) of Rule 25 of the Calcutta Municipal Corporation Building Rules, 1990, empowers the municipal authorities to allow a person to construct beyond the sanctioned covered area, which means construction exceeding the floor area ratio can be allowed to be carried on.

8. I say that there is no express provision in the Calcutta Municipal Corporation Act, 1980 and also in the Calcutta Municipal Corporation Building Rules, 1990, stopping a person from constructing beyond the floor area ratio. I further say that though none of the provisions of the Calcutta Municipal Corporation Act, 1980 and the Calcutta Municipal Corporation Building Rules, 1990, empowers Calcutta Municipal Corporation to regularise the construction made in excess of the sanctioned plan, but Kolkata Municipal Corporation gets the said power of regularisation by virtue of the Full Bench judgment of this Hon'ble Court delivered in *Purusottam Lalji* v. *Ratan Lal Agarwalla*[13]. In the said case this Hon'ble Court was pleased to decide that 'even in respect of matters which involve violation of unrelaxable building rules the Commissioner has discretion not to order demolition if the violation is not of serious nature'.

9. I say that I, on 13-8-2010, have already applied before Kolkata Municipal Corporation for regularisation of the construction erected beyond the sanctioned plan and have submitted a revised plan for sanction before the authority concerned. Copy of the letter dated 13-8-2010 and the revised plan is collectively annexed hereto and marked with the letter 'R-1'.

10. I say that the construction erected by me in the present case is not of a serious nature and there is no immediate threat that the building may fall down and the said fact shall be proved from the structural stability certificate issued by Shri Prabir Kumar Mitra, Civil Engineer, after due inspection of the premises in question.

13 AIR 1972 Cal 459

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A copy of the structural stability certificate is annexed hereto and marked with the letter 'R-2'."

16. The appellant filed detailed counter-affidavit dated 17-1-2011 reiterating his plea that the construction made by Respondent 7 was illegal. Thereafter, Respondent 8 filed affidavit dated 22-2-2010 and questioned the locus standi of the appellant to file the writ petition. Shri Tapas Chandra and Smt Asha Devi Shaw, to whom the unauthorised portions of the building are said to have been sold, got themselves impleaded as parties to the appeal filed by Respondent 7. On 1-3-2011, the Division Bench of the High Court suo motu directed issue of notice under Order 1 Rule 8 of the Code of Civil Procedure and publication thereof in two daily newspapers, one in Bengali and another in English so as to enable other purchasers of the unauthorised portions of the building to present their cause before the Court. The relevant portion of that order reads as under:

"1-3-2011

Mr Bhaskar Ghosh, learned advocate, has filed a report of the Officer-in-charge of Watgunge Police Station.

Let the first and second pages of the said report be endorsed by the learned Advocate Mr Ghosh.

Let the said report be kept on record.

From the said report it appears that in an unauthorised construction without sanction plan above 2nd floor, in terms of the complaint filed by Kolkata Municipal Corporation, Case No. 320 dated 14-10-2010 under Section 401-A of the CMC Act was started and developer/appellant and the respondent/owner are accused in the said proceeding.

It is submitted by the learned Advocate Mr Chatterjee, appearing for the developer and Mr Bhattacharya, learned advocate appearing for the owner that their clients already have been granted bail in that criminal proceeding and trial is continuing.

It is further submitted by the learned advocate appearing for the developer/appellant and the learned advocate appearing for the respondent/owner that the premises concerned, as have been constructed, though on breach of the sanction plan of Kolkata Municipal Corporation but many persons have been provided with occupation in different flats by selling the flats concerned of the said property or providing their occupation on considering their earlier tenancy right.

Let affidavits be filed by them disclosing the total number of flats of the premises concerned, the names of the occupants therein, if any, detailing the particulars, namely, their right and the instruments executed by the appellant and/or the respondent/owner concerned, so that the Court may pass appropriate order was to whether those persons should be heard to not before passing any decision in this appeal.

Let such affidavits be filed within 10 days from date.

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The matter is posted for hearing on 15-3-2011 at 10.30 a.m. as fixed matter.

Since it is the submission of the appellant that there are many occupants above the 2nd floor of the premises concerned up to the 5th floor which have been constructed without any sanction plan, for effective adjudication, let notice under Order 1 Rule 8 of the Code of Civil Procedure be published by the appellant within a week in two daily newspapers having State-wide publication; one in Bengali and another in English and will submit a supplementary affidavit disclosing his action to that effect."

17. On 15-3-2011, the High Court, after taking note of the fact that none of the occupants had come forward to espouse their cause, directed that a fresh notice be published under Order 1 Rule 8 CPC. The second opportunity given by the High Court was also not availed by the occupants of the illegally constructed portion of the building. The appeal filed by Respondent 7 was finally disposed of by the Division Bench of the High Court on 2-5-2011 and the competent authority of the Corporation was directed to take appropriate decision in accordance with law after complying with the principles of natural justice. This is evinced from the following extracts of the impugned order:

"Having heard the learned counsel appearing for the parties and considering the facts and circumstances of the case, we are of the view that the competent authority of Kolkata Municipal Corporation should take appropriate decision under the provisions of the Calcutta Municipal Corporation Act and the Building Rules framed thereunder while dealing with the allegations of unauthorised construction in respect of any building. In the present case, specific allegation has been made to the effect, that two floors of the building in question were constructed even in the absence of sanctioned building plan.

In the aforesaid circumstances, the competent authority of Kolkata Municipal Corporation must take appropriate decision in respect of the building in question upon complying with the provisions of the Calcutta Municipal Corporation Act and the Building Rules framed thereunder.

The Court cannot usurp the authority of Kolkata Municipal Corporation in this regard. The validity and/or legality of the decision of the Kolkata Municipal Corporation Authorities regarding demolition and/or retention of any unauthorised structure can be challenged before this Court but this Court under normal circumstances should not dictate the Kolkata Municipal Corporation Authorities to take any specific decision regarding demolition or retention of any structure without allowing the competent authority to take appropriate decision in this regard.

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The Kolkata Municipal Corporation Authorities should take appropriate decision in respect of the fate of an illegal structure at the first instance and the Court will thereafter adjudicate the correctness of such decision. The Court under normal circumstances should not either direct retention of any illegal structure or demolition of the same before allowing the competent authority of the Kolkata Municipal Corporation concerned to take appropriate decision in accordance with law.

For the aforementioned reasons, we direct the competent authority of Kolkata Municipal Corporation to consider the nature and magnitude of the unauthorised construction at the premises in question and take specific decision regarding retention or demolition of the same or any part thereof.

Needless to mention that the competent authority of Kolkata Municipal Corporation will take appropriate decision strictly in accordance with law and upon observing the principles of natural justice without any further delay but positively within a period of two months from date."

18. Shri Bhaskar P. Gupta, learned Senior Counsel appearing for the appellant argued that the direction given by the Division Bench is legally unsustainable because while deciding the appeal preferred by Respondent 7, the Division Bench of the High Court overlooked the fact that the Mayor-in-Council had, after giving notice and opportunity of hearing to the representative of Respondent 7, already passed order on 14-1-2010 for demolition of the unauthorised construction. The learned Senior Counsel emphasised that Respondent 7 had defied the "stop-work notice", decision taken by Mayor-in-Council and continued with the construction of the building even after demolition of the unauthorised portion thereof and argued that the Division Bench of the High Court committed serious error by ordaining compliance with the rule of audi alteram partem ignoring that Respondent 7 had never contested the factum of unauthorised construction. Shri Bhaskar P. Gupta relied upon the judgments of this Court in *Friends Colony Development Committee* v. *State of Orissa*[9] and *Priyanka Estates International (P) Ltd.* v. *State of Assam*[11] and argued that the Division Bench of the High Court committed serious error by interfering with the direction given by the learned Single Judge for demolition of the construction which was raised by Respondent 7 in violation of the sanctioned plan and by showing total contempt for the notices issued by the Corporation under Sections 400 and 401 of the 1980 Act.

19. Shri Kalyan Bandopadhyay, learned counsel for the Corporation extensively referred to the pleadings of the parties to show that the representative of Respondent 7 had admitted construction of building in

9 (2004) 8 SCC 733
11 (2010) 2 SCC 27 : (2010) 1 SCC (Civ) 283

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violation of the sanctioned plan and argued that such construction cannot be regularised under Rule 25(2) of the Calcutta Municipal Corporation Building Rules, 1990 (for short "the Rules").

20. The learned counsel for Respondent 7 fairly conceded that the construction raised by his client is contrary to the sanctioned plan but argued that the Corporation is duty-bound to pass appropriate order on the application filed for regularisation of such construction. The learned counsel submitted that even though Rule 25(2) of the Rules may not be strictly applicable to the case of his client, the Corporation possesses inherent power to regularise the illegal construction and there is no justification to demolish the unauthorised portion of the building without deciding the application submitted on 13-8-2010.

21. We have considered the respective arguments and carefully perused the record. Since, Respondent 7 has not disputed that the building was constructed in violation of the sanctioned plan and the Mayor-in-Council passed order dated 14-1-2010 for demolition of the disputed construction, the direction given by the Division Bench of the High Court to the competent authority of the Corporation to pass appropriate order after giving opportunity of hearing to Respondent 7 cannot be sustained. It appears that attention of the Division Bench was not drawn to the notices issued by the competent authority of the Corporation under Sections 400, 401 and 401-A of the 1980 Act and the order dated 14-1-2010 passed by the Mayor-in-Council, else it would not have decided the appeal by assuming that the competent authority had not passed an order for demolition of the illegal construction. The factum of illegal construction having been raised by Respondent 7 is also evinced from the counter-affidavits filed on behalf of Respondents 1 to 5 and Respondent 7 respectively.

22. In Paras 4(*a*) to (*c*), (*e*) to (*h*), (*j*) and (*k*), Shri Amitava Roy Chaudhary, Executive Engineer (Civil), Building Department, Kolkata Municipal Corporation has explained the Corporation's stand in the following words:

> "*4*. I crave leave of this Hon'ble Court to set out the following facts in connection with the present SLP:
>
> (*a*) A building plan being Building Sanction Plan No. 2009090004 was sanctioned on 11-4-2009 by the authority of the Corporation concerned in favour of one Md. Shahid for construction of two-storeyed residential building in respect of Premises No. 8/1F, Gopal Doctor Road, Kolkata 700 023 (hereinafter referred to as 'the said premises') and the same to be completed within five years from the date of sanction i.e. 10-4-2014 as per the said sanction.
>
> (*b*) On or about October 2009 the officers of the Corporation concerned inspected the said premises after receiving a complaint over telephone about the unauthorised construction being made in the said premises. Upon the said complaint the officials concerned

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inspected the said premises and found that RCC columns were erected up to 3rd floor level with projections of some columns above 3rd floor level and casting of RCC slab were made up to 3rd floor level along with staircase in deviation from the said sanction plan for which a notice under Section 401 of the CMC Act, 1980 was served on 8-10-2009 to Md. Shahid, the person responsible, to stop forthwith further progress of the construction work and the same was received by the person responsible. Moreover, an intimation was sent to the Officer-in-charge, Watgunge Police Station, Kolkata, requesting him for follow-up action in the prevention of unauthorised construction at the said premises which was in deviation and beyond the sanction plan.

A true copy of notice under Section 401 of the CMC Act and a copy of the intimation given to the Officer-in-charge, Watgunge Police Station, Kolkata, are annexed as Annexures P-1 & P-2 at pp. 23-27 of the SLP paper book.

(*c*) It appeared from the records of the KMC that in spite of service of notice under Section 401 of the CMC Act, 1980 to stop construction forthwith, the person responsible continued with the construction works defying the said stop-work notice for which first time municipal guard watch was posted from 12-10-2009 in respect of the said premises and an intimation of the said posting of guard watch was given to the person responsible for prevention of the continuance of unauthorised construction thereon.

* * *

(*e*) On or about November 2009 the officers of the Building Department of the Corporation concerned further inspected the said premises and found that the construction works were going on up to 4th floor level in spite of posting of guard watch. Accordingly, considering the gravity of the situation and safety of the adjoining structure as well as the safety of the public in general the authority concerned suggested that action under Section 401-A of the CMC Act, 1980 may be taken against the said person responsible and a proposal was made by the officials of the Corporation concerned, besides to it the same was sent to Watgunge Police Station for taking action against the person responsible or any other person who has conspired to make the said unauthorised construction. A true copy of the said proposal dated 10-11-2009 is annexed as Annexure P-4 at p. 30 of the SLP paper book.

(*f*) After considering the said statement and the demolition sketch the Deputy Chief Engineer (Building) submitted a report to the Director General (Building-II), KMC. In the said report the Deputy Chief Engineer (Building) mentioned that since the nature of the unauthorised construction works are massive and there was defiant

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attitude of the person responsible and since the premises are situated in congested area, the construction had been done in a haphazard manner without following the norms and practice of Civil Engineering. It was felt that the structural stability of the impugned construction is doubtful which would create several hazards like traffic congestion, fire hazards, environmental hazards, etc. Accordingly, it was recommended that action under Section 400(8) of the CMC Act, 1980 may be taken against the said unauthorised construction in the said premises to cause such building or work to be demolished forthwith, and the same was placed before the Member, Mayor-in-Council for approval.

(*g*) The Member, Mayor-in-Council approved the said recommendation. On 14-1-2010, upon such approval the Mayor-in-Council resolved that unauthorised construction/structures at the said premises be demolished forthwith under Section 400(8) of the CMC Act, 1980 with the help of the local administration. A true copy of the said proposal of the said premises and the resolution of the Mayor-in-Council dated 14-10-2010 is annexed as Annexure P-5 (Colly) at pp. 31-32 of the SLP paper book.

(*h*) In accordance with the said resolution of the Mayor-in-Council the demolition squad of the Corporation went to the said premises on 4-2-2010 and was able to demolish a portion of the unauthorised construction about 600 sq ft approx. out of approx. 1500 sq ft of the said unauthorised construction in the said premises. The demolition squad also submitted a report of the said structure in the said premises. In the said report the reason for not being able to demolish the entire unauthorised structure was also stated. A true copy of the demolition report and the demolition sketch is annexed as Annexure P-6 at p. 33 of the SLP paper book.

* * *

(*j*) Pursuant to the directions of the Calcutta High Court, the Executive Engineer concerned gave a hearing on 8-4-2010 to the petitioner and the respondent, M/s Unique Constructions represented by its proprietor Md. Shahid, the person responsible for making unauthorised constructions and on 16-4-2010 the Executive Engineer concerned passed an order and communicated the same to the respective parties. A true copy of the said order dated 16-4-2010 is annexed as Annexure P-8 (at pp. 36-37) of the SLP paper book.

(*k*) Thereafter, on the basis of the said order of the Executive Engineer, on 20-7-2010 the Assistant Engineer concerned along with the Sub-Assistant Engineer inspected the said premises and found that the demolished portion of the said building has been repaired by the said person responsible and also found that the said building is full of occupancy."

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23. In Paras 4, 5 and 6 of his affidavit, Mohammad Shahid has averred as under:

"*4*. That since Premises No. 8/1F, Gopal Doctor Road, Police Station Watgunge, Kolkata having an area of about 2 cottahs 11 chittacks 33 sq ft was covered with temporary structures and some of which were tiles and asbestos, etc. The said structures were occupied by various tenants and partly by the landlord. Therefore, the owner/landlord decided to enter into an agreement with the answering respondent for undertaking necessary construction works since the property became uninhabitable. Thus necessary agreements were executed by and between the answering respondent and owner/landlord for the construction work in the premises in question.

Accordingly, thereafter a plan dated 11-4-2009 vide Building Permit No. 2009090004 was sanctioned for Premises No. 8/1F, Gopal Doctor Road, Kidderpore, Kolkata 700 023, by Kolkata Municipal Corporation for erection of a two-storeyed building, covering a sanctioned area measuring about 145.82 sq m. The proposed FAR for the said plan was 0.99 over land measuring about 145.927 sq m. But the building has been constructed up to five storeys. Presently the total constructed cover area for the five-storeyed building is measuring about 55.57 sq m and the present FAR is 3.83.

5. That subsequent thereto as per the requirement of the owner and the tenants in the said premises construction up to the floor more than sanctioned was constructed. Upon construction the answering respondent filed an application with Kolkata Municipal Corporation under Rule 25(2)(*b*) of the Building Rules on 13-8-2010 for regularisation of the construction erected beyond sanctioned plan and a revised plan was submitted for sanction before the competent authority.

6. That according to clause (*b*) sub-rule (2) of Rule 25 of the Calcutta Municipal Corporation Building Rules, 1990 it is provided that if during the erection or execution of work any external deviation beyond the sanctioned covered space is intended to be made and which does not violate the provisions of the Act or the said Rules, the person erecting such construction, prior to carrying out such erection or execution of works, submit, in accordance with the provisions of the said Rules, a revised plan incorporating the deviation intended to be carried out, for obtaining necessary sanction thereof. Further clause (*b*) sub-rule (2) of Rule 25 of the Calcutta Municipal Corporation Building Rules, 1990, empowers the municipal authorities to allow a person to construct the sanctioned covered area, which means construction exceeding the floor area ratio can be allowed to be carried on."

24. In view of the pleadings filed before the High Court and the affidavits filed before this Court, there is no escape from the conclusion that Respondent 7 had raised construction in violation of the plan sanctioned under Section 396 of the 1980 Act and continued with that activity despite

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the order of the Mayor-in-Council. In the prevailing scenario, the representative of Respondent 7 might have thought that he will be able to pull strings in the power corridors and get an order for regularisation of the illegal construction but he did not know that there are many mortals in the system who are prepared to take the bull by horn and crush it with iron hand.

25. Rule 25 of the Rules, on which reliance was placed by Respondent 7 for seeking regularisation of the illegal construction, reads as under:

> "**25.** ***Deviation during execution of works***.—(1) No deviation from the sanctioned plan shall be made during erection or execution of any work.
>
> (2) Notwithstanding anything contained in sub-rule (1), if during erection or execution of work any internal alterations or external additions which do not violate the provisions of the Act or these Rules is made, the Municipal Commissioner may without prejudice to any action that may be taken against the person at whose instance such alteration or additions have been made, allow the person referred to in sub-rule (1) of Rule 4 to submit, in accordance with the provisions of these Rules, a revised plan showing the deviation and may sanction such plan.
>
> (3) Any departure made during the execution of any work or at any time thereafter without sanction shall be deemed to be in contravention of the provisions of the Act and these Rules and shall be dealt with accordingly."

26. A reading of the plain language of Rule 25(1) makes it clear that a person, who erects any structure or executes any work is not entitled to deviate from the sanctioned plan. Rule 25(2) which contains a non obstante clause and provides for sanction of revised plan to be submitted by the person engaged in erection of building or execution of work lays down that if during erection or execution of work, any internal alterations or external additions which do not violate the provisions of the Act or the Rules is made, the Municipal Commissioner can, at an application made in that behalf sanction the revised plan showing the deviation. Rule 25(3) is declaratory in nature. It lays down that any departure made during the execution of any work or at any time thereafter without sanction shall be deemed to be in contravention of the Act and the Rules shall be dealt with accordingly.

27. In our view, Respondent 7 cannot take benefit of Rule 25 because the disputed construction was in clear violation of the sanctioned plan and the notices issued by the competent authority of the Corporation and also because the application was made after completion of the construction.

28. Before parting with the case, we consider it necessary to observe that Respondent 7 is guilty not only of violating the sanctioned plan and the relevant provisions of the 1980 Act and the Rules framed thereunder but also of cheating those who purchased portions of unauthorised construction under a bona fide belief that Respondent 7 had constructed the building as per the sanctioned plan. With the demolition of unauthorised construction some of such persons will become shelterless. It is, therefore, necessary that Respondent 7 is directed to compensate them by refunding the cost of the flat, etc., with interest. Respondent 7 must also pay for raising construction in violation of the sanctioned plan.

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29. It must be remembered that while preparing master plans/zonal plans, the Planning Authority takes into consideration the prospectus of future development and accordingly provides for basic amenities like water and electricity lines, drainage, sewerage, etc. Unauthorised construction of buildings not only destroys the concept of planned development which is beneficial to the public but also places unbearable burden on the basic amenities and facilities provided by the public authorities. At times, construction of such buildings becomes hazardous for the public and creates traffic congestion. Therefore, it is imperative for the public authorities concerned not only to demolish such construction but also impose adequate penalty on the wrongdoer.

30. In the result, the appeal is allowed and the impugned judgment is set aside. With a view to ensure that the illegal construction raised by Respondent 7 is pulled down without delay, we issue the following directions:

30.1. Within three months from today, Respondent 7 shall pay the price of the flats, etc. to the purchasers with interest @ 18% per annum from the date of payment.

30.2. The occupiers of illegal/unauthorised construction shall vacate such portions of the building within the next one month.

30.3. Within the next one month, the Corporation shall demolish unauthorised construction after taking adequate precautionary measures.

30.4. Respondent 7 shall pay costs of Rs 25,00,000 for brazen violation of the sanctioned plan and continuance of illegal construction despite "stop-work notice". The amount of cost shall be deposited with the Kolkata State Legal Service Authority within three months and the same be utilised for providing legal aid in deserving cases.

31. Reports showing compliance with the aforesaid directions be filed by the Corporation and Respondent 7 in the Registry of the Calcutta High Court within six months. Thereafter, the matter be placed before the learned Single Judge who had passed the order dated 28-7-2010[12]. If the learned Single Judge finds that any of the aforesaid directions has not been implemented then he shall initiate proceedings against the defaulting officers and/or Respondent 7 under the Contempt of Courts Act, 1971 and pass appropriate order.

---

12 *Dipak Kumar Mukherjee* v. *Kolkata Municipal Corpn.*, WP No. 13815 of 2010, order dated 28-7-2010 (Cal)

Item No. 01 Court No. 1

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(By Video Conferencing)

Original Application No. 606/2018

(**In respect of State of Maharashtra**)

In re: **Compliance of Municipal Solid Waste Management Rules, 2016 and other environmental issues**

(Arising out of directions of the Hon'ble Supreme Court in W.P. No. 888/1996 and W.P. No. 375/2012)

Date of hearing: 08.09.2022

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER

Present: Shri Manu Kumar Shrivastava, Chief Secretary
Smt. Manisha Mhaiskar, Principal Secretary, Environment Dept.
Dr. Sonia Sethi, Principal Secretary, Urban Development Dept.
Shri P. Velarasu, Addl. Municipal Commissioner, MCGM
Shri Vikram Kumar, Municipal Commissioner, Pune
Shri Ashok Shingare, Member Secretary, MPCB
Shri Sameer Unahale, Director, Swacch Maharashtra
Shri A.V. Jevalikar, Dy. Secretary, UD
Shri C.A. Vibhute, Dy. Secretary
Shri S.B. Sandanshiv, Under Secretary
Dr. Y.B. Sontakke, JD
Dr. J.B. Sanjewar, RO, HR
Dr. N.N. Gurav, R.O., BMC

ORDER

The Issue – Monitoring of compliance of waste in terms of orders of Hon'ble Supreme Court

1. The issues of solid as well as liquid waste management are being monitored by this Tribunal as per orders of the Hon'ble Supreme Court order dated 02.09.2014 in *Writ Petition No. 888/1996, Almitra H. Patel vs. Union of India & Ors.,* with regard to solid waste management and order

dated 22.02.2017 in W.P. No. 375/2012, reported in (*2017) 5 SCC 326, Paryavaran Suraksha vs. Union of India,* with regard to liquid waste management. Other related issues include pollution of 351 river stretches, 124 non-attainment cities in terms of air quality, 100 polluted industrial clusters, illegal sand mining etc. which have also been dealt with earlier but we propose to limit the proceedings in the present matter to two issues of solid waste and sewage management.

ORDERS OF THE HON'BLE SUPREME COURT TRANSFERRING THE ISSUE OF SOLID WASTE MANAGEMENT AND LIQUID WASTE MANAGEMENT TO THIS TRIBUNAL:

Solid Waste Management

2. While transferring the issue of solid waste management vide Order dated 02.09.2014 in *Writ Petition No. 888/1996, Almitra H. Patel Vs. Union of India & Ors.*, the Hon'ble Supreme Court observed **"handling of solid municipal waste is a perennial challenge and would require constant efforts and monitoring with a view to making the municipal authorities concerned accountable, taking note of dereliction, if any, issuing suitable directions consistent with the said Rules and direction incidental to the purpose underlying the Rules such as upgradation of technology wherever possible. All these matters can, in our opinion, be best left to be handled by the National Green Tribunal established under the National Green Tribunal Act, 2010. The Tribunal, it is common ground, is not only equipped with the necessary expertise to examine and deal with the environment related issues but is also competent to issue in appropriate cases directions considered necessary for enforcing the statutory provisions."**

3. Before transferring the said proceedings, matter was monitored by Hon'ble Supreme Court for about eighteen years and orders passed include

(2000) 2 SCC 679 and *(2004) 13 SCC 538,* directing scientific disposal of waste by setting up of compost plants/processing plants, preventing water percolation through heaps of garbage, creating focused **'solid waste management cells'** in all States and complying with the Municipal Solid Waste Management Rules, 2000 (now replaced by SWM Rules, 2016). **It was observed that the local authorities constituted for providing services to the citizens are lethargic and insufficient in their functioning which is impermissible. Non-accountability has led to lack of effort on the part of the employees.** Domestic garbage and sewage along with poor drainage system in an unplanned manner contribute heavily to the problem of solid waste. The number of slums have multiplied significantly occupying large areas of public land. Promise of free land attracts more land grabbers. **Instead of "slum clearance" there is "slum creation" in cities which is further aggravating the problem of domestic waste being strewn in the open**. Accordingly, the Court directed that provisions pertaining to sanitation and public health be complied with, streets and public premises be cleaned daily, **statutory authorities levy and recover charges from any person violating laws and ensure scientific disposal of waste**, landfill sites be identified keeping in mind requirement of the city for next 20 years and environmental considerations, sites be identified for setting up of compost plants, steps be taken to prevent fresh encroachments and compliance report be submitted within eight weeks. Further observations in the judgment of the Hon'ble Supreme Court[1] are:

> *"3. The petitioner has handed over a note in the Court showing the progress that has been made in some of the States and also setting out some of the suggestions, including the suggestion for creation of solid waste management cell, so as to put a focus on the issue and also to provide incentives to those who perform*

[1] (2004) 13 SCC 538

well as was tried in some of the States. The said note states as under:

"1. As a result of the Hon'ble Supreme Court's orders on 26-7-2004, in Maharashtra the number of authorisations granted for solid waste management (SWM) has increased from 32% to 98%, in Gujarat from 58% to 92% and in M.P. from NIL to 34%. No affidavits at all have been received from the 24 other States/UTs for which CPCB reported NIL or less than 3% authorisations in February 2004. All these States and their SPCBs can study and learn from Karnataka, Maharashtra and Gujarat's successes.

2. ***All States/UTs and their SPCBs/PCCs have totally ignored the improvement of existing open dumps, due by 31-12-2001****, let alone identifying and monitoring the existing sites. Simple steps can be taken immediately at almost no cost by every single ULB to prevent monsoon water percolation through the heaps, which produces highly polluting black run-off (leachate). Waste heaps can be made convex to eliminate standing water, upslope diversion drains can prevent water inflow, downslope diversion drains can capture leachate for recirculation onto the heaps, and disused heaps can be given soil cover for vegetative healing.*

3. Lack of funds is no excuse for inaction. Smaller towns in every State should go and learn from Suryapet in A.P. (population 103,000) and Namakkal in T.N. (population 53,000) which have both seen dustbin-free 'zero garbage towns' complying with the MSW Rules since 2003 with no financial input from the State or the Centre, just good management and a sense of commitment.

4. States seem to use the Rules as an excuse to milk funds from the Centre, by making that a precondition for action and inflating waste processing costs 2-3 fold. *The Supreme Court Committee recommended 1/3 contribution each from the city, State and Centre. Before seeking 70-80% Centre's contribution, every State should first ensure that each city first spends its own share to immediately make its wastes non-polluting by simple sanitising/stabilising, which is always the first step in composting viz. inoculate the waste with cow dung solution or bio culture and placing it in windrows (long heaps) which are turned at least once or twice over a period of 45 to 60 days.*

5. Unless each State creates a focussed ***'solid waste management cell'*** *and rewards its cities for good performance, both of which Maharashtra has done, compliance with the MSW Rules seems to be an illusion.*

> 6. ***The admitted position is that the MSW Rules have not been complied with even after four years.*** *None of the functionaries have bothered or discharged their duties to ensure compliance.* ***Even existing dumps have not been improved.*** *Thus deeper thought and urgent and immediate action is necessary to ensure compliance in future."*

4. In this regard, reference may also be made to orders of Hon'ble Supreme Court in *Municipal Council, Ratlam vs. Vardhichand*[2] and *B.L. Wadhera v. Union of India and Ors.*[3] laying down that **clean environment is fundamental right of citizens under Article 21** and it is for the local bodies as well as the State to ensure that public health is preserved by taking all possible steps. **For doing so, financial inability cannot be pleaded.** We note that even after 26 years of monitoring, 18 years by Hon'ble Supreme Court and eight years by this Tribunal, ground situation remains unsatisfactory.

Liquid Waste Management

5. Hon'ble Supreme Court in *Paryavaran Suraksha vs. Union of India*[4] required this Tribunal to monitor directions for proper treatment of sewage to prevent untreated sewage and other effluents being discharged in water bodies by directing "We are of the view that mere directions are inconsequential, unless a rigid implementation mechanism is laid down. We, therefore, hereby provide that the directions pertaining to continuation of industrial activity only when there is in place a functional "primary effluent treatment plants", and the setting up of functional "common effluent treatment plants" within the timelines, expressed above, shall be of the Member Secretaries of the Pollution Control Boards concerned. The Secretary of the Department of Environment, of the State Government

[2] (1980) 4 SCC 162
[3] (1996) 2 SCC 594
[4] (2017) 5 SCC 326

concerned (and the Union Territory concerned), shall be answerable in case of default. **The Secretaries to the Government concerned shall be responsible for monitoring the progress and issuing necessary directions to the Pollution Control Board concerned, as may be required, for the implementation of the above directions. They shall be also responsible for collecting and maintaining records of data, in respect of the directions contained in this order. The said data shall be furnished to the Central Ground Water Authority, which shall evaluate the data and shall furnish the same to the Bench of the jurisdictional National Green Tribunal. To supervise complaints of non-implementation of the instant directions, the Benches concerned of the National Green Tribunal, will maintain running and numbered case files, by dividing the jurisdictional area into units. The abovementioned case files will be listed periodically. The Pollution Control Board concerned is also hereby directed to initiate such civil or criminal action, as may be permissible in law, against all or any of the defaulters."**

6. Extracts from the judgement of the Hon'ble Supreme Court in *Paryavaran Suraksha Samiti Vs. Union of India* are as follows:

> "***7.*** *Having effectuated the directions recorded in the foregoing paragraphs, the next step would be, to set up common effluent treatment plants.* ***We are informed, that for the aforesaid purpose, the financial contribution of the Central Government is to the extent of 50%, that of the State Government concerned (including the Union Territory concerned) is 25%. The balance 25%, is to be arranged by way of loans from banks****. The above loans, are to be repaid, by the industrial areas, and/or industrial clusters. We are also informed that the setting up of a common effluent treatment plant, would ordinarily take approximately two years (in cases where the process has yet to be commenced). The reason for the above prolonged period, for setting up "common effluent treatment plants",*

according to the learned counsel, is not only financial, but also, the requirement of land acquisition, for the same.

x……x……x…….

10. *Given the responsibility vested in municipalities under Article 243-W of the Constitution, as also, in Item 6 of Schedule XII, wherein the aforesaid obligation, pointedly extends to "public health, sanitation conservancy and solid waste management", we are of the view that the onus to operate the existing common effluent treatment plants, rests on municipalities (and/or local bodies). Given the aforesaid responsibility, the municipalities (and/or local bodies) concerned, cannot be permitted to shy away from discharging this onerous duty.* ***In case there are further financial constraints, the remedy lies in Articles 243-X and 243-Y of the Constitution. It will be open to the municipalities (and/or local bodies) concerned, to evolve norms to recover funds, for the purpose of generating finances to install and run all the "common effluent treatment plants", within the purview of the provisions referred to hereinabove. Needless to mention that such norms as may be evolved for generating financial resources, may include all or any of the commercial, industrial and domestic beneficiaries, of the facility.*** *The process of evolving the above norms, shall be supervised by the State Government (Union Territory) concerned, through the Secretaries, Urban Development and Local Bodies, respectively (depending on the location of the respective common effluent treatment plant).* ***The norms for generating funds for setting up and/or operating the "common effluent treatment plant" shall be finalised, on or before 31-3-2017, so as to be implemented with effect from the next financial year. In case, such norms are not in place, before the commencement of the next financial year, the State Governments (or the Union Territories) concerned, shall cater to the financial requirements, of running the "common effluent treatment plants", which are presently dysfunctional, from their own financial resources.***

11. *Just in the manner suggested hereinabove, for the purpose of setting up of "common effluent treatment plants", the State Governments concerned (including, the Union Territories concerned) will prioritise such cities, towns and villages, which discharge* ***industrial pollutants and sewer, directly into rivers and water bodies.***

12. *We are of the view that in the manner suggested above,* ***the malady of sewer treatment, should also be dealt with simultaneously.*** *We, therefore, hereby direct that "sewage treatment plants" shall also be set up and made*

functional, within the timelines and the format, expressed hereinabove."

7. Expression 'Common Effluent Treatment Plants" in para 7 may infact refer to the STPs, as the context shows.

8. On this subject, inspite of deadline of 31.3.2018 fixed by Hon'ble Supreme Court for preventing discharge of pollutants and rigorous monitoring by this Tribunal for the last five years, ground situation remains unsatisfactory.

Procedural History of present proceedings before this Tribunal

9. In the light of above, the Tribunal has considered the matter in the last eight years as far as solid waste management is concerned and more than five years as far as liquid waste management is concerned. Main orders on the subject include orders dated 22.12.2016, 31.08.2018, 16.01.2019, 28.8.2019, 12.09.2019, 6.12.2019, 07.01.2020, 28.02.2020, 02.07.2020, 14.12.2020, 22.2.2021, 30.11.2021, 14.12.2020 and 31.05.2022. First two orders - dated 22.12.2016 and 31.08.2018 deal only with solid waste management. Orders dated 28.8.2019, 6.12.2019 and 22.2.2021 deal with only liquid waste management while the remaining orders deal with solid waste as well as liquid waste management. Issue of liquid waste has also been separately dealt with in OA No. 593/2017 which was finally disposed of on 22.02.2021 with direction that further monitoring be undertaken by Central Monitoring Committee constituted by the said order. It was held that monitoring by the Tribunal cannot be for indefinite time and State authorities are primarily responsible for such monitoring after adequate monitoring by the Tribunal. By the same order, the Tribunal also dealt with the issue of 351 identified polluted river stretches in OA 673/2018. This is apart from individual cases dealing with

solid and liquid waste management. A brief reference of these orders will be made hereafter.

Orders dated 22.12.2016 and 31.08.2018

10. Vide order dated 22.12.2016, (2016) SCC Online NGT 2981, the issue of Solid Waste Management was disposed of requiring strict compliance of Solid Waste Management Rules, 2016 by all the States/UTs making it clear that if violations continue, the State will be liable to pay compensation. Later, matter was taken up to ascertain compliance status and finding that all the States/UTs were still non-compliant in the matter, the matter was again taken up and fresh directions issued for monitoring by the Tribunal constituted Monitoring Committees vide order dated 31.08.2018. Later, continuance of the committees was left to discretion of the States, depending on their own monitoring mechanism.

Order dated 16.01.2019 requiring personal presence of Chief Secretaries of all States and UTs to explore remedial action after interaction with them and further orders

11. In view of continuing non-compliances, vide order dated 16.01.2019, the Tribunal directed personal presence of Chief Secretaries of all States and UTs for interaction to ensure compliance. The Tribunal held that large scale non-compliance of environmental norms was resulting in deaths and diseases and irreversible damage to the environment, without accountability for such failures. Though violation of the Rules as well as orders of this Tribunal is criminal offence, still there was rampant violation by State authorities practically with no accountability which unhappy situation was required to be remedied by involvement of highest functionaries of the State in the interest of public health and to uphold rule of law.

12. In terms of order dated 16.1.2019, the Chief Secretaries of all the States/UTs appeared on different dates till 18.07.2019 and the Tribunal, after reviewing the status of noncompliance on most of the issues, directed further effective steps to be taken for compliance of the Rules and the environmental norms. The Chief Secretary of Maharashtra appeared on 08.04.2019 and following directions were issued:

> *"37. In view of above, after discussion with the Chief Secretary, following further directions are issued:*
>
> *i. Steps for compliance of Rules 22 and 24 of SWM Rules be now taken within six weeks to the extent not yet taken. Similar steps be taken with regard to Bio-Medical Waste Management Rules and Plastic Waste Management Rules.*
>
> *ii. Atleast three major cities and threemajor towns in the State and atleast three Panchayats in every District may be notified on the website within two weeks from today as model cities/towns/villages which will be made fully compliant within next six months.*
>
> *iii. The remaining cities, towns and Village Panchayats of the State may be made fully compliant in respect of environmental norms within one year.*
>
> *iv. A quarterly report be furnished by the Chief Secretary, every three months. First such report shall be furnished by July 10, 2019.*
>
> *v. The Chief Secretary may personally monitor the progress, atleast once in a month, with all the District Magistrates.*
>
> *vi. The District Magistrates or other Officers may be imparted requisite training.*
>
> *vii. The District Magistrates may monitor the status of compliance of environmental norms, atleast once in two weeks.*
>
> *viii. Performance audit of functioning of all regulatory bodies may be got conducted and remedial measures be taken, within six months."*

13. The Chief Secretary of Maharashtra appeared again on 24.01.2020 and the Tribunal inter-alia issued following directions:

"37. In view of above, consistent with the directions referred to in Para 29 issued on 10.01.2020 in the case of UP, Punjab and Chandigarh which have also been repeated for other States in matters already dealt with, we direct:

a. *In view of the fact that most of the statutory timelines have expired and directions of the Hon'ble Supreme Court and this Tribunal to comply with Solid Waste Management Rules, 2016 remain unexecuted, compensation scale is hereby laid down for continued failure after 31.03.2020. The compliance of the Rules requires taking of several steps mentioned in Rule 22 from Serial No. 1 to 10 (mentioned in para 12 above). Any such continued failure will result in liability of every Local Body to pay compensation at the rate of Rs. 10 lakh per month per Local Body for population of above 10 lakhs, Rs. 5 lakh per month per Local Body for population between 5 lakhs and 10 lakhs and Rs. 1 lakh per month per other Local Body from 01.04.2020 till compliance. If the Local Bodies are unable to bear financial burden, the liability will be of the State Governments with liberty to take remedial action against the erring Local Bodies. Apart from compensation, adverse entries must be made in the ACRs of the CEO of the said Local Bodies and other senior functionaries in Department of Urban Development etc. who are responsible for compliance of order of this Tribunal.*

b. *Legacy waste remediation was to 'commence' from 01.11.2019 in terms of order of this Tribunal dated 17.07.2019 in O.A. No. 519/2019 para 28*[5] *even though statutory timeline for 'completing' the said step is till 07.04.2021 (as per serial no. 11 in Rule 22), which direction remains unexecuted at most of the places. Continued failure of every Local Body on the subject of commencing the work of legacy waste sites remediation from 01.04.2020 till compliance will result in liability to pay compensation at the rate of Rs. 10 lakh per month per Local Body for population of above 10 lakhs, Rs. 5 lakh per month per Local Body for population between 5 lakhs and 10 lakhs and Rs. 1 lakh per month per other Local Body. If the Local Bodies are unable to bear financial burden, the liability will be of the State Governments with liberty to take remedial action against the erring Local Bodies. Apart from compensation, adverse entries must be made in the ACRs of the CEO of the said Local Bodies and other senior functionaries in Department of Urban Development etc. who are responsible for compliance of order of this Tribunal.*

[5] The Chief Secretaries may ensure allocation of funds for processing of legacy waste and its disposal and in their respective next reports, give the progress relating to management of all the legacy waste dumpsites. Remediation work on all other dumpsites may commence from 01.11.2019 and completed preferably within six months and in no case beyond one year. Substantial progress be made within six months. We are conscious that the SWM Rules provide for a maximum period of upto five years for the purpose, however there is no reason why the same should not happen earlier, in view of serious implications on the environment and public health.

c. *Further, with regard to thematic areas listed above in para 20, steps be ensured by the Chief Secretaries in terms of directions of this Tribunal especially w.r.t. plastic waste, bio-medical waste, construction and demolition waste which are linked with solid waste treatment and disposal. Action may also be ensured by the Chief Secretaries of the States/UTs with respect to remaining thematic areas viz. hazardous waste, e-waste, polluted industrial clusters, reuse of treated water, performance of CETPs/ETPs, groundwater extraction, groundwater recharge, restoration of water bodies, noise pollution and illegal sand mining.*

d. *The compensation regime already laid down for failure of the Local Bodies and/or Department of Irrigation and Public Health/In-charge Department to take action for treatment of sewage in terms of observations in para 33 above will result in liability to pay compensation as already noted above which is reproduced for ready reference:*

   i. *Interim measures for phytoremediation/ bioremediation etc in respect of 100% sewage to reduce the pollution load on recipient water bodies – 31.03.2020. Compensation is payable for failure to do so at the rate of Rs. 5 lakh per month per drain by concerned Local Bodies/States (in terms of orders dated 28.08.2019 in O.A. No. 593/2017 and 06.12.2019 in O.A. No. 673/2018) w.e.f. 01.04.2020.*

   ii. *Commencement of setting up of STPs – 31.03.2020. Compensation is payable for failure to do so at the rate of Rs. 5 lakh per month per STP by concerned Local Bodies/States (in terms of orders dated 28.08.2019 in O.A. No. 593/2017 and 06.12.2019 in O.A. No. 673/2018) w.e.f. 01.04.2020.*

   iii. *Commissioning of STPs – 31.03.2021. Compensation is payable for failure to do so at the rate of Rs. 10 lakh per month per STP by concerned Local Bodies/States (in terms of orders dated 28.08.2019 in O.A. No. 593/2017 and 06.12.2019 in O.A. No. 673/2018) w.e.f. 01.04.2021.*

e. *Compensation in above terms may be deposited with the CPCB for being spent on restoration of environment which may be ensured by the Chief Secretaries' of the States/UTs.*

f. *An 'Environment Monitoring Cell' may be set up in the office of Chief Secretaries of all the States/UTs within one month from today, if not already done for coordination and compliance of above directions which will be the responsibility of the Chief Secretaries of the States/UTs.*

g. *Compliance reports in respect of significant environmental issues may be furnished in terms of order dated 07.01.2020 quarterly with a copy to CPCB."*

14. **In short, the Tribunal expected three model cities, towns and villages to be made compliant in six months and the remaining State with one year. It was this target for the State by setting up of environmental cells directly under the Chief Secretaries, regular periodical monitoring by the Chief Secretaries at the State level and by the District Magistrates at the District level.** Further direction also was to take action for non-compliance by recovery of compensation and recording adverse ACRs against erring officers. The Tribunal also directed filing of quarterly reports by the Chief Secretaries. Based on such reports, CPCB was to file consolidated status reports. The Chief Secretaries were to appear again after six months with updated status of compliance. **It is difficult to hold that the State has taken directions of the Tribunal seriously or even endeavoured to go by this mandate. Even after three years, neither there is adequate compliance nor the same has been projected in immediate future. No accountability fixed, no performance audit shown to have been conducted and no entries in ACRs are shown to have been made. There is nothing to show that compensation has been recovered in terms of directions of the Tribunal. The State assumes that none is responsible for such gross violations of law and directions of Hon'ble Supreme Court and this Tribunal. It is difficult to say how rule of law will be achieved. We thus record our disappointment with the attitude of the State and hope the State makes amends in compliance now.**

15. The Tribunal has been receiving progress reports from States as well as monitoring Committees wherever functioning which have been considered by further orders.

Further Review after completing round of interaction with all Chief Secretaries by order dated 12.9.2019

16. The matter was then reviewed on 12.09.2019 in the light of report of the CPCB dated 09.09.2019 **showing wide gaps in compliance of solid waste, plastic waste, bio-medical waste management, rejuvenation of identified polluted river stretches, polluted industrial clusters and non-attainment cities**. A fresh schedule for appearance of the Chief Secretaries was issued. Vide order dated 07.01.2020, the Tribunal directed CPCB to ascertain Compliance of Solid Waste Management Rules, 2016 in terms of MSW generated, segregated and treated, gaps in the waste processing, enforcement of statutory timelines and orders of this Tribunal, number of sites remediated, and quantity of legacy waste therein and timelines for completing remediation. It was further directed that on the subject of sewage treatment, CPCB has to ascertain quantity of sewage generated and treated in the State, gap in the sewage treatment and timelines to bridge the gap, including strategy for use of treated water for secondary purpose. CPCB was accordingly directed to redesign its formats for securing relevant quantifiable information.

Order dated 28.02.2020

17. Accordingly, the Chief Secretaries of 18 States/UTs appeared and filed updated status reports. Since there still existed huge gaps in compliance, further directions were issued by way of different orders. Last such order is of 28.2.2020. Other orders are on same pattern. The direction part of the said order is reproduced below:

> *"41. In view of above, consistent with the directions referred to in Para 29 issued on 10.01.2020 in the case of UP, Punjab and Chandigarh which have also been repeated for other States in matters already dealt with, we direct:*
>
> **h.** *In view of the fact that most of the statutory timelines have expired and directions of the Hon'ble Supreme Court*

and this Tribunal to comply with Solid Waste Management Rules, 2016 remain unexecuted, ***interim compensation scale is hereby laid down for continued failure after 31.03.2020. The compliance of the Rules requires taking of several steps mentioned in Rule 22 from Serial No. 1 to 10 (mentioned in para 12 above). Any such continued failure will result in liability of every Local Body to pay compensation at the rate of Rs. 10 lakh per month per Local Body for population of above 10 lakhs, Rs. 5 lakh per month per Local Body for population between 5 lakhs and 10 lakhs and Rs. 1 lakh per month per other Local Body from 01.04.2020 till compliance. If the Local Bodies are unable to bear financial burden, the liability will be of the State Governments with liberty to take remedial action against the erring Local Bodies. Apart from compensation, adverse entries must be made in the ACRs of the CEO of the said Local Bodies and other senior functionaries in Department of Urban Development etc. who are responsible for compliance of order of this Tribunal. Final compensation may be assessed and recovered by the State PCBs/PCCs in the light of Para 33 above within six months from today. CPCB may prepare a template and issue an appropriate direction to the State PCBs/PCCs for undertaking such an assessment in the light thereof within one month.***

i. ***Legacy waste remediation was to 'commence' from 01.11.2019 in terms of order of this Tribunal dated 17.07.2019 in O.A. No. 519/2019 para 28[6] even though statutory timeline for 'completing' the said step is till 07.04.2021 (as per serial no. 11 in Rule 22), which direction remains unexecuted at most of the places and delay in clearing legacy waste is causing huge damage to environment in monetary terms as noted in para 33 above, pending assessment and recovery of such damage by the concerned State PCB within four months from today, continued failure of every Local Body on the subject of commencing the work of legacy waste sites remediation from 01.04.2020 till compliance will result in liability to pay compensation at the rate of Rs. 10 lakh per month per Local Body for population of above 10 lakhs, Rs. 5 lakh per month***

[6] The Chief Secretaries may ensure allocation of funds for processing of legacy waste and its disposal and in their respective next reports, give the progress relating to management of all the legacy waste dumpsites. Remediation work on all other dumpsites may commence from 01.11.2019 and completed preferably within six months and in no case beyond one year. Substantial progress be made within six months. We are conscious that the SWM Rules provide for a maximum period of upto five years for the purpose, however there is no reason why the same should not happen earlier, in view of serious implications on the environment and public health.

per Local Body for population between 5 lakhs and 10 lakhs and Rs. 1 lakh per month per other Local Body. If the Local Bodies are unable to bear financial burden, the liability will be of the State Governments with liberty to take remedial action against the erring Local Bodies. Apart from compensation, adverse entries must be made in the ACRs of the CEO of the said Local Bodies and other senior functionaries in Department of Urban Development etc. who are responsible for compliance of order of this Tribunal. Final compensation may be assessed and recovered by the State PCBs/PCCs in the light of Para 33 above within six months from today.

j. *Further, with regard to thematic areas listed above in para 20, steps be ensured by the Chief Secretaries in terms of directions of this Tribunal especially w.r.t. plastic waste, bio-medical waste, construction and demolition waste which are linked with solid waste treatment and disposal. Action may also be ensured by the Chief Secretaries of the States/UTs with respect to remaining thematic areas viz. hazardous waste, e-waste, polluted industrial clusters, reuse of treated water, performance of CETPs/ETPs, groundwater extraction, groundwater recharge, restoration of water bodies, noise pollution and illegal sand mining.*

k. *The compensation regime already laid down for failure of the Local Bodies and/or Department of Irrigation and Public Health/In-charge Department to take action for treatment of sewage in terms of observations in Para 36 above will result in liability to pay compensation as already noted above which are reproduced for ready reference:*

iv. Interim measures for phytoremediation/ bioremediation etc. in respect of 100% sewage to reduce the pollution load on recipient water bodies – 31.03.2020. Compensation is payable for failure to do so at the rate of Rs. 5 lakh per month per drain by concerned Local Bodies/States (in terms of orders dated 28.08.2019 in O.A. No. 593/2017 and 06.12.2019 in O.A. No. 673/2018) w.e.f. 01.04.2020.

v. Commencement of setting up of STPs – 31.03.2020. Compensation is payable for failure to do so at the rate of Rs. 5 lakh per month per STP by concerned Local Bodies/States (in terms of orders dated 28.08.2019 in O.A. No. 593/2017 and 06.12.2019 in O.A. No. 673/2018) w.e.f. 01.04.2020.

vi. ***Commissioning of STPs – 31.03.2021. Compensation is payable for failure to do so at the rate of Rs. 10 lakh per month per STP by concerned Local Bodies/States (in terms of orders dated 28.08.2019 in O.A. No. 593/2017 and 06.12.2019 in O.A. No. 673/2018) w.e.f. 01.04.2021.***

l. *Compensation in above terms may be deposited with the CPCB for being spent on restoration of environment which may be ensured by the Chief Secretaries' of the States/UTs.*

m. *An 'Environment Monitoring Cell' may be set up in the office of Chief Secretaries of all the States/UTs within one month from today, if not already done for coordination and compliance of above directions which will be the responsibility of the Chief Secretaries of the States/UTs.*

n. *Compliance reports in respect of significant environmental issues may be furnished in terms of order dated 07.01.2020 quarterly with a copy to CPCB.*

18. Timelines under the Rules referred to in sub para (a) above are **:**

"22. ***Time frame for implementation:-*** *Necessary infrastructure for implementation of these rules shall be created by the local bodies and other concerned authorities, as the case may be, on their own, by directly or engaging agencies within the time frame specified below:*

Sl. No.	***Activity***	***Time limit from the date of notification of rules***
(1)	*(2)*	*(3)*
1.	*Identification of suitable sites for setting up solid waste processing facilities.*	*1 year*
2.	*Identification of suitable sites for setting up common regional sanitary landfill facilities for suitable clusters of local authorities under 0.5 million population and for setting up common regional sanitary landfill facilities or stand alone sanitary landfill facilities by all local authorities having a population of 0.5 million or more.*	*1 year*
3.	*Procurement of suitable sites for setting up solid waste processing facility and sanitary landfill facilities.*	*2 years*
4.	*Enforcing waste generators to practice segregation of bio degradable, recyclable, combustible, sanitary waste domestic hazardous and inert solid wastes at source.*	*2 years*
5.	*Ensure door to door collection of segregated waste and its transportation in covered vehicles to processing or disposal facilities.*	*2 years*

6.	*ensure separate storage, collection and transportation of construction and demolition wastes.*	*2 years*
7.	*setting up solid waste processing facilities by all Local Bodies having 100000 or more population.*	*2 years*
8.	*Setting up solid waste processing facilities by Local Bodies and census towns below 100000 population.*	*3 years*
9.	*setting up common or stand alone sanitary landfills by or for all Local Bodies having 0.5 million or more population for the disposal of only such residual wastes from the processing facilities as well as untreatable inert wastes as permitted under the Rules.*	*3 years*
10.	*setting up common or regional sanitary landfills by 3 years all Local Bodies and census towns under 0.5 million population for the disposal of permitted waste under the rules.*	*3 years*
11.	*bio-remediation or capping of old and abandoned dump sites.*	*5 years*

"

19. **Our comments with regard to compliance of directions dated 28.2.2020 remain the same as in para 13 above.**

Order dated 02.07.2020

20. The matter was then considered on 02.07.2020. Having regard to the pandemic, appearance of remaining Chief Secretaries was deferred.

Order dated 14.12.2020

21. The matter was further considered on 14.12.2020 for review of progress. Scheduled appearance of remaining Chief Secretaries was dispensed with but it was directed that monitoring at the level of Chief Secretaries may continue and quarterly status reports be filed with CPCB so that CPCB may file a consolidated report every six months before the Tribunal. It was further directed that compensation in terms of earlier orders be recovered and credited to a separate account with the Environment Department of concerned State to be used for restoration of environment. It was also observed that in these proceedings Solid Waste

Management also will be monitored, other issues being considered in separate proceedings.

22. **As already noted above, there is nothing to show compliance by the State of Maharashtra on the issue of deposit of compensation and its utilization as directed.**

Further review on 30.11.2021 – huge gaps still found and hence, another round of interaction with Chief Secretaries proposed

23. The matter was thereafter taken up on 30.11.2021 to consider the report of CPCB dated 25.10.2020 giving compliance status in 32 States/UTs as in March, 2021 as follows:-

> **"Solid Waste Management**
>
> ***4.0 SUMMARY & CONCLUSIONS***
>
> *a. Total No. of ULBs in 29 States/UTs is 4186.*
>
> ***b. As per information provided by 29 States/UTs - total waste generated is 150858.951 TPD of which 94435.318 TPD is processed, which is 62.6% of the total waste generated in these States/UT. 11772.4538 TPD (7.8%) of the waste is landfilled and the gap in Solid waste management in 29 States is 45071.771 TPD which is 29.8% of the waste generated in these States/UTs.***
>
> *c. Information on MRF has been provided for 28 States/UTs covering 77% of ULBs in these States/UTs.*
>
> *d. Information on Recycling facilities have been provided for 22 States/UTs covering 39% of ULBs in these States/UTs*
>
> *e. Information on Composting facilities has been provided for all 29 States/UTs covering 70% of ULBs in these States/UTs*
>
> *f. Information on WtE has been provided for 25 out of 29 States/UTs covering 1.9% of ULBs in these States/UTs.*
>
> *g. Information on RDF has been provided for 24 out of 29 States/UTs covering 12.4% of ULBs in these States/UTs.*
>
> *h. Information on Biomethanation has been provided for 27 out of 29 States/UTs covering 7.1% of ULBs in these States/UTs.*
>
> ***i. Information on Landfills has been provided in 24 out of 29 States/UTs covering 18.9% of ULBs in the States.***

j. 498 of 2111 (23%) dumpsites in 25 States/UTs have been cleared and Remediation has been initiated in 23% (496) of the dumpsites.

k. Model Town/Cities have been identified in 25 States/UTs.

l. 16 States /UTs have established environmental cells.

m. 15 States /UTs have standardised rates for procurement of services/equipment required for solid waste management.

*n. In view of above, States/UTs need to develop of ULB wise action plan for collection, segregation, transportation and processing of waste and lay down an appropriate governance framework at state and district levels.**"***

24. The Tribunal in its order dated 30.11.2021 observed:-

"1to17....xxxx.....xxx.....xxx

18. We are of the view that hence forthwith proceedings in this matter need to cover Solid Waste Management and Sewage Management, these issues being crucial and required to be monitored by this Tribunal by the Hon'ble Supreme Court. Absence of management of waste results in adding to air and water pollution in a big way. All the legacy waste dump sites in the country need to be remediated to reduce methane gas, foul smell and leachate and also to release valuable land occupied by such sites which can be used for waste management/plantation or raising funds. Waste collected must be scientifically processed and disposed at the earliest in the interest of hygiene and public health. It needs to be ensured that instead of remediating the legacy waste sites, the garbage is not shifted to new sites which is not a solution to the problem. It only results in shifting the problem from one place to the other without any advancement of environment protection. What is necessary is that the garbage must be finally disposed of and land reclaimed. The authorities must move towards zero garbage at the end of the day by ensuring that instead of garbage being collected and dumped, it is taken to destination where it is finally processed scientifically and appropriately, except for reused/recycling of such residues as is possible. This is also the mandate of Swachh Bharat Mission, initiated by the Central Government. Similarly, sewage has to be scientifically treated to give effect to the mandate of Water (Prevention and Control of Pollution) Act, 1974 in the interest of availability of clean water in rivers and other waterbodies. Central Governments programmes also provide for initiatives on these subjects. On both aspects, compensation regime has been laid down which is necessary to enforce the rule of law and for protection of environment and public health. The compensation laid down has to be duly collected and utilized for restoration of environment, by being kept in a separate account. Accountability for the failures needs to be fixed by

way of ACRs and departmental action as such failures result in crimes under the law of land and damage to public health. Such failure is also breach of Constitutional obligation to uphold the Right to Life. The country is committed to Sustainable Development Goals of providing clean air and safe drinking water.

19. In view of above, continued failure of Rule of Law must be remedied in terms of mandate of orders of the Hon'ble Supreme Court in Writ Petition No. 888/1996, Almitra H. Patel Vs. Union of India & Ors. and Paryavaran Suraksha vs. Union of India,[7] followed by orders of this Tribunal. It is necessary that Chief Secretaries continue the monitoring and interact with this Tribunal periodically by video conferencing. Accordingly, we lay down following further schedule for personal appearance of the Chief Secretaries, by Video Conferencing, with the status of compliance in respect of each of the States/UTs on the subject of Solid Waste Management and Sewage Management. The data to be furnished should cover all categories of areas in the State – big cities, towns and villages.

20. The hearing on each of above dates will commence at 10:30 a.m. sharp. The Chief Secretaries may not delegate the responsibility. As far as possible, they may adjust other work for which long advance notice is being given. In case adjustment is found difficult for any unforeseen reason, request for change of date may be mailed by e-mail at judicial-ngt@gov.in.

21. All the States/CPCB may undertake process of verification of data after having interaction on video conferencing with the concerned States/UTs within one month. The Secretaries, Environment, Urban Development Department and Irrigation Department may also coordinate with the Member Secretaries of State Legal Services Authorities in all State/UTs in the light of background mentioned in paras 3 and 4 above for the awareness programmes on the subject."

Separate orders dated 28.8.2019, 12.9.2019, 6.12.2019 and 22.02.2021 on the subject of Liquid Waste Management

25. Issue of liquid waste management was separately dealt with in OA 593/2017 on directions of Hon'ble Supreme Court and in suo motu proceedings for restoration of 351 identified polluted river stretches in OA 673/2018. Vide order dated 28.08.2019, the Tribunal directed that 100% sewage treatment must be ensured by all local bodies. Vide further order

[7] (2017) 5 SCC 326

dated 06.12.2019 in O.A. No. 673/2018[8], the Tribunal directed that for failure to commence in-situ remediation, compensation will be payable at the rate of Rs. 5 lakh per month per drain after 31.03.2020 and for failure to commence setting up of STPs after 31.03.2020 compensation is to be paid at the rate of Rs. 5 lakh per month per STP. For failure to complete the project, compensation has to be paid at the rate of Rs. 10 lakh per STP per month after 31.03.2021. Relevant part of the order is quoted below:

> *"47. (i)* ***100% treatment of sewage may be ensured as directed by this Tribunal vide order dated 28.08.2019 in O.A. No. 593/2017 by 31.03.2020 atleast to the extent of in-situ remediation and before the said date, commencement of setting up of STPs and the work of connecting all the drains and other sources of generation of sewage to the STPs must be ensured.*** *If this is not done, the local bodies and the concerned departments of the States/UTs will be liable to pay compensation as already directed vide order dated 22.08.2019 in the case of river Ganga i.e.* ***Rs. 5 lakhs per month per drain, for default in in-situ remediation and Rs. 5 lakhs per STP for default in commencement of setting up of the STP.***
>
> ii. Timeline for completing all steps of action plans including completion of setting up STPs and their commissioning till 31.03.2021 in terms of order dated 08.04.2019 in the present case will remain as already directed. In default, compensation will be liable to be paid at the scale laid down in the order of this Tribunal dated 22.08.2019 in the case of river Ganga i.e**. Rs. 10 lakhs per month per STP."**

26. Both the matters were disposed of vide order dated 22.02.2021 with a direction that further monitoring be continued at the level of the Chief Secretaries in States and Central Monitoring Committee headed by Secretary, Ministry of Jal Shakti at the national level.

Today's hearing in the presence of Chief Secretary, Maharashtra to ascertain compliance status and way forward

[8] News item published in "The Hindu" authored by Shri Jacob Koshy Titled "More river stretches are now critically polluted: CPCB"

Compliance status in Maharashtra presented

27. The presentation filed by the Chief Secretary, Maharashtra on 07.09.2022 shows following data:

SUMMARY OF STATUS

A: Solid Waste Management					
Quantity of waste generation in the State (in TPD)	Waste Processed (in TPD)	Gap in generation and Processing (in TPD)	Quantity of waste being disposed in landfills (in TPD)	Quantity of Legacy waste in the State (Tones)	Status of Bio-mining
24,951 (403 ULBs)	20,294	1776	2881	3,94,19,287	189 out of 273 dump sites cleared

B): Sewage Management					
Quantity of sewage generation in the State (in MLD)	Utilized capacity (in MLD)	Current Gap in treatment (in MLD)	Utilization of treated sewage in		
			Agriculture/ Horticulture purpose	Industrial purpose	Any other purpose
9758.53	4338.2	5420.33	320 MLD		

Our Observations findings and Directions

28. It is disappointing to see from the data presented by the Chief Secretary that after 24.1.2020 when the Chief Secretary, Maharashtra last appeared before the Tribunal in the present matter, there is no meaningful progress. There are huge gaps in management of solid as well as liquid waste.

29. The above data shows that legacy waste is to the extent of 3,94,19,287. Data of rural areas has not been given. It is stated that 189 sites out of 273 dump sites have been cleared but it is not clear how much quantity of waste is remediated. Area of land recovered through this process has not been

mentioned. Further, more waste is being added on daily basis. Legacy waste remains source of air, water and land pollution resulting in damage to environment and public health, as noted in para 24 earlier. Since statutory timelines for remediation of legacy waste having expired, further steps have now to be taken in a mission mode and for past violations liability of the State has to be quantified on 'Polluter Pays' principle by way of monetary compensation to be utilised for restoration of damage to the environment.

30. On the issue of liquid waste/sewage, gap is to the extent of 5420.33 MLD. The said data does not cover the compliance status in rural areas. Figure of utilisaton of treated sewage shows that much work remains to be done. Unless treated sewage is usefully deployed for non potable purpose, potable water may be used for such purposes and sewage may mix with potable water or go to storm water drains or rivers which has to be avoided. Timeline for the establishing requisite treatment systems in terms of judgment of Hon'ble Supreme Court in *Paryavaran Suraksha vs. Union of India,* supra has long expired. This Tribunal had also directed that for delay after 01.04.2020, coercive measures are to be taken. Till the gaps are bridged, untreated liquid waste will continue to remain source of degradation of environment and damage to public health, including deaths and diseases which the society can ill afford. Hence, the urgency of the situation for good governance for ensuring emergent measures in public interest to protect the environment, natural resources and public health as per mandate of the Constitution. We have to levy compensation for continuing violation on polluter pays principle to be utilised for restoration measures.

31. As already noted and observed in the judgement of the Hon'ble Supreme Court in Paryavaran Surakhsha, supra, quoted earlier, the

matter falls in 12th Schedule to the Constitution and it is constitutional responsibility of the State and the Local Bodies to provide pollution free environment and to arrange funds. Being part of right to life, which is also basic human right and absolute liability of the State, lack of funds cannot be plea to deny such right. While there may be no objection to any central funds being availed, the State cannot avoid its responsibility or delay its discharge on that pretext.

32. It is a matter of concern that even after 48 years of enactment of Water (Prevention and Control of Pollution) Act, 1974 and expiry of timelines for taking necessary steps for solid waste management in terms of Solid Waste Management Rules, 2016 and binding direction in the judgment of the Hon'ble Supreme Court and this Tribunal in *Almitra H. Patel vs. Union of India & Ors.* and *Paryavaran Suraksha vs. Union of India*, supra, huge gaps still exist. Are there insurmountable difficulties for State authorities or lack of will and determination? We find it difficult to believe the first. In our view, it is lack of good governance and determination responsible for the situation which needs to be remedied soonest.

33. We have suggested change in approach in realizing that remedial action cannot wait for indefinite period as is being proposed by the Administration. Sources of funding are laid down in the orders of the Hon'ble Supreme Court. Responsibility of the State is to have comprehensive plan to control pollution which is its absolute liability, which is not being understood. If there is deficit in budgetary allocations, it is for the State and state alone to have suitable planning by reducing cost or augmenting resources. By way of suggestion, one may consider harnessing traditional knowledge and community involvement. People must be involved in the problem by appropriate awareness and strategies

to encourage public participation and contribution. At the cost of repetition, health issues cannot be deferred to long future. Long future dates which, breach of which is established from the track record of last several decades, is not convincing solution. There is no accountability for the past breaches. It is poor substitute for compliance. This approach may project lack of concern or not realizing the grim ground situation crying for emergent remedial measures on priority. There is no time for leisure, reflected in timelines proposed for bridging the acknowledged gaps.

34. It is the mindset and determination to act in a mission mode which can produce results.

35. Segregation of the solid waste at source and its earliest processing nearest to the point of generation with defined destination is imperative. In particular, adequate compositing/vermicomposting/bio-methanation centers need to be set up and upgraded nearest to the source of generation of wet solid waste, listing people's involvement. Waste generators can themselves be required to process the waste under guidance and handholding by the Administration, with the assistance of identified empaneled service providers. This may perhaps reduce planned expenditure.

36. Similarly, sewage can be required to be processed by conventional cost-effective methods at least at several identified locations with least expenses. Decentralized treatment plants can be explored, apart from imposing condition of ZLD on industries, Group Housing Societies etc. Reduced load can be processed partly with the help of water using commercial establishments requiring water for their processes enforcing consent conditions in CTEs and CTOs whereby State's financial burden can be reduced. In this context, the draft Notification of MoEF&CC dated

25.02.2022[9] etc. and the relevant part of the draft Notification in context of sewage and solid waste management is reproduced below:

> ***"xxx .....xxx.....xxx***
> ***C. Management of sewage/waste water, Reuse and recycle of treated wastewater by dual plumbing system***
>
> *10. Dual Plumbing System shall be implemented - one for supplying fresh water for drinking, cooking and bathing etc. and another for supply of treated water for flushing.*
>
> *11. Only treated water shall be used for flushing.*
>
> *12. In no case, sewage or untreated waste water generated within the project area shall be discharged through storm water drains or otherwise into water bodies nor discharged/injected into the ground water by any mode.*
>
> *13. Subject to Clause (3) of this notification, the project authority may opt or avail to common off-site treatment facility, as feasible, for treatment with reuse & recycle of corresponding quantity of treated water through the dual plumbing system for flushing and other non-potable use.*
>
> ***A. For projects with built up area of 5,000 sq.mtrs. to 20,000 sq.mtrs. –***
>
> *i. In areas where there is no municipal sewage network,*
>
> *a. Either Onsite Sewage Treatment Systems with capacity to treat 100% waste water may be installed with appropriate tertiary treatment system with disinfection for black & grey water. Such treated water should be used with dual plumbing system for flushing and other non-potable use;*
>
> *OR*
>
> *b. In case of usage of septic tank, only black water shall be discharged in the septic tank. Grey water may be treated through natural treatment systems or other secondary treatment as feasible. Such treated water should be used with dual plumbing system for flushing and other non-potable use;*

[9] https://www.compfie.com/wp-content/uploads/2022/03/01032022_EHS_02.pdf

The excess treated water should conform to the general discharge norms of CPCB/MoEF&CC.

ii. In areas where there is municipal sewage network

a. Either Onsite Sewage Treatment Systems with capacity to treat 100% waste water may be installed with appropriate tertiary treatment system with disinfection for black & grey water. Such treated water should be used with dual plumbing system for flushing and other non-potable use;

OR

b. The project authority may opt to discharge only black water in such municipal sewage network subject to availability of trunk sewer line. For this purpose, two separate pipeline network– one for black water discharge and other for collection of grey water shall be installed. Grey water may be treated through natural treatment systems or other secondary treatment as feasible. Such treated water should be used with dual plumbing system for flushing and other non-potable use;

B. For projects involving built-up area of 20,000 sq. mts. or more –

14. Subject to Clause (3) of this notification, Onsite Sewage Treatment Plant with capacity to treat 100% waste water generated within the project area through tertiary treatment shall be installed. Treated waste water shall be reused on site for landscape, flushing, HVAC, fire-fighting, and other end-uses.

15. The adequacy of the Sewage Treatment Plant (STP) shall be certified by an independent expert and a report in this regard shall be submitted to the authorized agency.

16. Discharge of excess treated wastewater outside the premises, after treatment in STP, should meet the discharge standards as notified by CPCB/MoEF&CC from time to time.

17. Wastewater and treated water quantification system through metering/sub-metering shall be installed.

18. Sludge from the onsite sewage treatment shall be collected, conveyed and disposed as per the Central Public Health and Environmental Engineering Organization (CPHEEO) Manual,

Ministry of Housing and Urban Affair, on Sewerage and Sewage Treatment Systems.

19. Where Common Sewage Treatment Plan facility has been availed, it shall be ensured that treated waste water is recycled back to respective building for reuse.

D. Solid Waste Management

20. Subject to Clause (3) of this notification, onsite solid waste management facility should be developed and a formal contractual arrangement shall be ensured with authorized recyclers/concerned municipal agency for disposal of all non-biodegradable waste.

21. Subject to Clause (3) of this notification, where there is no alternate arrangement for disposal of biodegradable waste, Organic waste composter/Vermiculture pit with a minimum capacity of 1.0 kg/150 sqm. of built-up area/day shall be installed & operated."

37. Treated water can also be used by establishments like malls, industrial estates, automobile establishments, power plants, playgrounds, railways, bus stands, local bodies, universities etc. to save potable water for drinking. The treated sewage can be utilized for industrial/agricultural/other non-drinking uses like washing railway wagons/yards, buses, roads, water sprinkling. Several such models reportedly exist[10].

[10] https://www.newindianexpress.com/cities/chennai/2019/jul/31/chennai-industries-to-now-use-treated-sewage-water-2011837.html
https://timesofindia.indiatimes.com/city/surat/surat-water-reuse-model-goes-global/articleshow/85668103.cms
https://www.aninews.in/news/national/general-news/surat-generating-massive-revenue-by-selling-treated-water-to-industries20201217051127/
https://swachhindia.ndtv.com/surat-generating-massive-revenue-by-selling-treated-water-of-river-tapi-to-industries-54411/
https://m.timesofindia.com/city/ahmedabad/amc-offers-rs43/kl-treated-wastewater-for-industries/amp_articleshow/87169850.cms https://theprint.in/india/governance/nagpur-to-become-the-first-indian-city-to-treat-and-reuse-90-of-its-sewage/180493/

https://www.business-standard.com/content/press-releases-ani/india-s-1st-and-largest-ppp-on-waste-water-reuse-completed-in-record-time- during-pandemic-bags-ficci-water-award-2020-121022500841_1.html
https://mpcb.gov.in/sites/default/files/focus-area-reports-documents/NMC_%26_KTPS_success_story_28052019.pdf
https://cpcb.nic.in/success-stories/upload/1501156301.pdf

38. Thus, it may be necessary to brain storm with available experts and other stake holders in the State at different levels, evolve models which can be fast replicated, initiate special campaigns with community/media involvement in the larger interest of protecting environment and public health with determination for prompt action. Such brain storming sessions may enable capacity enhancement of the regulators and the processes. Campaigns and community involvement may result in reducing the financial and administrative load on the administration.

39. Compliance of environmental norms on the subject of waste management has to be on high on priority. Tribunal has come across cases of serious neglect and continuing damage to the environment in absence of inadequate steps for treatment of solid and liquid waste.[11] We are of the

http://cpheeo.gov.in/upload/uploadfiles/files/engineering_chapter7.pdf

[11]

(i) O.A. No. 142/2016(THC), Sheikh Rashid Charitable Foundation, (Malegaon) & Ors. v. UOI & Ors., order dated 05.12.2017, relating to release of amount for functioning of sewage treatment plant in Malegaon.

(ii) O.A. No. 177/2016(THC), Kaustubha Ghokhale & Anr. v. State of Maharashtra Through Chief Secretary & Ors., order dated 23.10.2017, relating to grant of public hearing in case of grant of EC to MSW Processing Plant at Umbarde and Barave.

(iii) O.A. No. 177/2016(THC), Kaustubha Ghokhale & Anr. v. State of Maharashtra Through Chief Secretary & Ors., order dated 23.10.2017, relating to grant of public hearing in case of grant of EC to MSW Processing Plant at Umbarde and Barave.

(iv) O.A. No. 122/2017, Dileep Gopal Mangankar v. State of Maharashtra & Ors. order dated 31.01.20118, seeking direction the respondents to take steps in order to manage, collect, segregate, transport and disposal of the msw as per Rules.

(v) O.A. No. 168/2017, Mr. Omkar Ajit Keni V/s The Deputy Director (Forest) Sawantwadi, & Ors., order dated 17.07.2018, relating to removal of garbage dumped around Dhamapur Lake, Sindhudurg District.

(vi) O.A. No. 179/2017, Mr. Atul Kishor Karle & Ors. V/s The Collector, Pune & Ors., order dated 21.07.2017, seeking direction against respondent for not dumping msw and its proper disposal.

(vii) O.A. No. 11/2018, Amir Shaikh & Ors. v. Haji Ali Dargah Trust & Ors., order dated 25.08.2022, seeking direction against respondents to immediately stop releasing excrement/untreated sewage into the sea.

(viii) O.A. No. 40/2019, Rajkumar Kukreja & Anr. v. Ulhasnagar Municipal Corporation & Ors., order dated 23.08.2022, seeking direction against respondents to stop unauthorized dumping of municipal solid waste.

(ix) Original Application No. 60/2019(WZ), Ganesh Dadarao Anasane v. Amravati Municipal Corporation & Anr. order dated 07.09.2022, relating to illegal dumping of solid waste at Sukali Dumping ground in Amravati, Maharashtra.

view that issues have been identified and monitored by the Tribunal for a long time. It is high time that the State realizes its duty to law and to citizens and adopts further monitoring at its own level.

Conclusion with expression of hope for future remedial action

40. **We hope in the light of interaction with the Chief Secretary, Maharashtra that he will take further measures in the matter by innovative approach, stringent monitoring at appropriate level, including at the level of the District Magistrates (who execute the**

(x) Original Application No. 14/2020(WZ), Mohan Nanasaheb Kudale v. Pune Municipal Corporation & Ors., order dated 17.01.2022 relating to operation of an incinerator plant for disposal of animal carcass on land situated at Keshavnagar, Mundhwa, Pune.

(xi) Original Application No. 29/2020(WZ), Suraj Pradip Ajmera v. Aurangabad Municipal Corporation, order dated 09.03.2022, relating to absence of scientific management of sewage problem in Aurangabad city.

(xii) Original Application No.59/2020 (WZ), Riverdale Vista Co-operative Housing Society v. MoEF &CC & Ors., order dated 16.11.2021 relating to Common Municipal Solid Waste Management Facility Site at Revenue Village Barave in contravention of Solid Waste Management Rules 2016.

(xiii) Original Application No.62/2020 (WZ), Dagadkhan Asanghatit Kamgar Vikas Parishad Maharashtra v. State of Maharashtra & Ors., order dated 17.11.2021 relating to Illegal dumping of municipal solid waste by the Wagholi Gram Panchayat and Pune Metropolitan Region Development Authority on common land next to residential apartments and hutments of quarry workers at Wageshwarnagar in Village Wagholi, Taluka Haweli, District Pune.

(xiv) Original Application No. 84/2020 (WZ), Dhananjay Balwant Kokate & Anr. v. Union of India & Ors., order dated 08.12.2021 relating to Setting up of a Garbage Processing Plant at Survey No. 51/10, Ambegaon Bk., Pune.

(xv) Original Application No. 32/2021(WZ), Charan Ravindra Bhatt v. Vasai-Virar City Municipal Corporation & Anr. order dated 07.12.2021 relating to Failure of Vasai – Virar Municipal Corporation in performing its statutory obligation of providing clean environment by scientific disposal of solid and liquid waste.

(xvi) Original Application No. 55/2021(WZ), Tousif Bagnikar v. Nix Paolymers & Ors., order dated 03.12.2021 relating to illegally dumping, untreated toxic effluent by respondent no.1 from the polyester resin plant into Maharashtra Industrial Development Corporation (MIDC Drain) which in turn flows into river Krishna.

(xvii) Org. Application No. 75/2021(WZ), The Cliff Gardem Condominium B & C v. Gram Panchayat, Maan & Ors., order dated 10.03.2022 relating to failure of Authorities in the State of Maharashtra to follow Solid Waste Management Rules, 2016 in Village Maan, Tal. Mulshi, Dist. Pune, near housing society - Cliff Garden Condominium, MIDC infotech Park, Maan, Pune.

(xviii) Original Application No. 33/2022(WZ), Sanjay Vishwanath Lature & Ors v. Solapur Municipal Corporation & Ors., order dated 18.07.2022 relating to land filling site- to remove the set-up of abandoned processing plant at survey nos. 73 and 74/1 of Village Kasabe Solapur, Taluka-North Solapur, District Solapur.

District Environment Plans) and the Chief Secretary, ensuring that the gap in solid and liquid waste generation and treatment is bridged at the earliest, shortening the proposed timelines, adopting alternative/interim measures to the extent and wherever found viable.

41. The Chief Secretary may consider designating a Senior Nodal Officer at the rank of ACS to regularly assess the progress in bridging the gaps in sewage and solid waste management and establishing stocktaking at district level. Existing and upcoming STPs need to have linkages with industries and other bulk users including Agriculture/horticulture for using treated sewage. Legacy waste sites need to be remediated and reclaimed areas utilized for setting up of waste processing plants so to process day-to-day waste generation. More and more green belts/dense forests need to be set up to mitigate adverse impact of waste. Based on the gained experience, standardized processing and treatment methodologies be replicated for areas of other Corporations, Municipalities and Panchayats.

42. Laid down statutory norms need to be complied as per prescribed timelines and directions in the judgments of Hon'ble Supreme Court and this Tribunal, including directions in orders dated 25.4.2019, 28.2.2020 and 14.12.2020 and other orders in individual cases. In the light of observations in paras 14, 19 and 22 above, accountability be fixed for erring officers and compensation collected and utilised, as already directed.

Need for monitoring by NMCG and MoUD NMCG, SBM and Amrut schemes

43. In view of continuing huge gap in solid and liquid waste generation and treatment, it is high time that Ministry of Housing and Urban Development (MoUD) and National Mission for Clean Ganga (NMCG) who have programmes like Swachh Bharat Mission (SBM), AMRUT - 1 and 2.0 and River Cleaning, appropriately monitor compliance of waste management norms by concerned States and take remedial action on their part. MoEF&CC and CPCB may continue monitoring as per MSW Rules and the Water Act.

Determination of liability for compensation for restoration of environment

44. **Apart from compliance in future, the liability of the State has to be fixed for the past violations in the light of earlier binding orders passed in pursuance of orders of Hon'ble Supreme Court dated 2.9.2014 in WP 888/1996, Almitra Patel and dated 22.2.2017 in WP 375/2012, Paryavaran Suraksha. Order dated 22.12.2016 in Almitra Patel clearly laid down liability for compensation for breach of statutory timelines. Similarly, liability for compensation was laid down for failing to install water pollution control devices after 31.3.2020.** The Tribunal has to follow 'Polluter Pays' principle under Section 20 of the NGT Act. The State Authorities contributing to the pollution by failing in their constitutional duties are to be held accountable on this principle. Admittedly, timelines under Supreme Court orders and orders of this Tribunal for preventing water pollution and statutory timelines for solid waste management are over. Thus, atleast from 01.01.2021, the 'Polluter Pays' principle has to be applied. Compensation has to be equal to the loss to the environment and also taking into account cost of remediation.

45. In our recent order dated 01.09.2022 in O.A No. 606/2018 (in respect of State of West Bengal), considering scale of compensation adopted in earlier cases including in OA No. 1002/2018, *Abhisht Kusum Gupta vs. State of Uttar Pradesh & Ors.*, compensation was determined @ Rs. 2 Crore per MLD for untreated liquid waste and in OA No. 286/2022 for unprocessed legacy waste compensation was fixed @ Rs. 300 per MT to be utilized for restoration measures, including preventing discharge of untreated sewage and solid waste treatment/processing facilities, as per appropriate mechanism for planning and execution that may be evolved, within three months. Operative part of the said order is reproduced below:-

> **"Conclusion about quantum of compensation**
>
> *49. In the light of above and considering damage to the recipient environment, we hold that apart from ensuring compliance at the earliest, compensation has to be paid by the State for past violations. The amount of compensation is fixed @ Rs. 2 crore per MLD (at which rate compensation has been levied against Noida and DJB in OA No. 1002/2018, Abhisht Kusum Gupta vs. State of Uttar Pradesh & Ors, referred to in para 48 above for detailed reasons mentioned therein). As noted earlier,* ***gap in generation and treatment in West Bengal, as per data furnished is 1490 MLD. Thus, under this head, liability of the State of West Bengal is to pay compensation of Rs. 2980 crores, rounded off to Rs. 3000 crore in view of continuing damage****. F****or failure to process solid waste, unprocessed legacy waste being 1.20 crore MT, compensation is assessed @ Rs. 300 per MT (at which approximate rate compensation has been awarded in OA No. 286/2022 against Municipal Corporation, Ludhiana, for the reasons given therein). This works out to Rs. 366 crore but adding 134 crore for continuing addition of unprocessed waste @ 13469.19 TPD, the total amount is rounded off to Rs. 500 crore. Thus, final amount of compensation under the two heads (solid and liquid waste) is assessed at Rs. 3500 crores which may be deposited by the State of West Bengal in a separate ring-fenced account within two months, to be operated as per directions of the Chief Secretary and utilised** *for restoration measures, including preventing discharge of untreated sewage and solid waste treatment/processing facilities, as per appropriate mechanism for planning and execution that may be evolved, within three months. If violations continue, liability to pay additional compensation may have to be considered. Compliance will be the responsibility of the Chief Secretary."*

46. Following the above pattern, we determine compensation payable by the State of Maharashtra. In respect of **gap in treatment of liquid waste/ sewage i.e. 5420.33 MLD, compensation works out to Rs. 10840.66 crores and compensation for un-remediated legacy waste to the extent of 3,94,19,287 works out roughly to about Rs. 1200 crores. We round off the compensation amount @ Rs. 12,000/- crores which may be deposited by the State of Maharashtra in a separate ring-fenced account within two months, to be operated as per directions of the Chief Secretary and utilised** for restoration measures. The restoration measures with respect to sewage management would include setting up of sewage treatment and utilization systems, upgrading systems/operations to ensure utilization of their full capacities, ensuring compliance of standards, including those of fecal coliform and setting up of proper fecal sewage and sludge management in rural areas. With regard to solid waste management, the action plan would include setting up of required waste processing plants and remediation of left out 84 sites. Bio-remediation/bio-mining process need to be executed as per CPCB guidelines and the stabilized organic waste from biomining as well as from compost plants need to comply with laid down specifications. Other material recovered during such processes are to be put to use through authorized dealers/handlers/users. This restoration plan needs to be planned and executed in a time bound manner without further delay. If violations continue, liability to pay additional compensation may have to be considered. Compliance will be the responsibility of the Chief Secretary.

47. Award of above compensation has become necessary under section 15 of the NGT Act to remedy the continuing damage to the environment and to comply with directions of the Hon'ble Supreme Court requiring this Tribunal to monitor enforcement of norms for solid and liquid waste

management. Moreover, without fixing quantified liability necessary for restoration, mere passing of orders has not shown any tangible results in the last eight years (for solid waste management) and five years (for liquid waste management), even after expiry of statutory/laid down timelines. Continuing damage is required to be prevented in future and past damage is to be restored.

Directions for further follow up

48. Further, six monthly progress reports may be filed by the Chief Secretary with a copy to the Registrar General of this Tribunal by e-mail at judicial-ngt@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF. Copies thereof may be furnished to the NMCG, MoUD and CPCB and also be placed on the website of the State Government.

IA No. 163/2021 stands dismissed in light of today's proceedings.

A copy of this order be forwarded for compliance to the Chief Secretary, Maharashtra, Secretary, Ministry of Housing and Urban Development, MoEF&CC, GoI, National Mission for Clean Ganga and CPCB.

On report being filed with the Registrar General of this Tribunal, the same may be placed before the Bench, if found necessary.

If any grievance survives, it will be open to the aggrieved parties to take further remedies as per law.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Prof. A. Senthil Vel, EM

September 08, 2022
Original Application No. 606/2018