

NEXT DATE  
09/05/2023

HON'BLE NATIONAL GREEN TRIBUNAL  
WESTERN ZONE BENCH, PUNE

APPLICATION NO. 105/2021 (WZ)

**Shashikant Vitthal Kamble** ..... Applicant

VERSUS

**Ministry of Environment and** ..... Respondents  
**Forest, New Delhi & Ors**

**AFFIDAVIT BY RESPONDENTS NO. 14  
AURNAGABAD HOLIDAY RESORTS**

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Date: **08/05/2023**

Place: Thane

Filed by:



A-202 Chandravijay, Phule Road, Opp. Bansuri Hotel,  
Mulund East, Mumbai - 400081, Maharashtra, India.  
7400116222 mahabal60@gmail.com

**Raghunath Mahabal** रघुनाथ भालचंद्र महाबळ  
BE (Mechanical), ME (Industrial Management) VJTI Mumbai  
Chartered Engineer, FIE, Arbitrator-IIE, LLM ADVOCATE

## CONTACT DETAILS OF PARTIES

BETWEEN

..... APPLICANTS

1. Shashikant Vitthal Kamble,  
Age – 42 years, at: Popular Colony, Flat No.  
C1 / 13,  
Near Vitthal Nagar, Warje Malwadi, Warje,  
Pune – 411058  
E-mail : shashikantkambale125@gmail.com  
Phone : 9970619999

VERSUS

..... RESPONDENTS

1. Ministry of Environment and Forest and  
Climate Change (MoEF&CC),  
*through* its Secretary,  
Indira Paryavaran Bhawan,  
JorBagh Road, New Delhi – 110003  
E-mail : rosz.bng-mef@nic.in  
Phone :
2. Central Ground Water Authority (CGWA),  
*through* its Chairman having office at:  
Central Ground Water Board,  
Bhujal Bhawan, NH-IV, Faridabad – 121001  
E-mail : rdcr-cgwd@nic.in  
Phone :
3. Central Pollution Control Board (CPCB),  
*through* its Member Secretary, having office  
at:  
Parivesh Bhawan, CBD-cum-Office Complex  
East Arjun Nagar, Delhi – 110032.  
E-mail : ccb.cpcb@nic.in  
Phone :

4. Environment Department, Maharashtra.  
*through* the Principal Secretary, having office at:  
Room No.229, Mantralaya,  
Mumbai – 400032  
E-mail : psec.env@maharashtra.gov .in  
Phone :
5. State Environment Impact Assessment Authority (SEIAA), *through* its Chairman, having office at:  
601, 6th Floor, NKM International House,  
behind LIC Yogakshema Building,  
177 Babubhai Chinoy Marg,  
Nariman Point, Mumbai – 400020  
E-mail : psec.env@maharashtra.gov.in  
Phone :
6. State Expert Appraisal Committee (SEAC), Maharashtra.  
*through* its Chairman having office at:  
15th floor, Environment Department,  
Mantralaya, Mumbai – 411032  
E-mail : psec.env@maharashtra.gov.in  
Phone :
7. Maharashtra Pollution Control Board (MPCB), *through* its Member Secretary having office at:  
Kalpataru Point, 3rd and 4th floor,  
Road No.8, Sion Cir, opp. PVR Theater,  
Mumbai – 400022.  
E-mail : ms@mpcb.gov.in  
Phone : 8308392596
8. Maharashtra Pollution Control Board (MPCB), *through* its Regional Officer having office at:  
Jog Center, 3rd Floor, Mumbai Pune Road,  
Wakdewadi, Pune – 411003  
E-mail : ropune@mpcb.gov.in  
Phone :

9. District Environment Impact Assessment Authority. (DEIAA) *through* the Collector, Pune as a Chairman  
having office at:  
New Collectorate office, Opposite Sasson Hospital,  
Pune – 411001.  
E-mail : nahatavijay3l@gmaiJ.com  
Phone :
  
10. The Commissioner Land and Records, Pune *through* its Commissioner and Director  
2<sup>nd</sup> and 3<sup>rd</sup> Floor, New Administrative Building,  
Opposite Council Hall, Agarkar Nagar,  
Pune – 411001  
E-mail : dlrmah.mah@nic.nic  
Phone :
  
11. The Commissioner, Pune Municipal Corporation (PMC), *through* its Municipal Commissioner,  
having office at:  
Main Building, Pune Municipal Corporation,  
Congress House Road, Near Mangla Theater,  
Shivajinagar, Pune – 411005.  
E-mail : info@punecorporation.org  
Phone :
  
12. The City Engineer, Pune Municipal Corporation (PMC),  
having office at:  
Main Building, Pune Municipal Corporation,  
Congress House Road, Near Mangla Theater,  
Shivajinagar, Pune – 411005.  
E-mail : prashant.wagmare@punecorporation  
org  
Phone :

**13.** The Building Inspector, Pune Municipal Corporation (PMC), having office at:  
The Building Department, Main Building,  
Pune Municipal Corporation,  
Congress House Road, Near Mangla Theater,  
Shivajinagar, Pune – 411005.  
E-mail :  
Phone :

**14. Aurangabad Holiday Resorts,**  
**236, Patil Plaza, Satara Road, Parvati,**  
**Sarasbaug Pune – 411009**  
**Site address: "Jubilee Park"**  
**Survey No. 83/1,84/2,84/4, Village**  
**Warje,**  
**Taluka Haveli, District Pune - 411052.**  
E-mail :  
Phone :

**ABBREVIATIONS USED**

<b>Short form</b>	<b>Full-form</b>
MoEFCC	Ministry of Environment, Forest and Climate Change
CGWA	Central Ground Water Authority
CPCB	Central Pollution Control Board
SEIAA	State Environment Impact Assessment Authority
SEAC	State Expert Appraisal Committee
MPCB	Maharashtra Pollution Control Board
DEIAA	District Environment Impact Assessment Authority
PMC	Pune Municipal Corporation
RTI	Right to Information
STP	Sewage Treatment Plant
PP	Project Proponent
NGT	National Green Tribunal
JCR	Joint Committee Report
EC	Environmental Clearance
OM	Office Memorandum
OA	Original Application
BUA	Built up Area
PCMC	Pimpri Chinchwad Municipal Corporation
MRTP	Maharashtra Regional and Town Planning 1966 & UDPCR 2034
UGT	Underground Tank
DG	Deiseal Generator
OWC	Organic Waste Converter
CMD	Cubic Meter Day
RG	Recreational Ground
AAC	Autoclaved aerated concrete blocks

DAIRY OF EVENT

Sr.	Date (yyyy/mm/dd)	Activity / Particulars
1.	16-09-2005	Commencement Certificate - New DP Layout Dpo/5305/D/842
2.	14-09-2006	Directions u/s.5 from
3.	28-03-2007	Revised DP Layout Dpo/0995/D/1103
4.	30-03-2007	New Building Permission CC/4860/06
5.	04-02-2009	Revised DP Layout DPO/PLU/03/0544/08
6.	24-12-2009	Plinth Certificate - BPDP/Zone1/141
7.	02-02-2012	Revalidation Building permission CC/3915/11
8.	18-06-2012	Commencement Certificate - Revise building Permission CC/0912/12
9.	18-06-2012	Sanctioned Building Plan – CC No 4860
10.	01-01-2013	Building C - Plinth checking Certificate – PCC/1232/12
11.	01-01-2013	Building B - Plinth checking Certificate
12.	25-08-2014	Listed in 16 <sup>th</sup> SEAC-III meeting
13.	10-09-2014	Government of Maharashtra - Proposed Direction issued a letter u/s 5 of EPA, 1986
14.	06-10-2014	Reply submitted to letter

Sr.	Date (yyyy/mm/dd)	Activity / Particulars
15.	25-03-2015	Government of Maharashtra Proposed Direction issued a letter u/s 5 of EPA, 1986
16.	15-04-2015	Construction stopped
17.	05-11-2015	MPCB filed CrC No.0404255 of 2015 u/s.15 of the EPA 1986 in CJM Pune
18.	10-03-2017	Revalidation Building permission CC/3558/16
19.	19-05-2017	Application for Environmental Clearance to EAC- Delhi
20.	19-02-2018	4 <sup>th</sup> MoM EAC Delhi
21.	01-02-2021	The proposal file was transferred from EAC Delhi to SEIAA Maharashtra
22.	25-03-2021	Meanwhile application for Environmental Clearance to SEIAA Maharashtra
23.	09-04-2021	145 <sup>th</sup> MoM SEAC-II
24.	12-05-2021	117 <sup>th</sup> MoM SEAC-III
25.	03-08-2021	121 <sup>st</sup> MoM SEAC-III
26.	01-10-2021	230 <sup>th</sup> MoM (Part A) SEIAA
27.	08-10-2021	125 <sup>th</sup> MoM (Part A) SEAC-III
28.	29-12-2021	235 <sup>th</sup> MoM SEIAA
29.	12-05-2022	Joint Committee Site Visit
30.	29-07-2022	247 <sup>th</sup> MoM (Part C) SEIAA
31.	10-11-2022	156 <sup>th</sup> MoM SEAC-III
32.	12-12-2022	255 <sup>th</sup> MoM SEIAA
33.	23-02-2023	Application to CGWA

## **MOST RESPECTFULLY SUBMITTED**

**1.** I, Rameshwar Khune, aged about 43 years, working as Project Manager and authorized person of **Respondent No.14 M/s Aurangabad Holiday Resorts (AHR)** the Project Proponent (**PP**), for the impugned project (**hereafter referred to as PP**) have required knowledge of the facts and authority to file this affidavit in reply, which I hereby do on Solemn affirmation and oath, as hereunder in detail.

**2.** Answering Respondent (PP) denies all the allegations made by the applicant, other than categorically referred and respondent in the Affidavit. Nothing shall be construed as accepted, simply because it was not denied or replied to. The applicant shall be required to prove all the allegations and averments that he has made. Respondent craves leave to submit the additional affidavit if required subsequently or as may be directed by this Hon'ble Tribunal.

**3.** The earlier daily orders were passed ex-party without giving any hearing to PP, as provided in NGT Act. As such Respondent could not submit its say and make submissions before the Hon'ble Tribunal to present their say.

**4.** PP states that Joint Committee Report is already submitted, which is from Page No. 45 to 90. The Conclusion is on Page No.52, Point No.4. The recommendations are on Page No.53, Point No.5.

**5.** PP states that JCR has recorded the facts but interpretations or making judgemental comments is any way out of their scope.

**6.** PP states that only two Buildings B and C are complete with configuration Basement Parking + P+P\_ 11 floors, each. The 'total covered built-up construction area including FSI and non-FSI' as of the date of visit on 12/05/2022 is only about 12457m<sup>2</sup>, which is far below <20,000m<sup>2</sup>. No further construction work is going on at the site. MPCB has already filed the Criminal Case against PP on

**7.** PP states that the applicant has not shown as to how and why 'Consent to Establish' is required when the construction is below 20000m<sup>2</sup>. The applicant has not shown why 'Consent to Operate' is required when the construction is below 20000m<sup>2</sup>.

**8.** As per the CPCB classification of industries, consent is required for residential projects that are above 20000m<sup>2</sup>. CPCB Categorization of industries before 2012 did not have a requirement of Consent for residential construction

projects. As soon as the EC is granted and the PP has to start the project construction, PP will apply and obtain 'Consent to Establish', for the entire project. CPCB Classification 2016 covers such projects under "*Sl.No. (New/Old) (21/8) Building and construction project more than 20,000 sq. m built up area*". As of date also the construction is <20000m<sup>2</sup> area.

**9.** PP states that they have already applied for 'Environmental Clearance' and their application is under consideration of SEAC-3 and SEIAA. The EC application for the project has differed as the case is pending before Hon'ble Tribunal.

**10.** PP states that the project construction has been stopped as of now. PP has applied for EC when the area of the project has increased beyond 20000m<sup>2</sup>. That application is under consideration before SEAC-3 and SEIAA as a violation case, applied within the window of Violation Notification 14/03/2017. MoEFCC has laid down the procedure for by series of OM for dealing with the applications in case of violation cases. All these are enclosed collectively as **[Ax. R-3]** ■

**11.** PP states that various other allegations made in the OA are related to projects that are >20000m<sup>2</sup> area and that need EC. The violation will be there if one completes the project and of area

more than 20000m<sup>2</sup> and doesn't fulfil the conditions of the 'Environmental Clearance'.

**12.** PP states that as soon as EC is granted, PP shall comply with all the conditions of the EC as laid down and included in the EC or 'Consent to Establish'.

**13.** PP states that as on date few conditions are not applicable as the construction is <20000m<sup>2</sup>. However, when EC is granted for the entire project with BUA 26110m<sup>2</sup>, there may be additional requirements due to EC and Consent. PP is willing to fulfil them for the entire project, including even the past two buildings constructed.

## **ORDERS AND JUDGEMENTS OF HON'BLE HIGH COURTS**

**14.** Hon'ble High Court of Bombay through various orders and judgements have held that there is no violation in such cases when the 'total covered built-up construction area including FSI and non-FSI' is <20000m<sup>2</sup>. The present case is squarely covered by these orders. Environment Department, Govt. of Maharashtra has issued the letter to this effect in light of these judgements. All these orders/judgements are enclosed collectively as **[Ax. R-2]** ■

## PROJECT DESERVING EC INSTEAD OF DEMOLITION AS DESERVING CASE

**15.** PP states that the conceived project area of all the buildings was <20000m<sup>2</sup>. This can be also seen from the JCR Page No.47 Table Point No.4 dated 04/02/2009. This was for all the buildings A to D. Now only two buildings B & C are constructed and complete. Only the foundation and plinth of building A are completed. The total BUA of all both these buildings and the plinth (actually which is open to the sky and not covered) is still only about 12457m<sup>2</sup> which is well below 20000m<sup>2</sup>.

**16.** The plans of the building are sanctioned. The construction done so far is as per the plans sanctioned by PCMC. There is no violation of MRTP Act or DC Rules.

**17.** PP states that the flats in the occupied buildings are sold to bonafide buyers and they have started staying there. The demolition shall cause no benefit to the environment and loss to these buyers.

**18.** PP states that all the additions and provisions for sustainable environment management can be provided even now to the subsequent portion of the project. As such this is a fit and deserving case to be considered for grant of EC.

AND for this act of kindness, I shall pray forever.

Place: **Pune**  
Date: **08 May 2023**

Rameshwar Khune  
**Respondent No. 14**

**VERIFICATION AND AFFIDAVIT**

I, Rameshwar Khune, aged 42 years, am working as Project Manager and authorized person of Respondent No.14 M/s Aurangabad Holiday Resorts (AHR) the Project Proponent (PP). I have verified the contents of the above affidavit. I have not suppressed any relevant facts. I am filing this affidavit on solemn affirmation and oath.

Place: **Pune**  
Date: **08 May 2023**

Rameshwar Khune  
**Respondent No. 14**

Identified by:

Adv. Raghunath Mahabal  
Roll No. MAH/349/2012



**BEFORE ME**

**SHAIKH HARUN YASIN**  
ADVOCATE & NOTARY  
GOVT. OF INDIA  
48, Mitha Nagar, Kondhwa Kd., Pune - 43

**08 MAY 2023**



**PAN GREEN FIELD ENVIRO****ENVIRONMENTAL CONSULTANCY SERVICES**

www.PAN-gfe.in GSTIN/UIN: 27BBBPB3726P1ZK  
 Registration Certificate Number: 1810200312198599 AND  
 402, SHEETAL NIWAS BUILDING, NEAR BEDEKAR HOSPITAL, THANE WEST-400602  
 Email: pangreenfieldeviro@gmail.com and bagul\_pradnya@rediffmail.com

**ENVIRONMENTAL STATUS CUM AUDIT REPORT**

	:	Proposed Residential Project with convenient shops – “Jubilee Park” S. No.84, H. No. 2 & 4 & S. No. 83/1 (Plot No.3) at Mauje Warje Pune Pincode – 411052 by M/s. Aurangabad Holiday Resorts
Date of visit	:	05.05.2023
Status	:	Part construction has been completed
Observations	:	<p>The site has been visited.          environmental services were provided on-site.          Part construction of 2 buildings was completed. Wing B and Wing C have been completed as per received sanctioned from Pune Municipal Corporation vide number CC/0912/12 dated 18/6/2012          The sewage Treatment Plant (STP), Drainage line network, DG set, Solid waste management, UGT, Fire tank, and Lift services all are provided.          In addition, a Facility for landscape and tree plantation, parking facility, Stormwater network, Rainwater network, Amenity area, and lighting facilities also will be provided.</p>
Enclosed	:	Environmental Status Audit Report including Existing Environmental Status Report.
Prepared by	:	PAN GREEN FIELD ENVIRO Environmental Consultancy Services, Thane Maharashtra
		
Name and Signature : Mrs. Pradnya A Niphade Proprietor and Founder NABET ACCREDITED EIA COORDINATOR		

# Environmental <sup>132</sup> Status Report

## Project Summary

<b>Points</b>	<b>Contents</b>	<b>Information</b>
Project Name	Name and site address	Proposed Residential Project with convenient shops - "Jubilee Park" S. No.84, H. No. 2 & 4 & S. No. 83/1 (Plot No.3) at Mauje Warje Pune Pincode - 411052 by M/s. Aurangabad Holiday Resorts
Date of report		05.05.2023
Construction status	Current status	2 buildings were completed Wing B : BP + P + P + 11 Wing C : BP + P + P + 11 Club House/Multipurpose Hall : Ground structure
Permissions: Statutory NOC	Environmental Clearance	Applied
Permissions: Statutory NOC	Consent to Establish	Not yet applied
Monitoring:	Air, Water, Noise and Soil	Not yet done
Facility:	Green Belt area:	Currently, the part plantation has been done on site Total number of trees planted: 50
Provision:	Energy Conservation measures:	Yes: Provision of Solar heater panels is given. Now Project is in under construction phase and is yet to be completed
	DG set and Transformer	DG set provided with acoustic enclosure - 125 kVA x 1 No 1 no. x 630 kVA (transformer also provided)

# 133 Environmental Status Report

<b>Points</b>	<b>Contents</b>	<b>Information</b>
Provision:	Solid Waste Management:	<p>Solid waste: Organic Waste Converter (OWC) is to be proposed</p> <p>Currently, municipal solid waste has been collected and segregated on-site and handed over to Municipal Corporation</p>
	<u>Wastewater:</u>	<p>The provision of the Sewerage Treatment Plant of 150 CMD has been completed and in operational.</p> <p>The excess treated water drain has been connected to the existing municipal drain</p>
	Water network:	<p>Yes: The provision of water network is provided</p> <p>Current supply: Domestic water tanker</p> <p>During the operational phase:</p> <p>The water source is municipal water Pune Municipal Corporation</p> <p>The drainage line network and stormwater lines network will be constructed</p>
Provision:	Fire tender Movement:	<p>Yes: Proper driveway of 9 m has been provided for internal traffic and a turning radius and movement of fire tender have been provided around the building.</p>
Provision:	Parking facility:	<p>Current status :</p> <p>The provision of a parking facility is provided on the project side.</p>

# 134 Environmental Status Report

## ENVIRONMENTAL FACILITIES PROVIDED

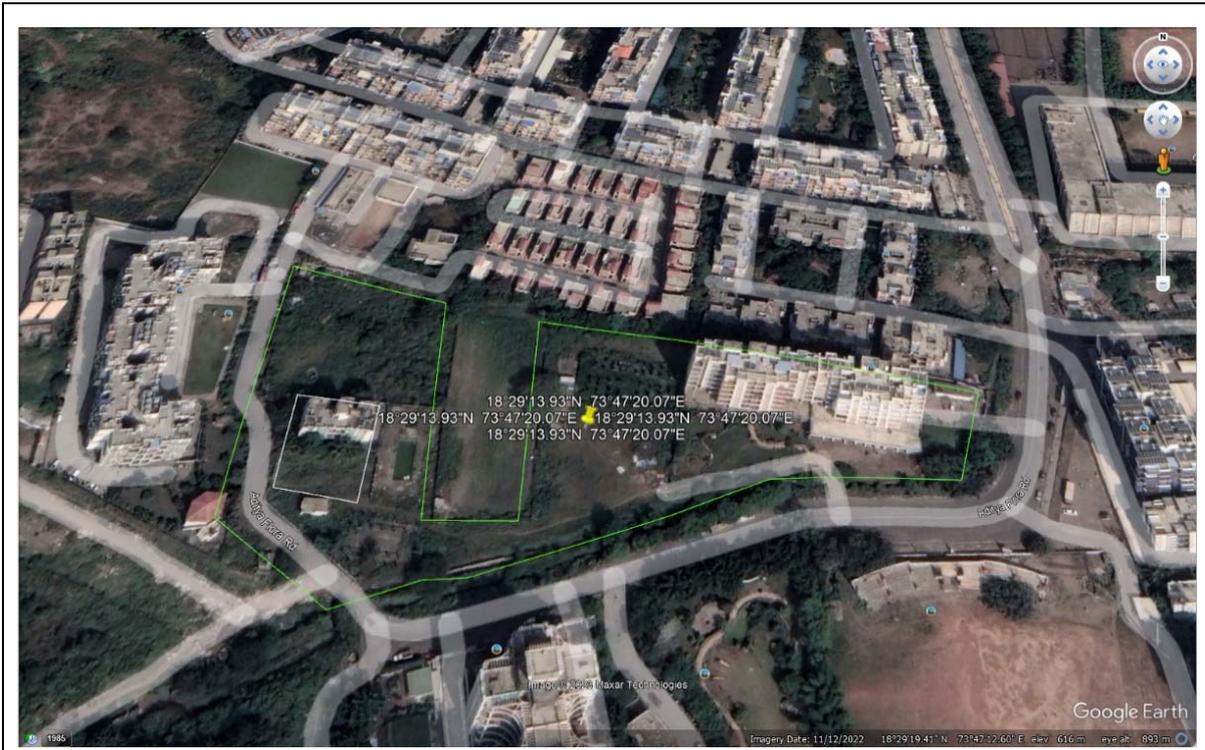
Sr.	Environment facilities provided	Remark	Photo/Ax
1.	Proper entry and exit to the project	Yes, the provision of proper entry and exit has been designed as per sanction. Currently, part construction has been completed	Photo
2.	Sewage Treatment Plant	Yes, the Provision of STP 150 m <sup>3</sup> has been provided. The construction of STP is completed	Photo
3.	Sewerage Drainage network:	Yes, completed	Photo
4.	Rainwater Harvesting pits with Groundwater recharge pits:	Yet to be completed	
5.	Stormwater network:	Yet to be completed	
6.	Provision of Solar PV Panels	Yes, provision of Solar Hot water has been provided	Photo
7.	Provision of Street light	Yet to be completed	
8.	Internal driveway	Yes, completed - 9 m	Photo
9.	Road connectivity	It was well connected to a 24 m DP road	Photo
10.	Water Facility source	Currently Tanker water and in the operational phase - Pune Municipal Corporation	
11.	Tree Plantation	Partly planation - 50 no	Photo
12.	Green area	Partly RG area also developed	Photo

# 135 Environmental Status Report

Sr.	Environment facilities provided	Remark	Photo/Ax
13.	Provision of the parking area	Partly completed – Basement parking was completed for Buildings B & C.	Photo
14.	External road connectivity -	24 m DP road & 12 m	Photo
15.	Provision of DG set:	1 x 125 kVA	Photo
16.	Provision of transformer:	1 x 650 kVA	
17.	Provision of Fire Fighting system:	A fire hydrant, the sprinkler, etc. have been provided	Photo
18.	Utilization of Recycled water:	Flushing and gardening	
19.	Utilization of Groundwater:	It was used during the construction phase. Currently not using the groundwater	Photo
20.	Approval plan and sanction:	Yes, the sanction received from Pune Municipal Corporation	
21.	Provision of Solid waste management:	Provision of OWC will be proposed. Currently, waste has been segregated and handed over to Corporation	Photo
22.	AAC blocks	Used AAC block	
23.	Monitoring	Yet to be done	
24.	Health checkup	Currently Not application.	
25.	Nalla retaining wall	Under construction	Photo

# 136 Environmental Status Report

## SITE PHOTOS



**Project Site: Latitude: N 18° 29' 13.93" N  
and Longitude - 73° 47' 20.07" E**



78/2, AtulNagar Phase I, Atul Nagar, Warje, Pune, Maharashtra 411058, India

Latitude  
18.4871°

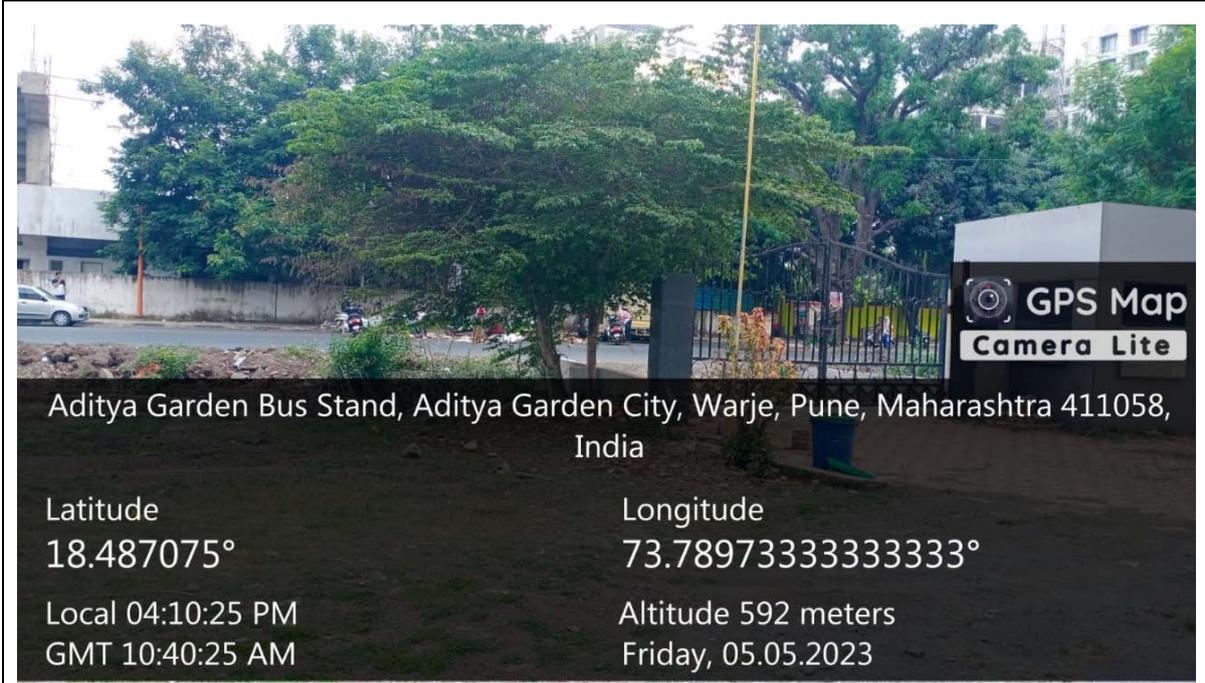
Longitude  
73.79051666666666°

Local 04:12:21 PM  
GMT 10:42:21 AM

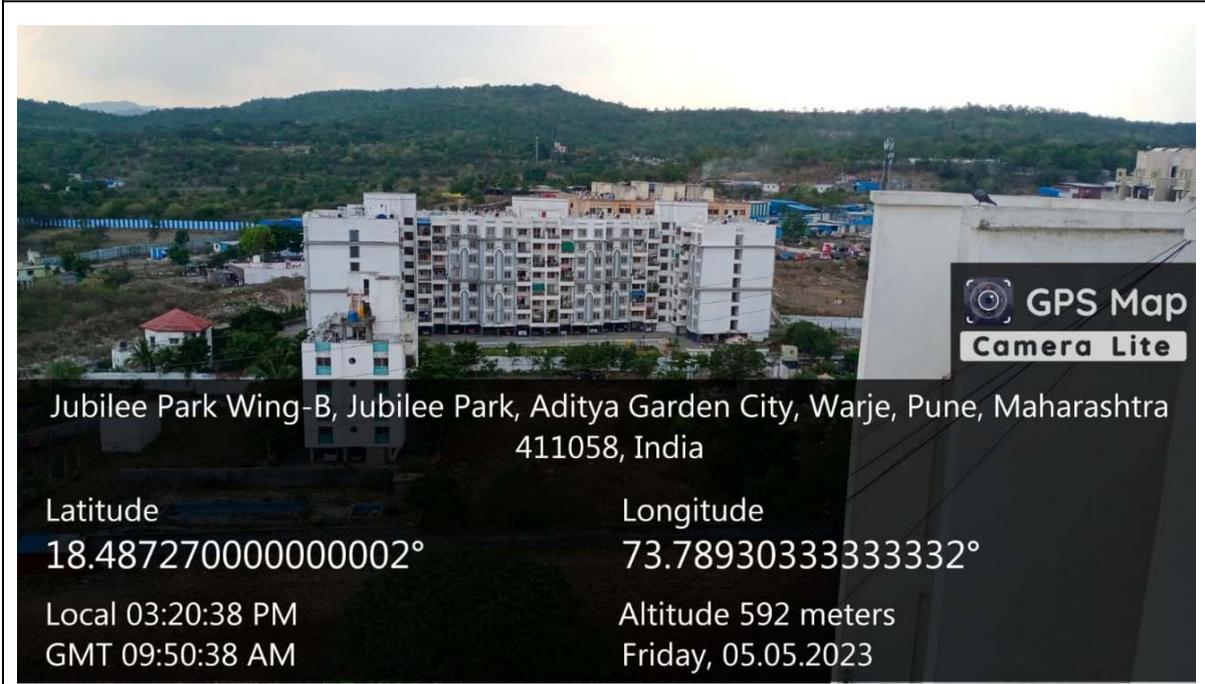
Altitude 592 meters  
Friday, 05.05.2023

**Project Entry Gate**

# 137 Environmental Status Report



## Project external road – 24 m DP road



## Front side – Wing B & C

# 138 Environmental Status Report



## Stlit/Ground-level parking below Wing B & C



## Solid waste segregation and handed over to the corporation

# 139 Environmental Status Report



**STP machinery**



**STP machinery**

# 140 Environmental Status Report



Building B, Flat 601, Jubilee Park, Aditya Garden City, Warje, Pune,  
Maharashtra 411058, India

Latitude  
18.487171666666665°

Longitude  
73.79031499999999°

Local 02:22:14 PM  
GMT 08:52:14 AM

Altitude 592 meters  
Friday, 05.05.2023

**Wing B –Parking entry – completed**

# 141 Environmental Status Report



## Wing C – Completed

# Environmental <sup>142</sup>Status Report



Gokul Nagar, AtulNagar Phase I, Atul Nagar, Warje, Pune,  
Maharashtra 411058, India

Latitude  
18.486718333333332°

Longitude  
73.78846°

Local 02:43:09 PM  
GMT 09:13:09 AM

Altitude 591 meters  
Friday, 05.05.2023

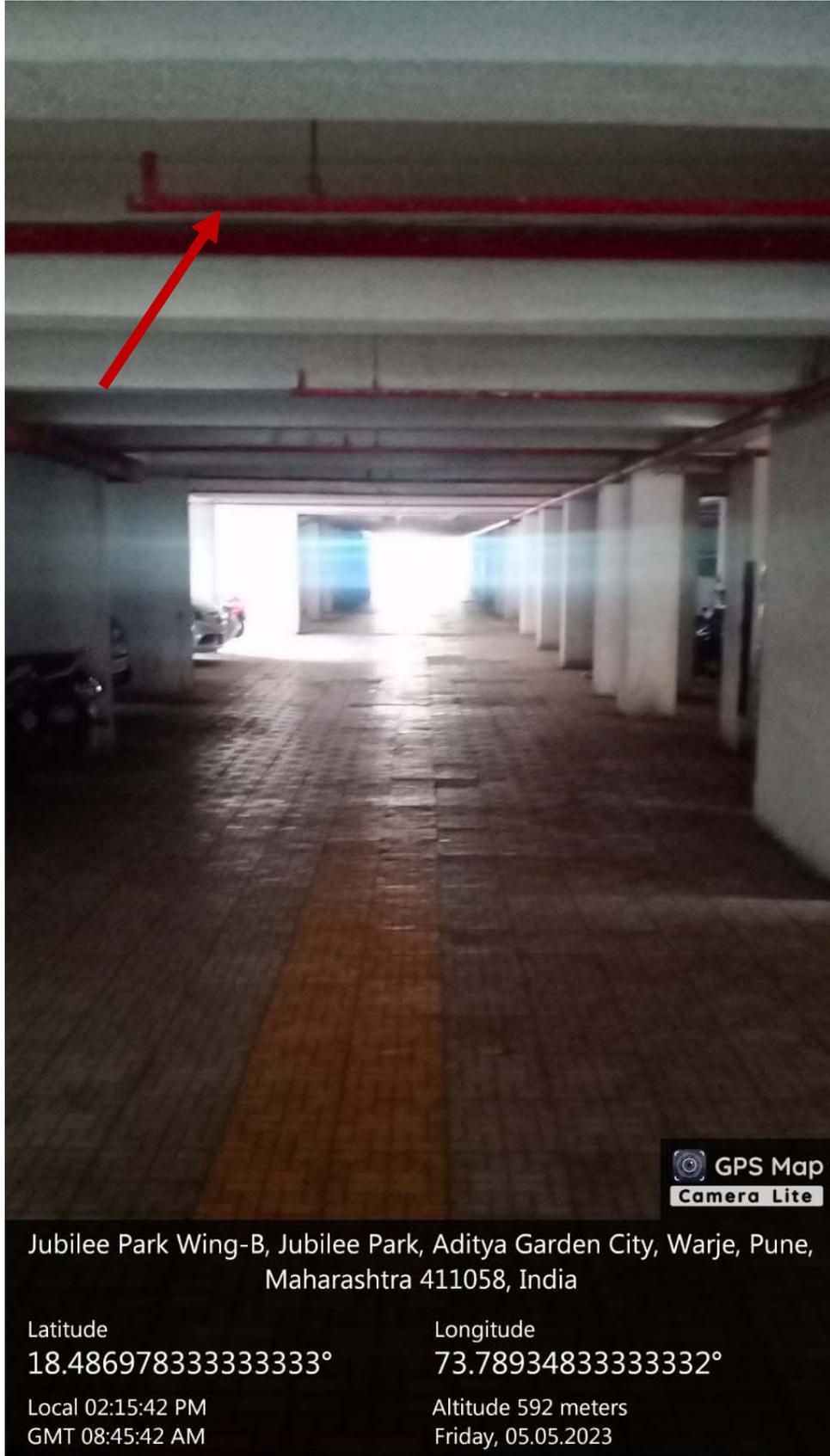
**Wing B & Wing C – completed**

# 143 Environmental Status Report



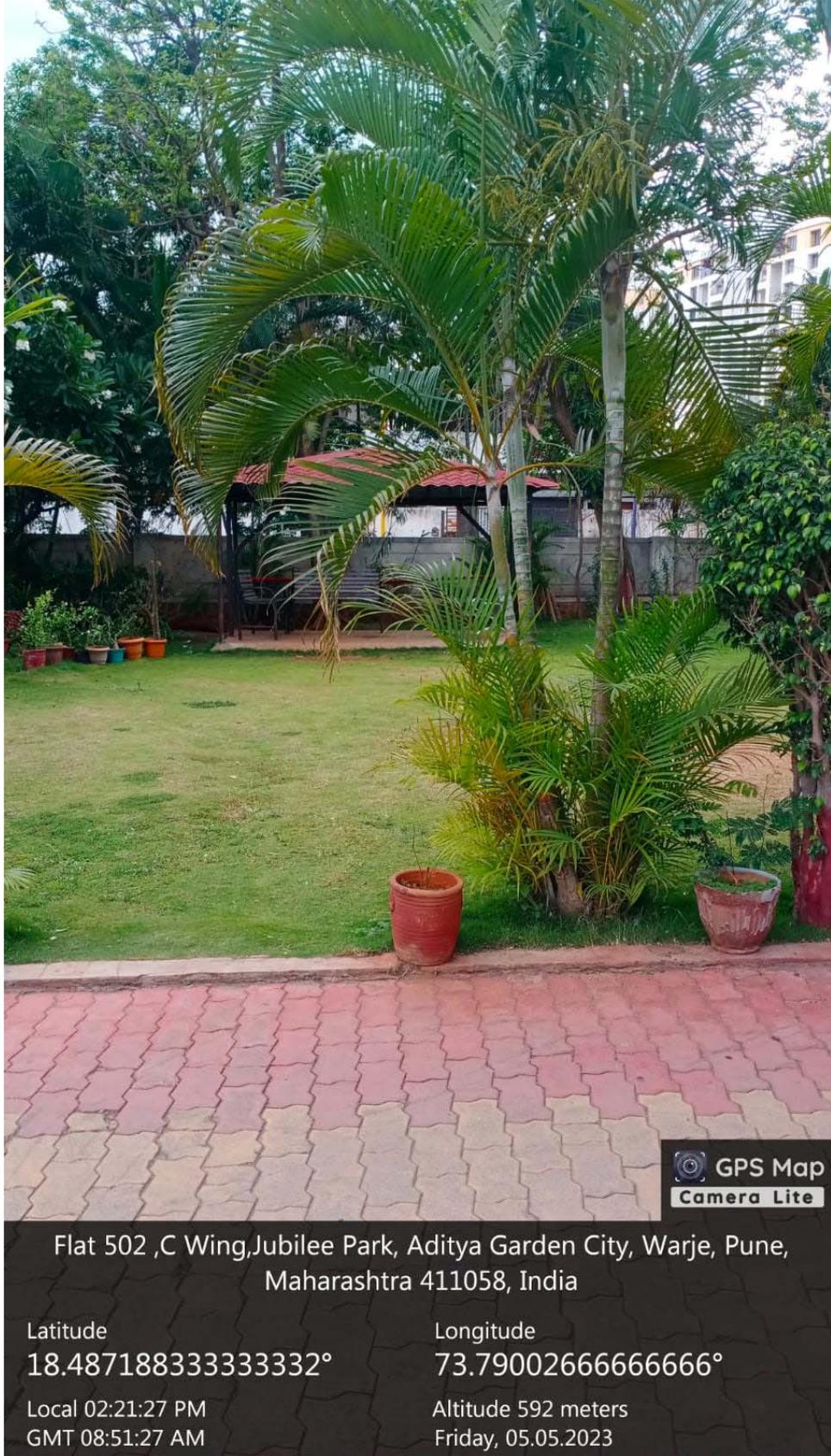
**Underground Tank (UGT) – 400 m<sup>3</sup>**  
**Location – Ground level**

# 144 Environmental Status Report



**Provision of Fire fighting in the basement**

# Environmental <sup>145</sup>Status Report



**RG area developed (Part)**

# Environmental Status Report

146



GPS Map  
Camera Lite

Building B, Flat 601, Jubilee Park, Aditya Garden City, Warje, Pune,  
Maharashtra 411058, India

Latitude  
18.487156666666667°

Longitude  
73.790131666666667°

Local 02:23:54 PM  
GMT 08:53:54 AM

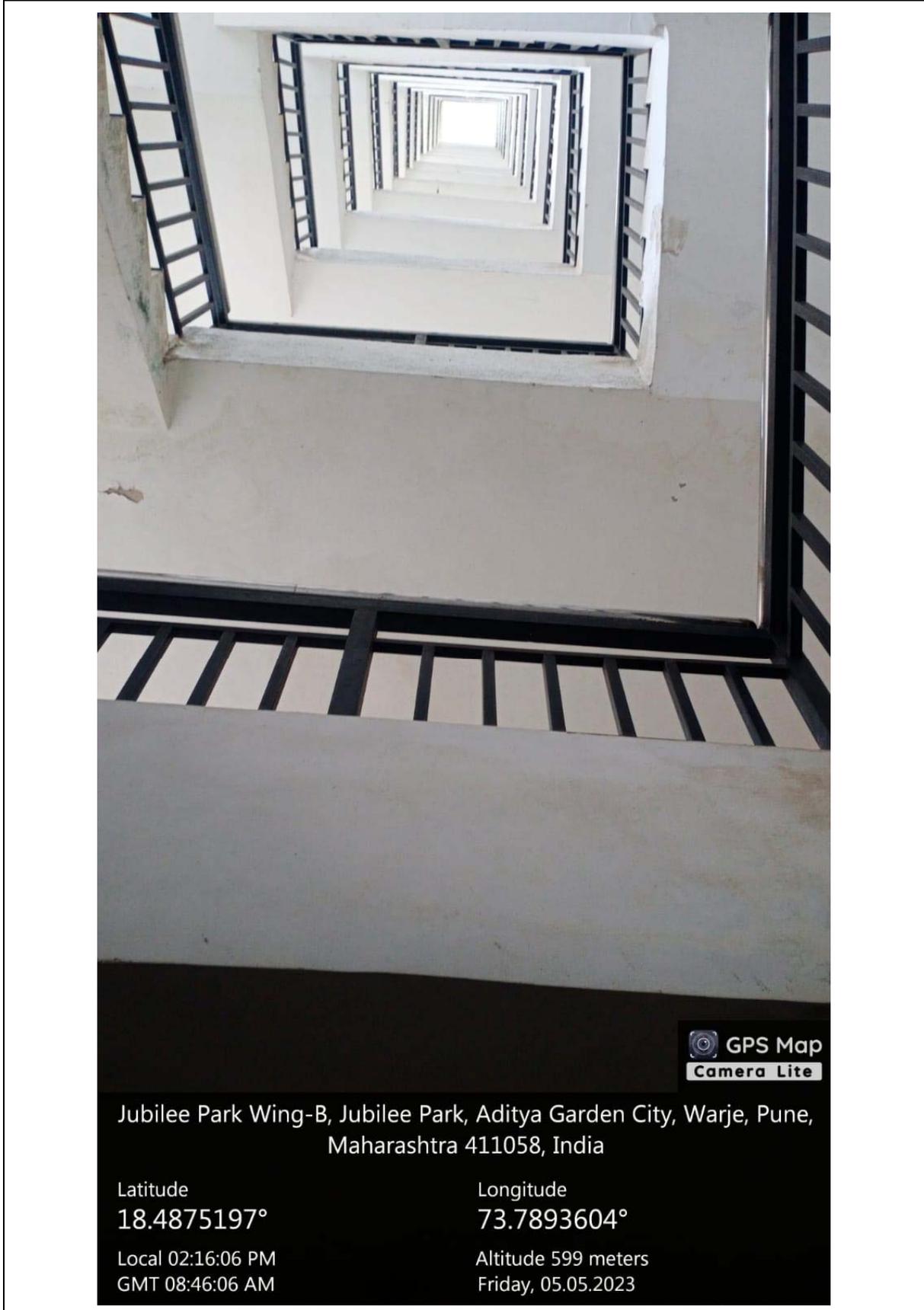
Altitude 592 meters  
Friday, 05.05.2023

**Partly RG area developed**

# Environmental <sup>147</sup>Status Report



**Swimming Pool - Partly constructed**



**Staircase with proper ventilation**

# 149 Environmental Status Report



**DG set at Basement level**

# 150 Environmental Status Report



Flat 502 ,C Wing,Jubilee Park, Aditya Garden City, Warje, Pune,  
Maharashtra 411058, India

Latitude  
18.487228333333334°

Longitude  
73.78994833333333°

Local 02:21:10 PM  
GMT 08:51:10 AM

Altitude 592 meters  
Friday, 05.05.2023

**Sewage Treatment Plant (STP) 150 m<sup>3</sup>/day**



Aditya Garden Bus Stand, Aditya Garden City, Warje, Pune,  
Maharashtra 411058, India

Latitude  
18.48708°

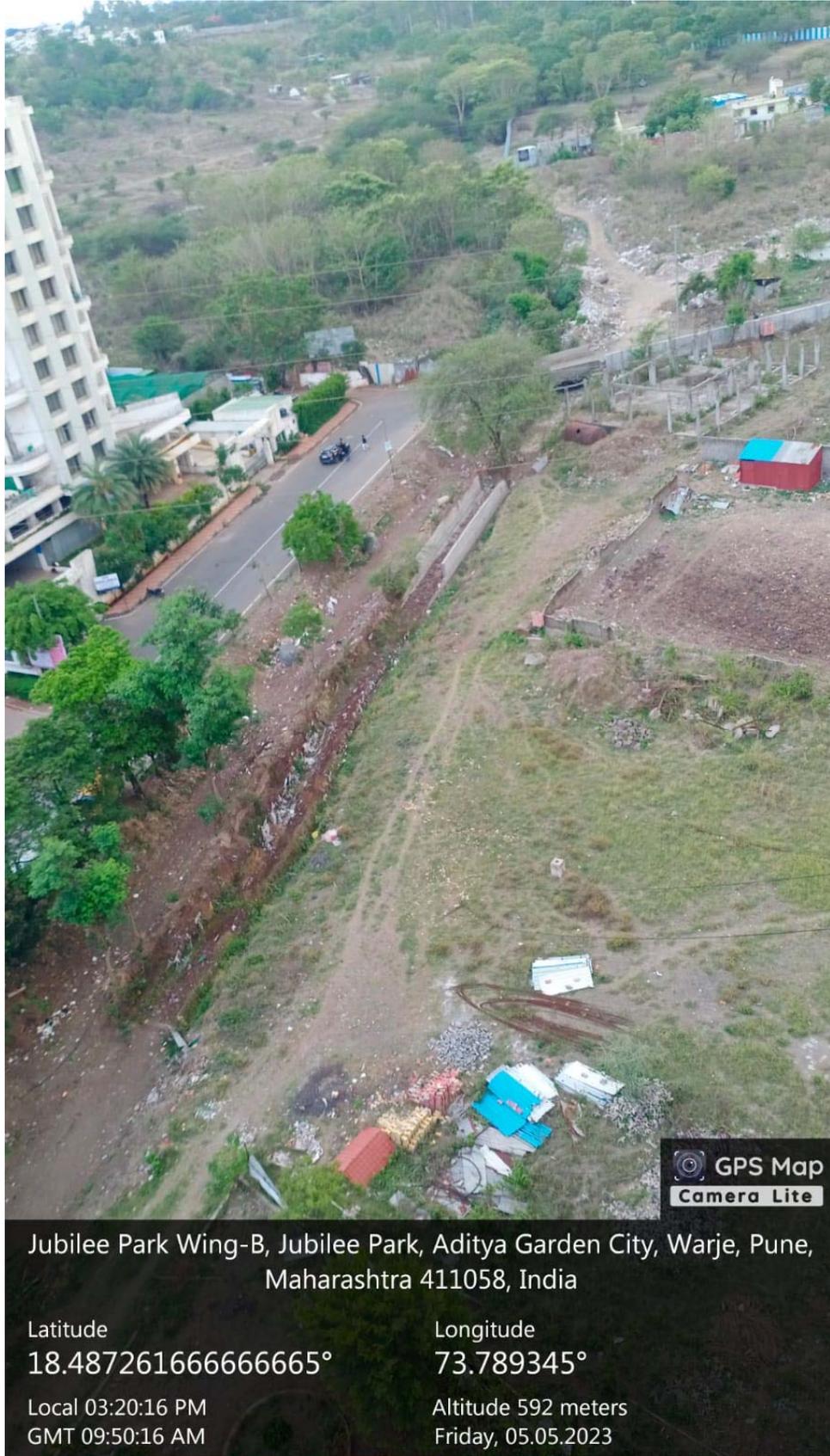
Longitude  
73.78978833333333°

Local 05:16:05 PM  
GMT 11:46:05 AM

Altitude 592 meters  
Friday, 05.05.2023

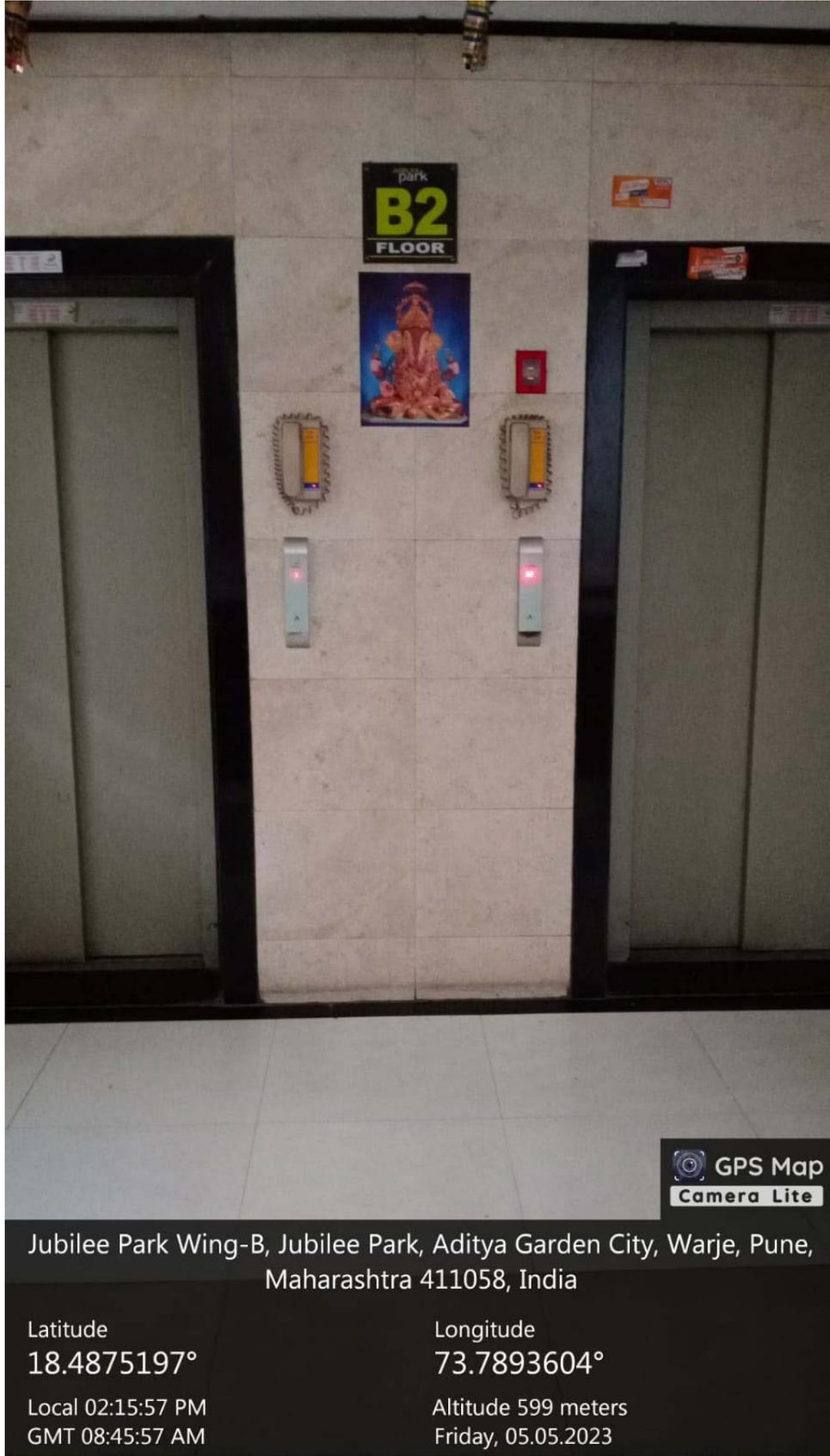
## Bore - Ground Water

# 152 Environmental Status Report



**External 12 m wide road**

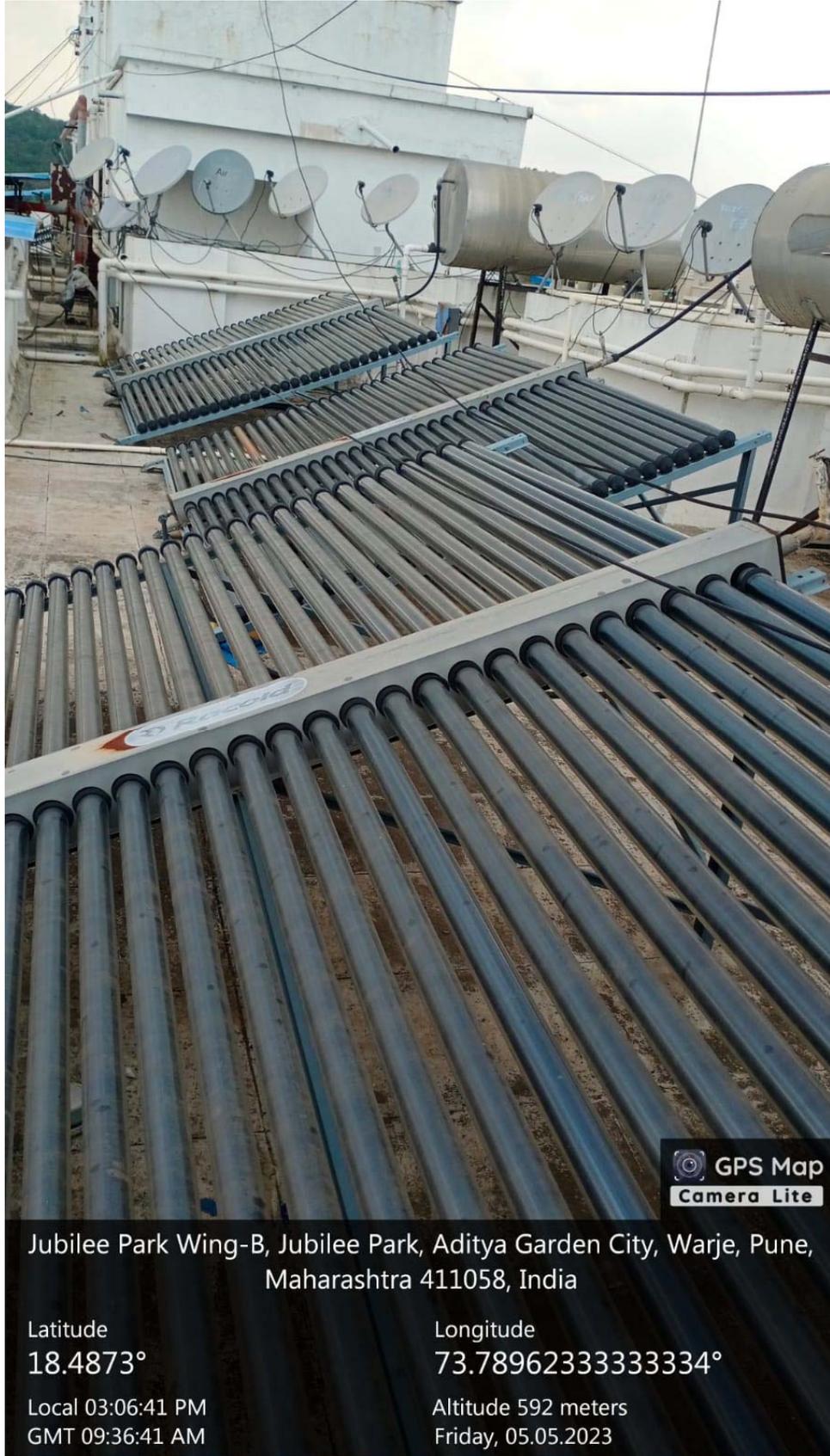
# 153 Environmental Status Report



**2 nos. of Lifts are provided**



## Network under construction



**Provision of Solar water heater on terrace**

# 156 Environmental Status Report



**Basement parking – drive-way of 6m**

# Environmental <sup>157</sup> Status Report



**Ground level parking drive-way of 9 m**

# 158 Environmental Status Report



**Dual plumbing system provided**

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2809 OF 2012

- 1 Nahur Vivekanand Cooperative Housing Society Ltd., Mulund (West), Mumbai
- 2 Silvex Developers Private Limited, Santacruz (W), Mumbai .... Petitioners

vs

- 1 Union of India, through the Secretary Ministry of Environment & Forests, New Delhi
- 2 State of Maharashtra, through State Environmental Impact Assessment Authority, Mantralaya, Mumbai
- 3 The Secretary, State Environmental Impact Assessment Authority, Mantralaya, Mumbai
- 4 Municipal Corporation of Greater Mumbai .... Respondents

Dr. Milind Sathe, Senior Advocate with Mr. Mukul Taly, Mr. Sheikh Yusuf Ali i/by M/s. S. Mahomedbhai & Co. for the petitioners.

Mr. Y. R. Mishra for respondent no.1.

Mr. Niranjan Pandit, AGP for State.

Ms. Sheela Tambe with Ms. Yamuna Parekh for Respondent No.4-BMC.

Mr. Altaf Khan i/by Anjali Awasthi for the Applicants.

**CORAM: MOHIT S. SHAH, C.J.  
AND ANOOP V. MOHTA, J.**

**DATE : January 16, 2013**

**P.C.:**

Rule. Respective counsel waive service of Rule.

2 In the facts and circumstances of the case, the writ petition is taken up for final hearing forthwith.

3 Petitioner No.1 is a Cooperative Housing Society of occupants of buildings which were constructed by Maharashtra Housing and Area Development Authority (MHADA). MHADA has permitted the Petitioner No.1-society to redevelop the property under Regulation 33(5) of the Development Control Regulations for Greater Mumbai, 1991. Petitioner No.2 is the developer which has been given the development rights on the above land in Nahur, Mulund (West), Mumbai. The land admeasures 6164 square meters as per the property card.

4 By now, all the eight buildings which were constructed by MHADA have been demolished and 160 members of Petitioner No.1-Society have been shifted to transit accommodation or have been provided compensation by way of fixed rental amount to enable the members to take rented premises on their own as a temporary arrangement till new buildings are constructed by Petitioner No.2-developer. So far the Petitioners have applied for and have been granted building permission for rehabilitation buildings and free-sale buildings. According to the Petitioners, the Petitioners have been granted such permission in the form of IOD by the

Municipal Corporation to the extent of 9691.92 square meters for the rehabilitation building and 5117.88 square meters for the free sale buildings, including staircase and lift area.

5           It is the Petitioners' case that under the Government of India Notification dated 14 September, 2006, environmental clearance is required to be obtained from the State Level Environmental Impact Assessment Authority (SEIAA or the Authority, for brevity) if the construction proposed to be put up is going to exceed 20,000 square meters. It is submitted that since the land has construction potential of more than 20,000 square meters, the Petitioners have applied for environmental clearance before the SEIAA in August 2012, but for the present, the Petitioners are only going to construct the rehab buildings to the extent of 9691.92 square meters and 5117.88 square meters for the free sale buildings, including staircase and lift areas. Thus, the total built up are proposed to be constructed by the Petitioners would only be 14809.8 square meters. The Petitioners submit that looking to about 300 such Applications for environmental clearance pending before the SEIAA, the Petitioners' application is not likely to be decided for a period of about two to three years. It is, therefore, submitted by learned counsel for the Petitioners that the Respondent Municipal Corporation be directed to consider the Petitioners' application for commencement certificate upto 14809.8 square meters without insisting for environmental clearance from SEIAA.

6           Mr. Niranjana Pandit, learned AGP appearing for the Respondent-Authorities does not admit that the SEIAA is likely to take three years for deciding the Petitioners application of environmental

clearance.

7 This aspect was considered by this Court while deciding Writ Petition No.1916/2012-Vardhman Developers Limited v. Union of India & ors decided on 24 September 2012 and this Court had noted the following grievance which was made in the said writ petition :

“The State Environmental Impact Assessment Authority, which is appointed for considering such proposal for environmental clearance has a large number of pending applications. The petitioner's application for prior environmental clearance was submitted to the said authority on 15 June 2012. However, the application is still at serial No.296 of the list of applications, from which so far only first ten applications have been considered by Respondent No.3-the State Environmental Impact Assessment Authority.”

8 Dr. Milind Sathe, learned senior counsel for the Petitioners has therefore submitted that having considered this aspect, this Court has passed orders dated 29 March 2012 and 24 September 2012 directing the Authorities to permit the concerned developers to take up the construction of area not exceeding 20,000 sq. meters for which the concerned developers had obtained approvals from the Municipal Corporation, after getting the undertaking from the developer that the developer shall not exceed construction of 20,000 sq.meters before getting environmental clearance, so that the projects for rehabilitation are not delayed.

9           While deciding the aforesaid matters, this Court had also noted the objection of the learned AGP Mr. Niranjana Pandit that when the project proponent cannot undertake construction project for more than 20,000 sq.meters of built up area without obtaining prior environmental clearance, the project proponent cannot be allowed to commence the construction within the limits of 20,000 sq.meters, without obtaining prior environmental clearance. After considering the said submissions, this Court has held that the projects for rehabilitation of slum dwellers or redevelopment projects should not be unnecessarily delayed, even to the extent of construction upto 20,000 sq.meters when the developer is ready to give the undertaking not to exceed the construction beyond 20,000 sq.meters without first obtaining environmental clearance.

10           In the facts of the present case also, we find that 160 families occupying flats constructed by MHADA have moved out and all the buildings in the concerned locality have been demolished. Those families are occupying the transit accommodation of the area only about 200 sq. ft. Once the rehabilitation buildings are constructed, the members will get permanent accommodation to the extent of about 460 sq.ft carpet area. It is, therefore, obvious that members of Petitioner No.1-Society i.e. each of the 160 families is presently required to occupy small area of 200 sq.ft as against the larger areas to the extent of about 460 sq.ft which they would be getting on the construction of rehabilitation buildings, without contributing anything as the developer is required to recover the project cost by constructing free sale buildings.

11 According to the Petitioners, the developer has already incurred expenditure to the tune of Rs. 21 crores and the developer will not be able to recover any amount unless and until the developer is also allowed to construct and sell the free sale buildings. According to the Petitioners, the Petitioners have already been granted the IOD for constructing 8581.68 sq. meters of built up area plus 1110.24 sq. meters for stair case and lift, totalling 9691.92 sq. meters for rehabilitation buildings. Similarly, the Petitioners have been granted IOD for constructing built up area of 4517.88 sq.meters plus 600 sq. meters for stair case and lift for free sale buildings. Thus the construction proposed to be put up by the Petitioners is not going to exceed 15,000 sq. meters which will be much less than 20,000 sq. meters of built up area which a person can construct without obtaining environmental clearance from SEIAA. When the Petitioners are standing in a long queue and the Petitioners application is not likely to be decided for quite some time, no useful purpose will be served by not permitting the Petitioners to put up any construction even upto 15,000 sq. meters. We, therefore, find considerable substance in the submission of the learned senior counsel for the Petitioners.

12 We also find substance in the submission of Dr. Sathe, learned senior counsel for the Petitioners that the case of residential buildings does not stand on the same footing as other projects like Power Generation Project where parties may not be allowed to put up any construction without getting prior environmental clearance. The proposed construction is to be up on the land which already had MHADA buildings for the last more than 20 years.

13 Chamber Summons (Lodging) No.20/2013 has been filed by three applicants who are members of Petitioner No.1-society. According to the said applicants, the developer should not have been granted the development rights by Petitioner No.1-society.

14 Dr. Sathe, learned counsel for the Petitioners has opposed the chamber summons and submitted that apart from the fact that the applicants are only three out of 160 members, the applicants had filed various other proceedings challenging the development agreement between Petitioner No.1-society and Petitioner No.2-developer, and challenging NOC granted by MHADA and IOD granted by the Municipal Corporation, but in all those proceedings, the Courts have negatived their contentions. Reliance is placed on judgment dated 10 April 2012 of this Court in Appeal from Order No.378/2012, judgment dated 16 April, 2012 in Writ Petition No.87 of 2012 of this Court and also order dated 8 February 2012 passed by the Cooperative Court, Mumbai below Exhibit "5" in Case No. CC/II/272 of 2011 and also judgment dated 21 February, 2012 of the City Civil Court in Notice of Motion No.358/2012 in L. C. Suit No.568/2012.

15 Having heard the learned counsel for the parties, we are not inclined to allow the chamber summons for joining three members of Petitioner No.1-society when overwhelming majority of the other 157 members out of 160 have decided to go for redevelopment and all the buildings constructed by MHADA have been demolished. The three members cannot be allowed to stall the redevelopment project. In the present Petition, we are only concerned with the limited question as to whether the Petitioners should be allowed to construct upto 15,000 sq.

meters without getting environmental clearance.

16 For the reasons already recorded earlier in similar matters, we are inclined to accept the Petitioners submission' that when the Petitioners do not propose to put up construction in excess of 20,000 sq. meters and environmental clearance is required from the State Level Environmental Impact Assessment Authority only when the built up area is to exceed 20,000 sq. meters, no useful purpose will be served by not granting the reliefs as prayed for by the Petitioners. As indicated earlier, the Municipal Corporation has also issued IODs for rehabilitation buildings as well as for free sale buildings. The Municipal Corporation shall, therefore, consider the Petitioners application for commencement certificate on the basis of the amended IODs and such commencement certificate shall not in any case be for construction in excess of 15,000 sq.meters. We record the undertaking being given on behalf of the Petitioners that they will not put up construction in excess of 15,000 sq. meters as the Petitioners have already been granted IODs for construction upto 14809.8 sq. meters.

17 We make it clear that the area for which the Petitioners have been granted IODs as indicated in the affidavit dated 12 December, 2012 of Nance Silva, shall be subject to verification of the area by the concerned Municipal Authorities but the Petitioners' application for commencement certificate shall be considered without requiring the Petitioners to produce the environmental clearance from the State Level Environmental Impact Assessment Authority.

18 Before parting with the matter, we cannot help placing on record our concern about the impact of the CRZ Regulations, 2011 and their implementation on development of Mumbai. While there can be no two opinions about the need to preserve ecology, one cannot overlook the fact that Mumbai, the commercial capital of the country, is an island city, already having thousands of structures within 500 meters and 1000 meters of the coast for several decades, even before coming into force of the CRZ Regulations of 1991 which are now replaced by CRZ Regulations of 2011. For regulating the development of Mumbai, therefore, the Ministry of Environment & Forest may consider appropriate regulatory measures which need not necessarily be the regulatory measures applicable to the other coastal areas.

In the last two years, this Court has come across several cases, where the parties have to wait for long for environmental clearances from State Level Environmental Impact Assessment Authority (SEIAA) or Maharashtra Coastal Zone Management Authority (MCZMA) for constructions on lands which were already having residential buildings for several decades. As noted in our order dated 24 September 2012 (quoted in para 7 hereinabove), during three months between 15 June 2012 to 24 September 2012, only 10 out of 300 pending applications were decided by SEIAA.

Similarly, in our order dated 14 June, 2012 in Writ Petition No.1047 of 2012, we had noted that for redeveloping a residential building on land admeasuring only 473 sq. meters (new survey No.1575 of Shivaji Park, Mahim Division) in CRZ II area, in place of old dilapidated and

cessed building constructed prior to 1 September, 1940, the occupants of the building and the developer had to wait for a long period. In that order, we had quoted from the article in the Economist of 9 June, 2012 (pages 69 to 70) titled “Property in Mumbai-The minimum city” –

“Rules inhibit new construction near the coast. Because of the thicket of red tape and litigation, only 3% of 15,000 rent-controlled buildings have been redeveloped.”.

19 Non-appreciation of the above important aspects has been only retarding the growth of infrastructure as well as residential and commercial buildings in the city of Mumbai. While all such developments have to be properly regulated, it would be in the fitness of things if the State Government takes up the matter with the Government of India in the Ministry of Environment & Forests for evolving a separate regulatory regime for Coastal Zone Management in Mumbai.

20 Since the learned Advocate General was also present in the Court when this petition was heard and decided, the learned Advocate General has agreed to convey the above observations to the appropriate authorities in the State Government.

21 The Petition is accordingly disposed of in the above terms. There shall be no order as to costs.

**CHIEF JUSTICE**

**(ANOOP V. MOHTA, J.)**

2013 SCC OnLine Bom 405 : (2013) 3 AIR Bom R 186

In the High Court of Bombay  
(BEFORE MOHIT S. SHAH, C.J. AND ANOOP V. MOHTA, J.)

Saumya Buildcon Pvt. Ltd. ... Petitioner;

*Versus*

Union of India and Others ... Respondents.

Writ Petition Lodging No. 470 of 2013

Decided on March 6, 2013

Advocates who appeared in this case:

Dr. Milind Sathe, Senior Advocate with Mr. Vishal Kanade and Mr. Hemant Shah i/b. IC Legal and Mira Lalani, for the Petitioner;

Mr. N.D. Sharma with Mr. H.V. Mehta, for Respondent No. 1;

Mr. Niranjan Pandit, AGP, for the Respondent State;

Ms. Sharmila Deshmukh, for the Respondent MCZMA;

Ms. Sharmila Modle, for the Respondent B.M.C.

The Judgment of the Court was delivered by

MOHIT S. SHAH, C.J.:— Rule. Respective counsel waive service of Rule. In the facts and circumstances, the matter is taken up for final hearing today.

2. The petitioner is a developer who had acquired development rights over the land situated and lying at Survey No. 777, 778, 779 and 780 (Part) of Worli Division, Mumbai admeasuring 7872.14 sq. meters. The petitioner is in the process of implementing the project as contemplated under Article 33(7) of the Development Control Regulation, 1991.

3. The land belongs to respondent No. 4 which had constructed flats for municipal tenants, who have formed a Co-operative Housing Society which is respondent No. 6 herein. The petitioner had submitted building plans to the Municipal Corporation for construction of buildings with 99 flats for rehabilitation of the municipal tenants and 9 shops, municipal school building, having ground plus 5 floors and a free sale building having various floors, for parking, club, etc. and first to 33 upper residential floors.

4. When the building plans were submitted in the year 2004 and they were approved, the applicable notification was Environment Impact Notification dated 14 September 2006 which lays down the following requirements for obtaining environmental clearance:—

“2. Requirement of prior Environmental Clearance (EC):—

The following projects or activities shall require prior environmental

clearance from the concerned regulatory authority, which shall hereinafter referred to be the Central Government in the Ministry of Environment and Forests for matters falling under Category "A" in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category "B" in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity:

(i) All new projects or activities listed in the Schedule to this Notification.

(ii) Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization;

(iii) Any change in product - mix in an existing manufacturing unit included in Schedule beyond the specified range."

(See Paragraph 2 and 7)

**LIST of PROJECTS OR ACTIVITIES REQUIRING PRIOR ENVIRONMENTAL CLEARANCE:**

Project or Activity Category with threshold limit Conditions if any

A B

1 2 3 4 5

8 Building/Construction projects/Area Development projects and Townships.

8(a) Building and

Construction project

> 20000 sq.mtrs and

< 1m 50,000 sq. mtrs. of built-up area #

# (built up area for covered construction; in the case of facilities open to the sky, it will be the activity area)

8(b) Townships and Area Development projects

Covering an area > 50 ha and or built up area

> 1,50,000 sq. mtrs. ++

++ All projects under Item 8(b) shall be appraised as Category B1.

5. The petitioner also applied to the MCZMA which granted approval by communication dated 14 February 2007 at Exhibit "F", in the following terms:—

"Accordingly, the proposal was forwarded to the Ministry of Environment & Forests, Govt. of India for grant of necessary CRZ clearance vide letter No. MCZMA/54, dtd. 16/10/2006. Now, the Ministry of Environment & Forests, Govt. of India (1A-III Division)

vide letter dtd.24/1/2007 (copy enclosed) accorded CRZ clearance for the above project, subject to the following conditions:"

.....

6. It is necessary to note that as per the criteria laid down in the aforesaid Notification dated 14 September 2006 the proposed construction was to the extent of 15,645.70 sq. meters. It is also necessary to note that as per Environment Impact Notification dated 14 September 2006 in the case of facilities open to the sky, it was to be treated as the activity area and not built up area and only covered construction was to be treated as built up area.

7. As per the IOD and the commencement certificate granted by the Municipal Corporation the petitioner proceeded to construct the buildings having 99 flats for rehabilitation of municipal tenants and 9 shops. The construction is almost complete. Similarly, the petitioner also proceeded to construct the Municipal School building of ground plus 5 floors and it is stated that the construction is almost complete.

8. It is necessary to note that when the petitioner was granted the MCZMA clearance in the year 2007 the built up area for the residential building and the shops was 6373.57 sq. meters and the built up area of the Municipal School building was 1045.54 sq. meters. However, by MOEF Notification dated 4 April 2011 the definition "built up area" was substituted as under:—

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

9. In other words, what was earlier known non-FSI area was not included in the definition of built up area but by the aforesaid Notification dated 4 April 2011 the definition of "built up area" was expanded to include construction of not only covered area, but also basement and other service areas which were earlier not included in the definition of built up area. In view of the above Notification, the built up area of the residential building for 99 flats and 9 shops was re-computed at 8720.51 sq. meters and the built up area of the municipal school was re-computed at 1196.16 sq. meters aggregating to 9916.67 sq. meters as against the previous area aggregating to 7419.06 sq. meters.

10. In view of the above amended Notification the built up area of the proposed sale component building which was earlier computed at 8226.57 sq. meters would now be 14,000 and odd sq. meters and aggregating all the three built up areas of the residential building, 9 shops, municipal school building and the free sale component building the aggregate area would work out to 39,681.13 sq. meters.

11. In view of the above, as the construction area is to exceed 20,000 sq. meters, the petitioner is required to obtain environmental clearance from the State Expert Appraisal Committee (SEAC). The SEAC would forward its recommendation to the State Environment Impact Assessment Authority (SEIAA). The petitioner has accordingly submitted its application to the SEAC in June 2011. However, by the impugned decision dated 16 November 2011 the petitioner has been informed about the following decision:—

“ Decision:

The case was discussed on the basis of the presentation made by the proponent. The proponent is requested to comply with the following observations:

1. The proponent shall obtain CRZ Clearance as per 4(d) of CRZ Notification 2011 which states that any construction involving more than 20000 m<sup>2</sup> BUA in CRZ-II, prior recommendation of concerned CZMA shall be essential for considering grant of environmental clearance as per EIA Notification 2006 or grant of approval by the relevant planning authority.
2. The proponent shall submit letter from MCGM (Municipal Corporation of Greater Mumbai) with detailed clarification on the following points:
  - a. Total area of the plot nearing CS No. 777, 778 and 780.
  - b. Plot area on which “Prerna Co-op. Housing Society” is proposed.
3.
  - c. Remaining plot area and details, if any other scheme, proposed thereon.
4. The draft general guidelines of MCGM dated 16<sup>th</sup> July 2011, including fire safety norms, for High Rise Building Proposals, shall be complied with.
5. Details of car park arrangement calculations.”

12. In the meantime, the petitioner has also been served with stop work notice dated 21 June 2011 from the Secretary, Environment Department of the State Government stating that since the petitioner's project construction is more than 20,000 sq. meters, it was obligatory on the petitioner's part to obtain prior environmental clearance from competent authority as per EIA Notification dated 14 September 2006 before starting any building construction activity. The notice further stated that since the petitioner had failed to obtain prior environmental clearance before starting construction activities, there is violation of Notification dated 14 September 2006 and, therefore, the petitioner must stop the construction work forthwith. Consequently the Municipal Corporation of Greater Mumbai has also issued stop work notice dated

27 July 2011.

13. According to the petitioner the petitioner has complied with both the stop work notices and the petitioner has filed this petition under Article 226 of the Constitution challenging the above decision dated 16 November 2011 and the aforesaid two stop work notices.

14. Dr. Milind Sathe, learned counsel for the petitioner has urged the following contentions:

(i) That the petitioner's project was approved and the CRZ clearance was granted on 14 February 2007 by MCZMA. The project was for construction with built up area of only 15,645.70 sq. meters in view of the definition of "built up area" then prevailing. In fact, the petitioner has only constructed the residential building for rehabilitation of municipal tenants for 99 flats, 9 shops and the Municipal School building of ground plus 5 floors which is to be handed over to the Municipal Corporation of Greater Mumbai free of costs.

(ii) In any view of the matter, even the built up area of the sale component building added to the above constructions would be within 20,000 sq. meters (15,645.70 sq. meters as per the definition of "built up area" when CRZ clearance for the project was granted by MCZMA). The changed definition of built up area as per Notification dated 11 April 2011 cannot apply to a project which was sanctioned prior to 11 April 2011.

(iii) In any view of the matter, even if the changed definition under Notification dated 11 April 2011 were to apply to the petitioner's project, the petitioner has already applied to SEAC for environmental clearance for a project having built up area exceeding 20,000 sq. meters and the petitioner is awaiting the said environmental clearance, but there can be no requirement again to go back to MCZMA for getting CRZ clearance which was already granted earlier on 14 February 2007. The proposed construction at the time of grant of CRZ clearance on 14 February 2007 and the proposed constructions now are for the same construction areas and merely because there is change in the definition of built up area, there is no justification for the State Expert Appraisal Committee to require the petitioner to obtain CRZ clearance again from MCZMA.

(iv) Without prejudice to the above submissions, it is submitted that in any view of the matter since the environmental clearance from State Expert Appraisal Committee and the State Environment Impact Assessment Authority under the EIA Notification dated 14 September, 2006 is required only when the construction exceeds 20,000 sq. meters, the petitioner is entitled to continue with the construction which would not exceed 20,000

sq. meters.

(v) Reliance is placed on orders dated 16 January 2013 in Writ Petition No. 2809 of 2012 and 24 September 2012 in Writ Petition No. 1919 of 2012 and other matters in support of the contention that the authorities cannot be permitted to object to the developer proceeding to construct upto 20,000 sq. meters without obtaining environmental clearance which is required to be obtained only when the construction is to exceed 20,000.

15. On the other hand, Ms. Sharmila Deshmukh, learned counsel for MCZMA and Mr. Niranjan Pandit, learned A.G.P., for the State Authorities have opposed the petition and submitted that the notification dated 4 April 2011 of the MOEF is merely clarificatory amendment relating back to the original Notification dated 14 September 2006. As per the amended definition of built up area, even the open construction areas are included in the built up area and since the petitioner's application to the said Expert Appraisal Committee itself indicates that as per the amended definition, the total construction area is going to be 39681.13 sq. meters, the authorities are justified in requiring the appellant to obtain not only environmental clearance, but also CRZ clearance from MCZMA. It is submitted that when the MCZMA had granted clearance on 14 February 2007 it was on the basis of the built up area being less than 20,000 sq. meters. Now that the built up area is going to exceed 20,000 sq. meters fresh CRZ clearance will be required from the MCZMA.

16. It is further submitted that the petitioner cannot be allowed to put up any construction and that the authorities are justified in issuing the stop work notices as the project is for construction exceeding 20,000 sq. meters of built up area.

17. As regards the decision of the *State Expert Appraisal Committee* that the petitioner should obtain CRZ clearance as per the CRZ Notification of 2011, when construction area remains the same, two views may be possible on the question whether the petitioner having obtained CRZ clearance from MCZMA with proposal for built up area upto 20,000 sq. meters should again be required to approach MCZMA for CRZ clearance when the built up area as per the amended definition is exceeding 20,000 sq. meters. However, in matters of environment concern, we would prefer to err on the safer side. We, therefore, do not find any fault with the decision of the *State Appraisal Committee* requiring the petitioner to move the MCZMA for environmental clearance because now the built up area of the project is computed at 39,681.13 sq. meters. We do not accept the petitioner's contention that because the petitioner's project was earlier granted CRZ clearance before 4 April 2011, the clarificatory amendment provided by the said Notification will not apply to the petitioner's project. The amendment

dated 4 April 2011 is clarificatory as indicated in the preamble to the Notification itself. The change in the definition of built up area from merely covered area to areas including basement and service areas will significantly increase the construction area. After all, CRZ clearance is all about construction activity in a coastal zone and, therefore, merely because the construction is open to sky would not make it any less the construction than the construction of the covered area. We, therefore, find considerable substance in the submission made on behalf of the MCZMA that the Notification dated 4 April 2011 will apply to the pending projects as well, meaning thereby the projects are not already executed.

18. We do, however, find some substance in the last submission made by the learned counsel for the petitioner that even if the petitioner is required to obtain CRZ clearance from MCZMA again on the basis that the built up area of the project will exceed 20,000 sq. meters, the petitioner is entitled to get the same reliefs which this Court has been granting in case of many other parties where similar prayer was made. In Writ Petition No. 1916 of 2012 (*Vardhman Developers Limited v. Union of India*) and Writ Petition No. 2809 of 2012 (*Nahur Vivekanand Cooperative Housing Society Ltd. v. Union of India*). We have rejected a similar contention urged on behalf of the respondent authorities that when the project proponent cannot undertake construction project for more than 20,000 sq. meters of built up area without obtaining prior environmental clearance, the project proponent cannot be allowed to commence the construction within the limits of 20,000 sq. meters, without obtaining prior environmental clearance. This Court has held that when clearances are required only for projects with built up area exceeding 20,000 sq. meters, redevelopment projects for residential buildings should not be unnecessarily delayed even to the extent of construction upto 20,000 sq. meters when the developer is ready to give undertaking not to exceed the construction beyond 20,000 sq. meters without first obtaining environmental clearance. This Court has noted that the Authorities take considerable time for taking a decision on the application for environmental clearance or for CRZ clearance. In the meantime the redevelopment projects are being delayed. This Court has been granting relief in such cases on the basis that even if ultimately the authorities were to reject the applications for clearance, there will be no illegality in so far as the developer has made construction upto 20,000 sq. meters.

19. Following the orders in the aforesaid cases i.e. orders dated January 16, 2013 in Writ Petition No. 2809 of 2012 and 24 September 2012 in Writ Petition No. 1916 of 2012, we are of the view that the respondent authorities are not justified in calling upon the petitioner to

stop work even within 20,000 sq. meters of work, particularly when the petitioner has already completed the construction of residential building for rehabilitation of 99 municipal tenants, 9 shops required for the ordinary needs of the residents and municipal school constructed by the petitioner for the benefit of the Municipal Corporation all free of costs. As regards the free sale building also, learned counsel for the petitioner gives an undertaking that the petitioner will construct only a portion of the free sale building to the extent that the aggregate construction of the rehabilitation building for 99 flats, 9 shops, municipal school building and the free sale building will not exceed 20,000 sq. meters, without first obtaining the CRZ clearance from the MCZMA and the environmental clearance from the State Environment Impact Assessment Authority.

20. Accordingly, the petition is partly allowed and the stop work notices dated 21 June 2011 issued by the Secretary, Environment Department, (Exhibit "I") and 27 July 2011 (Exhibit AA) issued by the Executive Engineer (Building Proposal, City) Municipal E-Ward of the Municipal Corporation of Greater Mumbai shall stand modified to the effect that the petitioner is restrained from putting up any construction in excess of 20,000 sq. meters computed on the basis of the MOEF Notification 4 April 2011, including the construction of the rehabilitation building for 99 flats, 9 shops and the municipal school building already constructed or almost constructed. An undertaking to this effect shall be filed by a Director of the petitioner company within two weeks from today and the petitioner shall commence construction only after such an undertaking is filed before this Court.

21. It is clarified that the above direction is given only in respect of the environmental clearance and the CRZ clearance and this judgment does not exempt the petitioner from complying with the other legal requirements in the matter of construction of the buildings in question.

22. It will be open to the petitioner to pursue their application for CRZ clearance before the MCZMA and for environment clearance before the State Expert Appraisal Committee and the State Environment Impact Assessment Authority.

23. Writ Petition accordingly stands disposed of.

2013 SCC OnLine NGT 96

National Green Tribunal (Western Zone) Bench, Pune  
(BEFORE V.R. KINGAONKAR, J.M. AND AJAY A. DESHPANDE, E.M.)

Virani Construction Company Ground Floor, Virani Plaza, Next to Virani Petrol Pump, Kausa, Thane-400612 ... Appellant;

*Versus*

1. The State Level Environmental Impact Assessment Committee (SEAC), Maharashtra C/o, Secretary Environment, Room No. 217, Mantralaya Annex, Mumbai-400032
2. The State Level Environmental Impact Assessment Authority (Seiaa), Maharashtra C/o, Secretary Environment, Room No. 217, Mantralaya Annex, Mumbai-40003
3. Govt. of Maharashtra Environment Department Secretary Environment, Room No. 217, Mantralaya Annex, Mumbai-400032 ... Respondents.

Appeal No. 72/2013

Decided on September 26, 2013

Counsel for Appellants:

Mr. R.B. Mahabal Advocate.

Counsel for Respondents:

Mr. D.S. Bhalerao for Respondent No. 1

Mr. A.M. Pimparkar for Respondent No. 2.

JUDGMENT

1. This is an appeal against decision taken by the State Environmental Assessment Committee (SEAC), in its meetings dated 22<sup>nd</sup>, 23<sup>rd</sup> and 24<sup>th</sup> of May, 2013. The appellant is a developer. The appellant has been authorized to construct buildings on the plots bearing Survey Nos. 36/4, 37/1 and 37/2, situated at village Kausa (district Thane).

2. It is not necessary to give a detailed account of the facts stated by the Appellant. Briefly stated, the Appellant initially proposed to carry out residential-cum-commercial construction project; having total construction area of 19,796.74 sq. meters on the above three plots. The appellant submitted plans to the Thane Municipal Corporation (TMC) for approval. The plans were approved. The TMC issued required commencement certificate dated 9<sup>th</sup> April, 2012. Subsequently, the Appellant decided to construct more area. Comprehensively, the total construction as proposed was of 38,071 sq. meters. Since it was over and above 20,000 sq. meters, the appellant approached to the State Environmental Assessment Committee (SEAC) for grant of Environmental Clearance (EC), in accordance with the MoEF Notification dated 14<sup>th</sup> September, 2006.

3. The appellant, admittedly, constructed 5,965 sq. meters of built up area on the said plots before the grant of EC. The proposal was considered by the State Environmental Assessment Committee (SEAC) in the meetings held on 22<sup>nd</sup>, 23<sup>rd</sup> and 24<sup>th</sup> May, 2013. The SEAC held that the construction of 5968 sq. meters, built up area was done by the appellant in violation of the MoEF Notification dated 14<sup>th</sup> September, 2006, and hence, the State Environmental Impact Assessment Authority (SEIAA), after due verification may initiate credible action, in accordance with OM dated 12<sup>th</sup> December, 2012, issued by the MoEF. Thus, proposal was referred to the State Environmental Impact Assessment Authority (SEIAA). The State Environmental Assessment Committee (SEAC) observed that the proposal will be considered only after the State Environmental Impact Assessment Authority (SEIAA) will take appropriate action or will give further instructions in the matter.

4. We have heard the learned Counsel for the parties. We have perused the affidavit in reply filed on behalf of the Respondent Nos. 1, 2 and 3. The Respondents have justified their action taken by the State Environmental Assessment Committee (SEAC). The Respondents referred to various OMs. The Respondents submitted that the question involved, is in the context of interpretation of the provisions contained in EIA Notification, as well as various OMs, coupled with the Orders passed by the Hon'ble High Court of Bombay.

5. We have heard learned Counsel for the parties. We have also perused the relevant OM dated 12<sup>th</sup> December, 2012. The learned Counsel for the Appellant invited our attention to the Judgments

rendered by the Hon'ble High Court of Bombay in (1) WP. No. 2809 of 2012, (2) WP Lodging No. 470 of 2013, (3) WP No. 654 of 2013, (4) WP (L) No. 852 of 2013 and (5) WP (L) No. 470 of 2013.

6. Learned Counsel for the Appellant argued that the SEAC, should have considered the proposal on its merits. He contended that the part of construction carried out by the Appellant is duly authorized in view of the Municipal permission. He argued that the Appellant approached to SEAC due to subsequent development, namely, decision to expand its original project. He argued that the construction done by the Appellant is legal one, because no EC was needed at the time the project was for area below 20,000 sq. meters. It is argued that the Appellant cannot be penalized for the earlier construction and, therefore, the impugned decision of SEAC is bad in law.

7. Before we proceed to consider the appeal on merits, it may be noted that the prayers in the Appeal, clearly go to show that certain directions are sought against the SEAC, particularly, for consideration of construction proposal in full on environmental aspects. Not only that but the Appellant seeks declaration that previous construction of 8083 sq. meters, does not amount to violation of provisions of the Regulations enumerated in the MoEF Notification dated 14<sup>th</sup> September, 2006.

8. The Appellate jurisdiction of this Tribunal is circumscribed under Clauses (h) and (i) of Section 16 of Environment (Protection) Act, 1986. It will be useful to reproduce the relevant part of Section 16 along with Sub-clauses (h) and (i) of the National Green Tribunal Act, 2010 for ready reference. It reads as follows:

"16. Tribunal to have appellate jurisdiction.—Any person aggrieved by,—

- |     |   |     |     |     |
|-----|---|-----|-----|-----|
| (a) | xxx   | xxx | xxx | xxx |
| (b) | xxx   | xxx | xxx | xxx |
| (c) | xxx   | xxx | xxx | xxx |
| (d) | xxx   | xxx | xxx | xxx |
| (e) | xxx   | xxx | xxx | xxx |
| (f) | xxx   | xxx | xxx | xxx |
| (g) | xxx   | xxx | xxx | xxx |
| (h) | <i>an order made, on or after the commencement of the National Green Tribunal Act, 2010, granting environmental clearance in the area in which any industries, operations or recesses or class of industries, operations and processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 (20 of 1986)</i> |     |     |     |
| (i) | <i>an order made, on or after the commencement of the National Green Tribunal Act, 2010, refusing to grant environmental clearance for carrying out any activity or operation or process under the Environment (Protection) Act, 1986 (29 of 1986);</i>   |     |     |     |
| (j) | xxx   | xxx | xxx | xxx |

(Emphasis Supplied)

9. A plain reading of above provision clearly shows that an Appeal can be entertained, if it is against the provisions issued under Section 5 of the Environment (Protection) Act, 1986, or order granting the EC, or refusing the EC. There appears no escape from conclusion that the Appellate jurisdiction of this Tribunal, is not equivalent to the Writ jurisdiction available to the Hon'ble High Court, under Art. 226 of the Constitution. It is obvious, therefore, that this Tribunal cannot grant any declaratory relief and cannot issue any direction in the manner as prayed by the Appellant. In other words, we cannot direct SEAC to consider the proposal of the Appellant in full, excluding the area of the construction which was done prior to submission of the proposal. We cannot direct SEAC to segregate the earlier construction from remaining part of development project. Needless to say, the Appeal is pre-mature and incompetent.

10. Perusal of the record shows that the Appellant has not given up the project for construction of more than 20,000 Sq. meters. The Appellant's proposal is for construction of 38,071 sq. meters. The MoEF Notification dated 14<sup>th</sup> September, 2006, is part and parcel of the act done in pursuance of delegated powers, under the provisions of Environment (Protection) Act, 1986. The relevant Clause

in the said Notification reads as under:

*"Requirement of prior Environmental Clearance (EC):— The following Projects or activities shall require prior environmental clearance from the concerned regulatory authority, which shall hereinafter referred to be as the Central Government in the Ministry of Environment and Forests for and for matters falling under Category 'A' in the Schedule and at State level the State Environment Impact Assessment Authority (SEIAA) for matters falling under Category 'B' in the said Schedule, before any construction work, or preparation of land by the project management except for securing the land, is started on the project or activity;*

- (i) *All new projects or activities listed in the Schedule to this notification.*
- (ii) *Expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion or modernization.*
- (iii) *Any change in product, mix in an existing manufacturing unit including in Schedule beyond the specified range."*

(Emphasis supplied)

3. Relevant portion of the Schedule in Clause (2) of the Notification reads as under:—

Project or activity	Category with threshold limit			Conditions if any
	A		B	
8	Building/Construction projects/Area Development projects and Townships			
1	2	3	4	5
8(a)	Building and Construction projects		>20000 sq. mtrs and <1,50,000 sq. mtrs. of built up area	The built up area for the purpose of this Notification is defined as 'the built up or covered area on all the floors put together including basement(s) and other service area, which are proposed in the building/construction projects'
8(b)	Township and Area Development projects		Covering an area >50ha and or built up area < 1,50,000 sq. mtrs+ +	All projects under item 8 (b) shall be appraised as Category B1

11. Considering the tenor of the Judgments, referred to by the learned Counsel for the Appellant, we are of the opinion that the Hon'ble High Court of Bombay, has not quashed the OM dated 12<sup>th</sup> December, 2012, issued by the MoEF. The MoEF Notification dated 14<sup>th</sup> September, 2006, which mandates EC, required prior to commencement of construction exceeding 20,000 sq. meters, is still not quashed or withdrawn by the MoEF. What we find from the reply given by the Appellant to the Show Cause Notice given by the SEIAA, vide letter dated 10<sup>th</sup> September, 2013, is that the Appellant gave following explanation "After making available necessary finance and making of our mind to develop further beyond 20,000m, we applied for the environmental clearance for the area that is more than 20,000m. However to be fair to environment, we planned and provided for environment management plan for the entire project without omitting responsibility for even the earlier planned area under construction."

12. It is pertinent to note that the Appellant did not show as to when the construction of 5965 sq. meters was completed. In this context, the only explanation given by the appellant is that his project is standalone project, and therefore, it is not compulsory to construct all buildings simultaneously, as a part of the same project. It is stated in the reply (Para 7) thus:

*"If there is no market demand or we don't have sufficient funds, we may not construct the total project."*

13. On careful consideration of the Judgments of the Hon'ble High Court of Bombay, we are of the opinion that the relief was granted to other Project Proponents like Saumya Buildcon Pvt. Ltd. Tridhatu Ventures Ltd. and Nahur Vikekanand Co-op. Housing Society Ltd. and another, having regard to the facts of particular cases. It is important to note that in WP No. 654 of 2013, *Tridhatu Ventures Ltd. v. State of Maharashtra*, the Hon'ble High Court permitted the Project Proponent to

put up construction upto 19,000 sq. meters, including construction of 4935 sq. meters, which was already put up, subject to certain conditions. The conditions enumerated in para 17 of that Judgment, may be reproduced as follows:

"17. *Having heard learned counsel for parties, and in the facts and circumstances of the case and particularly in the view of the fact that the width of the road is sufficient as required by the DCR 1991 and as far as OM is concerned, the same is treated as advisory and not mandatory and in the facts of the present case where the petitioner does not propose to make any further digging in the earth or laying any further foundation structure for the purpose of putting up construction upto 19,000 sq. mtrs. of built up area including 4935 sq. mtrs already put up by the petitioner, we are inclined to direct the respondent-Municipal Corporation to permit the petitioner to put up construction upto to 19,000 sq. meter including 4935 sq. meter already put up, subject to following conditions:*

- (i) *that the petitioner as well as the Chairman of 'Sri Swati Co-operative Housing Society' shall file undertakings stating that the petitioner and the society shall not put up any construction exceeding 20,000 sq meter including the existing construction on the site being land CTS No. 275,275/1 to 276/1 to 16 & 277 village of Borla, Govandi.*
- (ii) *that the petitioner will be putting up construction of 19,000 sq. mtrs for the purpose of accommodation 75 or maximum 78 members of 'Sri Swati Co-operative Housing Society' whose flats have already been demolished in 2010 for the purpose of redevelopment and not for any other purpose.*
- (iii) *that the petitioner shall not do any further digging on the ground for laying foundation and shall only continue with the construction on the existing construction by raising height of the building within the limits permissible as per the DCR 1991 and in accordance with plans which may be sanctioned by the Municipal Corporation.*
- (iv) *that the petitioner will not claim equity on the basis of this order.*

(Emphasis supplied)

14. In our opinion, the Judgments of the Hon'ble High Court of Bombay are rendered in peculiar circumstances of each case. The said Judgments do not give a go-by to the requirements as enumerated vide MoEF Notification dated 14<sup>th</sup> September, 2006, nor OM dated 12<sup>th</sup> December, 2012, issued by the MoEF, has been quashed or held ultra vires. In fact, OM dated 12<sup>th</sup> December, 2012, brings about internal instructions given by the MoEF to the State Authority. The Appellant cannot, as a matter of right, challenge the impugned decision of SEAC. The prayer Clause in the Appeal Memo reads as follows:

- A. The SEAC be directed to hear the complete proposal as submitted by the appellant for grant of Environmental Clearance on merit, notwithstanding the independent action that may be taken by the SEIAA.
- B. Prior construction to the extent of 5,965 m<sup>2</sup> is legal as it does not attract the provisions of EIA notification 2006, as it is lesser than 20,000 m<sup>2</sup> does not attract the provisions of EIA notification 2006, as it is lesser than 20,000 sq. meters.
- C. There is no violation by the Appellant with respect to the construction of the appellant of 5965 m<sup>2</sup> on the said plot.
- D. Any other relief as may be deemed fit in the interest of justice.

15. This Tribunal cannot declare that the construction to the extent of 5,965 sq. meters is legal one. This Tribunal cannot entertain the Appeal against the decision of SEAC, which is not a final order as such. The SEAC, by the impugned decision only referred the proposal for necessary action to SEIAA, and decided to consider the proposal after the necessary action, or any other instructions of the superior Authority. The impugned decision, therefore, does not trample any legal right of the Appellant. What we find from the nature of the pleadings and prayers indicated in the Appeal Memo, is that by filing this Appeal, the Appellant desires to regularize the illegal construction, which has been already done in spite of the fact that no EC is granted for the project, though the said construction is part and parcel of the said project.

16. Taking a stock of the foregoing discussion, we are of the opinion that the Appeal is not maintainable and is incompetent. We are of further opinion that the appellant filed the present Appeal with malafide intention to put pressure on SEAC and SEIAA, in order to escape from credible action contemplated against him. In this view of the matter, the Appeal is liable to be dismissed with exemplary costs. We accordingly dismiss the Appeal with costs of Rs. 1,00,000/- (Rs. One Lac). The amount of costs shall be deposited by the Appellant within one month by sending D.D. drawn in favour of Fund Manager, Environmental Relief Fund, as per MoEF, Notification GSR-768(E), dated 4-10-2008, notified under the provisions of Section 7(A) of the Public Liability Insurance Act, 1991,

directly sent to the said Authority under Registered Post/acknowledgement due. The appellant shall produce copy of the D.D., copy of the acknowledgment of forwarding letter and receipt of payment to the said Authority, in the office of this Tribunal, within a period of one month (four weeks). In case of default of payment of the said costs, in the manner stated above, we will be constrained to direct attachment of the constructed building of the Appellant and may issue further directions to defer the proposal of the Appellant from consideration till the said amount is paid, or for any other coercive action, as may be permissible under the Law.

— — —

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**WRIT PETITION (L) NO. 2305 OF 2013  
WITH  
NOTICE OF MOTION (L) NO. 539 OF 2013**

M/s. Vardhman Developers Limited ..Petitioners  
vs.  
Union of India & Ors. ..Respondents

.....

Mr. Milind Sathe – Senior Advocate with Mr. Chirag Shah i/b. Mr. J. J. Shah for Petitioners.  
Mr. Y. R. Mishra with D. A. Dubey for Respondent No. 1.  
Mr. A. B. Ketkar – A.G.P. for Respondent Nos. 2 and 3.  
Mr. Vinod Mahadik for Respondent No. 4.  
Mr. A. A. Siddiquie i/b. A. A. Siddiquie & Associates for Applicant / Intervenor in Notice of Motion (L) No. 539 of 2013.

.....

**CORAM : V. M. KANADE, AND  
M. S. SONAK, JJ.**

**DATE : DECEMBER 18, 2013**

**P. C.**

1] Heard the learned counsel for the Petitioners and the learned counsel for the Respondents as well as the learned counsel appearing on behalf of the Applicant / Intervenor in the notice of motion.

2] By this petition filed under Article 226 of the Constitution of India the Petitioners are seeking appropriate writ, order and

direction that for the construction of the building on the property mentioned in Exhibit 'A' the Environmental Clearance is not required for construction upto 20,000 sq. meters. It is submitted that the Petitioners intend to construct the rehab component for accommodating 259 tenants at the said site and the said construction is less than 20,000 sq. meters and therefore Environmental Clearance is not necessary. Reliance is placed on the orders passed by this court in the following matters:-

- (i) Writ Petition No. 504 of 2012 (Naresh Janardhan Mali vs. State of Maharashtra & Ors.)
- (ii) Writ Petition No. 1916 of 2012 (Vardhaman Developers Ltd. vs. Union of India & Ors.
- (iii) Writ Petition No. 2809 of 2012 (Nahur Vivekanand Co-operative Housing Society Ltd. vs. Union of India & Ors.)
- (iv) Writ Petition No. 654 of 2013 (Tridhaatu Ventures LLP vs. State of Maharashtra & Ors.
- (v) Writ Petition (L) No. 852 of 2013 (M/s. Vision Developers vs. Union of India & Ors.)

It is submitted that the facts in this case are also identical to the facts in the aforesaid cases. It is submitted that the Petitioners have

already filed an undertaking dated 29.10.2013 stating therein that the society shall not put up any construction exceeding 20,000 sq. meters and that the said construction will be restricted to the construction of the rehab component only for the purpose of accommodation 259 tenants. It is therefore prayed that the Petitioners be permitted to carry out the said construction on the said site.

3] On the other hand the learned counsel appearing on behalf of the Respondent Nos. 2 and 3 – Environment Department has submitted that the Office Memorandum which was issued initially after certain orders were passed by this court dated 29.06.2013 has now been withdrawn by a subsequent Office Memorandum dated 31.10.2013. He has invited our attention to the said Office Memorandum in which it is stated that in view of the orders passed by the Hon'ble National Green Tribunal, Bench at Pune Office Memorandum dated 29.06.2013 has been recalled. He has also invited our attention to the last paragraph of the said Office Memorandum which mentions that if any construction plan above 20,000 sq. meters is approved by the Planning Authority and part Commencement Certificate below 20,000 sq.meters is issued for commencement of the construction work to the Project Proponent without obtaining mandatory prior Environmental Clearance then in

such cases the said construction will be treated as a violation of the provisions of EIA Notification 2006 read with Office Memorandum dated 12.12.2012. It is therefore submitted that interim relief may not be granted and the matter be kept for final disposal.

4] Learned counsel appearing on behalf of the State also has made the similar submissions.

5] Learned counsel appearing on behalf of the Intervenor has submitted that he has filed a PIL in which he has challenged the orders passed by this Court granting interim reliefs in the said petitions.

6] After having heard all the learned counsel at length, in our view, there is no impediment in granting any interim relief as prayed for by the Petitioners in this case. This Court in various writ petition nos. 504 of 2012, 1916 of 2012, 2809 of 2012, 654 of 2013, writ petition (L) No. 852 of 2013 and in writ petition no. 1556 of 2013 has considered the said submissions and after interpreting the provisions of Notification dated 14.09.2006 has observed that for the purpose of carrying on construction upto 20,000 sq. meters prior Environmental Clearance is not required. It is an admitted position that the said orders have not been challenged by the State or by any other Respondents in the Apex Court. The said orders are binding on all the Respondents.

7] In this view of the matter, we permit the Petitioners to put up construction below 20,000 sq. meters in respect of the rehab component project. Undertaking given by the Petitioners in their affidavit dated 29.10.2013 is accepted. The Petitioners are permitted to put up construction upto 20,000 sq. meters for the purpose of accommodating 259 tenants. Petitioners to file a further undertaking that the construction upto 20,000 sq. meters shall be restricted to construction of the rehab component only within a period of one week from today. Petitioners shall comply with all other conditions imposed by the Corporation. We accordingly direct the Corporation to permit the Petitioners to put up construction upto 20,000 sq. meters by issuing Commencement Certificate. With these directions the writ petition is disposed of.

8] In view of the disposal of the writ petition, notice of motion (L) No. 539 of 2013 filed by the Applicant / Intervenor does not survive and is disposed of .

**[M. S. SONAK, J.]**

**[V. M. KANADE, J.]**

**MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE  
NOTIFICATION**

New Delhi, the 14th March, 2017

**S.O. 804(E).**—Whereas, a draft notification under sub-section (1), and clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 (29 of 1986) was published in the Gazette of India, Extraordinary, Part II, Section 3, sub-section (ii), *vide* number S.O. 1705(E), dated the 10<sup>th</sup> May, 2016, as required by sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986, for finalising the process for appraisal of projects for grant of Terms of Reference and Environmental Clearance, which have started the work on site, expanded the production beyond the limit of environmental clearance or changed the product mix without obtaining prior environmental clearance under the Environment Impact Assessment Notification, 2006 inviting objections and suggestions from all persons likely to be affected thereby within a period of sixty days from the date on which copies of Gazette containing the said notification were made available to the public;

2. And whereas, copies of the said notification were made available to the public on the 10<sup>th</sup> May, 2016;

3. And whereas, all objections and suggestions received in response to the above mentioned draft notification have been duly considered by the Central Government.

4. Whereas, subject to the provisions of the Environment (Protection) Act, 1986, under sub-section (1) of section 3 of the Act, the Central Government has the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling, and abating environment pollution;

5. Whereas, section 5 of the Environment (Protection) Act, 1986 empowers the Central Government to give directions which reads as “Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in the exercise of its powers and performance of its functions under this Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions;

6. Whereas the Ministry of Environment, Forest and Climate Change issued Office Memoranda dated 12.12.2012 and 27.06.2013 to establish a process for grant of environmental clearance to cases of violation.

7. Whereas, the Hon’ble High Court of Jharkhand had passed an order dated the 28<sup>th</sup> November, 2014 in W.P. (C ) No. 2364 of 2014 in the matter of Hindustan Copper Limited *Versus* Union of India in which the High Court held that the conditions laid down under Office Memorandum dated 12<sup>th</sup> December, 2012 in paragraph No. 5 (i) and 5 (ii) were illegal and unconstitutional and had further held that action for alleged violation would be an independent and separate proceeding and therefore, consideration of proposal for environment clearance could not await initiation of action against the project proponent. The Hon’ble Court further ruled that the proposal for environment clearance must be examined on its merits, independent of any proposed action for alleged violation of the environmental laws;

8. And whereas, Hon'ble National Green Tribunal, Principal Bench *vide* its order dated 7<sup>th</sup> July, 2015 in Original Application No. 37 of 2015 and Original Application No. 213 of 2015 had also held that the Office Memoranda dated 12<sup>th</sup> December, 2012 and 24<sup>th</sup> June, 2013 on the subject of consideration of proposals for Terms of Reference or Environment Clearance or Coastal Regulation Zone Clearance involving violations of the Environment (Protection) Act, 1986 or Environment Impact Assessment Notification, 2006 Coastal Regulation Zone Notification, 2011 could not alter or amend the provisions of the Environment Impact Assessment notification, 2006 and had quashed the same;

9. And whereas, the Ministry of Environment, Forest and Climate Change and State Environment Impact Assessment Authorities have been receiving certain proposals under the Environment Impact Assessment Notification, 2006 for grant of Terms of References and Environmental Clearance for projects which have started the work on site, expanded the production beyond the limit of environmental clearance or changed the product mix without obtaining prior environmental clearance;

10. Whereas, the Ministry of Environment, Forest and Climate Change deems it necessary for the purpose of protecting and improving the quality of the environment and abating environmental pollution that all entities not complying with environmental regulation under Environment Impact Assessment Notification, 2006 be brought under compliance with in the environmental laws in expedient manner;

11. And whereas, the Ministry of Environment, Forest and Climate Change deems it necessary to bring such projects and activities in compliance with the environmental laws at the earliest point of time, rather than leaving them unregulated and unchecked, which will be more damaging to the environment and in furtherance of this objective, the Government of India deems it essential to establish a process for appraisal of such cases of violation for prescribing adequate environmental safeguards to entities and the process should be such that it deters violation of provisions of Environment Impact Assessment Notification, 2006 and the pecuniary benefit of violation and damage to environment is adequately compensated for;

12. And whereas, Hon'ble Supreme Court in *Indian Council for Enviro-Legal Action Vs. Union of India* (the Bichhri village industrial pollution case), while delivering its judgment on 13<sup>th</sup>. February, 1996, analyzed all the relevant provisions of law and concluded that damages may be recovered under the provisions of the Environment (Protection) Act, 1986 (1996 [3] SCC 212). The Hon'ble Court observed that ..... section 3 of the Environment (Protection) Act, 1986 expressly empowers the Central Government [or its delegate, as the case may be] to "take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment.....". Section 5 clothes the Central Government [or its delegate] with the power to issue directions for achieving the objects of the Act. Read with the wide definition of "environment" in Section 2 (a), Sections 3 and 5 clothe the Central Government with all such powers as are "necessary or expedient for the purpose of protecting and improving the quality of the environment". The Central Government is empowered to take all measures and issue all such directions as are called for the above purpose. In the present case, the said powers will include giving directions for the removal of sludge, for undertaking remedial measures and also the power to impose the cost of remedial measures on the offending industry and utilize the amount so recovered for carrying out remedial measures..... Hon'ble Court has further observed that levy of costs required for carrying out remedial measures is implicit in Sections 3 and 5 which are couched in very wide and expansive language. Sections 3 and 5 of the Environment (Protection) Act, 1986, apart from other provisions of Water and Air Acts, empower the Government to make all such directions and take all such measures as are necessary or expedient for protecting and promoting the 'environment', which expression has been defined in very wide and expansive terms in Section 2 (a) of the Environment (Protection) Act. This power includes the power to prohibit an activity, close an industry, direct to carry out remedial measures, and wherever necessary impose the cost of remedial measures upon the offending industry. The question of liability of the respondents to defray the costs of remedial measures can also be

looked into from another angle, which has now come to be accepted universally as a sound principle, viz., the "Polluter Pays" Principle. "The polluter pays principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause the pollution".

13 (1). Now, therefore, in exercise of the powers conferred by sub-section (1) and sub clause (a) of clause (i) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986, read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986; the Central Government hereby directs that the projects or activities or the expansion or modernisation of existing projects or activities requiring prior environmental clearance under the Environment Impact Assessment Notification, 2006 entailing capacity addition with change in process or technology or both undertaken in any part of India without obtaining prior environmental clearance from the Central Government or by the State Level Environment Impact Assessment Authority, as the case may be, duly constituted by the Central Government under sub-section (3) of Section 3 of the said Act, shall be considered a case of violation of the Environment Impact Assessment Notification, 2006 and will be dealt strictly as per the procedure specified in the following manner:-

(2) In case the projects or activities requiring prior environmental clearance under Environment Impact Assessment Notification, 2006 from the concerned Regulatory Authority are brought for environmental clearance after starting the construction work, or have undertaken expansion, modernization, and change in product- mix without prior environmental clearance, these projects shall be treated as cases of violations and in such cases, even Category B projects which are granted environmental clearance by the State Environment Impact Assessment Authority constituted under sub-section (3) Section 3 of the Environment (Protection) Act, 1986 shall be appraised for grant of environmental clearance only by the Expert Appraisal Committee and environmental clearance will be granted at the Central level.

(3) In cases of violation, action will be taken against the project proponent by the respective State or State Pollution Control Board under the provisions of section 19 of the Environment (Protection) Act, 1986 and further, no consent to operate or occupancy certificate will be issued till the project is granted the environmental clearance.

(4) The cases of violation will be appraised by respective sector Expert Appraisal Committees constituted under sub-section (3) of Section 3 of the Environment (Protection) Act, 1986 with a view to assess that the project has been constructed at a site which under prevailing laws is permissible and expansion has been done which can be run sustainably under compliance of environmental norms with adequate environmental safeguards; and in case, where the finding of the Expert Appraisal Committee is negative, closure of the project will be recommended along with other actions under the law.

(5) In case, where the findings of the Expert Appraisal Committee on point at sub-para (4) above are affirmative, the projects under this category will be prescribed the appropriate Terms of Reference for undertaking Environment Impact Assessment and preparation of Environment Management Plan. Further, the Expert Appraisal Committee will prescribe a specific Terms of Reference for the project on assessment of ecological damage, remediation plan and natural and community resource augmentation plan and it shall be prepared as an independent chapter in the environment impact assessment report by the accredited consultants. The collection and analysis of data for assessment of ecological damage, preparation of remediation plan and natural and community resource augmentation plan shall be done by an environmental laboratory duly notified under Environment (Protection) Act, 1986, or a environmental laboratory accredited by National Accreditation Board for Testing and Calibration Laboratories, or a laboratory of a Council of Scientific and Industrial Research institution working in the field of environment.

(6) The Expert Appraisal Committee shall stipulate the implementation of Environmental Management Plan, comprising remediation plan and natural and community resource augmentation plan corresponding to the ecological damage assessed and economic benefit derived due to violation as a condition of environmental clearance.

(7) The project proponent will be required to submit a bank guarantee equivalent to the amount of remediation plan and Natural and Community Resource Augmentation Plan with the State Pollution Control Board and the quantification will be recommended by Expert Appraisal Committee and finalized by Regulatory Authority and the bank guarantee shall be deposited prior to the grant of environmental clearance and will be released after successful implementation of the remediation plan and Natural and Community Resource Augmentation Plan, and after the recommendation by regional office of the Ministry, Expert Appraisal Committee and approval of the Regulatory Authority.

14. The projects or activities which are in violation as on date of this notification only will be eligible to apply for environmental clearance under this notification and the project proponents can apply for environmental clearance under this notification only within six months from the date of this notification.

[F. No. 22-116/2015-IA-III]

MANOJ KUMAR SINGH, Jt. Secy.

## MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE

## NOTIFICATION

New Delhi, the 8<sup>th</sup> March, 2018

**S.O. 1030(E).** —Whereas, the Ministry of Environment, Forest and Climate Change *vide* notification number S.O.804(E), dated the 14<sup>th</sup> March, 2017 (hereinafter referred to as the said notification) has notified the process for appraisal of projects for grant of Terms of Reference and Environmental Clearance, which have started the work on site, expanded the production beyond the limit of environmental clearance or changed the product mix without obtaining prior environmental clearance as mandated under the Environment Impact Assessment Notification, 2006 [S.O.1533 (E), dated the 14<sup>th</sup> September, 2006];

And whereas, the Ministry of Environment, Forest and Climate Change (hereinafter referred to as the Ministry) in the said notification *inter alia*, directed *vide* sub-paragraph (2) of paragraph 13, that in case the projects or activities requiring prior environmental clearance under Environment Impact Assessment Notification, 2006 from the concerned Regulatory Authority, are brought for environmental clearance after starting the construction work, or have undertaken expansion, modernization, and change in product- mix without prior environmental clearance, these projects shall be treated as cases of violations and in such cases, even Category B projects which are granted environmental clearance by the State Environment Impact Assessment Authority constituted under sub-section (3) section 3 of the Environment (Protection) Act, 1986 shall be appraised for grant of environmental clearance only by the Expert Appraisal Committee and environmental clearance will be granted at the Central level;

And whereas, the Ministry has received a number of proposals relating to all sectors covered under category A and category B, for consideration in pursuance of the said notification;

And whereas, the Ministry is in receipt of representations from the public representatives and Industrial Associations, requesting delegation of powers to the respective States to deal with the violation cases for operational reasons and expediting the proposals;

And whereas, the National Green Tribunal, Principal Bench at New Delhi *vide* their order dated the 27<sup>th</sup> November, 2017 in similar matters in OA No.570/2016 titled M/s Anjli Infra Housing LLP Vs Union of India & others, OA No.576/2016 in the matter of M/s Ankur Khusal Construction LLP Vs Union of India & others and OA No.579/2016 in the matter of Anjli Infra Housing LLP Vs Union of India & others, has passed directions for consideration of the projects at the State level and pass appropriate orders in regard to grant/refusal of the environmental clearance in accordance with law;

And whereas, in view of the above, the Central Government finds it necessary to amend the said notification number S.O.804(E), dated the 14<sup>th</sup> March, 2017 by dispensing with the requirement of notice referred to in clause (a) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986 regarding inviting objections and suggestions from persons likely to be affected thereby, in public interest;

Now, therefore, in exercise of the powers conferred by sub-section (1), sub-clause (a) of clause (i) and clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986), read with sub-rule (4) of rule 5 of the Environment (Protection) Rules, 1986, the Central Government hereby makes the following amendments in the said notification by dispensing with the requirement of notice referred to in clause (a) of sub-rule (3) of rule 5 of the said rules, in public interest, namely:-

In the said notification, in paragraph 13, -

- (a) for sub-paragraph (2), the following sub-paragraph shall be substituted, namely:-

“(2) In case the projects or activities requiring prior environmental clearance under the Environment Impact Assessment Notification, 2006 from the concerned regulatory authority are brought for environmental clearance after starting the construction work, or have undertaken expansion, modernisation, and change in product-mix without prior environmental clearance, these projects shall be treated as cases of violations and the projects or activities covered under category A of the Schedule to the Environment Impact Assessment Notification, 2006, including expansion and modernisation of existing projects or activities and change in product mix, shall be appraised for grant of environmental clearance by the Expert Appraisal Committee in the Ministry and the environmental clearance shall be granted at Central level, and for category B projects, the appraisal and approval thereof shall vest with the State or Union territory level Expert Appraisal Committees and State or Union territory Environment Impact Assessment Authorities in different States and Union territories, constituted under sub-section (3) of section 3 of the Environment (Protection) Act, 1986.”;

- (b) for sub-paragraph (4), the following sub-paragraph shall be substituted, namely:-

“(4) The cases of violations will be appraised by the Expert Appraisal Committee at the Central level or State or Union territory level Expert Appraisal Committee constituted under sub-section (3) of section 3 of the Environment (Protection) Act, 1986 with a view to assess that the project has been constructed at a site which under prevailing laws is permissible and expansion has been done which can run sustainably under compliance of environmental norms with adequate environmental safeguards, and in case, where the findings of Expert Appraisal Committee for projects under category A or State or Union territory level Expert Appraisal Committee for projects under category B is negative, closure of the project will be recommended along with other actions under the law.”;

- (c) for sub-paragraph (5), the following sub-paragraph shall be substituted, namely:-

“(5) In case, where the findings of the Expert Appraisal Committee or State or Union territory level Expert Appraisal Committee on point at sub-paragraph (4) above are affirmative, the projects will be granted the appropriate Terms of Reference for undertaking Environment Impact Assessment and preparation of Environment Management Plan and the Expert Appraisal Committee or State or Union territory level Expert Appraisal Committee, will prescribe specific Terms of Reference for the project on assessment of ecological damage, remediation plan and natural and community resource augmentation plan and it shall be prepared as an independent chapter in the environment impact assessment report by the accredited consultants, and the collection and analysis of data for assessment of ecological damage, preparation of remediation plan and natural and community resource augmentation plan shall be done by an environmental laboratory duly notified under the Environment (Protection) Act, 1986, or a environmental laboratory accredited by the National Accreditation Board

for Testing and Calibration Laboratories, or a laboratory of the Council of Scientific and Industrial Research institution working in the field of environment.”;

(d) for sub-paragraph (6), the following sub-paragraph shall be substituted, namely:-

“(6) The Expert Appraisal Committee or State or Union territory level Expert Appraisal Committee, as the case may be, shall stipulate the implementation of Environmental Management Plan, comprising remediation plan and natural and community resource augmentation plan corresponding to the ecological damage assessed and economic benefit derived due to violation as a condition of environmental clearance.”;

(e) for sub-paragraph (7), the following sub-paragraph shall be substituted, namely:-

“(7) The project proponent will be required to submit a bank guarantee equivalent to the amount of remediation plan and Natural and Community Resource Augmentation Plan with the State Pollution Control Board and the quantification will be recommended by the Expert Appraisal Committee for category A projects or by the State or Union territory level Expert Appraisal Committee for category B projects, as the case may be, and finalised by the concerned Regulatory Authority, and the bank guarantee shall be deposited prior to the grant of environmental clearance and released after successful implementation of the remediation plan and Natural and Community Resource Augmentation Plan, and after recommendation by regional office of the Ministry, Expert Appraisal Committee or State or Union territory level Expert Appraisal Committee and approval of the Regulatory Authority.”.

[F.No.Z-11013/22/2017-IA-II (M)]

GYANESH BHARTI, Jt. Secy.

**Note:** The principal notification was published vide number S.O.804(E), dated the 14<sup>th</sup> March, 2017.

**ORDER**

New Delhi, the 8<sup>th</sup> March, 2018

**S.O. 1031(E).**—Whereas, by the notification of the Government of India in the Ministry of Environment, Forest and Climate Change number S.O. 804(E), dated the 14<sup>th</sup> March, 2017, issued under sub-section (1), sub-clause (a) of clause (i) and clause (v) of sub-section (2) of section (3) of the Environment (Protection) Act, 1986 (29 of 1986), read with clause (d) of sub-rule (3) of rule 5 of the Environment (Protection) Rules, 1986 (hereinafter referred to as the said notification), the Central Government has established an arrangement to appraise the projects, which have started the work without obtaining prior environmental clearance and such cases have been termed as cases of violation;

And whereas, vide sub-paragraph (1) of paragraph 13 of the said notification, it has been directed that the projects or activities or the expansion or modernisation of existing projects or activities requiring prior environmental clearance under the Environment Impact Assessment Notification, 2006 [S.O.1533(E), dated the 14<sup>th</sup> September, 2006] entailing capacity addition with change in process or technology or both, undertaken in any part of India without obtaining prior environmental clearance from the Central Government or by the State Environment Impact Assessment Authority, as the case may be, duly constituted by the Central Government under the said Act, shall be considered a case of violation of the Environment Impact Assessment Notification, 2006;

And whereas, the said notification further provides that the projects and activities referred above, shall be dealt strictly as per the procedure specified in sub-paragraph (2) to (7) of paragraph 13 of the said notification;

And whereas, in exercise of the power conferred by sub-section (3) of section 3 of the Environment (Protection) Act, 1986 and in pursuance of sub-paragraph (4) of paragraph 13 of the said notification, an Expert Appraisal Committee (EAC) was constituted by notification of the Government of India in the Ministry of Environment, Forest and Climate Change *vide* number S.O.1805(E), dated the 6<sup>th</sup> June, 2017 comprising members with expertise in different sectors to appraise and make recommendations to the Central Government as cases of violation in all the sectors;

And whereas, in this Expert Appraisal Committee so constituted, Shri S K Srivastava, Scientist E was nominated as representative of the Ministry of Environment, Forest and Climate Change as Member Secretary of the said Committee;

And whereas, due to administrative and operating reasons, it has become expedient to replace the nomination of Shri S. K. Srivastava, Scientist E with the Scientist E or Scientist F or Scientist G, as the case may be, as Member Secretary of the Expert Appraisal Committee constituted to deal with violation cases;

And now, therefore, in exercise of the powers conferred by sub-section (3) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986) and in pursuance of sub-paragraph (4) of paragraph 13 of the said notification number S.O.804(E), dated the 14<sup>th</sup> March, 2017, the Central Government hereby makes the following amendments in the order of the Government of India in the Ministry of Environment, Forest and Climate Change number S.O.1805(E), dated the 6<sup>th</sup> June, 2017, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), dated the 6<sup>th</sup> June, 2017, namely:-

In the said order, in the Table, against serial number 11, for the entries in column (2), the following entries shall be substituted, namely:-

“Scientist E or Scientist F or Scientist G, as the case may be, Ministry of Environment, Forest and Climate Change, Jorbagh Road, New Delhi-3”.

[F. No. Z-11013/22/2017-IA-II (M)]

GYANESH BHARTI, Jt. Secy.

**Note:** The principal order was published vide number S.O.1805(E), dated the 6<sup>th</sup> June, 2017.

**F. No.Z-11013/22/2017-IA.II (M)**  
**Government of India**  
Ministry of Environment, Forest and Climate Change  
(Impact Assessment Division)

Indira Paryavaran Bhawan,  
Jor Bagh Road, New Delhi-110003

Dated: 15<sup>th</sup> March, 2018

**OFFICE MEMORANDUM**

**Sub: Implementation of Notification S.O.1030 (E) dated 8<sup>th</sup> March, 2018 - reg.**

The Environment Impact Assessment (EIA) Notification, 2006 under the Environment (Protection) Act, 1986 mandates the requirement of prior environmental clearance to the projects/activities listed in the schedule to the said Notification. These projects/activities have been categorized under category 'A' or 'B' and require appraisal and approval by the respective regulatory authorities at the Central/State level.

2. The Ministry has issued a Notification number S.O.804(E) dated 14<sup>th</sup> March, 2017 under the Environment (Protection) Act, 1986 to appraise and regularize the projects, already taken up or under implementation without obtaining the prior environmental clearance in terms of the provisions of the EIA Notification, 2006 and thus identified to be in violation of the same. The Notification enables consideration of such proposals at Central level by providing one-time opportunity to submit the request in this regard within 6 months.

3. In order to streamline and expedite consideration of proposals, it has now been decided that the projects/activities covered under category 'B', shall be considered by the SEAC/SEIAAs in the respective States/UTs. The Ministry has issued another Notification number S.O.1030 (E) dated 8<sup>th</sup> March, 2018, amending the Notification dated 14<sup>th</sup> March, 2017 to that extent.

4. In order to operationalize the Notification number S.O.1030 (E) dated 8<sup>th</sup> March, 2018, following directions are being issued for compliance with immediate effect: -

- i. The proposals received up to 13<sup>th</sup> September, 2017 on the Ministry's portal, shall be considered by the EAC or the SEAC/SEIAA in the respective States/UTs, as the case may be, in order of their submission.
- ii. All the proposals of category 'B' projects/activities pertaining to different sectors, received within six months only i.e. up to 13<sup>th</sup> September, 2017 on the Ministry's portal, but yet not considered by the EAC in the Ministry, shall be transferred online to the SEAC/SEIAAs in the respective States/UTs.
- iii. The proposals submitted directly for consideration of EC (in place of ToR), shall also be considered on the same lines, in order of their submission on the Ministry's portal.
- iv. All the projects of category 'B' pertaining to different sectors, although considered by the EAC in the Ministry and accorded ToR, shall be appraised for grant of EC by the SEAC/SEIAAs in the respective States/UTs.

- v. All projects/activities of all sectors, shall be required to adhere to the directions of Hon'ble Madras High Court vide order dated 13<sup>th</sup> October, 2017 while upholding the Ministry's Notification dated 14<sup>th</sup> March, 2017.

  
(Sharath Kumar Pallerla)  
Scientist "F" / Director

To,

1. The Chairman of all the SEAC/SEIAA of States/UTs
2. The Member Secretary of all the SEAC/SEIAA of States/UTs

**Copy for information to:**

1. PS to Minister for Environment, Forest and Climate Change
2. PS to MoS for Environment, Forest and Climate Change
3. PPS to Secretary (EF&CC)
4. PPS to AS (AKJ)/AS (AKM)
5. PS to JS (GB)/JS (JT)
6. All officers in IA Division
7. Website, MoEF&CC
8. Guard File

## GOVERNMENT OF MAHARASHTRA

Tel. No.: 22793132

No.ENV-2018/Legal/CR-7  
Environment Department,  
Mantralaya, Mumai-400 032.Dated : 3<sup>rd</sup> April, 2018.**CIRCULAR**

Sub. : Guidelines regarding appraisal of violation cases for grant of Environment Clearance under provisions of the EIA Notification dtd. 14.9.2006 in light of the Notification No. 1030 ( E ) / 1031 ( E ) dtd. 8<sup>th</sup> March 2018 issued by the Ministry of Environment, Forest and Climate Change, Govt. of India.

Ref. : 1. Notification No. S.O. 1030 ( E ) dtd. 8<sup>th</sup> March, 2018 issued by the Ministry of Environment, Forest and Climate Change, Govt. of India.  
2. O.M. No. F. NO. Z-11013/22/2017-IA.II (M) dtd. 15<sup>th</sup> March, 2018 & 16<sup>th</sup> March, 2018 issued by the Ministry of Environment, Forest and Climate Change, Govt. of India.

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In exercise of the powers conferred by sub-section (1), sub-clause (a) of clause (i) and clause (v) of sub-section (2) of section 3 of the Environment (P) Act, 1986 (29 of 1986), read with sub-rule (4) of rule 5 of the Environment (P) Rules, 1986, the Central Government has amended the Notification No. S.O. 804 ( E ) dtd. 14<sup>th</sup> March, 2017 vide above reference Notification dtd. 8<sup>th</sup> March, 2018.

The Central Government vide amendment dtd. 8<sup>th</sup> March, 2018 [SO 1030 ( E )] in the Notification dtd. 14<sup>th</sup> March, 2017 has substituted sub-paragraph (2) to (7) in paragraph 13 regarding procedure to be followed for appraisal of violation cases covered under Category A and Category B projects. The Ministry of Environment, Forest and Climate Change, Government of India has further issued two Office Memorandum Nos. F.No. Z-11013/22/2017-IA.II (M) dtd. 15<sup>th</sup> March, 2018 and F.No. Z-11013/22/2017-IA.II (M) dtd. 16<sup>th</sup> March, 2018 regarding implementation of Notification S.O. 1030 ( E ) dtd. 8<sup>th</sup> March, 2018 and compliance of the order dtd. 14<sup>th</sup> March, 2018 of Hon'ble High Court of Judicature at Madras in WMP Nos. 3361 and 3362 of 2018 and WMP No. 3721 of 2018 in W.P. No. 11189 of 2017 respectively.

Hence, following guidelines are hereby issued for consideration of violation cases under Category B projects at State Level :-

- a) The proposals received upto 13<sup>th</sup> September, 2017 on the Ministry's portal, shall be considered by the Concerned State Level Expert Appraisal Committee-I/II/III / State Environmental Impact Assessment Authority in order of their submission.
- b) All the proposals of category 'B' projects / activities pertaining to different sectors, received within six months only i.e. up to 13<sup>th</sup> September, 2017 on the Ministry's portal, but yet not considered by the EAC in the Ministry, shall be transferred online to the Concerned State Level Expert Appraisal Committee-I/II/III / State Environmental Impact Assessment Authority.
- c) The proposals submitted directly for consideration of EC (in place of ToR), shall also be considered on the same line, in order of their submission on the Ministry's portal.
- d) All the projects of category 'B' pertaining to different sectors, although considered by the EAC in the Ministry and accorded TOR, shall be appraised for grant of Environment Clearance by the Concerned State Level Expert Appraisal Committee-I/II/III / State Environmental Impact Assessment Authority.

: 2 :

- e) All projects/activities of all sectors, shall be required to adhere to the directions of Hon'ble Madras High Court vide order dated 13<sup>th</sup> October, 2017 while upholding the Ministry's Notification dated 14<sup>th</sup> March, 2017.
- f) The project proponent, who have not submitted the proposals within six months window i.e. upto 13<sup>th</sup> September, 2017 in pursuance of the Ministry's Notification S.O. 804 ( E ) dated 14<sup>th</sup> March, 2017, are required to submit the proposals within 30 days, to the concerned State Level Expert Appraisal Committee-I/II/III / State Environmental Impact Assessment Authority for category B projects.
- g) The project proponent, who have submitted the proposals on the Ministry's portal after 13<sup>th</sup> September, 2017, are also required to submit the proposals afresh within 30 days, to the concerned State Level Expert Appraisal Committee-I/II/III / State Environmental Impact Assessment Authority for category B projects.
- h) Hon'ble High Court of Judicature at Madras vide order dtd. 14<sup>th</sup> March, 2018 in WMP Nos. 3361 and 3362 of 2018 and WMP No. 3721 of 2018 in WP No. 11189 of 2017 considering that sub-clause (i) (d) of Stage III of paragraph 7(i) of parent notification as contained in item No. 8(a) of the Schedule being housing projects clarified that projects and project proponents falling under category alone shall be governed by the 'public consultation' clause in the parent notification.
- i) The cases of violation will be appraised by the concerned State Level Expert Appraisal Committee-I/II/III constituted under sub-section (3) of section 3 of the Environment (Protection) Act, 1986 with a view to assess that the project has been constructed at a site which under prevailing laws is permissible and expansion has been done which can run sustainably under compliance of environmental norms with adequate environmental safeguards, and in case, where the findings of the concerned State Level Expert Appraisal Committee-I/II/III for projects under category B is negative, closure of the project will be recommended alongwith other actions under the law.
- j) In case, where the findings of the concerned State Level Expert Appraisal Committee-I/II/III on point at sub-paragraph (4) of the said amended Notification (i.e. i) above) are affirmative, then the projects will be granted the appropriate TOR for undertaking Environment Impact Assessment and preparation of Environment Management Plan and the concerned State Level Expert Appraisal Committee-I/II/III will prescribe specific terms of Reference for the project on assessment of ecological damage, remediation plan and natural and community resource augmentation plan and it shall be prepared as an independent chapter in the environment impact assessment report by the accredited consultants and the collection and analysis of data for assessment of ecological damage, preparation of remediation plan and natural and community resource augmentation plan shall be done by an environmental laboratory duly notified under the Environment (P) Act, 1986 or a environmental laboratory accredited by the National Accreditation Board for Testing and Calibration Laboratories, or a laboratory of the Council of Scientific and Industrial Research institution working in the field of environment.
- k) The concerned State Level Expert Appraisal Committee-I/II/III, as the case may be, shall stipulate the implementation of Environmental Management Plan, comprising remediation plan and natural and community resource augmentation plan corresponding to the ecological damage assessed and economic benefit derived due to violation as a condition of environmental clearance with specific period of time for compliance thereof.
- l) The Project Proponent will have to submit a bank guarantee equivalent to the amount of remediation plan and Natural and Community Resource Augmentation Plan with the State Pollution Control Board giving assurance for compliance of the same within stipulated period of time.
- m) Thereafter, the concerned State Environment Impact Assessment Authority will finalize the recommendations of the concerned State Level Expert Appraisal Committee-I/II/III by grant of Environment Clearance subject to condition about compliance of the remediation plan and Natural and Community Resource Augmentation Plan given by the concerned State Level Expert Appraisal

: 3 :

- Committee-I/II/III after assessment of damage and assured by the Project Proponent in the Bank Guarantee submitted to the State Pollution Control Board within stipulated period of time.
- n) The Bank Guarantee shall be deposited prior to the grant of environmental clearance. After successful implementation of the remediation plan and Natural and Community Resource Augmentation Plan within stipulated period of time, the Project Proponent will have to apply to the concerned State Level Expert Appraisal Committee-I/II/III for release of the said Bank Guarantee.
  - o) Thereafter, the concerned State Level Expert Appraisal Committee-I/II/III after verification of the same, if found satisfactory compliance/ implementation of the remediation plan and Natural and Community Resource Augmentation Plan, then will recommend for release of the Bank Guarantee to the State Environment Impact Assessment Authority.
  - p) The State Environment Impact Assessment Authority will take decision about release of the Bank Guarantee on recommendations of the concerned State Level Expert Appraisal Committee-I/II/III and will remove the condition about Bank Guarantee from the Environment Clearance.
  - q) Invariably in all violation cases this process will have to be followed by the concerned State Level Expert Appraisal Committee-I/II/III and the State Environment Impact Assessment Authority.
  - r) Priority shall be accorded to all violation cases over regular Environment Clearance cases, since these cases are long pending for grant of prior Environment Clearance.
  - s) First priority shall be accorded to violation cases where Criminal Cases have been filed before the appropriate Court of Law and either the cases are disposed off by imposing penalty upon the Project Proponent or pending before the appropriate court of law.
  - t) Next priority shall be accorded to cases where action has not been initiated but violation determined by the Competent Authority.
  - u) If possible, separate meetings to be held by the concerned State Level Expert Appraisal Committee-I/II/III to deal with such violation cases so that all cases shall be given TOR and pendency of such violation cases will reduce.

All concerned State Level Expert Appraisal Committee-I/II/III are hereby informed to take cognizance of the above guidelines while appraisal of violation cases under provisions of the EIA Notification dtd. 14.9.2006 in compliance of the amendment in the said Notification dtd. 8<sup>th</sup> March, 2018.

  
(Satish M. Gavai)  
Addl. Chief Secretary,  
Environment Department

Copy forwarded to :

- 1) Addl. Chief Secretary to Chief Minister, Maharashtra State – for information.
- 2) Chairman, State Environment Impact Assessment Authority / State Level Expert Appraisal Committee – I/ II/ III – for information.
- 3) P.S. to Hon'ble Minister (Environment) – for information.
- 4) P.S. to Hon'ble State Minister (Environment) – for information.

Copy to :

- 1) Member Secretary, State Level Expert Appraisal Committee – I/ II/ III, 15<sup>th</sup> Floor, New Administrative Building, Mantralaya – for information and necessary action.
- 2) Member Secretary, Maharashtra Pollution Control Board, Sion (E), Mumbai – for information .

## F. No. 22-10/2019-IA.III

Government of India  
Ministry of Environment, Forest and Climate Change  
Impact Assessment Division  
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Indira Paryavaran Bhawan  
Jor Bagh Road, Aliganj  
New Delhi - 110003  
sharath.kr@gov.in

Date: 9<sup>th</sup> September, 2019

### OFFICE MEMORANDUM

**Subject: Consideration of Category B violation proposals at the State level as per the provisions of Notification S.O 804 (E) dated 14.03.2017 through lateral entry - regarding.**

The Ministry of Environment Forest and Climate Change issued a Notification vide S.O 804 (E) dated 14<sup>th</sup> March 2017 under the Environmental (Protection) Act, 1986 to appraise the projects, which have started the work onsite without taking prior environmental clearance in terms of the provisions of the Environment Impact Assessment (EIA) Notification, 2006. Time period of six months (14.03.2017 to 13.09.2017) was given vide aforesaid Notification to the proponents to submit proposals.

2. Soon after the publication of aforesaid notification, a PIL challenging the validity of the Notification dated 14.03.2017 was filed in Hon'ble High Court of Madras. Hon'ble High Court of Madras vide Order dated 7<sup>th</sup> June, 2017 prohibited from taking any further action pursuant to the Notification dated 14.03.2017 and therefore appraisal process for violation cases could not be taken up further. Hon'ble High Court of Madras vide order dated 13.10.2017 vacated the order while upholding validity of the Notification dated 14.03.2017.

3. Pursuant to the notification dated 14<sup>th</sup> March 2017, Ministry received a number of proposals relating to all sectors covered under category A and category B. As per the said notification all the proposals of violation, irrespective of its categories were required to be appraised at Central level by the Expert Appraisal Committee (EAC).

4. Further, Ministry vide Notification S.O 1030 (E) dated 08.03.2018 amended the Notification S.O 804 (E) dated 14.03.2017 and delegated the power to the States for appraisal of category B proposals which are under violation of EIA Notification.

5. Subsequently, the Ministry issued an OM dated 15.03.2018 for the implementation of Notification S. O 1030 (E) dated 08.03.2018. All the category B proposals were transferred to the concerned State Level Environment Impact Assessment Authority (SEIAA).

6. The Hon'ble High Court of Madras vide order dated 14.03.2018 was of the view that it will serve the ends of justice if time is extended by 30 (thirty) days from the date of delivery of the order, thereby extending the time till 13<sup>th</sup> April 2018, providing time for violators to apply as per the provisions of Notification S.O 804 (E). Therefore, again a one-month window was given from the date of order of Hon'ble High court (14.03.2018-13.04.2018) to submit proposals under violation of EIA Notification. The Ministry has issued OM dated 16.03.2018 for the compliance of the order dated 14.03.2018 of Hon'ble High court of Madras.

7. Proposals involving violation of EIA Notification, which had applied during the window (14.03.2017 to 13.09.2017 & 14.03.2018 to 13.04.2018) under violation category are being considered by the violation committee. However, in addition to such proposals, there were many category A proposals submitted in the respective sectoral committees for regular appraisal during or prior to violation window period. Sectoral committee while deliberating on the proposals, identified these as violation of EIA Notification. These proposals were subsequently forwarded to the violation committee after approval by the Competent Authority and such proposals are termed as "lateral entry proposals".

8. It is possible that there may be certain category B proposals which were submitted at SEIAA during or prior to the violation window period but not under violation category and later during the appraisal by State Level Expert Appraisal committee (SEAC) identified as violation proposals.

9. Now, a decision has been taken in the Ministry that such proposals as mentioned in para (8) above, may be considered in terms of provisions of Ministry's Notification dated 14.03.2017 & 08.03.2018 by the SEIAA. It is clarified that only those proposals may be taken up for consideration under this provision which had been submitted to SEAC during the window or prior to it as detailed above.

10. This issues with the approval of the competent authority.

  
(Sharath Kumar Pallerla)  
Director, IA (Policy) Division

To

1. All the officers of IA Division
2. Chairperson/Member Secretaries of all the SEIAAs/SEACs
3. Chairman of all the Expert Appraisal Committees
4. Chairman, CPCB
5. Chairpersons/Member Secretaries of all SPCBs/UTPCCs

Copy for information:

1. PS to Minister for Environment, Forest and Climate Change
2. PS to MoS (EF&CC)
3. PPS to Secretary(EF&CC)
4. PPS to AS(AKJ) / AS (AKM)
5. PPS to JS (GB)/ JS(JT)
6. Website, MoEF&CC
7. Guard file

**F. No. 22-21/2020-IA.III**

Government of India  
Ministry of Environment, Forest and Climate Change  
Impact Assessment Division

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Indira ParyavaranBhawan  
Jor Bagh Road, Aliganj  
New Delhi - 110003  
sujit.baju@gov.in

Date: 7<sup>th</sup> July, 2021

**Office Memorandum**

**Subject: Standard Operating Procedure (SoP) for Identification and handling of violation cases under EIA Notification 2006 in compliance to order of Hon'ble National Green Tribunal in O.A. No.34/2020 WZ - Regarding.**

The Ministry had issued a notification number S.O.804(E), dated the 14<sup>th</sup> March, 2017 detailing the process for grant of Terms of Reference and Environmental Clearance in respect of projects or activities which have started the work on site and/or expanded the production beyond the limit of Prior EC or changed the product mix without obtaining Prior EC under the EIA Notification, 2006.

2. This Notification was applicable for six months from the date of publication i.e. 14.03.2017 to 13.09.2017 and further based on court direction from 14.03.2018 to 13.04.2018.

3. Hon'ble NGT in Original Application No. 287 of 2020 in the matter of Dastak N.G.O. Vs Synochem Organics Pvt. Ltd. &Ors. and in applications pertaining to same subject matter in Original Application No. 298 of 2020 in Vineet Nagar Vs. Central Ground Water Authority &Ors., vide order dated 03.06.2021 held that "(...) **for past violations, the concerned authorities are free to take appropriate action in accordance with polluter pays principle, following due process**".

4. Further, the Hon'ble National Green Tribunal in O.A No. 34/2020 WZ in the matter of Tanaji B. Gambhire vs. Chief Secretary, Government of Maharashtra and ors., vide order dated 24.05.2021 has directed that "**...a proper SoP be laid down for grant of EC in such cases so as to address the gaps in binding law and practice being currently followed. The MoEF may also consider circulating such SoP to all SEIAAs in the country**".

5. Therefore, in compliance to the directions of the Hon'ble NGT a Standard Operating Procedure (SoP) for dealing with violation cases is required to be drawn. The Ministry is also seized of different categories of 'violation' cases which have been

pending for want of an approved structural/procedural framework based on 'Polluter Pays Principle' and 'Principle of Proportionality'. It is undoubtedly important that action under statutory provisions is taken against the defaulters/violators and a decision on the closure of the project or activity or otherwise is taken expeditiously.

6. In the light of the above directions of the Hon'ble Tribunal and the issues involved, the matter has accordingly been examined in detail in the Ministry. A detailed SoP has accordingly been framed and is outlined herein. The SoP is also guided by the observations / decisions of the Hon'ble Courts wherein principles of proportionality and polluters pay have been outlined.

**7. Relevant Court Cases on the issue:** It is noted that while deciding issues related to violations of the Environment Protection Act, 1986 on account of running the project/activity without prior environmental clearance or in excess of capacity allowed in such clearances, **the Hon'ble courts have, *inter-alia*, deliberated on various facets involving 'violation' cases and have enunciated principles of 'Proportionality' and 'Polluter Pays' in various decisions viz. Industrial Council for Enviro-Legal Action Vs Union of India (the Bichhri village industrial pollution case) (1996 SCC [3] 212); Alembic Pharmaceuticals Ltd. Vs Rohit Prajapati & Ors. (C.A. No. 1526 of 2016, order dated 1.4.2020) and Hindustan Copper Limited Vs Union of India in (W.P. (C) No. 2364 of 2014, order dated 28.11.2014).** The salient extracts of the judgements are as under:

**Issue 1: Proposal for grant of Environmental Clearance in violation cases – to be considered on merits:**

**i. Hon'ble High Court of Jharkhand in the matter of Hindustan Copper Limited Vs Union of India in W.P. (C) No. 2364 of 2014, vide order dated 28.11.2014**

*Held: "(...) action for alleged violation would be an independent and separate proceeding and therefore, consideration of proposal for environment clearance cannot await initiation of action against the project proponent."*

*"(...) the proposal of the petitioner company for **environmental clearance must be examined on its merits, independent of any proposed action for the alleged violation of the environmental laws.**"*

**ii. Hon'ble Madras High Court in the matter of Puducherry Environment Protection Association Vs The Union of India in W.P. No. 11189 of 2017, vide order dated 13.10.2017**

*Held "27. The question is whether an establishment contributing to the economy of the country and providing livelihood to hundreds of people should be closed down only because of failure to obtain prior environmental clearance, even though the establishment may not otherwise be violating*

SA

*pollution laws or the pollution, if any, can conveniently and effectively be checked. **The answer necessarily has to be in the negative.***

*“29. It is reiterated that protection of environment and prevention of environmental pollution and degradation are non-negotiable. At the same time, the Court cannot altogether ignore the economy of the Nation and the need to protect the livelihood of hundreds of employees employed in projects, which as stated above, otherwise comply with or can be made to comply with norms.”*

**Issue 2: Environmental Clearance – Prospective & not ex-post facto:**

**Hon’ble Supreme Court in the matter of Common Cause Vs Union of India in W.P. (C) No. 114 of 2014, vide order dated 2.8.2017**

*Held: “(...) an EC will come into force **not earlier than the date of its grant.**”*

**Issue 3: ‘Principles of Proportionality’ – to be applied:**

**Hon’ble Supreme Court in the matter of Alembic Pharmaceuticals Ltd. Vs Rohit Prajapati & Ors. in C.A. No. 1526 of 2016, vide order dated 1.4.2020**

*Held: “(...) **this Court must take a balanced approach** which holds the industries to account for having operated without environmental clearances in the past without ordering a closure of operations. The directions of the NGT for the revocation of the ECs and for closure of the units do not accord **with the principle of proportionality**”*

**Issue 4: ‘Polluter pays’ principle &  
&**

**Issue 5: Costs for remedial measures** implicit in Sections 3 & 5 of Environment (Protection) Act, 1986.

**Hon’ble Supreme Court in the matter of Indian Council for Enviro- Legal Action Vs Union of India (the Bichhri village industrial pollution case) in (1996 SCC [3] 212)**

**Held:**

*a) The Central Government is empowered to take all measures and issue all such directions as are called for the above purpose. The said powers will **include giving directions ...** and also the power to **impose the cost of remedial measures** on the offending industry and utilize the amount so recovered for carrying out remedial measures.....*

*SA*

b) **Levy of costs required for carrying out remedial measures is implicit in Sections 3 and 5** which are couched in very wide and expansive language. Sections 3 and 5 of the Environment (Protection) Act, 1986, apart from other provisions of Water and Air Acts, empower the Government to make all such directions and take all such measures as are necessary or expedient for protecting and promoting the 'environment', which expression has been defined in very wide and expansive terms in Section 2 (a) of the Environment (Protection) Act. This power includes the power to prohibit an activity, close an industry, direct to carry out remedial measures, and wherever necessary impose the cost of remedial measures upon the offending industry.

c) The question of liability of the respondents to defray the costs of remedial measures can also be looked into from accepted universally sound principle, viz., the "**Polluter Pays**" Principle. "The polluter pays principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution, or produce the goods which cause the pollution".

#### **8. Legal provisions:**

i. The Environment (Protection) Act, 1986 mandates the Central Government to take all measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution (reference sub-section (1) of Section 3 of Environment (Protection) Act, 1986). Further, clause (xiv) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986 specifies that the measures stipulated under sub-section (1) of Section 3 of the Environment (Protection) Act 1986 includes 'such other matters as the Central Government deems necessary or expedient for the purpose of securing effective implementation of the provisions of this Act'.

ii. Further, notwithstanding anything contained in any other law but subject to the provisions of the Environment Protection Act, 1986, Section 5 of the Environment (Protection) Act, 1986, provides that the Central Government may, in the exercise of powers and performance of Central Government functions under the said Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions.

#### **9. Definition of Violation and Non-compliance:**

The Standard Operating Procedure (SoP) considers 'Violation' & 'Non-compliance' from the following perspective:

i. "Violation" means cases where projects have either started the construction work or installation or excavation, whichever is earlier, on site or have expanded the production capacity and / or project area beyond the limit specified in the Environmental Clearance (Prior-EC) without obtaining Prior-EC or change of scope without prior approval from the Ministry.

ii. "Non-compliance" means non-compliance of terms and conditions prescribed by the Regulatory Authority in the Prior Environment Clearance accorded to the project.

#### 10. Standard Operating Procedure – Guiding Principles:

i. Without prejudice to any other consequences, **action has to be initiated under section 15 read with section 19** of The Environment (Protection) Act, 1986 **against all violations.**

ii. Projects not allowable/permissible, for grant of EC, as per extant regulations: **To be demolished.**

iii. Projects allowable/permissible, if prior EC had been taken as per extant regulations: **To be closed until EC is granted (if no prior EC has been taken) or to revert to permitted production level (in case prior EC has been granted).**

iv. **Polluter pays:** Violators to pay for violation period - proportionate to the scale of project and extent of commercial transaction.

v. Setting up a mechanism for reporting of violation to the regulatory authority(ies).

#### 11. SOP for dealing with the violation cases:

##### Step 1: Closure or Revision

Sl no.	Status of EC	Actions
1	If no prior EC has been taken	Order to <b>close</b> its operation
2.	If prior EC is available for existing/old unit	Order to <b>revert the activity/production to permissible limits.</b>
3.	If prior EC was not required for earlier production level but is now required	<b>Restrict the activity/production</b> to the extent to which prior EC was not required.

##### Step 2: Action under Environment (Projection) Act, 1986

Action under section 15 read with section 19 of the Environment (Protection) Act, 1986 shall be initiated against the violators.

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**Step: 3: Appraisal under EIA Notification, 2006**

The permissibility of the project shall be examined from the perspective of whether such activity/project was at all eligible for the grant of prior EC.

**A. If not permissible:**

i. The project shall be **ordered for the demolition/closure after issuing show cause notice and providing an opportunity of hearing.**

*Ex. If a red industry is functioning in a CRZ-I area which means that the activity was, in the first place, not permitted at the time of commencement of project. Therefore, the activity is not permissible and therefore it shall be **closed & demolished.***

ii. Respective regulatory authorities shall issue directions under section 5 of the Environment (Protection) Act, 1986 for such closure & demolition of the project/activity.

**B. If permissible:**

i. As per extant regulations at the time of scoping, if it is viewed that the project activity is otherwise permissible, Terms of Reference (TOR) shall be issued with directions to complete the impact assessment studies & submit Environmental Impact Assessment (EIA) report & Environmental Management Plan (EMP) in a time bound manner.

ii. Such cases of violation shall be subject to appropriate

(a) Damage Assessment

(b) Remedial Plan and

(c) Community Augmentation Plan by the Central level Sectoral Expert Appraisal Committees or State/Union Territory Level Expert Appraisal Committees, as the case may be.

iii. The Competent Authority shall issue directions to the project proponent, under section 5 of the Environment (Protection) Act, 1986 on case to case basis mandating payment of such amount (as may be determined based on Polluters Pay principle) and undertaking activities relating to Remedial Plan and Community Augmentation Plan (to restore environmental damage caused including its social aspects).

iv. Upon submission of the EIA & EMP report, the project shall be appraised by the Central Sectoral Expert Appraisal Committees or the State/Union Territory Level Expert Appraisal Committees, as the case may be, as if it was a new proposal. If, on examination of the EIA/EMP report, the project is considered permissible for operation as per extant regulations, the requisite Environmental Clearance shall be issued **which shall be effective from the date of issue.**

v. However, during appraisal after examination if it is found that even though the project may **be permissible but not environmentally sustainable in its present**

**form/configuration/features** then the project shall be directed to be **modified so that the project would be environmentally sustainable.**

vi. If, however, it is not considered appropriate to issue EC, the project shall be directed to be **demolished/ closed. If such proposal is a case of expansion, the project shall be directed to revert back to the extent of activity for which EC had been granted earlier or to revert back to the extent of activity for which EC was not required (as the case may be).**

vii. Central Sectoral Expert Appraisal Committees or the State/Union Territory Level Expert Appraisal Committees, as the case may be, may insist upon public hearing to be conducted for such categories of projects for which the EIA Notification 2006, as amended from time to time, requires the public hearing to be conducted.

viii. The project proponent will be required to **submit a bank guarantee equivalent to the amount of Remediation Plan and Natural & Community Resource Augmentation Plan with Central / the State Pollution Control Board (depending on whether it is appraised at Ministry or by SEIAA).** The quantification of such liability will be recommended by Expert Appraisal Committee and finalized by Regulatory Authority. The bank guarantee shall be deposited prior to the grant of environmental clearance and **will be released after successful implementation of the Remediation plan and Natural & Community Resource Augmentation Plan.**

**Note** - The activities, as per above clauses, shall be undertaken simultaneously wherever feasible. Environmental Clearance, if granted, to such projects or activities, after due appraisal of EIA/EMP report, **shall be effective only from the date of issuance of such clearance** and shall be subject to compliance of obligations towards Damage Assessment, Remedial Plan & Community Augmentation Plan, etc. finalized in each case.

## **12. Penalty provisions for Violation cases and applications:**

### **a. For new projects:**

- i. **Where operation has not commenced:** 1% of the total project cost incurred up to the date of filing of application along with EIA/EMP report; [Ex: Rs.1 lakh for project cost of Rs.1 Cr]
- ii. **Where operations have commenced without EC:** 1% of the total project cost incurred up to the date of filing of application along with EIA/EMP report **PLUS** 0.25% of the total turnover during the period of violation. [Ex: For Rs.100 Cr project cost and Rs.100 Cr total turnover, the penalty shall be Rs.1 Cr + Rs. 0.25 Cr = Rs.1.25 Cr]

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**b. For expansion projects:**

- i. **Where operation/production with expanded capacity has not commenced:**  
1% of the project cost, attributable to the expansion, incurred up to the date of filing of application along with EIA/EMP report.
- ii. **Where operation/ production with expanded capacity have commenced:**  
1% of the project cost (attributable to the expansion activity) incurred upto the date of filing of application along with EIA/EMP report PLUS 0.25% of the total turnover (attributable to the expanded activity/capacity) involved during the period of violation.

12.1. Without prejudice to obligation as per (a) & (b) above, where the project or activity is considered for appraisal as above & the project proponent fails to provide required information or requisite documents or complete the requisite study for the purpose of EIA/EMP reports or does not furnish such reports within such period, as specified by the appraisal committee, without reasonable cause, it shall be inferred that the project proponent is not serious enough and the project or activity shall be directed to be demolished / closed.

12.2. The percentage rates, as above, shall be halved if the project proponent *suo-moto* reports such violations without such violations coming to the knowledge of the Government either on inquiry or complaint.

12.3. The penalty, as above, shall be in addition to liability for carrying out various remedial measures which shall be worked out based on the damage assessment for quantifying the environmental damage caused due to unauthorized project activity [as per Step 3 enumerated above].

**13. Identification of Violation cases:**

With a view to protecting the environment and to expeditiously bring violators into a regulatory regime so as to prevent & control environment damage caused by such violation & to determine whether operation of such projects is permissible and to take action stipulated under Section 15 of the Environment (Protection) Act, 1986 for contravention of the provisions of the said Act, Rules, orders and directions, it is expedient to also identify the cases of violation, examine and appraise such projects so as to refrain them from causing further environmental damage and also to compensate for causing damage to the environment. Therefore, in exercise of the powers conferred under Section 5 of the Environment (Protection) Act, 1986, the Central Government hereby directs that:-

- i. State Pollution Control Boards & Union Territory Pollution Control Committees, before grant or renewal of Consents under Water(Prevention & Control of Pollution) Act, 1974 & Air (Prevention& Control of Pollution) Act, 1981, shall ensure that the project proponents applies for or possess valid Prior



Environmental Clearance in terms of extant EIA Notification and shall not grant or renew CTO (Consent to Operate) unless Environment Clearance (if applicable) has been obtained.

- ii. The Central Pollution Control Board, all State Pollution Control Boards and all Union Territory Pollution Control Committees shall identify cases of violation under their respective jurisdiction, report such cases to the Ministry or State/Union Territory Level Environmental Impact Assessment Authority, as the case may be and also revoke CTO, if granted to the unit after giving an opportunity of being heard.
  - iii. The Central Pollution Control Board, all State Pollution Control Boards and all Union Territory Pollution Control Committees shall expeditiously examine the references, received from public and other bodies, relating to violations and take necessary steps as per (ii) above.
14. This is issued with the approval of the Competent Authority.

  
 (Dr. Sujit Kumar Bajpayee)  
 Joint Secretary (IA)

To

1. Chairperson/Member Secretary of Central Pollution Control Board
2. Chairperson/Member Secretaries of all the SEIAAs/SEACs
3. Chairman/Members of all the Expert Appraisal Committees
4. Chairman/Members of all the State Pollution Control Boards and Union Territory Pollution Control Committees

Copy for information:

1. PS to Hon'ble Minister for Environment, Forest and Climate Change
2. PS to Hon'ble MoS for Environment, Forest and Climate Change
3. PPS to Secretary(EF&CC)
4. PPS to AS(RS) / AS (RA)/ AS (UD)/ JS(JT) / JS (MP)/ JS (NPG)
5. All the officers of IA Division
6. Website of MoEF&CC/PARIVESH/Guard file

Copy (by email) also forwarded to the Registrar, NGT, in compliance to instruction given in O.A No. 34/2020 WZ in the matter of Tanaji B. Gambhire vs. Chief Secretary, Government of Maharashtra and ors.(order dated 24.05.2021).

F. No. IA3-22/8/2023-IA.III (E- 205497)  
Government of India  
Ministry of Environment, Forest & Climate Change Impact  
Assessment Division  
\*\*\*

3<sup>rd</sup> floor, Vayu wing  
Indira Paryavaran Bhavan,  
Aliganj, Jorbagh Road,  
New Delhi-110 003

Dated: 29<sup>th</sup> March, 2023

## OFFICE MEMORANDUM

**Subject: Advisory to adhere to the SoP dated 7<sup>th</sup> July 2021 issued by the Ministry for identification and handling of violation cases under EIA Notification 2006 - reg.**

The Ministry has issued a Standard Operating Procedure (SoP) dated 7<sup>th</sup> July 2021 for identification and handling of violation cases under EIA Notification 2006, in compliance to order of Hon'ble National Green Tribunal in O.A. No.34/2020 WZ. However, instances have been brought to the notice of the Ministry that the provisions of the SoP dated 7<sup>th</sup> July 2021 are not being followed in letter and spirit.

2. In this regard, it is hereby directed that the provisions of the SoP dated 7<sup>th</sup> July 2021 shall be strictly adhered to so that there is a uniform approach in handling the violation proposals.

3. This is issued with the approval of the Competent Authority.

  
(Sundar Ramanathan)  
Scientist 'E'

To

1. Chairperson/ Member Secretaries of all Expert Appraisal Committees
2. Chairperson/ Member Secretaries of all SEIAAs/SEACs
3. All Officers of IA Division

Copy for information to:

1. PS to Hon'ble MEF&CC
2. PS to Hon'ble MoS, EF&CC
3. PPS to Secretary, EF&CC
4. PPS to AS (TK)/JS (SKB)
5. Website, MoEF&CC / Guard file

*Minutes of 117<sup>th</sup> SEAC-3 meeting held on 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup> May, 2021 through Video Conference*

**Minutes of 117<sup>th</sup> SEAC-3 meeting held on 10<sup>th</sup> & 11<sup>th</sup> May, 2021 through Video Conference**

In view of sudden increase in present pandemic situation of COVID-19, Maharashtra SEIAA directed SEAC-3 to appraise the proposals by using information technology facilities. Hence, SEAC-3 initiated to appraise the proposals received by the SEIAA through Videoconferencing technology on Zoom platform on 10<sup>th</sup>, 11<sup>th</sup> & 12<sup>th</sup> May, 2021.

The following members were present.

Dr. Deepak Mhaisekar, IAS Rtd.	Chairman	10 <sup>th</sup> , 11 <sup>th</sup> , 12 <sup>th</sup> May, 2021
Shri Mukund Pathak	Member	10 <sup>th</sup> , 11 <sup>th</sup> , 12 <sup>th</sup> May, 2021
Shri Dattatray Thorat	Member	10 <sup>th</sup> , 11 <sup>th</sup> , 12 <sup>th</sup> May, 2021
Shri Kiran Acharekar	Member	10 <sup>th</sup> , 11 <sup>th</sup> , 12 <sup>th</sup> May, 2021
Dr. Aseem Gokarn Harwansh	Member	10 <sup>th</sup> , 11 <sup>th</sup> , 12 <sup>th</sup> May, 2021
Shri. Narendra Toke	Secretary	10 <sup>th</sup> , 11 <sup>th</sup> , 12 <sup>th</sup> May, 2021

Chairman welcomed the members to the 117<sup>th</sup> SEAC III Meeting. The minutes of 115<sup>th</sup> & 116<sup>th</sup> Meetings were confirmed.

10 <sup>th</sup> May, 2021			
1.	P-01	SIA/MH/MIS/1 52948/2020	Residential Development "Central Park" located at S.NO. 759/A/2 + 759/A/3 + 759/A/4, Of Nashik Shiwar, At. Nashik by M/s. BHAVIK & KHETWANI VENTURES LLP.

**PP requested to withdraw the proposal vide letter dated 05/05/2021. Committee noted & accepted the same**

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Secretary, SEAC-3

Page 1 of 62

Chairman, SEAC-3

It is utmost important that, the project which is appraised and recommended for grant of Environment clearance has the same project profile which is uploaded in public domain- PARIVESH website.

Considering above, the concerned Project Proponent & Environment consultant are hereby informed that, the projects for which projects profile has been changed from what is uploaded on PARIVESH website has to apply fresh for grant of EC with modified details. To maintain the seniority of the projects applied earlier, but fresh application is submitted due to change in DCR regulations and Change in planning by Project Proponent, the new UID number along with Old UID number to be communicated to Secretary SEAC 3 & Supporting Staff, through e mail.

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22.	P-22	SIA/MH/MIS/ 169445/2020	Proposed Construction project at Survey No. 11/2A & 11/2B, Near Symbiosis College Kiwale, Pune 412101
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**PP / representative M/s. Shree Sai Capital of PP Mr. Sandeep Agarwal was absent, hence deferred the project.**

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23.	P-23	SIA/MH/NCP/ 60014/2021	Environment Clearance for Proposed Construction Project Reflections by SHASHWATI BUILDERS
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**PP was absent, hence deferred the project.**

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24.	P-24	SIA/MH/NCP/ 60016/2021	Environment Clearance for Proposed Construction Project Jubilee Park by
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Representative of PP was present during the meeting along with environmental consultant M/s. Mahabal Enviro Engineers Pvt. Ltd.

Secretary, SEAC-3

Chairman, SEAC-3

Committee noted that, the proposal is forwarded from MoEF & CC & the application is of 19<sup>th</sup> May 2017. Committee also noted that, the application is not properly filled. PP stated that they have submitted the fresh application & requested to consider that application against the UID which is under consideration.

It is observed that, project profile has been changed from what was uploaded on PARIVESH platform. During deliberations, it is informed that, the change in project profile is,

(A) Due to change in local town planning rules, introduction of unified Development Control Rules.

(B) Due to change in planning by Project Proponent.

It is utmost important that, the project which is appraised and recommended for grant of Environment clearance has the same project profile which is uploaded in public domain- PARIVESH website.

Considering above, the concerned Project Proponent & Environment consultant are hereby informed that, the projects for which projects profile has been changed from what is uploaded on PARIVESH website has to apply fresh for grant of EC with modified details. To maintain the seniority of the projects applied earlier, but fresh application is submitted due to change in DCR regulations and Change in planning by Project Proponent, the new UID number along with Old UID number to be communicated to Secretary SEAC 3 & Supporting Staff, through e mail.

\*\*\*\*\*

25.	P-25	SIA/MH/NCP/ 60017/2021	Environment Clearance for Proposed Construction Project Eco City Phase 2 by NAMRATA PROMOTERS AND BUILDERS
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**PP was absent, hence deferred the project.**

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**Secretary, SEAC-3**

**Chairman, SEAC-3**

Minutes of 230<sup>th</sup> (Part-A) meeting of SEIAA held on 01<sup>st</sup> October, 2021

**Item no. 40**

**Proposal No.:-** SIA/MH/MIS/211317/2021

**Type of Project:** Modi. ToR

**Subject-** Environment Clearance for Proposed Residential Project with convenient shops Jubilee Park S. No. 84, H. No. 2 & 4 and S. No. 83/1 (Plot No 3) at Mauje Warje Pune by M/s. Aurangabad Holiday Resorts

**Project Details-**

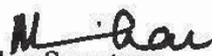
Representative of PP was present during the meeting along with environmental consultant M/s. Mahabal Enviro Engineers Pvt. Ltd. Thane

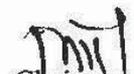
The proposal under consideration is construction of “Jubilee Park” on land bearing Survey No. 84, H. No. 2 + 4 & S. No. 83/1 (Plot No. 3) at Warje, Pune –411036.

The UID for the project is SIA/MH/MIS/211317/2021. It is noted that, different proposals on the same land with different UIDs are considered earlier by different committees, which is summarized as below-

Sr. No	Project UID No	Submission Date	Considered in	Decision/remarks
1	IA/MH/NCP/64 794/2017	19.05.2017	4th EAC meeting dated 19-21 February, 2018	PP was absent, hence project was deferred.
2	IA/MH/NCP/64 794/2017-MoEf & CC transfer to SEIAA SIA/MH/NCP/ 60016/2021	Received from MoEF & CC 20/1/2021	1) 145th SEAC2 meeting 08.04.2021 2) 117th SEAC3 meeting 12.05.2021	1) Withdrawal letter submitted to SEAC2 2) Withdrawal letter & consideration for UID- SIA/MH/MIS/6222 6/2021 submitted to SEAC3
3	SIA/MH/MIS/6 2226/2021	25.03.2021	ToR proposal- 121st SEAC3 meeting 29th July, 2021	absent letter submitted to SEAC3
4	SIA/MH/MIS/2 11317/2021	04.05.2021	Modification in ToR proposal- 121st SEAC3 meeting 29th July, 2021	
5	SIA/MH/MIS/2 15352/2021	15.06.2021	Proposal without violation and ref of Environment Department Circular dated 21.04.2015	

**SEAC Deliberation –**

  
Member Secretary

  
Chairman

Minutes of 230<sup>th</sup> (Part-A) meeting of SEIAA held on 01<sup>st</sup> October, 2021

The Environment Consultant of the project under consideration with UID SIA/MH/MIS/211317/2021 has informed that, work has initiated and around 12,177.37 Sq.mt construction has been done on site. It is a case of violation of EIA Notification, 2006.

It is also noted that, application of PP to MoEF & CC during the provided window period vide Notification dated 14<sup>th</sup> March, 2017 could not come to the logical end, as PP withdrawn the proposal which was forwarded to SEIAA by MoEF & CC regarding violation of EIA Notification. Considering this, SEAC-3 after detailed deliberation decided to refer the matter to SEIAA to address the issue of violation. Once the said issue decided, SEAC-3 will appraise the proposal subject to decision of SEIAA.

**Recommendations of SEAC-**

SEAC-3 will appraise the proposal subject to decision of SEIAA.

**Deliberation in SEIAA-**

SEAC-3 in its 121st meeting pointed out that, application of PP to MoEF & CC during the provided window period vide Notification dated 14th March, 2017 could not come to the logical end, as PP withdrawn the proposal which was forwarded to SEIAA by MoEF & CC regarding violation of EIA Notification. SEAC decided to refer the matter to SEIAA to address the issue of violation. Once the said issue decided, SEAC-3 will appraise the proposal subject to decision of SEIAA.

During the meeting, PP submitted that, they have started the construction on the site and constructed 12,117 m2, on site and after that no construction was done on the site since 2015. PP further submitted that, they had applied for EC under the violation category as per MoEF&CC notification dt. 14.03.2017, vide application having proposal no. SIA/MH/NCP/64794/2017 dated 19.05.2017. The project was listed in the 4th EAC meeting (21.02.2018), however the PP couldn't attend the meeting and remained absent.

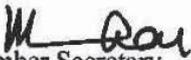
The MoEF& CC Notification S. O. 1030(E) dt 08.03.2018 and OM dated 15.03.2018, had decided to transfer the category B Projects to the State SEIAA's.

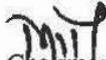
During the meeting, SEIAA asked PP to submit additional details regarding construction done on site along with architect certificate, details of chronology of the proposal.

SEIAA decided to defer the proposal for compliance of above.

**SEIAA Decision-**

SEIAA decided to defer the proposal.

  
Member Secretary

  
Chairman

**Minutes of 125<sup>th</sup> (Part A) SEAC-3 meeting held on 7<sup>th</sup> & 8<sup>th</sup> October, 2021 through Video Conference**

In view of sudden increase in present pandemic situation of COVID-19, Maharashtra SEIAA directed SEAC-3 to appraise the proposals by using information technology facilities. Hence, SEAC-3 initiated to appraise the proposals received by the SEIAA through Videoconferencing technology on Zoom platform from 7<sup>th</sup> & 8<sup>th</sup> October, 2021.

Dr. Deepak Mhaisekar, IAS Rtd.	Chairman	7 <sup>th</sup> & 8 <sup>th</sup> October, 2021
Shri Mukund Pathak	Member	7 <sup>th</sup> & 8 <sup>th</sup> October, 2021
Shri Dattatray Thorat	Member	7 <sup>th</sup> & 8 <sup>th</sup> October, 2021
Shri Kiran Acharekar	Member	7 <sup>th</sup> & 8 <sup>th</sup> October, 2021
Dr. Aseem Gokarn Harwansh	Member	7 <sup>th</sup> & 8 <sup>th</sup> October, 2021
Shri. Narendra Toke	Secretary	7 <sup>th</sup> & 8 <sup>th</sup> October, 2021

Chairman welcomed the members to the 125<sup>th</sup> SEAC III Meeting.

7 <sup>th</sup> October, 2021			
1.	P-01	SIA/MH/MIS/213871/2021	SKYI STAR TOWN by ENERRGIA SKYI PROPERTIES PVT LTD

Representative of PP was present during the meeting along with environmental consultant M/s. JV Analytical Services

It is noted that, the PP has submitted the application for prior Environmental clearance for total plot area of 29165.00 Sq.mt, FSI area of 33248.06 Sq.mt, Non FSI area of 16475.99 Sq.mt and total BUA of 49724.05 Sq.mt.

Secretary, SEAC-3

Chairman, SEAC-3

**During discussion following points emerged:**

1. It is noted that, the proposed refugee area seems to be less, PP to provide one additional; refugee area for the project. PP to revise the drawing accordingly & submit the same.
2. PP to submit the fire NoC
3. PP to submit the revised landscape plan.
4. PP to ensure that NBC norms should be followed for building line & building podium line.
5. PP to provide minimum 30% of total parking arrangement with electric charging facility by providing charging points at suitable places.

**Decision: -**

After deliberation, Committee decided to recommend the proposal for Environmental Clearance to SEIAA, subject to compliance of above points.

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16.	P-16	SIA/MH/MIS/214661/2021	Proposed Residential & Commercial "Ganga Avanta"Project by M/S. SOHAM ASSOCIATES
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PP requested to withdraw the proposal. Committee noted & accepted the same, hence application is forwarded to SEIAA with the recommendation that PP may be allowed to withdraw the project.

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17.	P-17	SIA/MH/MIS/215352/2021	Proposed Residential Project with convenient shops – “Jubilee Park” S. No.84, H. No. 2 & 4 & S. No. 83/1 (Plot No.3) at Mauje Warje Pune by M/s. Aurangabad Holiday Resorts
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**PP was absent, hence deferred the project.**

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18.	P-18	SIA/MH/MIS/215358/2021	Nexus Skydale by M/S. NEXUS INFRASTRUCTURE
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**PP requested to withdraw the proposal. Committee noted & accepted the same, hence application is forwarded to SEIAA with the recommendation that PP may be allowed to withdraw the project.**

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19.	P-19	SIA/MH/MIS/150822/2020	Sai Dwarika- Phase I & II by M/S MAA SANKALP BUILDCON
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**PP requested to withdraw the proposal. Committee noted & accepted the same, hence application is forwarded to SEIAA with the recommendation that PP may be allowed to withdraw the project.**

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20.	P-20	SIA/MH/MIS/150880/2021	Sai Dwarika- Phase III & IV by M/S MAA SANKALP BUILDCON
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**PP requested to withdraw the proposal. Committee noted & accepted the same, hence application is forwarded to SEIAA with the recommendation that PP may be allowed to withdraw the project.**

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21.	P-21	SIA/MH/MIS/216173/2021	Proposed Residential project at S. no. 44, 51/52, Moshi-Alandi road, Dudulgaon, Pune by Mr.
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**Item no. 299****Proposal No.:-** SIA/MH/MIS/211317/2021**Type of Project:**

EC

**Subject-****Project Details-**

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**SEAC Deliberation –**

The proposal under consideration is construction of “Jubilee Park” on land bearing Survey No. 84, H. No. 2 + 4 & S. No. 83/1 (Plot No. 3) at Warje, Pune –411036.

The UID for the project is SIA/MH/MIS/211317/2021. It is noted that, different proposals on the same land with different UIDs are considered earlier by different committees, which is summarized as below-

Sr. No	Project UID No	Submission Date	Considered in	Decision/remarks
1	IA/MH/NCP/64794/2017	19.05.2017	4th EAC meeting dated 19-21 February, 2018	PP was absent, hence project was deferred.
2	IA/MH/NCP/64794/2017- MoEf & CC transfer to  SEIAA SIA/MH/NCP/60016/2021	Received from MoEF  & CC 20/1/2021	1) 145th SEAC2 meeting 08.04.2021 2) 117th SEAC3 meeting 12.05.2021	1) Withdrawal letter submitted to SEAC2  2) Withdrawal letter & consideration for UID-SIA/MH/MIS/62226/2021 submitted to SEAC3
3	SIA/MH/MIS/62226/2021	25.03.2021	ToR  propo sal- 121st SEAC3 meeting 29th July, 2021	absent letter submitted to SEAC3
4	SIA/MH/MIS/211317/2021	04.05.2021	Modification proposal-  12 1st S EAC3meeting 29th July, 2021	

  
Member Secretary

  
Chairman

5	SIA/MH/MIS/215352/2021	15.06.2021	Proposal without violation and ref of Environment Department Circular dated 21.04.2015	
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**Recommendations of SEAC-**

The Environment Consultant of the project under consideration with UID SIA/MH/MIS/211317/2021 has informed that, work has initiated and around 12,177.37 Sq.mt construction has been done on site. It is a case of violation of EIA Notification, 2006.

It is also noted that, application of PP to MoEF & CC during the provided window period vide Notification dated 14<sup>th</sup> March, 2017 could not come to the logical end, as PP withdrawn the proposal which was forwarded to SEIAA by MoEF & CC regarding violation of EIA Notification. Considering this, SEAC-3 after detailed deliberation decided to refer the matter to SEIAA to address the issue of violation. Once the said issue decided, SEAC-3 will appraise the proposal subject to decision of SEIAA.

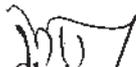
**Deliberation in SEIAA-**

SEIAA decided to defer the proposal for submission of revised architect certificate.

**SEIAA Decision-**

SEIAA decided to defer the proposal.

  
Member Secretary

  
Chairman

Minutes of 247<sup>th</sup> (Day-2) Part C meeting of SEIAA held on 29<sup>th</sup> July, 2022.

**Item no. 55**

**Proposal No.:-** SIA/MH/MIS/211317/2021

**Type of Project:** Modi. ToR

**Subject-** Environment Clearance for Proposed Residential Project with convenient shops Jubilee Park S. No. 84, H. No. 2 & 4 and S. No. 83/1 (Plot No 3) at Mauje Warje Pune by M/s. Aurangabad Holiday Resorts

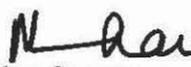
**Project Details-**

Representative of PP was present during the meeting along with environmental consultant M/s. Mahabal Enviro Engineers Pvt. Ltd. Thane

The proposal under consideration is construction of “Jubilee Park” on land bearing Survey No. 84, H. No. 2 + 4 & S. No. 83/1 (Plot No. 3) at Warje, Pune –411036.

The UID for the project is SIA/MH/MIS/211317/2021. It is noted that, different proposals on the same land with different UIDs are considered earlier by different committees, which is summarized as below-

Sr. No	Project UID No	Submission Date	Considered in	Decision/remarks
1	IA/MH/NCP/64794/2017	19.05.2017	4th EAC meeting dated 19-21 February, 2018	PP was absent, hence project was deferred.
2	IA/MH/NCP/64794/2017 -MoEf & CC transfer to SEIAA SIA/MH/NCP/60016/2021	Received from MoEF & CC 20/1/2021	1) 145th SEAC2 meeting 08.04.2021 2) 117th SEAC3 meeting 12.05.2021	1) Withdrawal letter submitted to SEAC2 2) Withdrawal letter & consideration for UID-SIA/MH/MIS/62226/2021 submitted to SEAC3
3	SIA/MH/MIS/62226/2021	25.03.2021	ToR proposal- 121st SEAC3 meeting 29th July, 2021	absent letter submitted to SEAC3
4	SIA/MH/MIS/211317/2021	04.05.2021	Modification in ToR proposal- 121st SEAC3	

  
Member Secretary

  
Chairman

			meeting 29th July, 2021	
5	SIA/MH/MIS/215352/20 21	15.06.202 1	Proposal without violation and ref of Environment Department Circular dated 21.04.2015	

**SEAC Deliberation –**

The Environment Consultant of the project under consideration with UID SIA/MH/MIS/211317/2021 has informed that, work has initiated and around 12,177.37 Sq.mt construction has been done on site. It is a case of violation of EIA Notification, 2006.

It is also noted that, application of PP to MoEF & CC during the provided window period vide Notification dated 14th March, 2017 could not come to the logical end, as PP withdrawn the proposal which was forwarded to SEIAA by MoEF & CC regarding violation of EIA Notification. Considering this, SEAC-3 after detailed deliberation decided to refer the matter to SEIAA to address the issue of violation. Once the said issue decided, SEAC-3 will appraise the proposal subject to decision of SEIAA.

**Recommendations of SEAC-**

SEAC-3 will appraise the proposal subject to decision of SEIAA.

**Deliberation in SEIAA-**

SEAC-3 in its 121st meeting pointed out that, application of PP to MoEF & CC during the provided window period vide Notification dated 14th March, 2017 could not come to the logical end, as PP withdrawn the proposal which was forwarded to SEIAA by MoEF & CC regarding violation of EIA Notification. SEAC decided to refer the matter to SEIAA to address the issue of violation. Once the said issue decided, SEAC-3 will appraise the proposal subject to decision of SEIAA.

During the meeting, PP submitted that, they have started the construction on the site and constructed 12,117 m<sup>2</sup>, on site and after that no construction was done on the site since 2015. PP further submitted that, they had applied for EC under the violation category as per MoEF&CC notification dt. 14.03.2017, vide application having proposal no. SIA/MH/NCP/64794/2017 dated 19.05.2017. The project was listed in the 4th EAC meeting (21.02.2018), however the PP couldn't attend the meeting and remained absent.

The MoEF & CC Notification S. O. 1030(E) dt 08.03.2018 and OM dated 15.03.2018, had decided to transfer the category B Projects to the State SEIAA's.

  
Member Secretary

  
Chairman

Minutes of 247<sup>th</sup> (Day-2) Part C meeting of SEIAA held on 29<sup>th</sup> July, 2022.

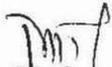
In 230<sup>th</sup> & 235<sup>th</sup> meeting, SEIAA asked PP to submit additional details regarding construction done on site along with architect certificate, details of chronology of the proposal. SEIAA decided to defer the proposal for compliance of above.

During the meeting, PP could not present their proposal due network issues from their end. SEIAA decided to defer the proposal to the proposal is next SEIAA meeting.

**SEIAA Decision-**

SEIAA decided to defer the proposal to the proposal is next SEIAA meeting.

  
Member Secretary

  
Chairman

4. PP to ensure that, the water proposed to use for construction phase should not be drinking water. They can use recycled water or tanker water for proposed construction.

**Decision: -**

**After deliberation, Committee decided to recommend the proposal for Environmental Clearance to SEIAA, subject to compliance of above points.**

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18	P-18	SIA/MH/MIS/291385/2022	Proposed Residential Project with convenient shops – “Jubilee Park” S. No.84, H. No. 2 & 4 & S. No. 83/1 (Plot No.3) at Mauje Warje Pune by M/s. Aurangabad Holiday Resorts
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**PP requested to withdraw the application. Committee noted & accepted the same, hence application is forwarded to SEIAA with the recommendation that PP may be allowed to withdraw the project.**

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19	P-19	SIA/MH/MIS/250452/2022	Proposed Commercial & Residential Project at Mundhwa, Pune by Sapra Constructions
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Representative of PP was present during the meeting along with environmental consultant M/s. Srushti Seva Private Limited.

It is noted that, the PP has submitted the application for prior Environmental Clearance for proposed residential and commercial project with total plot area of 3939.10 m<sup>2</sup>, FSI area of 18856.15 m<sup>2</sup>, Non FSI area of 11404.70 m<sup>2</sup> and total BUA of 30260.85 m<sup>2</sup>.

**Brief information of the proposal is as below:**

1.	Proposal Number	SIA/MH/MIS/250452/2022
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Minutes of 255<sup>th</sup> Day - 1 (Part B) meeting of SEIAA held on 12<sup>th</sup> December, 2022.

**Item no. 21**

**Proposal No.:-** SIA/MH/MIS/291385/2022

**Type of Project:** EC

**Subject-** Environmental Clearance for Proposed Residential Project with convenient shops – “Jubilee Park” S. No.84, H. No. 2 & 4 & S. No. 83/1 (Plot No.3) at Mauje Warje Pune by M/s. Aurangabad Holiday Resorts

**Project Details-**

**SEAC Deliberation –**

PP requested to withdraw the application. Committee noted & accepted the same, hence application is forwarded to SEIAA with the recommendation that PP may be allowed to withdraw the project.

**Recommendations of SEAC-**

PP requested to withdraw the application. Committee noted & accepted the same, hence application is forwarded to SEIAA with the recommendation that PP may be allowed to withdraw the project.

**Deliberation in SEIAA-**

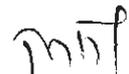
Proposal is recommended by SEAC-3 in its 157<sup>th</sup> meeting to allow PP to withdraw their application. SEIAA decided to allow PP to withdraw the application as per the recommendation of SEAC.

**SEIAA Decision-**

SEIAA decided to allow PP to withdraw the application.



Member Secretary



Chairman



# National Green Tribunal



Case Title	Shashikant Vitthal Kamble Vs. MINISTRY OF ENVIRONMENT AND FOREST AND CLIMATE CHANGE (MOEF & CC) NEW DELHI
Miscellaneous No.	2704138014472021/10
Transaction id	2700410060312023
Bank Transaction id	0805230043282
Payment Date	2023-05-08 00:00:00.0
Amount	530 Rs.
Status	SUCCESS

S. No.	File Name	Party Name	Location	Document Type
1	2023-05-05 OA 105 R-14 Aurangabad AiR.pdf	AURANGABAD HOLIDAY RESORTS	PUNE (WESTERN ZONE BENCH)	Reply