BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,

WESTERN ZONE BENCH PUNE

AT PUNE

ORIGINAL APPLICATION NO. 33 OF 2020

TANAJI BALASAHEB GAMBHIRE APPLICANT

V/s

UNION OF INDIA
AND OTHERS RESPONDENTS

REPLY ON BEHALF OF THE RESPONDENT NO.13 TO THE AFFIDAVIT DATED 22.08.2023 FILED BY THE RESPONDENT NO.14.

MAY IT PLEASE THE HON'BLE TRIBUNAL

1. At the outset, it is submitted that the contents of the Reply filed by the Respondent No.14 are not admitted by the present Respondent and the same are denied in toto. The present Reply has been filed only with a view to harass the present Respondent, as the contents clearly demonstrate that the Respondent No.14 has filed the present Reply at the behest of the Applicannt and being hands in glove with the Applicant. The present reply is filed by a person who claims to be the Chairman of the Respondent No.14. However, no such authority or resolution of the Respondent No.14 has been produced on record.
2. The averments made in the Affidavit of the Respondent No.14 also demonstrate that the present OA is hopelessly barred by limitation.

Furthermore, it is submitted that the Application for impleadment, which was filed before this Hon'ble Tribunal was filed by the erstwhile Chairman namely Mr. Padmakar Kulkarni. However, the Hon'ble Deputy Registrar under the Maharashtra Cooperative Housing Societies Act has already vide its order dated 14.02.2023 held that the election of the said Chairman is illegal and he did not have powers to sign the requisite documents. Copy of the order is annexed hereto and marked as **ANNEXURE – R-1**.

3. The present Respondent has filed a detailed reply on 6th March 2021. The Respondent No.13 adopts, reiterates and confirms the statements made in the said reply as part and parcel of the present reply to avoid repetition.
4. The Respondent No.13 submits that the Respondent No.13 submitted a plan for sanctioning with the Respondent No.9. The said plan was sanctioned by the Respondent No.9 on 30th March 2007. The Respondent No.13 submits that on 7th May 2008, the Respondent No.13 obtained a commencement certificate, a layout sanction plan and other permissions as mandated, from the Pune Municipal Corporation and other authority, for the project known as of **Prayeja City I**.
5. Pertinently, it can be gleaned from the said documents that the structure had an FSI area of 12,828 m^2, but the total built-up area of the structure was more than 20,000 m^2. However, solely in view of the unclarity in the manner of calculation of the built-up area for the purpose of the notification, the Respondent No.13 did not obtain an EC from the concerned authority. A copy of the commencement

certificate dated 07.05.2008 bearing ref. no DPO/11116/PLU-4/Wadegaum issued by the Pune Municipal Corporation.

6. That on 04.04.2011, the MoEF issued a clarification that the built-up area would be the area covered on all floors put together, including the basement and other service area i.e. FSI + Non-FSI area.
7. That between 2007-2012, the aforesaid permissions were renewed and revised from time to time. That on 03.08.2013, the Respondent No.13 acquired additional land, pursuant to a Development Agreement dated 08.10.2012, which was adjacent to the aforesaid on-going construction. As the Respondent No.13 sought to utilise a portion of the said newly acquired land for the ongoing construction, it amalgamated the newly acquired property, (NEWLY ACCQUIRED PROPERTY WAS AMALGAMATED AND SUBDIVIDED IN THE SAME PLAN CC/1446/2013 DATED 3/8/2013) and the property where the ongoing property stood, to form two separate and independent Plots i.e.:
    a. Plot 1 having an area of 19,833 m^2, and consisting of Sy . Nos. 71/5(Pt),71/6A/1 to 71/6A/13, 71/6, B/1 TO 71/6,B/6, 71/7,B, 71/9,A/1,71/3/1 to 71/3/6, Plot No. 1, Wadgaon(BK), Sinhagad Road, Taluka:-Haveli, District:- Pune, 411041;
    b. Plot 2 having an area of 14,027 m^2, and consisting of Sy . Nos. 71(Pt) & 72/20A TO 27A, Plot No.2, Wadgaon(BK), Sinhagad Road, Taluka:- Haveli, District:- Pune, 411041.

8. The Respondent No.13 submits that the Respondent No.9 completed all the plinth checks and also inspected the same at times. The

Respondent No.9 after completion of the said process has proceeded to issue the necessary plinth check certificates. The Respondent No.9 has also issued Commencement Certificates on the basis of the certificates.

9. The Respondent No.13 thereafter went for revision of the plans and also sub-division of the plots in 2013. The Respondent No.13 thereafter received basic Commencement Certificate in 2015. The area in respect of Plot No.II (AS PER PMC SANCTIONED FSI+NON FSI BUA) comes to around 18461 sq.mtrs. Till date the Respondent No.13 has constructed 11200.15 sq.mtrs. The Respondent No.13 submits that the EC is not required, however, considering the new (UDPCR,2021) Development Control Regulations of the Respondent No.9 and the potential area, the same goes upto 37000 sq.mtrs and hence the Respondent No.13 has applied for Environmental Clearance.

10. The Respondent No.13 submits that in view of the additional area, the built-up area of Plot 1 (FSI + Non-FSI) increased to 56,292 m^2, as on date. The construction on this plot is known as Prayeja City-I.The Plot 2 has a total built area of 18,461 m^2, as on date. The construction on this plot is known as Prayeja City-II.
11. That on 08.10.2015, the Respondent No.13 obtained a revised commencement certificate for construction of Prayeja City II in Plot No.2 after amalgamation/sub-division in 2013.A copy of the commencement certificate dated 8th October 2015 bearing No. CC/2107/15.
12. That on 7th July 2017, the MoEF issued an office memorandum bearing F. No. 22-35/2017-IA.III clarifying that the notification

dated 4th April 2011 would be prospective in nature. A copy of the office memorandum bearing F.No.22-35/2017-IA.III dated 7th July 2017.

13. That on 10th July 2017, the Respondent No.13 obtained a revised commencement certificate for construction of Prayeja City I in Plot No.1. This document, however, does not create any fresh cause of action, as it is a merely a fresh commencement certificate obtained in view of revision of the permissions which were previously granted. The Applicant, however, has relied upon this document, before this Hon'ble Tribunal, so as to overcome the bar of limitation.

14. That on 10th August 2018, the Hon'ble Supreme Court in ***Goel Ganga Developers India (P) Ltd. v. Union of India,*** (2018) 18 SCC 257 quashed the notification dated 7th July 2017 issued by the MoEF. Pertinently, even after this judgment, the issue of whether the projects which had not obtained an EC, in view of the ambiguity in the EIA notification continues to be open and is the subject matter of a pending *lis* before the Hon'ble Supreme Court in ***Builders Association of India v. Union of India*** SLP (c) No. 10078/2019, wherein this Hon'ble Court, by an order dated 3rd May 2019, has directed that no coercive steps will be taken. The said SLP is pending.

15. That the term 'built-up area' has not been defined under the EIA Notification 2006. A phrase having been introduced by virtue of a Notification/statute ought to be defined and the definition *prima facie* must determine the application of the phrase. It is most respectfully submitted that Column 5 of item 8(a) of the EIA Notification 2006 only states *'built-up area for covered*

construction; in the case of facilities open to the sky, it will be the activity area'. A plain and literal reading of the said sentence leads to ambiguity and uncertainty with regard to actual meaning and/scope of the term 'built-up area'. The ambiguity in the definition arises since the word for is not a compelling word to show that the intention of the original EIA Notification 2006 was to include the entire construction area at the time of referring to 'built up area'. It is noteworthy that on the basis of the built up area, the projects listed under item 8 of the schedule to the 2006 notification were even given exemption from obligation to conduct public consultation and scoping.

16. That owing to the above the term 'built up area' came to be understood in terms of the state / municipal bye laws at least till the issuance of the 2011 notification even for the purposes of grant of environmental clearance. It is most respectfully submitted that in absence of a definition of the term 'built-up area' in the EIA Notification 2006, the same was calculated and/interpreted in consonance with the state bye-laws to fill in the vacuum until the 2011 Notification came into effect. That the construction industry as well as the Appropriate Authorities including MoEF had understood and proceeded the term built up area with respect to granting ECs'.

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

interpret 'built up area' for the purpose of granting ECs in consonance with the applicable state bye laws. That most of the state-bye laws calculate ‘built-up area’ on the basis of Floor Space Index (FSI). It is submitted that the appropriate authorities were granting ECS on the basis of FSI.

18. That even the facts recorded in the 2010 judgment reflect the general practice adopted by the appropriate authorities of interpreting 'built up area' in consonance with the state bye laws. The 2010 Judgment pertained to a project undertaken by the Govt. of Uttar Pradesh to develop a recreational park at NOIDA. The project involved massive construction inter alia including dedicatory columns, commemorative plaza, national memorial, plinth with sculptures, larger than life statutes etc.; and was undertaken without any prior environmental clearance as required under the EIA Notification 2006. When an issue was raised with respect to the project being undertaken without prior environmental clearance, the stand taken by the SEIAA UP was that the built-up area was less than 20,000 square meters and the EIA Notification 2000 would not be applicable. In submitting so, the SE1AA UP had calculated the 'built up area' on the basis of state bye-laws. Furthermore, during the course of the proceedings of the 2010 Judgment, the MoEF also took the unequivocal stand that the project in question did not require prior environmental

clearance *(paras 38-49)***.** As was noted in para 42 of the 2010 Judgment:

> *The built-up area has been calculated by the state of Uttar Pradesh on the basis of its building bye-laws.'*
>
> *"….. The MoEF, however reiterated its stand in very definite and unequivocal terms that the project in question did not fall within the ambit of the ElA Notification 2006 and no environmental clearance was required for such kind of projects. The stand of the MoEF was based on the premise that the area of the project (33.43ha) was less than 50ha and its built up area (9542 sq m) was less than 20,000 sq.m.*
>
> *....."*

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

19. That the judgment in Okhla bird Sanctuary (supra) was made earlier in time and was delivered by a Bench comprising Of three judges. It contained the following crucial observation in para 79:

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

As opposed thereto, the judgment in Goel Ganga (*supra*) was rendered by a two judge Bench, eight years later, only in 2018. The primary finding of the said judgment was contained in para 19 stating 'as held by us above the notification of 2006 with regard to "built up area" was absolutely clear and needed no clarification." With utmost respect it is submitted that such a finding could not have been made without taking into consideration the observations contained in the aforementioned judgment passed in Okhla Bird Sanctuary.

20. That the definition of the term 'built-up area' as provided under 2011 notification ought to be construed prospectively. It is most

respectfully submitted that the application of the 2011 Notification to projects granted ECs between 14.09.2006 - 04.04.2011 or to those projects which were exempted from an EC prior to the 2011 Notification shall oppress the vested rights of such project proponents, create new disabilities or obligations or impose new duties in respect of constructions already completed. The same shall cause chaos, disruption and disarray in the entire construction industry.

21. That the 2011 Notification was issued by way of amendment to the EIA Notification 2006 and would only apply prospectively. This is clear from para 5 of the 2011 Notification which reads as follows: "*Now therefore in exercise of the powers conferred by sub section (1) and clause (v) of sub¬section 2 of section 3 of the said Environment (Protection) Act read with clause (d) of sub-rule (3) of rule 5 of the said Environment (Protection) Rules, the Central Government hereby makes the following amendments in the said Notification, namely-....*"

22. That prior to 04.04.2011, the widely followed practice for the project proponents was to specify the FSI area as the built-up area, and for the appropriate authority to grant the EC after noting such FSI area as the built-up area in the EC. It is pertinent to note that even though most of the applications made prior to the 2011 notification specified

'built up area' to be the same as FSI, due to the practice followed, the applications submitted nonetheless contained:

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

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

23. That it is submitted that the 2011 Notification was an amendment of the EIA Notification 2006 and substituted the term "built up for covered area" with "built up area or covered area on all floors put together including basements and other service areas, which are proposed in the building/construction project." That however this Hon’ble Court while passing the Goel Ganga judgment did not go into the question of whether the 2011 Notification is a clarification

or a substitution of the E1A Notification 2006. The relevant paragraph — is extracted below:

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

However, the question whether the 2011 notification is to be construed as a substitution of the original entry or is merely a clarification would have to be considered by this Hon'ble Court. The said question though was raised in the Goel Ganga case, this Hon'ble Court refrained to answer the same on the basis that the EIA Notification 2006 was clear and unambiguous. As such, the issue of whether the 2011 Notification was a clarification or a substitution has been left open. This has caused confusion for all stakeholders in the Indian construction sector. In view of the same, it is of utmost importance that this Hon'ble Court settles this question in order to end the confusion.

24. That even though the ECs may have been granted by the appropriate authorities for the projects on the basis of 'FSI Area' for the purpose of calculating 'built up area' for the period between 2006-2011; the overall impact on the environment caused by the construction, including crucial factors such as water

consumption, sewerage facilities, energy, consumption, welfare of the people, road requirements, pollution generated etc., remains unchanged. This is notwithstanding the use of non-FSI Area of the projects for the calculation of the built up area. Therefore, so long as the overall environmental impact remains unchanged, merely due to the fact that non-FSI area while being disclosed, was not taken as a part of 'built up area' by the appropriate authorities while granting ECs prior to 2011, (due to the then general understanding of the provisions of the 2006 notification), ought not to by itself trigger a violation of the EIA Notifications 2006 and ECs issued thereunder.

25. That from the years 2006-2011; i.e. prior to the introduction of the 2011 Notification, it was a common practice of the appropriate authorities to grant EC to project proponents on the basis of 'built up area' as defined in the state bye laws. That most of the state bye laws equated the terms 'built up area' and `FS1' and many of the ECs granted used the terms 'built up area' and 'FSI' interchangeably.

26. The Respondent No.13 submits that on 29th July 2019, the Applicant, for the first time, issued a legal notice to various State Bodies alleging *inter alia* that the Respondent No.13

construction was being carried out in violation of EIA 2006, as even though the built-up area of the constructed structure was 67,154.88 m^2, the Respondent No.13 has not obtained a prior EC. On 29th August 2019, the Environment Department, Government of Maharashtra, based on the complaint filed by the Respondent Complainant, issued a show cause notice to the Respondent No.13 stating therein, *inter alia*, that it was obligatory for the Respondent No.13 to obtain a prior Environment Clearance before starting construction, as the total built up area of the proposed construction was 67,154.88 m^2.

27. That on 4th January 2020, the Respondent No.13 made an application to the SEIAA for the purpose of obtaining an EC for Prayeja City II, since after the revisions of its plans in 2020, the total built up area would exceed the 20,000m^2 threshold. The Respondent No.13 submits that the Application of the Respondent No.13 has been considered and has been recommended for grant of Environmental Clearance for plot No.12. The Respondent No.13 submits that pertinently, the Applicant lists the built-up area of both the projects and states that the area is 67,154 m^2, when in fact the two are independent project i.e. Prayeja City I and Prayeja City II.

28. The Respondent No.13 submits that on 21st August 2020, the Respondent No.9 after inspecting the projects, i.e., Prayeja City I and Prayeja City II found that Prayeja City I has a total built up area

of 48,694 m^2, and that Prayeja City II has a total built up area of 18,461 m^2.The built-up area in the report of Respondent No.9, with respect to Prayeja City I, is shown as 48,694 m^2, as opposed to its actual total built up area of 56,292 m^2, as the Respondent No.9 has not considered certain areas such as parking while computing the same.

29. This Respondent further submits that it has already filed an application for post facto EC vide the notification dated 07.07.2021 issued by the Respondent No.1 and that the proposal for the grant of Environment Clearance is pending before the SEIAA, Maharashtra.

Pune

Date: 19/02/2024

Advocate for Respondent No.13

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,

WESTERN ZONE BENCH PUNE

AT PUNE

ORIGINAL APPLICATION NO.33 OF 2020

TANAJI BALASAHEB GAMBHIRE **APPLICANT**

V/s

UNION OF INDIA
AND OTHERS **RESPONDENTS**

AFFIDAVIT IN SUPPORT

MAY IT PLEASE THE HON'BLE TRIBUNAL

I, Sandeep Narayandas Jani, Age 57 years, Occu.: Business, having office at Bhandari House, 1140, Raviwar Peth, Pune 411002. Director of the Respondent No.13 herein above, do hereby state on solemn affirmation as under: -

1. I say that, I am one of the Director of Respondent No.13 Project Proponent and I am aware of the facts and circumstances of the present case, hence, I am able to depose the same on oath.

2. I say that, the Respondent No.13 is filing a reply to the Affidavit dated 22nd August 2023 filed by the Respondent No.14. I say that

the contents of the said reply may kindly be treated as part and parcel of the present Affidavit. I say that whatever stated in the present Affidavitand the Reply is true and correct to the best of my knowledge, information and belief and the legal advice, which I believe to be true.

Solemnly affirmed at Pune, on this 19th day of February, 2024.

NOTARY
HANUMANT BHAGWAN TAKALE
DIST. PUNE (MAHARASHTRA)
Regd No. 16481
Exp. Dt. 03/02/2025
GOVERNMENT OF INDIA

BEFORE ME

HANUMANT BHAGWAN TAKALE
NOTARY GOVT. OF INDIA
DIST. PUNE (MAHARASHTRA)
Regd No. 16481 Exp. Dt. 3/2/2025

DEPONENT

Noted and Registered
At Sr. No. 0254/2024
Date:- 19 FEB 2024

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ANNEXURE-R-1

विभागीय सहनिबंधक, सहकारी संस्था, पुणे विभाग, पुणे यांचेसमोर

(महाराष्ट्र सहकारी संस्था अधिनियम १९६० चे कलम १५४ अन्वये पुनरिक्षण अर्ज)

पुनरिक्षण अर्ज क्र ३७३ / २०२२

१. श्री पद्माकर कुलकर्णी (चेअरमन) (फ्लॅट नं ई / ३०२)
२. श्री अरविंद कवठेकर, (सेक्रेटरी) (फ्लॅट नं ई १ /८०१)
३. श्री वसंत सागडे, (ट्रेझरर) (फ्लॅट नं बी २/४०१)
सर्व रा प्रयेजा सिटी सहकारी गृहरचना संस्था मर्या,
वडगाव बुद्रुक, सिंहगड रोड, पुणे ४११ ०६८ अर्जदार

विरुध्द

१. प्रयेजा सिटी सहकारी गृहरचना संस्था मर्या,
ऑ वडगाव बुद्रुक, सिंहगड रोड, पुणे ४११ ०६८
२. उपनिबंधक, सहकारी संस्था, पुणे शहर (४), पुणे
मार्केटयार्ड, पुणे
३. श्री राहुल मांडे,
४. श्री आशिक नामदेव बडकस (साळी)
५. श्री शिवाजी मोरे
प्रतिवादी क्र ३ ते ५ रा प्रयेजा सिटी,
सिंहगड रोड, पुणे प्रतिवादी

अर्जदार यांनी प्रतिवादी क्र २, उपनिबंधक, सहकारी संस्था, पुणे शहर (४), पुणे यांनी दि २२.०७.२०२२ रोजी कलम ७५(५) अन्वये दिलेल्या आदेशा विरुध्द सदरचा पुनरिक्षण अर्ज दाखल केला आहे. सदर पुनरिक्षण अर्जाची वेळोवेळी सुनावणी घेण्यात येवून अंतिम सुनावणी दि ०१.०२.२०२३ रोजी घेण्यात आली. अर्जदार यांचेवतीने ॲड रहाटे व त्रयस्थ पक्षकार यांचेवतीने ॲड हिंगे यांनी उपस्थित राहून म्हणणे मांडण्यात आले. नैसर्गिक न्यायतत्वानुसार सुनावणीची संधी देणेसाठी त्रयस्थ पक्षकार यांचा दाव्यातील समावेशनाचा अर्ज मान्य करणेत आला.

अर्जदार यांचेवतीने खालीलप्रमाणे म्हणणे मांडण्यात आले.

१. प्रयेजा सहकारी गृहरचना संस्था मर्या, वडगाव बुद्रुक, पुणे ही नोंदणीकृत सहकारी गृहरचना संस्था असून, अर्जदार १ ते ३ हे संस्थेचे अनुक्रमे चेअरमन, सेक्रेटरी व ट्रेझरर म्हणून कार्यरत आहेत. संस्थेचे कामकाज कायदा, नियम व उपविधीतील तरतूदींनुसार सुरळीत चालू आहे.

२. संस्थेचे काही सभासद हे संस्थेच्या कामकाजावर नियुक्त होणेस इच्छुक असल्याने त्यांनी प्रतिवादी क्र २ यांचेकडे कलम ७५ अन्वये तक्रार अर्ज दाखल केला होता. सदर तक्रार अर्जाची शहानिशा न करताच प्रतिवादी क्र २ यांनी अर्जदार यांनी दाखल केलेले पुरावे विचारात न घेताच दि २२.०७.२०२२ रोजीचे आदेशाने अपात्र घोषित केले आहे.

३. संस्थेने दि २७.०८.२०२१ रोजीच दोष दुरुस्ती पूर्ण केली होती. सन २०१९-२०२० कालावधीचे दि २५.०३.२०२१ रोजीचे दोष दुरुस्ती अहवाल दि ०१.०४.२०२१ रोजीचे रजिस्टर पोस्टाव्दारे पाठविण्यात आले होते. तसेच सन २०२०-२१ चे दोष दुरुस्ती अहवाल प्रतिवादी क्र २ यांचे कार्यालयास दि ०६.१२.२०२१ रोजी सादर केले आहेत. दोष दुरुस्ती अहवाल कायद्याची माहिती नसल्याने, अनवधानाने सर्वसाधारण सभेत ठेवलेला नसून तो समिती सभेत ठेवलेले आहे ही अर्जदार यांची वाजवी सबब विचारात घेणेत यावी.

४. प्रतिवादी क्र २ यांनी अर्जदार यांनी दाखल केलेले पुरावे विचारात न घेताच, कोणत्याही स्पष्टीकरणाशिवाय अर्जदार यांना २ वर्षांचे दोष दुरुस्ती अहवाल सादर न करणे या कारणास्तव बेकायदेशीररित्या २ वर्षे कालावधीकरीता अपात्र घोषित केले आहे. वास्तविक अर्जदार हे प्रामाणिकपणे संस्थेचे कामकाज करत आहेत. तथापि प्रतिवादी क्र २ यांचे आदेशाने अर्जदार हे त्यांचा निवडणूक लढविणेचा हक्कापासून वंचित झालेले आहेत. त्यामूळे प्रतिवादी क्र २ यांचे आदेश रद्द करणेत यावेत.

<u>प्रतिवादी क्र ३ ते ५ यांचेवतीने खालीलप्रमाणे म्हणणे मांडण्यात आले.</u>

१. प्रतिवादी क्र ३ ते ५ यांचेसह एकूण १४४ सभासदांनी अर्जदार या संस्थेच्या पदाधिकाऱ्यां विरुध्द हरकत घेतलेली होती. त्या अनुषंगाने प्रतिवादी क्र २ यांनी संबंधितांना सुनावणीची पुरेशी संधी दिल्यानंतरच दि २२.०७.२०२२ रोजीचे आदेश पारीत केलेले आहेत त्यामूळे ते कायम करणेत यावेत.

२. सदर प्रतिवादी यांना संस्थेचे लेखापरीक्षण अहवाल कधीच पहावयास मिळालेले नाहीत. कागदपत्रांची वेळोवेळी मागणी करुनही संस्थेने सदर प्रतिवादी यांना कागदपत्रे देण्यास टाळाटाळ केलेली आहे.

३. संस्थेच्या समितीने अनेक वर्षांपासून दोष दुरुस्ती अहवाल ओ नमुन्यात सादर केलेले नाहीत ही बाब विचारात घेवूनच प्रतिवादी क्र २ यांनी अर्जदार यांना अपात्र घोषित केलेले आहे. सबब सदरचे आदेश कायम करणेत यावेत.

निरिक्षण

१. प्रयेजा सहकारी गृहरचना संस्था मर्या, वडगाव बुद्रुक, पुणे ही संस्था महाराष्ट्र सहकारी संस्था अधिनियम १९६० मधील तरतूदींनुसार नोंदणीकृत सहकारी गृहरचना संस्था असून, अर्जदार क्र १ ते ३ हे संस्थेचे अनुक्रमे चेअरमन, सेक्रेटरी व ट्रेझरर आहेत. प्रतिवादी क्र ३ ते ५ संस्थेच्या इतर काही

सभासदांच्या तक्रारीवरुन प्रतिवादी क्र २ यांनी अर्जदार यांना दि २२.०७.२०२२ रोजीच्या आदेशाने अपात्र घोषित केल्याने अर्जदार यांनी सदरचा पुनरिक्षण अर्ज दाखल केला आहे.

२. प्रतिवादी क्र २ यांनी अर्जदार यांना संस्थेच्या सन २०१८-१९ चे दोष दुरुस्ती अहवाल सर्वसाधारण सभेमध्ये चर्चेले गेले नाहीत, सदर विषय विषयपत्रिकेवर नमूद नाही, तसेच दि २६.०९.२०२१ रोजीच्या वार्षिक सर्वसाधारण सभेमध्ये सन २०१९-२०२० या आर्थिक वर्षाचे दुरुस्ती अहवालाबाबतचा विषय विषयपत्रिकेवर घेतला नसला कारणाने अपात्र घोषित केल्याचे दिसून येत आहे.

३. संस्थेने सन २०१९-२० रोजीचा दोष दुरुस्ती अहवाल व दि २१.०३.२०२१ रोजीचे सभेच्या मिर्टींगचा अहवाल व नोटीस दि २५.०३.२०२१ रोजीच्या पत्राव्दारे लेखापरीक्षकांना दि ०१.०४.२०२१ रोजी पोस्टाने पाठविल्याचे दाखल कागदपत्रांवरुन दिसून येत आहे. अर्जदार यांनी दोष दुरुस्ती अहवाल सादर केलेले आहेत. तथापि ते सर्वसाधारण सभेत ठेवलेले नाहीत या कारणास्तव संबंधितांवर अपात्रतेची कार्यवाही करणे उचित होणार नाही. अर्जदार यांनी उपस्थित केलेली सदरची वाजवी सबब विचारात घेणे आवश्यक आहे.

अनुमान

उक्त निरिक्षणे विचारात घेता अर्जदार यांना म्हणणे मांडण्याची पुरेशी संधी दिल्याचे प्रथमदर्शनी दिसून येत आहे. तसेच संस्थेने दोष दुरुस्ती अहवाल सादर केल्याचे दिसून येत आहे. अर्जदार यांनी सदर दोष दुरुस्ती अहवाल हा कायद्याची माहिती नसल्याने सर्वसाधारण सभे ऐवजी संचालक सभेत ठेवला असल्याची वाजवी बाब सदर प्रकरणी विचारात घेणे आवश्यक आहे. त्यामूळे प्रतिवादी क्र २ यांचे दि २२.०७.२०२२ रोजीचे आदेश रद्द करणे योग्य होईल या निर्णयाप्रत मी आलो आहे.

आदेश

१. पुनरिक्षण अर्ज क्र ३७३/२०२२ मान्य करणेत येत आहे.

२. प्रतिवादी क्र २, उपनिबंधक, सहकारी संस्था, पुणे शहर (४), पुणे यांचे दि २२.०७.२०२२ रोजीचे आदेश रद्द करणेत येत आहे.

३. खर्चाबाबत कोणतेही आदेश नाहीत.

सदरचा आदेश आज दिनांक १४ .०२.२०२३ रोजी माझे सही व शिक्कयानिशी देत आहे.

TRUE COPY ADVOCATE

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I undertake to produce English translation if required by the Hon'ble Tribunal