BEFORE THE NATIONAL GREEN TRIBUNAL, WESTERN ZONE BENCH, PUNE

APPLICATION NO. 43 OF 2023

Sagar Kantilal Devre ... **Applicant**

VERSUS

The State of Maharashtra & Others ... **Respondents**

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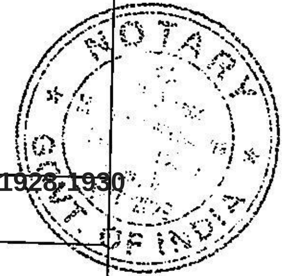

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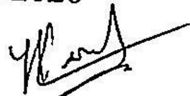
Mumbai
Date: 06 June 2026



Advocate for Respondent No. 27 (Rajnigandha Foundation)

BEFORE THE NATIONAL GREEN TRIBUNAL, WESTERN ZONE BENCH, PUNE

APPLICATION NO. 43 OF 2023

Sagar Kantilal Devre,

Aged about 36 years, Occupation: Advocate, **... Applicant**

Mulund (East), Mumbai – 400 081.

VERSUS

The State of Maharashtra & Others.

... Respondents

AFFIDAVIT-IN-REPLY ON BEHALF OF RESPONDENT NO. 27, FILED BY RAJNIGANDHA FOUNDATION (PUBLIC TRUST), THE OCCUPIER OF THE SUBJECT STRUCTURE, THROUGH ITS EXECUTIVE PRESIDENT

I, Mahendra Vaity, the Executive President of Rajnigandha Foundation, a public charitable trust duly registered under the Maharashtra Public Trusts Act, 1950, having its office at Mulund (East), Mumbai, aged about 65 years, Occupation: Social Work, do hereby solemnly affirm and state on oath as under:

1. I am the Executive President of Rajnigandha Foundation ("the Foundation" / "the Trust") and I am duly authorised by the Board of Trustees of the Foundation, by a resolution duly passed in that behalf, to affirm and file the present Affidavit-in-Reply on its behalf. I am fully conversant with the facts and circumstances of the present matter, both from the records maintained by the Foundation in the ordinary course and from my personal knowledge in the discharge of my duties. I am, therefore, competent to depose to the facts stated herein.

2. At the very outset, the contesting Respondent submits that the occupier of the subject structure is Rajnigandha Foundation, a public charitable trust, which is arrayed in the Application as Respondent No. 27. The service of the Application has been effected upon Rajnigandha Foundation as the occupier of the subject structure. Being the entity actually in occupation and actually affected by the reliefs prayed for, Rajnigandha Foundation (Respondent No. 27), through its Executive President, Shri Mahendra Vaity (duly authorised by the Trust), files the present Affidavit-in-Reply.

3. At the outset, the contesting Respondent denies each and every allegation, averment, contention, submission and statement contained in the Application that is contrary to or inconsistent with what is stated hereinbelow, save and except what is expressly and specifically admitted. Nothing in the Application shall be deemed to have been admitted by the contesting Respondent merely for want of a specific traverse, and the contesting Respondent puts the Applicant to the strict proof of every allegation made by him.

4. The contesting Respondent submits that the Application is misconceived, untenable and an abuse of the process of law. The Application deserves to be dismissed at the threshold, with exemplary costs, for the reasons set out under the heading "Preliminary Objections" below, which the contesting Respondent prays be treated as part and parcel of the prayer for dismissal. Without prejudice to the said preliminary objections, the contesting Respondent deals with the Application paragraph by paragraph on merits thereafter.

I. PRELIMINARY OBJECTIONS

A. None of the prayers falls within the jurisdiction of this Hon'ble Tribunal under the National Green Tribunal Act, 2010.

5. The jurisdiction of this Hon'ble Tribunal is a creature of statute. Under Sections 14 and 15 of the National Green Tribunal Act, 2010, the Tribunal can entertain only those disputes which raise a "substantial question relating to environment" arising out of the implementation of the enactments specified in Schedule I to the Act. A bare reading of the prayers in the Application shows that the Applicant seeks

(a) an order directing the District Magistrate, the Collector and the Municipal Corporation of Greater Mumbai to "take over the area" by removing structures and persons;

(b) an order that the area be taken over and maintained as per the permitted user; and

(c) an order for criminal prosecution of the so-called offenders.

Not one of these prayers raises any substantial question relating to environment, nor does any of them arise out of any enactment in Schedule I. In substance, the Application is a complaint about alleged unauthorised construction on a plot reserved as open space. That is a town-planning grievance governed by the Maharashtra Regional and Town Planning Act, 1966, the Mumbai Municipal Corporation Act, 1888 and the Development Control and Promotion Regulations, 2034, **none of which finds a place in Schedule I to the NGT Act**.

6. The Applicant has not produced a shred of evidence, no expert report, no air, water or soil analysis, no measurement of any pollutant, no study of any ecological impact, to demonstrate that the structures in question have caused, are causing, or are likely to cause any harm to the environment whatsoever. The

Application proceeds on the bald, sweeping and unsupported assertion that "*use of open area for any construction does adversely affect the environment*." Such a vague and conclusory statement, unsupported by any material, cannot clothe this Hon'ble Tribunal with jurisdiction. A grievance about a building standing on a reserved plot, absent proof of an environmental consequence, is not an environmental dispute. It is settled that the burden lies on the person invoking the Tribunal's jurisdiction to plead and prove a substantial question relating to environment, and the Applicant has wholly failed to discharge that burden.

B. The very same subject matter is pending before the Hon'ble Bombay High Court, the Application amounts to parallel adjudication and abuse of process.

7. The Application is liable to be dismissed *in limine* on the short ground that the identical subject matter, in respect of the identical plot, seeking identical relief, is already pending before the Hon'ble Bombay High Court. The plot in question, bearing CTS No. 1320/C and 1320 (pt), Village Mulund, Taluka Kurla, and the very structures standing thereon, are the subject of *Writ Petition No. 1650 of 2017, Ankur Patil s/o Prabhakar Patil & Anr. v. Municipal Corporation of Greater Mumbai & Ors.*, pending before the Hon'ble Bombay High Court. By order dated 18th January 2018, the Hon'ble High Court (Coram: A.S. Oka and R.N. Deshmukh, JJ.) has already directed the Designated Officer of the Municipal Corporation of Greater Mumbai to visit the very same plot bearing CTS No. 1320 at Village Mulund, Taluka Kurla, to inspect the structures, and to initiate appropriate action in accordance with law in respect of the structures found to be illegal. A true copy of the said order of the Hon'ble Bombay High Court dated 18th January 2018 is

annexed hereto and marked as Exhibit R-9. The said proceedings are being conducted, periodically monitored, and compliance affidavits are being called for by the Hon'ble High Court.

8. The present Applicant is fully aware of the said pending proceedings before the Hon'ble High Court. The Applicant has himself annexed to his Application, as his own Exhibit "H" and Exhibit "H-1", the affidavit of the Collector, Mumbai Suburban District filed in Writ Petition No. 1650 of 2022 / 2017 and the order of the Hon'ble Bombay High Court dated 18th January 2018 passed therein. Having himself placed the High Court proceedings on the record of this Hon'ble Tribunal, the Applicant cannot feign ignorance of them. Despite that knowledge, the Applicant has chosen to approach this Hon'ble Tribunal seeking the self-same relief of removal of the self-same structures from the self-same plot. This is nothing but an attempt to procure, from a second forum, a relief which is already under the seizin and active monitoring of the constitutional court.

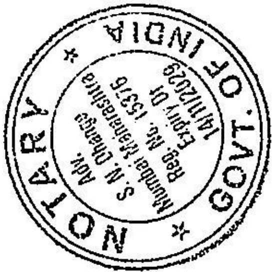
9. Such conduct is impermissible. It is well settled that a litigant cannot be permitted to pursue the same cause for the same relief simultaneously before two different fora. To allow the Application to proceed would result in the unseemly spectacle of parallel adjudication, with the attendant risk of conflicting findings and directions on the legality of the very same structures, one set emanating from the Hon'ble High Court in exercise of its powers under Articles 226 and 227 of the Constitution of India, and another from this Hon'ble Tribunal. The orders of the Hon'ble High Court are binding on this Hon'ble Tribunal, and it would be wholly inappropriate for the

NOTARY GOVT. OF INDIA

Tribunal to embark upon an enquiry into a matter already engaging the High Court. The filing of the present Application, in the teeth of the pending writ petition, is plainly an abuse of the process of law and an arm-twisting tactic. On this ground alone the Application deserves to be thrown out with costs.

C. Demolition is a discretionary, executive and administrative function of the Planning Authority; it cannot be commanded by a writ or a Tribunal direction.

10. Even assuming, without admitting, that any structure on the plot is unauthorised, the decision whether or not to demolish it is an administrative and executive function reserved by statute to the Planning Authority / the Municipal Corporation, to be exercised in its discretion after due process. It is not for the Applicant to dictate, nor for any court or tribunal to direct, that a particular structure must be demolished. The Hon'ble Supreme Court has authoritatively settled this question in *Muni Suvrat-Swami Jain S.M.P. Sangh v. Arun Nathuram Gaikwad & Ors., (2006) 8 SCC 590*. The Hon'ble Supreme Court held that the power to order demolition of an alleged unauthorised structure (under Section 351 of the Mumbai Municipal Corporation Act, 1888) is exercisable only by the Municipal Commissioner, who, after issuing a show-cause notice and examining the cause shown, has the discretion to order or not to order demolition. The Court held in terms that even the High Court, in exercise of its writ jurisdiction under Articles 226 and 227, cannot impede, by a mandatory order, the exercise of that discretion, and cannot itself direct demolition. The Court held that the word "may" in the relevant provision leaves it to the Commissioner's discretion whether or not to demolish, and that the court cannot substitute its discretion for that of the statutory authority or command the authority to exercise its discretion in a particular



manner. A copy of the said judgment is annexed hereto and marked as Exhibit R-10.

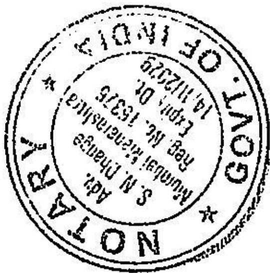
11. The principle laid down in *Muni Suvrat (supra)* is squarely applicable. If the Hon'ble High Court, exercising the plenary writ jurisdiction under Article 226 of the Constitution, cannot direct demolition and cannot substitute its own discretion for that of the Planning Authority, then this Hon'ble Tribunal, a creature of statute with a limited jurisdiction confined to environmental disputes, can certainly issue no such direction. The reliefs prayed for by the Applicant, directing the authorities to "take over the area" and remove the structures, are precisely the kind of mandatory directions that the Hon'ble Supreme Court has held to be impermissible.

12. Further, it is well settled that the mere departure from a sanctioned plan, or the putting up of a construction without prior sanction, does not ipso facto and inevitably justify demolition. The Hon'ble Supreme Court, both in *Muni Suvrat (supra)* and in the decisions approved therein, including *Syed Muzaffar Ali v. Municipal Corporation of Delhi, 1995 Supp (4) SCC 426*, has held that there are cases of unauthorised construction which are amenable to compounding and regularisation, and others which are not, and that it is for the Planning Authority to consider, at the appropriate time and having regard to the nature of the transgression, whether a structure may be compounded or regularised rather than demolished. Demolition is the extreme step, reserved for cases of grave and serious breach; it is neither automatic nor mandatory. The discretion to compound or to regularise vests in the Planning Authority and not in the Applicant, this Hon'ble Tribunal, or any court. In the present case, as set out in Section

II below, the question of demolition does not even arise, because the subject structure was erected by a public authority that required no development permission under Section 44 of the Maharashtra Regional and Town Planning Act, 1966, and is therefore not unauthorised at all.

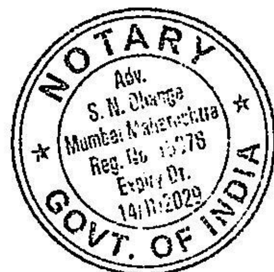
II. THE SUBJECT STRUCTURE IS NOT UNAUTHORISED AT ALL: IT IS ERECTED BY A PUBLIC AUTHORITY EXEMPT FROM DEVELOPMENT PERMISSION UNDER SECTION 44 OF THE MRTP ACT, 1966

13. Without prejudice to the preliminary objections, the contesting Respondent submits that the structure with which it is concerned is wholly lawful, was raised for a public purpose, and is expressly protected by the planning regime. The Foundation is a public charitable trust, duly constituted under its Deed of Trust and registered under the Maharashtra Public Trusts Act, 1950. A certified copy of the Deed of Trust of the Foundation is annexed hereto and marked as Exhibit R-1, the Certificate of Registration of the Foundation is annexed hereto and marked as Exhibit R-2, and the Permanent Account Number (PAN) Card of the Foundation is annexed hereto and marked as Exhibit R-3. The Foundation is in lawful occupation of the subject structure, which is provided with a metered and authorised electricity connection; the electricity bill in respect of the said premises is annexed hereto and marked as Exhibit R-4. The structure in question was not put up for any private gain or personal benefit of any individual. It was constructed for a genuine public purpose, for the benefit of the residents of the locality, in the nature of a public amenity.



14. Crucially, the subject structure was erected by and at the instance of public authorities, out of public money, for a public purpose. The structure was constructed out of the Corporator's

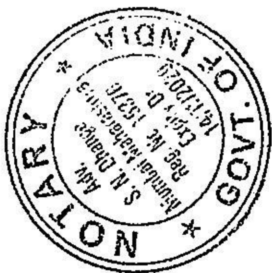
development fund, that is, public funds placed at the disposal of the local elected representative for civic amenities, the utilisation of which was duly sanctioned by the Collector, Mumbai Suburban District, an officer of the State Government. The structure was then actually constructed through the Maharashtra Housing and Area Development Authority (MHADA), a statutory public authority and Area Development Authority constituted under the Maharashtra Housing and Area Development Act, 1976, which executed the work and granted its No Objection Certificate (NOC) for the same. The Collector, Mumbai Suburban District has, by his letters dated 26th December 2008, 7th June 2010 and 2nd December 2010, expressly issued NOC to public representatives and to public-purpose bodies to construct amenities such as a community hall, drinking water point, library and the like on the said plot. True copies of the said letters of the Collector dated 26th December 2008, 7th June 2010 and 2nd December 2010 are annexed hereto and marked as Exhibit R-5, Exhibit R-6 and Exhibit R-7 respectively. The construction was, therefore, not a clandestine encroachment by a land-grabber, but a publicly funded amenity, built out of the Corporator's fund with the sanction of the Collector and executed through MHADA, in the ordinary course of civic development.



15. This single fact is, with respect, decisive of the entire Application. The Applicant's case rests wholly on the premise that the subject structure is "unauthorised" because, on his case, it was put up without the prior permission of the Planning Authority. That premise is legally untenable, because the law does not require a public authority to obtain such permission. Section 44 of the Maharashtra Regional and Town Planning Act, 1966 (the very statute under which the plot is reserved)

provides, in sub-section (1); that "any person *not being Central or State Government or local authority* intending to carry out any development on any land shall make an application in writing to the Planning Authority for permission." The obligation to apply for development permission is, by the express words of the statute, cast only upon persons other than the Central or State Government or a local authority. The Central Government, the State Government, and a local authority are, in terms, excluded from the requirement of obtaining development permission under the Act.

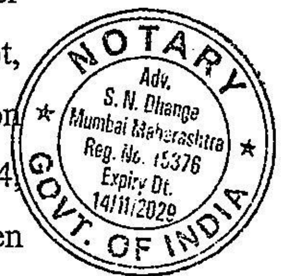
16. The same exemption appears in Section 43 of the Act, which, while restricting development of land, carves out, by its third proviso, that no permission shall be necessary for the carrying out of works by any authority in exercise of its powers under any law for the time being in force, and for the carrying out by the Central or the State Government or any local authority of the works therein described. Read together, Sections 43 and 44 of the MRTP Act, 1966 establish a clear statutory scheme: a public authority acting in exercise of its statutory powers does not require development permission from the Planning Authority. Indeed, the proviso to Section 44(1) itself recognises the special position of the Housing and Area Development Board and the bodies established under the Maharashtra Housing and Area Development Act, 1976, of which MHADA is the apex authority. A copy of the relevant extract of Sections 43 and 44 of the Maharashtra Regional and Town Planning Act, 1966 is annexed hereto and marked as Exhibit R-11.



17. Applying the said provisions to the facts: the subject structure was erected by the Collector (an officer of the State Government) and MHADA (a statutory public authority),

acting in exercise of their respective statutory powers and out of public funds. Neither the State Government nor MHADA was required, under Section 44 of the MRTP Act, 1966, to apply for or to obtain any development permission from the Planning Authority in order to erect the subject structure. It follows, as a matter of plain statutory construction, that the subject structure is *not unauthorised at all*. A structure raised by a public authority that is statutorily exempt from the very permission whose absence the Applicant complains of cannot, by definition, be branded an "unauthorised construction." The foundation of the Applicant's case therefore collapses. There being no want of any permission that the law required, there is no illegality, no encroachment, and no occasion for demolition.

18. Without prejudice to and in addition to the foregoing, even on the Applicant's own premise the structure is protected by the planning regime. The Applicant's entire case rests on the further premise that no construction whatsoever can stand on a plot reserved as Recreation Ground (RG) or open space. That premise too is legally erroneous. The Development Control and Promotion Regulations, 2034 (DCPR-2034) for Greater Mumbai, the very planning regime governing the plot, expressly permit limited construction within a Recreation Ground / open space. Regulation No. 27 of the DCPR-2034, which deals with Layout / Plot Recreational Ground / Open Spaces (LOS), expressly provides, at sub-regulation (1)(g)(ii), that in an open space of 1000 sq. m or more in area, structures for pavilions, gymnasia, club houses, swimming pools and **other structures** for the purpose of sports and **recreation activities** may be permitted, with built-up area not exceeding 15 per cent of the total required open space (the plinth being restricted to 10 per cent of the area of the open space). Far from



prohibiting all construction, the planning regulation in force expressly contemplates and sanctions the utilisation of up to 15 per cent of the open space for amenity structures of exactly the kind in question. The structures, therefore, are not *per se* impermissible; they fall within the four corners of what DCPR-2034 permits, and are, at the highest, capable of regularisation by the Planning Authority. A copy of the relevant extract of Regulation No. 27 of the Development Control and Promotion Regulations, 2034 is annexed hereto and marked as Exhibit R-8.

19. The cumulative effect of the foregoing is that the Foundation's structure

(a) was erected by a public authority (the Collector / the State Government and MHADA) which, under Section 44 of the MRTP Act, 1966, required no development permission, so that the structure is not unauthorised at all;

(b) serves a public purpose and not any private benefit;

(c) was constructed out of the Corporator's development fund and executed through MHADA, under MHADA's NOC;

(d) was put up with the sanction of the Collector for the utilisation of the Corporator's fund, and with the Collector's NOC;

(e) is the subject of a regularisation process already set in motion by the MCGM's communication to the Collector; and

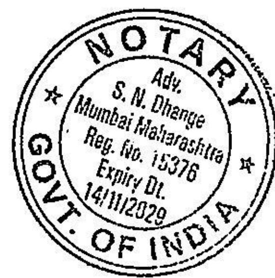
(f) is of a nature and within the limits expressly permitted by Regulation 27 of DCPR-2034.

There is, on the Applicant's own showing, no environmental harm, and there is no warrant for the drastic relief of demolition that he seeks.

III. PARAWISE REPLY TO THE APPLICATION

20. With reference to the description of parties and the Synopsis in the Application, the contesting Respondent says that the same is a matter of record to the extent it correctly describes the plot and the parties, and the contesting Respondent denies every allegation therein suggesting illegality, environmental harm or wrongdoing on its part. The contesting Respondent reiterates the preliminary objections set out above.

21. With reference to the Synopsis sub-paragraphs (i) to (vii) of the Application, the contesting Respondent admits only that the plot bears CTS No. 1320/C, 1320 (pt), Village Mulund, Taluka Kurla, and is owned by the Government of Maharashtra and carries an open space / Recreation Ground reservation, as a matter of record. The contesting Respondent denies that any structure raised by or for it is an illegal encroachment, denies that any such structure causes any harm to the environment, and denies that the structures must necessarily be demolished. The constitution of the Permanent Standing Committee (Encroachment Prevention Committee) under the Government Resolution dated 15th December 2004, and the directions of the Hon'ble Bombay High Court in the Suo Motu Public Interest Litigation No. 1 of 2020 dated 26th February 2022, are matters of record; the contesting Respondent says that those directions, even on their own terms, contemplate action only against illegal and unauthorised structures, after due process, and confer no right upon the Applicant to demand the demolition of a lawful, publicly funded, publicly sanctioned amenity such as the Foundation's structure.



22. With reference to the Synopsis sub-paragraph (viii) and the reliance on the order of this Hon'ble Tribunal in M/s 108, Super

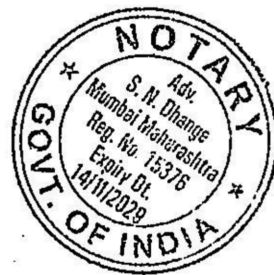
Complex R.W.A. v. Uttar Pradesh Pollution Control Board & Ors., the contesting Respondent says that the said decision is wholly distinguishable on facts and is of no assistance to the Applicant. That decision turned on its own facts and on the existence of a demonstrated environmental impact; in the present case the Applicant has pleaded and proved no environmental impact whatsoever. A precedent cannot be applied mechanically divorced from its facts.

23. With reference to the Synopsis sub-paragraph (ix) and the List of Dates, the contesting Respondent says that the complaints and correspondence of the Applicant are matters of record. The contesting Respondent specifically says that the alleged inaction of the authorities, if any, is itself the subject of the pending Writ Petition No. 1650 of 2017 before the Hon'ble Bombay High Court, where the Designated Officer has already been directed to take action in accordance with law. The Applicant's remedy, if any, lies in pursuing that pending writ petition and not in filing a parallel proceeding before this Hon'ble Tribunal.

24. With reference to paragraphs 1.1 to 1.3 of the Facts in Brief, the contesting Respondent admits only the description, ownership and reservation of the plot as a matter of record, and denies the sweeping allegation that all structures on the plot are "unauthorized constructions." The contesting Respondent puts the Applicant to strict proof of the alleged illegality of each structure and reiterates that the Foundation's structure, having been erected by a public authority (the Collector / the State Government and MHADA) which required no development permission under Section 44 of the MRTP Act, 1966, is not unauthorised at all, and is in any event lawful, for public

purpose, built out of the Corporator's fund with the sanction of the Collector and executed through MHADA, and within the limits permitted by Regulation 27 of DCPR-2034.

25. With reference to paragraphs 1.4 to 1.12 of the Facts in Brief, the contesting Respondent says that these paragraphs concern the NOCs granted by the Collector to various public representatives and bodies for the construction of public amenities such as a community hall, a drinking water point (panpoi), a social welfare centre, a library and a gymnasium. Far from supporting the Applicant's case, these very averments demonstrate that the structures were raised by or at the instance of public authorities, with the NOC of the Collector, and for public purposes, and not as private encroachments. The contesting Respondent says that such structures, having been erected by the State Government / its officers and MHADA, did not require development permission under Section 44 of the MRTP Act, 1966, and are therefore not unauthorised. The contesting Respondent further says that the Collector's correspondence and the affidavit filed before the Hon'ble Bombay High Court in Writ Petition No. 1650 of 2017 (the Applicant's own Exhibit "H"), and the order of the Hon'ble Bombay High Court dated 18th January 2018 (the Applicant's own Exhibit "H-1"), establish beyond doubt that the legality of these structures is precisely the question already pending before the Hon'ble High Court. Whether any structure was raised in breach of the terms of the NOC, and what action should follow, are matters for the Planning Authority and the Hon'ble High Court, and not for this Hon'ble Tribunal.



26. With reference to paragraphs 1.13 to 1.21 of the Facts in Brief, the contesting Respondent says that the references to a garage,

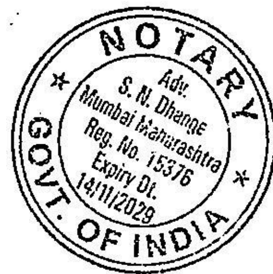
to a retail cloth bazaar (Chindi Bazaar), and to the various complaints, reminders and correspondence of the Applicant, do not concern the Foundation's structure and are, in any event, matters of record. The contesting Respondent denies that it has carried on any commercial activity, and denies that its structure is in any manner comparable to the matters complained of. The contesting Respondent reiterates that all questions concerning the legality of structures on CTS No. 1320 are pending before the Hon'ble High Court.

27. With reference to paragraphs 2.1.1 to 2.1.13 under the heading "Grounds of Objection," the contesting Respondent says as follows. The generalised statements about urbanisation, the shortage of open space per thousand persons, and the value of open spaces are matters of policy and rhetoric, unsupported by any evidence of environmental harm caused by the Foundation's structure. The assertion in paragraph 2.1.7 that "use of open area for any construction does adversely affect the environment" is a bare, unsupported and legally untenable proposition; if it were correct, no pavilion, gymnasium or amenity structure permitted by Regulation 27 of DCPR-2034 could ever stand, which is plainly not the law. The contesting Respondent denies that the issue falls within Section 15 of the NGT Act, and reiterates that the Applicant has demonstrated no substantial question relating to environment. The reliance on *Citispace v. State of Maharashtra* and other authorities is misplaced, those decisions being distinguishable on facts and concerned with the writ jurisdiction of the constitutional court, not the limited statutory jurisdiction of this Hon'ble Tribunal.

28. With reference to the heading "Limitation" and the Applicant's declaration that the Application is within time, the contesting

Respondent does not admit the same and puts the Applicant to strict proof. The contesting Respondent says that the structures complained of have stood for many years, with the knowledge of the authorities and pursuant to NOCs, and the Application is, in any event, an afterthought designed to run parallel to the pending writ petition.

29. With reference to the prayers (A), (B), (C) and (D) of the Application, the contesting Respondent says that each prayer is beyond the jurisdiction of this Hon'ble Tribunal, is incapable of being granted, and is in any event already engaging the Hon'ble Bombay High Court. Prayers (A) and (B) seek mandatory directions to "take over the area" and to remove structures – directions which, on the authority of *Muni Suvrat-Swami Jain S.M.P. Sangh v. Arun Nathuram Gaikwad (supra)*, cannot be issued even by the Hon'ble High Court, the decision to demolish being a discretionary executive function of the Planning Authority. Prayer (C), seeking criminal prosecution, lies wholly outside the jurisdiction of this Hon'ble Tribunal and is, in any event, the subject of the directions already given by the Hon'ble High Court. Prayer (D), for ad-interim relief, is consequential and must fail with the rest. Each of the prayers is, therefore, liable to be rejected.



IV. GENERAL

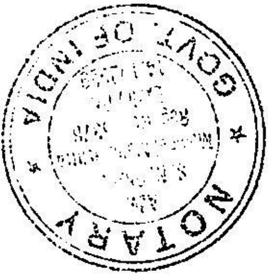
30. The contesting Respondent says that the Application has been filed with an oblique motive, and is a manifest abuse of the process of law. The Applicant, with full knowledge of the pending Writ Petition No. 1650 of 2017 before the Hon'ble Bombay High Court – a fact established by the Applicant's own Exhibits "H" and "H-1" – has dragged the contesting Respondent before this Hon'ble Tribunal in respect of a lawful,

publicly funded, publicly sanctioned amenity, without a whit of evidence of any environmental harm. The filing of the Application is an arm-twisting tactic and a device to obtain, from a second forum, a coercive order against structures whose legality is already under the consideration of the constitutional court.

31. The contesting Respondent craves leave to refer to and rely upon the documents annexed hereto, and to produce such further documents and material as may be necessary at the time of the hearing of the present matter. The contesting Respondent also craves leave to amend, add to, or alter this Affidavit-in-Reply, with the leave of this Hon'ble Tribunal, should it become necessary to do so.

32. In the premises aforesaid, the contesting Respondent, Rajnigandha Foundation, most respectfully prays that this Hon'ble Tribunal be pleased to:

(a) dismiss Application No. 43 of 2023 in its entirety, with exemplary costs payable to the contesting Respondent;



(b) hold and declare that the Application raises no substantial question relating to environment and is not maintainable before this Hon'ble Tribunal under Sections 14 and 15 of the National Green Tribunal Act, 2010;

(c) hold and declare that the subject matter of the Application is already pending before the Hon'ble Bombay High Court in Writ Petition No. 1650 of 2017, and that the Application amounts to an abuse of the process of law and impermissible parallel adjudication;

(d) hold and declare that the subject structure, having been erected by a public authority exempt from development

permission under Section 44 of the Maharashtra Regional and Town Planning Act, 1966, is not an unauthorised construction and is not liable to demolition;

(e) reject the prayer for any ad-interim or interim relief against the contesting Respondent; and

I say that the facts stated hereinabove are true to my own knowledge and no material fact is concealed here from.

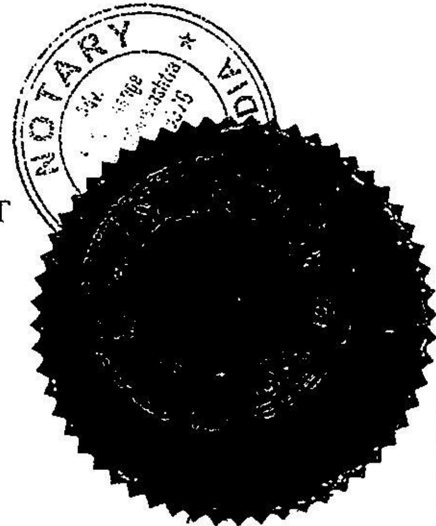
Solemnly afformed,
Mumbai
Date: 06/06/2026

Advocate for Respondent No. 27
(through Executive President of
Rajnigandha Foundation- Mahendra Vaity)

BEFORE THE NATIONAL GREEN TRIBUNAL, WESTERN ZONE

BENCH, PUNE, AT PUNE

Original Application No. 43 of 2023 (WZ)



SAGAR KANTILAL DEVRE

... APPLICANT

Versus

STATE OF MAHARASHTRA
THROUGH PRINCIPAL SECRETARY & ORS

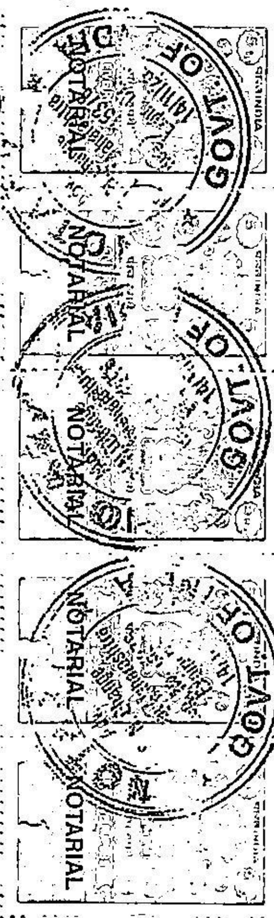
... RESPONDENTS

AFFIDAVIT

MAY IT PLEASE THE HON'BLE TRIBUNAL:

I, Mahendra Vaiti, Age- 65 years, Occupation: Retired, having address at, A / 503, Sai Asha Society , Near Neelam Nagar Phase - II , Gujar Road, Gavanpada, Mulund (East), Mumbai – 400 081 do hereby state on solemn affirmation as under: -

I am the Executive President of Respondent No. 27 (Mahendra Vaiti) above named and responsible for day-to-day administration of my trust. As such, I have gone through the memo of Reply and its Annexures being filed today. I find that the contents therein are true and correct to the best of my knowledge and belief and which may be treated as part and parcel of the present affidavit.



WHATEVER STATED ABOVE is true and correct to the best of my knowledge and belief. In witness whereof I have signed hereunder at 6 th day of June 2026

BEFORE ME

Dhange

Adv. Shivaji N. Dhangg
Notary Govt Of India
Regd. No 15376 MUMBAI (MS
404-405, 4th Floor, Davar House
97/199, Near Central Camera Bld
D.N Road, Fort, Mumbai - 40000
Mob 8788385736

DEPONENT

NOTED & REGISTERED
Page No 17 .Sr. No. 196
06 JUN 2026

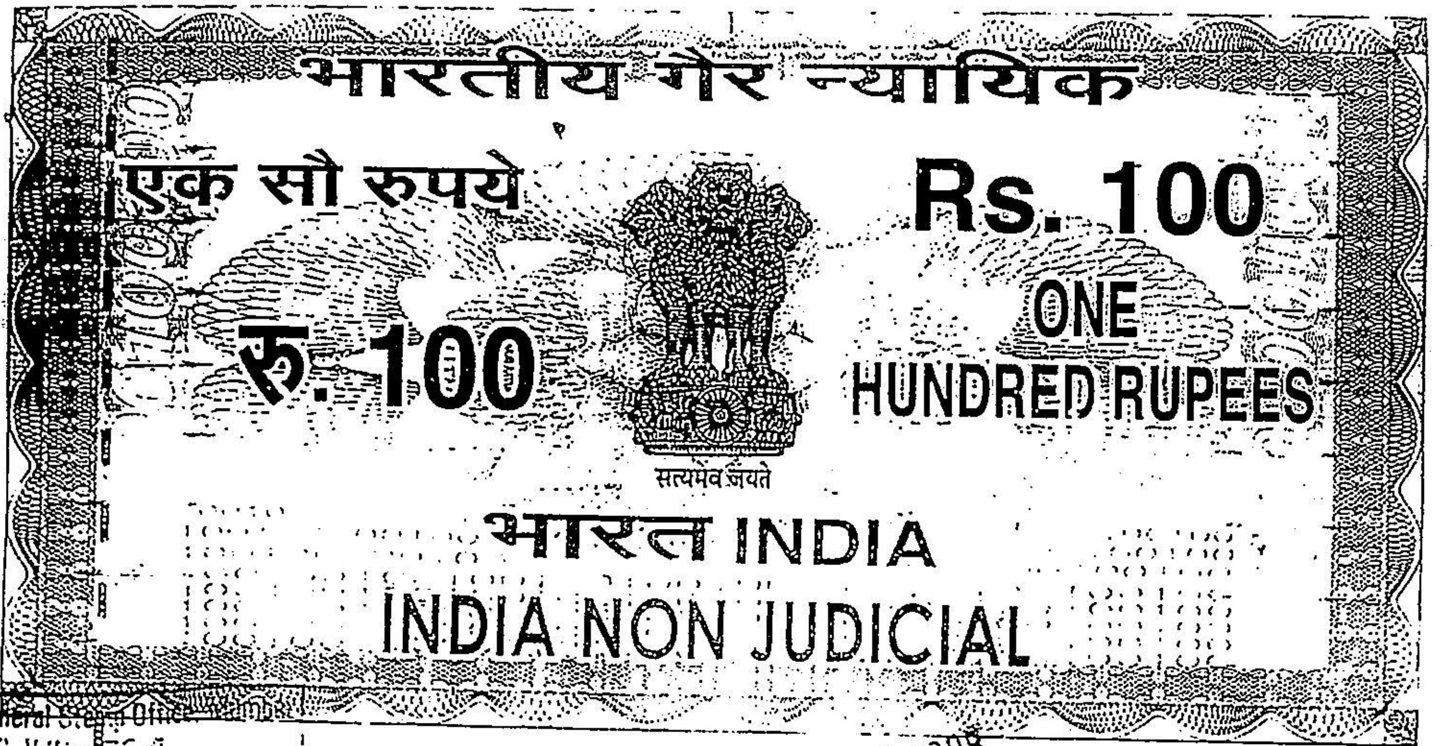
LIST OF EXHIBITS ANNEXED TO THE AFFIDAVIT-IN-REPLY

Exhibit R-1	Certified copy of the Deed of Trust of Rajnigandha Foundation.
Exhibit R-2	Certificate of Registration of Rajnigandha Foundation under the Maharashtra Public Trusts Act, 1950.
Exhibit R-3	Permanent Account Number (PAN) Card of Rajnigandha Foundation.
Exhibit R-4	Electricity bill in respect of the premises of Rajnigandha Foundation (establishing the lawful, metered and authorised use of the structure).
Exhibit R-5	Letter dated 26th December 2008 issued by the Collector, Mumbai (Bandra), in respect of the said plot / NOC.
Exhibit R-6	Letter dated 7th June 2010 issued by the Office of the Collector, Mumbai Suburban District, in respect of NOC for construction on the said plot.
Exhibit R-7	Letter dated 2nd December 2010 issued by the Collector, Mumbai Suburban District, in respect of the said plot.
Exhibit R-8	Relevant extract of Regulation No. 27 of the Development Control and Promotion Regulations, 2034 (DCPR-2034), permitting utilisation of up to 15 per cent of the recreation ground / open space for amenity structures.
Exhibit R-9	Copy of the order of the Hon'ble Bombay High Court dated 18th January 2018 in Writ Petition No. 1650 of 2017 (Ankur Patil v. Municipal

Corporation of Greater Mumbai & Ors.) [also on record as the Applicant's Exhibit "H-1"], demonstrating the pendency of the identical subject matter before the Hon'ble High Court.

Exhibit R-10	Copy of the judgment of the Hon'ble Supreme Court in Muni Suvrat-Swami Jain S.M.P. Sangh v. Arun Nathuram Gaikwad & Ors., (2006) 8 SCC 590, relied upon by the contesting Respondent.
Exhibit R-11	Relevant extract of Sections 43 and 44 of the Maharashtra Regional and Town Planning Act, 1966, establishing that the Central or State Government and a local authority are exempt from the requirement of obtaining development permission.

Deponent



महाराष्ट्र MAHARASHTRA

AW 403845

15 JAN 2008

Proper Officer

Shri B. N. Arekar

न्या स प त्र

हे **न्यासपत्र** मुंबई येथे दिनांक २६ जानेवारी २००८ रोजी **श्री. राज यशवंत केतकर, सेटलर्स** (यापुढे या न्यासपत्रात यांचा उल्लेख न्यास निर्माते असा असेल) व न्यास निर्माता या प्रचाराचा प्रस्तुत न्यासपत्राच्या संदर्भाशी विसंगत, प्रतिकूल अगर त्याच्या अर्थास बाधा येत नाही, तोपर्यंत त्याचे कायदेशीर वारस अगर प्रशासकाचे उत्तरजीवी अगर त्यांनी नेमून दिलेला / दिलेले व्यवस्थापक यांचा समावेश होतो आणि १. श्री. राज यशवंत केतकर २. श्री. रमाकांत

बारकू पाटील ३. श्री. महेंद्र दामोदर वैती ४. श्री. भालचंद्र दशरथ वैती ५. श्री. महेंद्र विरजी अंजारीया ६. सौ. सुचिता राज केतकर सर्व भारतीय रहिवासी यांचे मध्ये झाला.

या सर्वांना विश्वस्त म्हणून संबोधण्यात आले आहे. (हयापुढे या न्यासपत्रात यांचा उल्लेख विश्वस्त असा केला आहे) व विश्वस्त या शब्दास विषयाला अथवा संदर्भाला बाधा न येता तो अथवा त्यांचेपैकी भविष्यकाळात विश्वस्त म्हणून काम करणारे आणि त्यांचे नंतर नेमण्यात येणारे तत्कालीन विश्वस्त यांचे एक्झीक्युटर्स न्यास मिळकतीची व्यवस्था करणारे व्यवस्थापक व त्यांचे पैकी शेवटी राहणारे व्यवस्थापक यांचा समावेश होईल. हे सर्व या न्यासपत्राहचे द्वितीय पक्ष आहेत.

२. आणि सेटलर्स यांनी प्रथमतः त्यांचे खाजगी मालकीचे रुपये १०००/- (रुपये एक हजार मात्र) जमा करुन या रक्कमेचा यानंतर या न्यासपत्रात लिहिलेल्या हेतुसाठी एक सार्वजनिक न्यास अस्तित्वात आणावा व सदरहू रक्कमेची खाजगी मालकी (सेटलर्सची) नष्ट करुन ती रक्कम न्यास मिळकत म्हणून विश्वस्तांचे ताब्यात रहावी व त्यांनी न्यासपत्रात यानंतर उल्लेखिलेल्या हेतूसाठी उपयोग करावयाच्या हेतुने सेटलर्सनी ती रक्कम रु. १०००/- हे न्यासपत्र करण्याचे वेळी प्रत्यक्ष विश्वस्तांचे ताब्यात दिलेली आहे.

वरील नियमास अनुसरुन सेटलर्स या न्यासपत्रान्वये असे जाहीर करतात की, या न्यासपत्रात खाली उल्लेखिलेल्या हेतूंच्या संदर्भात आणि सार्वजनिक न्यास अस्तित्वात आणण्यासाठटी सेटलर्स यांनी खाजगी व मालकीची असलेली व गोळा केलेली रक्कम रुपये १०००/- (रुपये एक हजार मात्र) यातील त्यांचे सर्व वैयक्तिक

खाजगी मालकी हक्क व अधिकार काढून घेऊन हे न्यासपत्र अंमलबजावणीत आणातना म्हणजे त्यावर सही करताना या न्यासपत्रात यानंतर उललेखिलेल्या विश्वस्तांच्या स्वाधीन केलेली आहे.

(अ) न्यासनिधी अथवा न्यास मिळकती विश्वस्तांच्या ताब्यात विश्वस्त म्हणून राहतील. न्यास मिळकतीपासून येणारे व्याज. नफा आणि इतर सर्व प्रकारचे उत्पन्न विश्वस्त नियमित गोळा करतील व त्यातून प्रथम विश्वस्तांनी न्यासाची अंमलबजावणी करताना करावयाच्या तरतुदीनुसार त्याचे स्वतःचे अथवा त्यांचे पैकी ज्यांनी स्वतःचे पैसे खर्च केले असतील त्यास देतील. तसेच त्यानंतर न्यास हेतू पुर्ततेसाठी व न्यासाची अंमलबजावणी करण्यासाठी तसेच न्यासाच्या अंमलबजावणीच्या अनुषंगाने येणारे सर्व खर्च व त्यांचे मिळकती संबंधी दयावे लागणारे कर सारा तसेच त्याच्या मालकीच्या असल्यास स्थावर मिळकतीच्या डागडुजी संबंधी या न्यासपत्राच्या तरतुदीप्रमाणे खर्च करतील आणि नतर राहिलेले उत्पन्न अथवा फायदा त्यांचेपैकी कोणताही एक भाग व संपूर्ण भाग त्यांचा उल्लेख यानंतर या न्यासपत्रांत न्यासाचे उत्पन्नास उत्पन्नात उत्पन्न असा केलेला आहे.) परिस्थिती अनुसरुन विश्वस्तांना योग्य वाटेल त्याप्रमाणे यानंतर या न्यासपत्रात नमूद केलेल्या न्यासाच्या हेतू पुर्ततेसाठी खर्च करतील.

(ब) न्यासाचे उत्पन्न याचा संचय व संचित उत्पन्न तसेच भांडवल हे न्यासाच्या हेतुपुर्ततेसाठी केला जाइल.

(क) विश्वस्तांना न्यास उत्पन्नाचा संचय करण्याचा अधिकार राहील. न्यास व उत्पन्नाचा संचय हेतुपुर्ततेसाठीच केला जाईल. उत्पन्न संचय केल्यास तो न्यास हेतु पुर्ततेसाठीच केला असे समजण्यात येईल.

३. या न्यासपत्रान्वये अस्तित्वात असलेल्या न्यासाकडे ज्या देणग्या येतील त्या देणग्या आयकर कायदयान्वये सन १९६१ मार्फत तरतुदीनुसार आयकर करामधून मुक्त समजण्यात येतील. वर उल्लेखिलेल्या हेतु बाधा न येता परंतु वर नमूद केलेल्या तरतुदीनुसार असे जाहीर करण्यात येते की, दर वर्षी विश्वस्तांनी त्यांच्याकडे येणारा खर्च वजा जाता राहिलेले न्यास उत्पन्न खर्च करावे. तसेच विश्वस्तांना योग्य वाटेल त्याप्रमाणे व प्रमाणात न्यास निधी अथवा त्याचा कोणताही भाग खालील सर्व अथवा कोणत्याही एका हेतूवर खर्च करावा.

४) न्यासाचे उद्देश :

न्यास समाजाच्या सर्वांगीण उद्देशाकरीता कार्यरत राहील, त्याकरीता सामाजिक, शैक्षणिक, वैद्यकिय, सांस्कृतिक, कला क्रीडा, या सर्व क्षेत्रांत कार्य करील.

(अ) सामाजिक : समाजाच्या समस्या जाणून त्या सोडविण्याचा प्रयत्न करणे. समाजाच्या उत्कर्षाकरीता निरनिराळया योजना आखून त्या राबविणे. समाजहिताच्या योजनांची माहिती जनतेला उपलब्ध करुन देणे, त्या मिळवून देण्याकरीता मदत करणे. आर्थिक मागासलेल्या लोकांना सर्वतोपरी मदत करणे, महिलांना रोजगार, व्यवसाय उपलब्ध करुन देणे, तसेच कुटीर उद्योग सुरु करण्यास मदत करणे. महिलांना स्वयंसिध्द करणे, महिलांच्या सामाजिक व आर्थिक विकासाकरीता मदत करणे.

(ब) शैक्षणिक : बालवाडी, शाळा, विद्यालये, महाविद्यालये स्थापणे, चालविणे व त्यांना मदत करणे, विद्यार्थ्यांना मदत करणे. शिष्यवृत्त्या देणे, वाचनालय, अभ्यास केंद्र स्थापणे व चालविणे, अत्याधुनिक तंत्रज्ञान, संगणकीय ज्ञान देण्याकरीता सुविधा उपलब्ध करणे.

1935

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(क) <u>वैद्यकिय</u> : गरजूंना वैद्यकिय मदत देणे, प्रथमोपचार केंद्र, दवाखाना, हॉस्पिटल इत्यादी स्थापणे व चालविणे, रक्तदान शिबिर, डोळे तपासणी शिबिर, वैद्यकिय चाचणी शिबिरे भरविणे, ॲम्ब्यूलन्सची सोय उपलब्ध करणे इ. वृध्दांकरीता वैद्यकिय मदत निवास केंद्र स्थापणे, चालविणे इत्यादी.

(ड) <u>कला व क्रीडा</u> : खेळांचे, व्यायामाचे शिक्षण देणे, खेळांच्या स्पर्धांचे आयोजन करणे, भारतीय कलांचे शिक्षण देणे, त्यांना उत्तेजन देणे याकरीता जिमखाना स्थापणे, [illegible] निर्माण करणे, त्यांची जोपासना करणे.

(इ) <u>सांस्कृतिक</u> : वेगवेगळया सांस्कृतिक कार्यक्रमांचे आयोजन करणे, भारतीय संस्कृतीचा वारसा जोपासण्याकरीता आवश्यक ते शिक्षण देणे, वेगवेगळया कार्यक्रमांचे आयोजन करणे, उत्सव साजरे करणे, इत्यादी. सण उत्सव, जयंत्या, पुण्यतिथी, शिवजयंती [illegible] करणे.

न्यास निधीच्या ध्येय साधनेला पोषक व [illegible] आवश्यक अशा सर्व कायदेशीर गोष्टी करणे व सर्वसाधारण तरतूदीला बाधा न आणता कोणत्याही गोष्टी खालील पैकी सर्व अगर कोणतीही गोष्ट करण्याचा विश्वस्तास अधिकार राहील.

(१) व्यक्ती / संस्था / धर्मादाय विश्वस्त मंडळे इत्यादी यांच्याकडून रोख वा मालमत्ता इतर स्वरुपांत देणग्या स्विकारणे, व्यक्ती / संस्था इत्यादी यांच्याकडून ठेवीच्या स्वरुपांत रोख रक्कम [illegible] गोळा करणे इत्यादी.

(२) न्यासास योग्य वाटतील अशा ठिकाणी गरजेनुसार शाळांकरीता / दवाखाने वा अन्य कारणांसाठी नव्याने इमारती बांधणे असेल , या इमारतीत बदल करुन घेणे, इमारती दुरुस्त करणे, इमारतीत वाढ करणे. इमारतीची देखभाल करणे, इत्यादी.

(३) न्यासाचे उत्पन्न वाढले आणि उद्दिष्टांशी संबंधीत असतील अशा उत्पन्नांचा साधनांचा विचार करुन [illegible] निश्चित करणे.

(४) न्यासाच्या मालकीचो जमीन / इमारत इत्यादी गोष्टी विकणे. भाडयाने देणे वा अन्य त-हेने देणे, अंशतः वा पूर्णपणे गहाण ठेवणे.

(५) न्यासाची ध्येय आणि उद्दिष्टे हयांना पूरक ठरतील अशा स्वरुपाचे आर्थिक जमीनजुमला, मालमत्ता, इत्यादी संबंधीचे सर्व व्यवहार करणे.

४. न्यासाचे नाव :

"रजनीगंधा फौंडेशन"

५. न्यासाची कचेरी :

द्वारा - श्री. राज यशवंत केतकर

११/२, विश्वमोहिनी, नेताजी सुभाषचंद्र बोस मार्ग,

मुलुंड (पश्चिम), मुंबई - ४०० ०८०.

आवश्यकता वाटल्यास विश्वस्तांना पत्ता बदलण्याचा अधिकार राहील.

६. न्यासाच्या मिळकती

स्थावर व जंगम मिळकतीचा न्यास मिळकतीत समावेश होईल. सर्व मिळकती व त्यात नवनवीन होणारी वाढ तसेच न्यासाकडे त्यानंतर येणा-या अथवा मिळणा-या व न्यासाचे मिळविलेल्या स्थावर जंगम मिळकती आणि न्यासास मिळालेले इतर दान

या सर्वांचा न्यासपत्रात वा नंतर सांघिक अथवा उल्लेख न्यास मिळकती विश्वस्त मंडळात समाविष्ट होऊन [illegible] विश्वस्त मंडळाकडे राहील आणि विश्वस्त मंडळ त्याची सर्व व्यवस्था व कारभार [illegible] तरतुदीनुसार हुकूम करेल.

७. <u>विश्वस्तांची संख्या</u> :

या न्यासाच्या विश्वस्तांची संख्या कमीत कमी तीन व जास्तीत जास्त नऊ राहील.

८. <u>प्रथम विश्वस्त</u> :

या न्यासपत्राखाली [illegible] विश्वस्त मंडळातील प्रथम विश्वस्तांची नांवे खालीलप्रमाणे [illegible]

१. श्री. राज यशवंत केतकर

२. श्री. रमाकांत बारकू पाटील

३. श्री. महेंद्र दामोदर वैती

४. श्री. भालचंद्र दशरथ वैती

५. श्री. महेंद्र विरजी अंजारीया

६. सौ. सुचिता राज केतकर

वरील विश्वस्त तसेच त्यांचेपैकी उरलेले व त्यांचेनंतर नवीन नेमण्यात येणारे तात्कालीन विश्वस्त यांचा या नंतर या न्यासपत्रात विश्वस्त म्हणून उल्लेख केलेला आहे.

९. <u>विश्वस्तांची कालमर्यादा</u> :

या न्यासपत्राखाली नेमण्यात आलेल्या विश्वस्तांची विश्वस्त म्हणून काम करण्याची कालमर्यादा तीन वर्षे राहील. फक्त कार्यकारी विश्वस्त तहहयात राहतील.

१०. <u>नविन विश्वस्तांची नेमणूक</u> :

विश्वस्त मंडळाची तीन वर्षांची मुदत संपल्यावर कार्यकारी विश्वस्त नविन विश्वस्त नेमतील. मुदत संपलेल्या विश्वस्तांची पुनर्नेमणूक होऊ शकते.

११. <u>विश्वस्त पद रद्द होणे</u> :

जेव्हा या न्यासपत्राखाली नेमण्यात आलेल्या अथवा आलेले नवीन विश्वस्त अथवा त्यांचे जागी नेमण्यात आलेल्या विश्वस्ताने राजीनामा दिल्यास अथवा नितिमत्तेच्या अथवा गुन्हया सबंधातील फौजदारी गुन्हयात त्यास शिक्षा झाल्यास अथवा तो विश्वस्त पदातून मुक्त होऊ इच्छित असल्यास अथवा त्याने विश्वस्त म्हणून काम करण्यास लेखी नकार दिल्यास अथवा न्यासपत्राद्वारे त्यांचेवर टाकण्यात आलेल्या जबाबदा-यांची अंमलबजावणी करण्यास असमर्थ अथवा अयोग्य झाल्यास किंवा नादार ठरल्यास किंवा विश्वस्त मंडळाच्या पूर्व लेखी परवानगी शिवाय विश्वस्त मंडळाच्या लागोपाठ चार सभेत गैरहजर राहिल्यास अथवा बाहेर कायमच्या वास्तव्यास गेल्यास किंवा दिवाणी कोर्टाची पूर्वपरवानगी घेतल्याशिवाय हिंदुस्थानच्या बाहेर सहा महिन्यांपेक्षा अधिक वास्तव्यासाठी गेल्यास, त्या विश्वस्तांच्या जागा रिकाम्या झाल्या असे मानण्यात येईल आणि अशी रिकामी झालेली जागा कार्यकारी विश्वस्त भरतील.

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जेव्हा वर लिहिल्याप्रमाणे राहिलेले विश्वस्त नवीन विश्वस्तांची नेमणूक करतील तेव्हा इतर विश्वस्तांच्या [illegible] [illegible] मिळकत त्यांच बरोबर नवीन विश्वस्तात समाविष्ट व्हावी. म्हणून राहिलेले विश्वस्त त्वरीत कार्यवाही करतील.

११.(१) <u>सभासद</u> : न्यासाचे तहहयात व सर्वसाधारण असे दोन प्रकारचे सभासद राहतील. सभासद फी व सभासदत्वाच्या अटी विश्वस्त आवश्यकतेनुसार वेळोवेळी ठराव करुन ठरवतील.

विश्वस्त त्यांना [illegible] [illegible] [illegible] करीता एक कार्यकारी मंडळ सभासदांमधून निवडतील. सदर कार्यकारी मंडळ जास्तीत जास्त नऊ जणांचे राहील. या कार्यकारी मंडळात एक अध्यक्ष, एक उपाध्यक्ष, एक सचिव, एक उपसचिव व उर्वरित कार्यकारिणीचे सदस्य असतील. सदर कार्यकारी मंडळाची मुदत दोन वर्षांची राहील. कार्यकारी मंडळाची फेरनियुक्ती करण्याचा अधिकार विश्वस्तांना राहील. तसेच कार्यकारी मंडळातील एकदा पदाधिकारी विश्वस्तांच्या आदेशाविरुध्द वागला किंवा [illegible] [illegible] हानिकारक वर्तन केल्यास अशा पदाधिका-याला काढून टाकण्याचा तसेच आवश्यक वाटल्यास संपूर्ण कार्यकारी मंडळ बरखास्त करण्याचा अधिकार विश्वस्त मंडळास राहील. कार्यकारी मंडळ कार्यकारी विश्वस्तांच्या संमतीने कार्य करील. कार्यकारी विश्वस्त कार्यकारी मंडळाच्या सभांना हजर राहून मार्गदर्शन करतील व त्याप्रमाणे कार्यकारी मंडळ कार्य करील.

१२) <u>नवीन विश्वस्तांची खर्च करण्यास मान्यता</u> :

वर उल्लेखिलेल्या प्रमाणे वा न्यासपत्राखाली प्रथम पासून नेमण्यात आलेला आहे हे असे समजून त्यास विश्वस्तांच्या सर्व जबाबदा-या हक्क व अधिकार प्राप्त होतील. मात्र तोपर्यंत असा विश्वस्त न्यासाच्या नोंदवहीत (तो) या न्यासाचा विश्वस्त म्हणून काम करण्यास तयार आहे व त्याचा विश्वस्त पदाचे जबाबदारी मान्य आहे. असा लेख लिहून त्यावर [illegible] त्याच्या विश्वस्त पदाच्या नेमणूकीस मान्यता जाहीर करणार नाही. तोपर्यंत त्यास विश्वस्त पदांचे अधिकार व हक्क जबाबदा-या प्राप्त होणार नाहीत व तोपर्यंत तो या न्यासाचा विश्वस्त म्हणून काम करु शकणार नाही.

१३. <u>विश्वस्त मंडळाच्या</u> सभा व त्यांचे अध्यक्ष :

दर सहा महिन्याने [illegible] सभा भरेल व अशा सभेस साधारण सभा असे म्हटले जाईल. [illegible] साधारण सभेव्यतिरिक्त जादा सभा भरविता येतील. अशा जादा सभेस विश्वस्त मंडळाची खास सभा असे संबोधण्यात येईल व खास सभा विश्वस्त मंडळ ठरवेल व त्या ठिकाणी भरविण्यात येतील. कार्यकारी विश्वस्त सभेचे अध्यक्ष पद भूषवतील व विश्वस्त मंडळाच्या सभावृत्तांतावर मंजूरी दाखल सहया करतील.

१४. <u>कार्यकारी</u> - विश्वस्त

विश्वस्त मंडळातील कार्यकारी विश्वस्त म्हणून न्यास निर्माते राहतील. जर त्या कार्यकारी विश्वस्ताने मुदतपूर्व राजीनामा दिल्यास अथवा अन्य इतर काही कारणाने ती जागा रिकामी झाल्यास राहिलेले विश्वस्त याचे जागी त्यांचे कायदेशीर वारसांना कार्यकारी विश्वस्त पदी निवड करतील व त्यांच्या जागी नवीन येणारा

विश्वस्त कार्यकारी विश्वस्त म्हणून पुढे काम पाहील. इतर विश्वस्तांचे संमतीने कार्यकारी विश्वस्त न्यासाचे दप्तर सांभाळणे. पत्रव्यवहार करणे व विश्वस्त मंडळाने घेतलेल्या निर्णयाचे [illegible] अंमलात आणणे.

परतु त्याचे गैरहजेरीत [illegible] सभेत [illegible] असलेले विश्वस्त हया विशिष्ट सभेकरीता त्याचे पैको एकाची सभेचा अध्यक्ष म्हणून फक्त त्या विशिष्ट सभेकरीता नेमणूक करतील.

१५. <u>गणसंख्या पूर्ती</u> :

विश्वस्त मंडळातील विश्वस्तांची संख्या जेव्हा [illegible] असेल तेव्हा विश्वस्तांची विश्वस्त मंडळाच्या [illegible] म्हणून गणली जाईल. जेव्हा विश्वस्तांचो संख्या [illegible] तीन विश्वस्तांची विश्वस्त मंडळाच्या सभेतील उपस्थिती हो गणसंख्या पूर्ती मान[illegible] येईल.

१६. <u>तहकूब सभा</u> :

विश्वस्त मंडळाच्या सभेला मुक्रुर केलल्या वेळेपासून अर्ध्या तासात तर गणसंख्या पूर्ती झाली नाही तर तो सभा गणसंख्या पूर्ती अभपवी तहकूव होऊन त्याच ठिकाणी अर्ध्या तासाने [illegible] सभेस हजर असलेल्या या विश्वस्तांची हजेरी हो गणसंख्या पूर्ती समजली जाइल. मात्र अशा तहकूबी सभेस कोणत्याही प्रकारचा कार्यक्रम जो कार्यक्रम पत्रिकेत मूळ सभेकरीता नमूद केलेला नाही अशा विषयावर निर्णय घेता येणार नाही. तसेच कार्यक्रम पत्रिकेवर लिहिलेल्या परंतु पेपराविषयी अथवा न्यासाचे ध्येय धोरण ठरविण्याचे निर्णय तहकूब सभेस घेता येणार नाहीत.

१७. <u>सभावृत्तांत वही</u> :

(अ) विश्वस्त मंडळ हे त्यांचे सभांचे वृत्तात ठेवण्यासाठी एक सभावृत्तांत वही ठेवील व त्या वहीत सभेतील गोष्टींचा समोवश होईल.

१. विश्वस्त मंडळाच्या प्रत्येक सभेचा समग्र सभावृत्तांत.

२. विश्वस्त मंडळाची [illegible] [illegible] काढण्यात येणा-या प्रत्येक फतव्याची प्रत.

(ब) विश्वस्तांच्या प्रत्येक सभेचा वृत्तांत त्यांच्या पुढील सभेमध्ये वाचून दाखविण्यात येईल व तो मंजूर झाल्यावर त्या सभेचा अध्यक्ष त्यावर मंजूरी दाखल सही करतील.

(क) जर पूर्वीचा सभावृत्तांत मंजूर करण्याविषयी विश्वस्तांत मतभेद झाले तर असलेल्या विश्वस्तांच्या बहुमताने तो सभावृत्तांत मंजूर करण्यात येईल.

१८. <u>व्यवस्थापनेचा खर्च</u> :

विश्वस्त हे न्यास मिळकतीच्या येणा-या भाडयातून, नफयातून, व्याजातून आणि इतर उत्पन्नातून सर्वप्रथम सारा कर आणि इतर प्रकारची देणी देतील आणि त्यानंतर न्यास मिळकतीच्या व्यवस्थापनेसाठी व कारभारासाठी येणारा खर्च व किंमत वगैरे आणि तदनुषंगाने येणारे खर्च करतील. तसेच न्यासाच्या आलेल्या स्थावर मिळकतीचा ताबा सुरक्षित [illegible] [illegible] करतील व त्यानतरन राहिलेल्या उत्पन्नाच्या दहा टक्के इतर [illegible] न्यासाच्या स्थावर मिळकतीच्या मोठया प्रमाणावर डागडूजीसाठी व नवीन अथवा पुन्हा पुन्हा बांधकामासाठी राखीव निधी म्हणून वेगळा काढून ठेवतील. त्यानंतर राहिलेल्या उत्पन्नातून इमारत निधी, सारा निधी, आणि विश्वस्तांनी ठरविल्याप्रमाणे गुंतवणूक करुन न्यासाच्या हेतूसाठी खर्च करतील.

१९. <u>डागडुजी</u> :

विश्वस्त मंडळ न्यासाच्या मालकीच्या आणि इतर स्थावर मिळकती त्यात जरुर असणा-या डागडुजी वारंवार करुन सुरक्षित ठेवतील आणि न्यासाच्या मिळकतीचे व इमारतीचे विमे विश्वस्त ठरवतील त्याप्रमाणे कोणत्याही सुप्रसिध्द विमा कंपनी मार्फत उतरवतील.

२०. <u>हिशोब</u> :

विश्वस्त मंडळ मिळकतीचे व त्यापासून येणा-या उत्पन्नाचे (न्यास मिळकतीचे उत्पन्न) व्यवस्थित हिशोब ठेवतील व ते हिशोब तपासण्यासाठी एका मान्यवर हिशोब तपासणीसाची नेमणूक करतील. अशा रितीने नेमणूक केलेल्या हिशोब तपासणीसाकडून विश्वस्त मंडळ न्यासाचे हिशोब दर वर्षी तपासून घेतील व नंतर ताळेबंद व आवश्यक [illegible] [illegible] साधारण सभामध्ये एका सभेत मंजूरीसाठी मांडून ते मंजूर [illegible].

२१. <u>बँक खाते</u> :

न्यास निधीची गुंतवणूक मुंबई विश्वस्त व्यवस्था कायदा १९५० च्या कायदयाच्या तरतुदीप्रमाणे केली जाईल. न्यासाची बँकेतील खाती ही न्यासाच्या नावावर राहतील. कोणत्याही तीन पैकी दोन विश्वस्तांच्या सहीने बँकेतील खाती चालविता येतील. कार्यकारी [illegible] आवश्यक राहील.

२२. <u>विश्वस्तांच्या सभेचा फतवा</u> :

विश्वस्त मंडळाच्या प्रत्येक सभेच्या लेखी फतवा सभेच्या ठरलेल्या दिवसाचे कमीत कमी सात दिवस अगोदर प्रत्येक विश्वस्ताला त्यांच्या न्यासाकडे असलेल्या पत्त्यावर टपालाने अथवा हाती पाठविल्यास त्यांची पोच वेगळया वहीत केली जाईल.

एखादया विश्वस्ताला सभेला फतवा मिळाली नाही तर त्या सभेचे कामकाज असमर्थनीय अथवा रद्दबातल ठरणार नाही. कार्यकारी विश्वस्त सभेची नोटीस काढतील.

२३. न्यासाच्या स्थावर जंगम मिळकती

विश्वस्त मंडळ न्यासाकडे येणा-या स्थावर मिळकतीची संपूर्ण यादी पावत्यासहीत ठेवतील व जेव्हा न्यासाच्या मिळकतीपैकी ज्यांची कायदेशीर रित्या विल्हेवाट लावली जाईल तेव्हा या यादीतून ती मिळकत कमी केली जाईल. तसेच न्यास जेव्हा नवीन मिळकत खरेदी करील अथवा मिळवेल अथवा न्यासाकडे कायदेशीररित्या नवीन मिळकत येईल त्यावेळी सदर नोंदवहीत न्यास मिळकतीची संपूर्ण यादी विश्वस्त मंडळ नेहमी अद्यावत ठेवतील व त्यावर विश्वस्तांच्या सहया असतील. तसेच जेव्हा नवीन विश्वस्तांच्या नेमणूका होतील त्यावेळी त्यांच्या नेमणूकीनंतर ती स्वतः नोंदवहीतील यादीप्रमाणे मिळकतीची प्रत्यक्ष तपासणी करुन त्यावर सही करेल.

२४. नोकर वर्ग :

विश्वस्त मंडळाला [illegible] [illegible] [illegible], व्यवस्थापक, कोतवाल, कारकून, आणि न्यासाच्या व्यवस्थेकरीता कारभाराकरीता इतर नोकर वर्ग नेमण्याचा अधिकार राहील. नोकर वर्गाच्या नेमणूका विश्वस्त मंडळाला कोणत्या वाटेल त्या अटीवर म्हणजेच रोजंदारी पगार अथवा भत्ता वगैरे वर नेमण्याचा अधिकार राहील तसेच विश्वस्त मंडळात योग्य वाटेल तेव्हा कोणत्याही नोकराला नोकरीवरुन काढून टाकण्याचा अधिकार निलंबित करण्याचा अधिकार विश्वस्त मंडळास राहील. वरील

उल्लेखित कामापैकी विश्वस्तांपैकी जर कोणी सदर काम केल्यास त्यांची योग्य तो मोबदला घेण्याचा अधिकार विश्वस्तांना राहील.

२५. **विश्वस्त मंडळाचा अधिकार** :

विश्वस्त मंडळाने मंजूर केलेल्या कामाची कार्यवाही करण्यासाठी देखरेखीसाठी अथवा अंमलबजावणीसाठी विश्वस्तांतही अथवा बिना विश्वस्तांच्या तात्पुरत्या काळासाठी उपसमित्या नेमण्याचा अधिकार विश्वस्त मंडळास राहील. मात्र अशा काळासाठी उपसमित्या विश्वस्तांच्याच देखरेखीखाली व मार्गदर्शनाखाली काम करतील व त्या विश्वस्त मंडळास जबाबदार राहतील. तसेच अशा उपसमित्या बरखास्त करण्याचा अधिकार विश्वस्त मंडळास राहील.

२६. **विश्वस्त मंडळाचे विशिष्ट अधिकार** :

विश्वस्त मंडळास विशिष्ट अधिकार खालीलप्रमाणे असतील.

(१) स्थावर जंगम मिळकत घेणे, विकणे, भुईभाडयाने देणे व घेणे व इतर कोणत्याही कायदेशीर प्रकारे स्थावर व जंगम मिळकत घेणे व विकणे. तसेच न्यासाच्या हेतुपुर्ततेसाठी अथवा न्यासासाठी जरुर असणारे विशेष अधिकार मिळविणे व येथे नवीन स्थावर मिळकत शोधणे व त्यात सुधारणा करणे, त्या व्यवस्थित राखणे, गहाण देणे, भुईभाडयाने देणे, विल्हेवाट लावणे, इतर कोणत्याही कायदेशीर प्रकारे मिळकतीची अथवा स्थावर जंगम मिळकतीच्या कोणत्याही भागांचे कायदेशीर रित्या न्यासाच्या हेतुपूर्ततेसाठी व्यवहार करणे, वर लिहिलेले अधिकार वापरताना विश्वस्त मंडळाने खालील तरतुदींचे कसोशीने पालन करणे, न्यासाच्या व्यवस्थेसाठी, विस्तारासाठी आवश्यक ते खर्च करण्याचा अधिकार विश्वस्तांना राहील.

(२) कोणत्याही देणगी वर्गणी अथवा स्थावर मिळकतीचे दान अथवा मृत्युपत्राने मिळणारी मिळकत अथवा एक मिळकतीच्या बदल्यात दुसरी मिळकत मिळविणे अथवा इतर कोणत्याही प्रकारे त्यावर स्थावर व जंगम मिळकत विशिष्ट अटींवर अथवा विना अट न्यासासाठी अथवा न्यासाकरीता मिळविणे, विश्वस्त व्यवस्थापक व नोकरवर्ग यांच्या निवास व्यवस्था करणे.

(३) कायदयाच्या तरतुदीप्रमाणे न्याय निधी गुंतविणे व तसेच ती गुंतवणूक एका प्रकारातून दुस-या प्रकारात बदलणे.

(४) न्यासाच्या वारंवार लागणा-या खर्चास मंजूरी देणे.

(५) न्यासातर्फे दावे व हक्क [illegible] जेव्हा गरज व जरुरी असेल तेव्हा चालू करणे व तो चालविणे, तडजोड करणे व त्या दावे कब्जात कायदेशीर कामात न्यासातर्फे व न्यासाकरीता हजर राहून अथवा कायदेशीर सल्लागारांमार्फत चालविणे.

(६) विश्वस्त मंडळाच्या सभांची तारीख व वेळ व जागा ठरवून त्याप्रमाणे कार्यकारी विश्वस्तांना सभेच्या नोटीसा काढण्याचे आदेश देणे.

२८ विश्वस्तांची जबाबदारी

विश्वस्ताची जबाबदारी ही फक्त त्याच्या प्रत्यक्षात व ताब्यात असलेल्या न्यायानिधीत रोखत्यास सारण्यास आणि इतर मिळकती पुरती मर्यादित राहील. जर विश्वस्तांनी एखादया पावतीवर अथवा समादेशावर सही केल्यास परंतु ते पैसे जर प्रत्यक्ष त्यांच्या हातात आले नाहीत तर त्या पैशासंबंधीचे जबाबदारी विश्वस्तावर राहणार नाही.

२८. **नियम बनविण्याचे अधिकार :**

विश्वस्त मंडळास या न्यासपत्राच्या तरतुदी अंमलात आणण्यासाठी आणि न्यासाच्या मिळकतीची व्यवस्था व कारभार करण्यासाठी जरुर ते नियम करावयाचा अधिकार राहील. तसेच अशा रितीने केलेल्या नियमात वेळोवेळी बदल करण्याचा व रद्द करण्याचा किंवा त्या जागी नवीन नियम करण्याचा अधिकार विश्वस्त मंडळास राहील. परंतु या तरतुदी खाली केलेले नियम अथवा त्यानंतर त्यात केलेले फेरबदल हे कोणत्याही प्रकारे या न्यासपत्रातील तरतुदींशी व कायदयातील तरतुदींशी विसंगत असता कामा नये.

२९. **कार्यकारी विश्वस्त :**

अ) सर्व सभांचे अध्यक्षस्थान स्विकारणे.

आ) विश्वस्त मंडळाच्या सभावृत्तांतावर मंजूरीदाखल सहया करणे.

इ) न्यासाच्या कारभारावर देखरेख ठेवणे.

ई) समान मते झाल्यास अधिक [illegible].

उ) आवश्यकता वाटल्यास [illegible].

ऊ) कार्यकारी मंडळाच्या सभाना उपस्थित राहणे. त्यांना मार्गदर्शन करणे.

ए) विश्वस्तांची मुदत संपल्यावर नवीन विश्वस्त नेमणे.

३०. **हिशोबाचे वर्ष :**

न्यासाचे हिशोबाचे वर्ष ३१ मार्च असे राहील. या न्यासपत्रात वर ठरलेल्या तारखेस आम्ही सेटलर्स व विश्वस्त हे न्यासपत्र मुंबई येथे राजीखुशीने व त्यातील मजकूर पूर्णपणे समजून त्यावर न्यासपत्रात सहया केल्या.

३१. न्यासाचे विसर्जन :

सा.न्या.नों. अधिनियम १९५० मधील तरतूद नुसार केले जाईल.

सही/-

१. श्री. राज यशवंत केतकर न्यासनिर्माता

१. श्री. राज यशवंत केतकर विश्वस्त

२. श्री. रमाकांत बारकू पाटील विश्वस्ते

३. श्री. महेंद्र दामोदर वैती विश्वस्त

४. श्री. भालचंद्र दशरथ वैती विश्वस्त

५. श्री. महेंद्र विरजी अंजारीया विश्वस्त

६. सौ. सुचिता राज केतकर विश्वस्त

साक्षीदार :

१. [illegible]

२. गिरीश जमनादास ठक्कर

नोंदणीचे प्रमाणपत्र

[illegible]

सार्वजनिक विश्वस्तव्यवस्थांच्या नोंदणी पुस्तकातील क्रमांक [illegible]

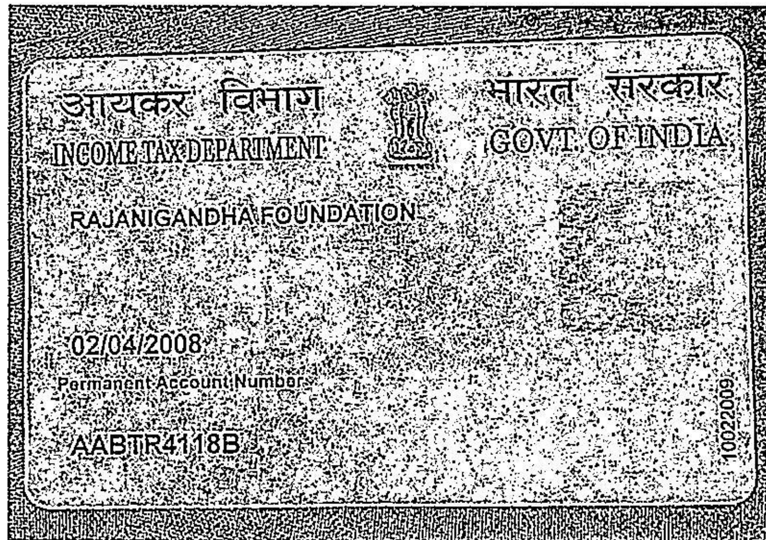
[illegible] यास प्रमाणपत्र दिले.

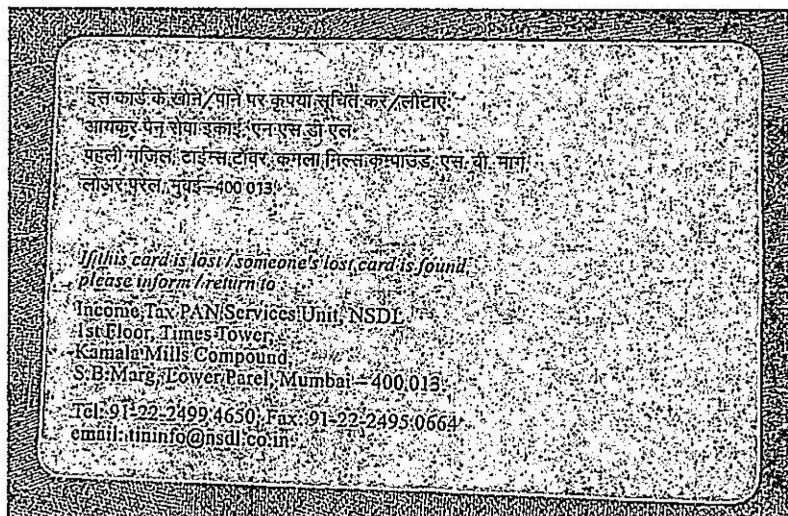
आज दिनांक २/४/ २००८ रोजी माझ्या सहीनिशी दिले.

सही [illegible]

पदनाम [illegible] मुंबई.

R3 **2062**





2063

R4

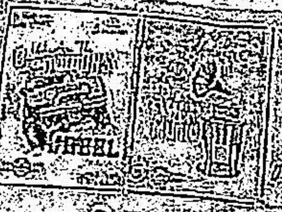
महावितरण

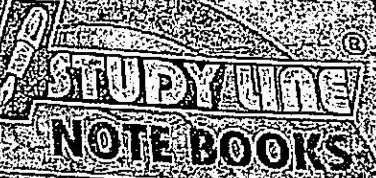
वीज पुरवठा देयक

BILL OF SUPPLY FOR THE MONTH OF - मार्च-2025

Meter Status: Normal

विशेष संदेश





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अंतिम तारीख	08-04-2025	Rs. 600.00
या तारखेपर्यंत भरल्यास	28-03-2025	Rs. 600.00
या तारखेनंतर भरल्यास	08-04-2025	Rs. 610.00

ग्राहकाचे स्थळप्रत

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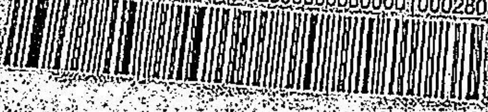

अंतिम तारीख	08-04-2025	Rs. 600.00
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जिल्हाधिकारी, मुंबई उपनगर जिल्हा यांचे कार्यालय

प्रशासकीय इमारत, १० वा मजला, सरकारी वसाहत, बांद्रा (पू) मुंबई-५१

Ph.26556799, 6557807 Fax :26556805 emailaddress:collrmsd@yahoo.com

क्र. :-सी/कार्या २अ/जमिन/कावि ४५४/०८

दिनांक :- २६/१२/२००८

प्रति,

सहाय्यक अभियंता (परिक्षण)
'टी' विभाग,बृहन्मुंबई महानगर पालिका
लाला देवीदयाळ मार्ग, मुलुंड (प.)मुंबई ४०००८०

विषय :- जमिनःमुंबई उपनगर जिल्हा
अग्निशमन केंद्र गव्हाणपाडा समोरील
सरकारी भूखंडावर बालवाडी (समाजकल्याण
केंद्र) बांधण्याबाबत

संदर्भः आपलेकडील पत्र क्र.AEMT/६७८/GEN
दिनांक १३/१०/२००८

अग्निशमन केंद्र गव्हाणपाडा समोरील सरकारी भूखंडावर बालवाडी (समाजकल्याण केंद्र) बांधण्याकरिता रजनीगंधा फांऊडेशन या नोंदणीकृत संस्थेने सौ.ज्योती महेंद्र वैती, नगरसेविका मुलुंड यांजकडे विनंती केली आहे. त्या अनुषंगाने सौ.ज्योती महेंद्र वैती यांनी आपलेकडे दिनांक १९/९/२००८ रोजी पत्र देऊन प्रस्तावित जागेवर बालवाडी (समाजकल्याण केंद्र) बांधणेसाठी परवानगी मागितली आहे. तथापि आपले संदर्भिय पत्रानुसार प्रस्तावित जागेचे स्थळनिरिक्षण करुन तहसिलदार कुर्ला यांनी त्यांचे क्र.तह/कु/जमिन/कावि १०६०/०८ दिनांक १५/१२/२००८ रोजी आपलेकडे अभिप्राय अहवाल पाठविलेला आहे.

प्रस्तावित केलेली जागा ही मौजे मुलुंड येथील नभूक्र १३२० अ ही शासकीय जागा असून ती आपलेकडील विकास आराखडयाप्रमाणे रिक्रेएशन ग्राऊंडसाठी आरक्षित आहे. अर्जदार यांनी प्रस्तावित केल्याप्रमाणे जास्तीत जास्त ३०० चौ.फूट क्षेत्रावर बालवाडी (समाजकल्याण केंद्र) ऐवजी वाचनालयाचे बांधकाम करण्यास शासन निर्णय क्र.जमिन-२५०७/४००/प्र.क्र.१६४/ज.३ दिनांक २२/१/२००८ मधील तरतूदीस व खालील अटी/शर्तीस अधिन राहून ना हरकत प्रमाणपत्र देण्यात येत आहे.

१) वाचनालयाच्या प्रयोजनासाठी वापरण्यात येणाऱ्या क्षेत्राची मालकी शासनाची राहिल. जमिनीची शासनास आवश्यकता लागल्यास ती विना तक्रार शासनास सुपूर्द करावी लागेल.

२) प्रश्नांकीत जमिनीत केलेल्या बांधकामामुळे जमिनीबाबत कोणत्याही प्रकारचे हक्क/अधिकार प्राप्त होणार नाहीत अथवा तशा प्रकारचे हक्क/अधिकार प्रस्थापितकरता येणार नाहीत.

३) प्रश्नांकीत जमिनीत करण्यात येणारे बांधकाम तात्पुरत्या स्वरुपाचे असेल. बांधण्यात येणाऱ्या वाचनालयावर पालिकेचे/संस्थेचे नियत्रंण असेल.

४) प्रश्नांकीत जमिनीचा वापर वाचनालयासाठीच करावा लागेल, जमिनीचा वापर अन्य प्रयोजनासाठी करता येणार नाही तसा बदल केल्यास सदर आदेश रद्द समजून जमिन शासन जमा करणेत येईल.

५) प्रश्नांकीत जमिनीवर बांधण्यात येणारे वाचनालय हे सर्व ज्ञाती धर्मांच्या लोकांना खुले असेल.

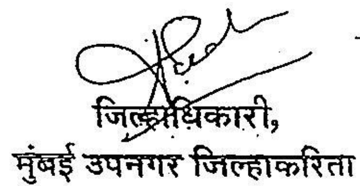
६) प्रस्तावित वाचनालयाचे बांधकामासाठी मुंबई महानगर पालिकेची रितसर परवानगी घेतलेनंतरच पुढील बांधकाम करता येईल.

स्थळप्रतीवर जिल्हाधिकारी
यांची सही असे

सही/-
जिल्हाधिकारी,
मुंबई उपनगर जिल्हा.

प्रत:१) जिल्हा नियोजन अधिकारी,मु.उ.जि. यांस माहितीसाठी
२) नगर भूमापन अधिकारी मुलुंड यांचेकडे माहितीसाठी .
३) तहसिलदार अंधेरी यांना माहितीसाठी
४) उप जिल्हाधिकारी (अति/निष्का)मुलुंड यांस माहितीसाठी

स्थळप्रतीवर जिल्हाधिकारी
यांची सही असे



जिल्हाधिकारी,
मुंबई उपनगर जिल्हाकरिता

मंडळ,
दिनांक: २९/०६/२०१०.

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क्र. जिनिस १०३०/का.०२/आस्थाविका//०९-१०/सु मं आ /८२१
दिनांक ०७/ ०६ /२०१०.

सुधारित प्रशासकीय मंजूरी आदेश :

विषय : आमदार स्थानिक विकास कार्यक्रम सन २००९-१० अंतर्गत सुधारित मंजूरी आदेश

संदर्भ
१) या कार्यालयाचे प्रशासकीय मंजूरी आदेश क्र.जिनिस.१०३०/का.०३/ आस्थाविका/२००९-१०/प्रमआ/१२५० दि. २०.०८.२००९
२) मा. श्री. चरण सिंग सप्रा, आमदार महोदय यांचे पत्र दि. १४.०१.२०१०.
२) या कार्यालयाचे पत्र क्र. जिनिस.१०३०/का.०३/आस्थाविका/अहवाल/१० दि. २०.०१.२०१०
३) उप अभियंता-१ (पुर्व). मु.झो.सु.म यांचे पत्र क्र. ९९९/१० दि. २९.०४.२०१०.

II nd Adm-O/C

आमदार स्थानिक विकास कार्यक्रम सन २००९-१० अंतर्गत संदर्भ क्र. १ च्या आदेशान्वये मुलुंड पुर्व गव्हाणपाडा येथील अग्निशमन दलाच्या समोरील सी.टी.सर्व्हे नं.१४४ ह्या मोकळ्या जागेवर समाजकल्याण केंद्र बांधणे ह्या कामास आमदार महोदय श्री. चरण सिंग सप्रा यांच्या दि. १७.०७. ०९ च्या पत्रात प्रस्तावित केल्याप्रमाणे प्रशासकीय मंजूरी देण्यात आली आहे. संदर्भ क्र. २ च्या पत्रान्वये सदर मंजूरी दिलेल्या कामाबाबत आमदार महोदय श्री. चरण सिंग सप्रा यांनी त्यांचे दि. १७.०७.०९ च्या पत्रात सी.टी. सर्व्हे क्र. १३२० च्या ऐवजी चुकून १४४ असे नमुद केले होते, तरी सी.टी.सर्व्हे नं. १४४ च्या ऐवजी सी.टी. सर्व्हे क्र. १३२० अशी दुरुस्ती करून समाजकल्याण केंद्र बांधण्यास प्रशासकीय मंजूरी देणेबाबत विनंती केली आहे. अनुषंगाने या कार्यालयाने संदर्भ क्र. ३ च्या पत्रान्वये कार्यकारी अभियंता (पुर्व), मुं.झो.सु.मं, म्हाडा, मुंबई यांना त्यांचे अभिप्राय सादर करणेबाबत विनंती करण्यात आली. त्यानुसार संदर्भ क्र. ४ अन्वये उप अभियंता-१ (पुर्व), मुं.झो.सु.मं, म्हाडा, मुंबई यांनी सी.टी.सर्व्हे क्र. १४४ ऐवजी सी.टी. सर्व्हे क्र. १३२० या नवीन प्रस्तावित जागेत समाजकल्याण केंद्र बांधावयाचे असल्यामूळे नवीन प्रस्तावित जागेच्या प्रशासकीय मंजूरीनूसार केवळ कामाच्या नावात बदल करावा तसेच अंदाजपत्रकात कोणताही बदल होणार नाही असे कळविले आहे.

या सर्व बाबींचा विचार करता पुढीलप्रमाणे सुधारित प्रशासकीय मंजूरी प्रदान करण्यात येत आहे.

पूर्वीच्या आदेशान्वये मंजूर केलेले रद्द करण्यात येत असलेले काम			सुधारित मंजूर केलेले काम		
अ. क्र.	कामाचे स्थान व प्रकार	रक्कम रुपये	अ. क्र	कामाचे स्थान व प्रकार	रक्कम रुपये
१.	मुलुंड पुर्व गव्हाणपाडा येथील अग्निशमन दलाच्या समोरील सी.टी. सर्व्हे क्र. १४४ ह्या मोकळ्या जागेवर समाजकल्याण केंद्र बांधणे.	[illegible]	१.	मुलुंड पुर्व गव्हाणपाडा येथील अग्निशमन दलाच्या समोरील सी.टी. सर्व्हे क्र. १३२० ह्या मोकळ्या जागेवर समाजकल्याण केंद्र बांधणे.	७,००,०००/-
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संदर्भ क्र. १ च्या प्रशासकीय मंजूरी आदेशात नमुद केलेल्या इतर अटी व शर्ती कायम आहेत.

सही/
जिल्हाधिकारी
मुंबई उपनगर जिल्हा

स्थळ प्रतीवर मा. जिल्हाधिकारी यांची सही असे.

प्रति, कार्यकारी अभियंता (पुर्व), मुंबई झोपडपट्टी सुधार मंडळ, वांद्रे (पुर्व), मुंबई

प्रत माहितीसाठी सादर :
१. मुख्य लेखा अधिकारी, मुंबई झोपडपट्टी सुधार मंडळ, गृहनिर्माण भवन, वांद्रे (पूर्व), मुंबई. ५१.
२. मुख्य अधिकारी, मुंबई झोपडपट्टी सुधार मंडळ, गृहनिर्माण भवन, वांद्रे (पूर्व), मुंबई. ५१.
३. मा. श्री. चरण सिंग सप्रा, आमदार महोदय यांना माहितीसाठी सादर.

जिल्हाधिकारी
मुंबई उपनगर जिल्हाकरिता

2067

जिल्हाधिकारी, मुंबई उपनगर जिल्हा यांचे कार्यालय

प्रशासकीय इमारत, १० व्या मजला, सरकारी वसाहत, बांद्रा (पू.) मुंबई-५१
Ph.6556799, 6550111 Fax : 6556805 email address:- collmsd@yahoo.com

क्र. :-सी/कार्या-२/२ अ/जमिन/कावि-५२७/१०
दिनांक :- ०२/१२/२०१०

विषय :- जमिन : मुंबई उपनगर जिल्हा
ता. कुर्ला, गाव मुलुंड येथील सर्वे नं. ३८६, न.भू.क्र. १३२०
फायर बिग्रेड समोरील जागेत समाजकल्याण मंदिर बांधणेकरीता ना हरकत परवानगी मिळणेबाबत
मा. आमदार श्री. चरणसिंग सप्रा यांची विनंती

संदर्भ :-१) मा. आमदार श्री. चरणसिंग सप्रा यांचा दि. ०५/०७/२०१० रोजीचा अर्ज
२) तहसिलदार, कुर्ला यांचा क्र. तह/कु/जमिन/कावि-९२०/१० दि. २८/१०/२०१० रोजीचा अहवाल
३) नगर भूमापन अधिकारी यांचा क्र. नभूअमु/सरकारी जागा मागणी/ प.भू./बा.क्र.८/१९७४ दि. २०/०९/२०१० रोजीचा अहवाल

मौजे मुलुंड येथील सर्वे नं. ३८६ पै., तत्सम न.भू.क्र. १३२० क ही जागा शासन कागदोपत्री महाराष्ट्र शासनाचे मालकीची आहे. ७/१२ प्रमाणे या जागेचे क्षेत्र ८ एकर ७ गुंठे ऐवढे असून न.भू.क्र. १३२० क चे मिळकत पत्रिकेप्रमाणे क्षेत्र ३६४४५.७ चौ.मी. एवढे दाखल आहे. तहसिलदार, कुर्ला व नगर भूमापन अधिकारी, मुलुंड यांचेवरील प्राप्त अहवालानुसार प्रस्तावित केलेली जागा ही फायर बिग्रेडच्या बाजूच्या जागेची मागणी केलेली असून ती स्थळदर्शक नकाशाप्रमाणे डी पी रोडच्या पलिकडे नारंगी रंगाने दर्शविलेली आहे. सदरहू जागा मुंबई महानगरपालिका यांचेकडील क्र. CE/४७/BPES/Govt./LOI दि. ०४/०८/२००७ मधील विकास आराखडयामध्ये मनोरंजन मैदान (आर जी) करीता आरक्षित असलेचे दिसून येते. प्राप्त अहवालानुसार प्रस्तावित केलेली जागा अतिक्रमण विरहीत असून जागेवर सध्या गवत आहे. याप्रमाणे सदर जागेची सद्यस्थिती आहे.

division/amalgamated/plot area is more than 5000 sq. m, LOS may be provided in more than one place, but at least one of such places shall be not less than 1000 sq. m in size. Such LOS will not be necessary in the case of land used for educational institutions with attached independent playgrounds.

In case of provisions of Regulation No 33 the LOS shall be as stipulated in the relevant regulations if specified separately, or else the LOS as specified above shall be provided.

Provided further that the provisions of LOS in case of the redevelopment schemes under the regulation no 33(5),33(7),33(8),,33(15) and 33(20) (A) may be reduced due to planning constraints, minimum of at least 10%shall be maintained. Provided further that in case of redevelopment proposal under Regulation No 33(5), the existing area of LOS shall be maintained, if it is more than 10 % of the layout.

(b) ***Minimum area:*** No such LOS shall measure less than 125 sq. m.

(c) ***Minimum dimensions:*** The minimum dimension of such LOS shall not be less than 7.5 m, and if the average width of such LOS is less than 16.6 m, the length thereof shall not exceed 2 1/2 times the average width.

(d) ***Access:*** Every plot meant for a LOS shall have an independent means of access, unless it is approachable directly from every building in the layout.

(e) ***Ownership:*** The ownership of such LOS shall vest by provision, in a deed of conveyance, in all the property owners on account of whose holdings the LOS is assigned.

(f) ***Tree growth:*** Excepting for the area covered by the permissible structures mentioned under (g) below, the LOS shall be kept permanently open to the sky and accessible to all owners and occupants as a . LOS and trees shall be grown as under: -

(a) at the rate of 5 trees per 100 sq. m or part thereof of the said LOS to be grown within the entire plot(b) at the rate of 1 tree per 100 sq. m or part thereof to be grown in a plot for which LOS is not necessary

(c) In between the trees planted along the boundary of plot shrubs with grass shall be planted.

Rg

pmw

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.1650 OF 2017

Ankur Patil s/o. Prabhakar Patil and Anr. ... Petitioners
Vs.
Municipal Corporation of Greater Mumbai and Ors. ... Respondents

Mr. Altaf Khan i/by Anjali Awasthi for the Petitioners.
Ms. Pallavi Thakar for the Respondent – BMC.
Mr. Kedar Dighe, AGP for Respondent Nos.3 to 5.
Mr. Suyash Gadre i/by M/s. Utangale & Co. for Respondent Nos.2 and 4.

CORAM : A.S. OKA &
P.N. DESHMUKH, JJ.

DATE : 18th JANUARY, 2018

P.C.

1 Heard the learned counsel appearing for the petitioners, the learned AGP for the State and the learned counsel appearing for the Mumbai Municipal Corporation. We have also heard the learned counsel appearing for the second and fourth respondents. The learned counsel appearing for the petitioners seeks leave to implead all the legally elected representatives mentioned in Exhibit - 8 to the reply of the State Government as party respondents. One of which has been already impleaded as party respondent No.6.

2 Accordingly, we grant leave to amend for impleading the said persons as parties and for carrying out consequential amendments which shall be done within a period of two weeks from the date on which this order is uploaded. Issue notice to the added respondents as well as respondent No.6 returnable on 28th February, 2018. Petition to be listed under the caption of "Fresh Admission". Advocate for the petitioners to supply adequate number of copies for effecting service within a period of three weeks from today failing which the Petition shall stand dismissed for non-prosecution without further reference to the Court.

3 Perusal of Exhibit – 8 to the reply filed on behalf of the Collector records that 5 persons named therein have carried out construction on the plots allotted to them without obtaining permission of the Mumbai Municipal Corporation.

4 We, therefore, direct the Designated Officer of the Mumbai Municipal Corporation to visit the plot bearing CTS No.1320 at village Mulund, Taluka Kurla and inspect the structures which are mentioned in Exhibit 8 of the reply filed on behalf of the Collector. As stated in the said letter at Exhibit -8, the Designated Officer shall initiate appropriate action in accordance with law in respect of the structures which are

found to be illegal. Compliance affidavit shall be filed before the next date.

(P.N. DESHMUKH, J) (A.S. OKA, J)

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hold that the provisions of Section 8 of the Hindu Succession Act are not retrospective in operation and where a male Hindu died before the Act came into force i.e. where succession opened before the Act, Section 8 of the Act will have no application."

(See also *Daya Singh* v. *Dhan Kaur*[16].)

21. The Act indisputably would prevail over the old Hindu law. We may notice that Parliament, with a view to confer right upon the female heirs, even in relation to the joint family property, enacted the Hindu Succession Act, 2005. Such a provision was enacted as far back in 1987 by the State of Andhra Pradesh. The succession having opened in 1989, evidently, the provisions of the Amendment Act, 2005 would have no application. Sub-section (1) of Section 6 of the Act governs the law relating to succession on the death of a coparcener in the event the heirs are only male descendants. But, the proviso appended to sub-section (1) of Section 6 of the Act creates an exception. First son of Babu Lal viz. Lal Chand, was, thus, a coparcener. Section 6 is an exception to the general rules. It was, therefore, obligatory on the part of the respondent-plaintiffs to show that apart from Lal Chand, Sohan Lal will also derive the benefit thereof. So far as the second son, Sohan Lal is concerned, no evidence has been brought on record to show that he was born prior to coming into force of the Hindu Succession Act, 1956.

22. Thus, it was the half-share in the property of Babu Ram, which would devolve upon all his heirs and legal representatives as at least one of his sons was born prior to coming into force of the Act.

23. Except to the aforementioned extent, in our opinion, the courts below are correct in applying the provisions of Section 6 of the Act and holding that Section 8 thereof will have no application. The appeal is allowed in part and to the aforementioned extent. The decree would be modified accordingly. No costs.

(2006) 8 Supreme Court Cases 590

(BEFORE DR. AR. LAKSHMANAN AND TARUN CHATTERJEE, JJ.)

MUNI SUVRAT-SWAMI JAIN S.M.P. SANGH .. Appellant;

Versus

ARUN NATHURAM GAIKWAD AND OTHERS .. Respondents.

Civil Appeal No. 4448 of 2006†, decided on October 11, 2006

Town Planning — Bombay Municipal Corporation Act, 1888 (3 of 1888) — Ss. 354-A and 351 — Comparative scope of — Authority competent to exercise the power under S. 351 and scope of judicial interference, if any, with the exercise of discretion by that authority — Held, S. 354-A deals with stop-work notice whereas S. 351 deals with show-cause notice for demolition of unauthorised structures — Power under S. 351 is exercisable only by the

16 (1974) 1 SCC 700

† Arising out of SLP (C) No. 9049 of 2006. From the Final Judgment and Order dated 23-2-2006 of the High Court of Judicature at Bombay in Writ Petition No. 2841 of 2005

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Municipal Commissioner who, after issuing show-cause notice and after examining the cause shown, has the discretion to order or not to order demolition of the alleged unauthorised structure — High Court cannot, in exercise of its writ jurisdiction, impede by a mandatory order the exercise of that discretion — Constitution of India — Arts. 226 and 227 — Administrative Law — Administrative action — Administrative or executive function — Exercise of power/Discretionary power — Scope of judicial interference with

One *F* and certain others (hereinafter referred to as "the original owners") owned a plot of land consisting of two bungalows and one chawl of a certain number of tenements. There was only one entrance to the property through a 12 feet wide strip of land. *F* entered into a development agreement with a party in order to develop the property. A proposal for approval of a proposed temple complex on the plot was submitted to Bombay Municipal Corporation (for short "BMC"). After the construction of the temple was completed, the original owner sold the said property (hereinafter referred to as "the trust property") to the appellant, a public trust, by a deed of conveyance. The easementary rights in the access road of 12 feet were also conveyed to the appellants. Meanwhile, a developer of an adjacent plot constructed a building and dug the land beneath the access road and tried to install a gate at the entrance of the access road. The appellants then filed a suit for declaration and injunction. Respondent 1 herein (a tenant of the premises), allegedly at the suggestion of the said developer, made a representation to the Municipal Commissioner about the unauthorised structure/temple. The appellants also complained to the authorities about various illegal constructions and unauthorised conduct of the respondents. BMC did not take any action on the complaints due to the pendency of the suit. Respondent 1 then filed a writ petition before the Bombay High Court alleging that appellants were in the process of constructing a temple in the extremely crowded area without obtaining permission from the Municipal Corporation. He, therefore, sought, inter alia, the relief that the municipal authorities be directed to demolish the entire unauthorised and illegal constructions. The appellants replied that the construction of the temple was not in progress at that time and had already been completed. BMC issued notice to stop the work under Section 354-A of the BMC Act for construction of four RCC columns on the rear side of the temple. No work was carried out after the service of the notice under Section 354-A. However, the appellant submitted an application before BMC for regularisation of the temple building. The High Court passed an order directing the Municipal Authorities to demolish entire illegal and unauthorised construction carried on by the respondents despite noting that the issue of regularisation was a matter between the respondent and BMC. The appellants then filed the present appeal by special leave. While granting leave, the notice issued was limited to the question as to whether although Section 351 of the Bombay Municipal Corporation Act, 1888 (for short "the Act") had left to the Commissioner's discretion to demolish or not to demolish, the High Court could direct a mandamus for demolition. It was further directed that there would be interim stay of demolition and no further construction would be made.

Before the Supreme Court, the appellants contended that by the impugned order, the High Court had assumed the powers granted to the Municipal Commissioner under the BMC Act, 1888 to decide whether the structure was legal or illegal. That moreover, issuance of a notice under Section 351 of the

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BMC Act and giving opportunity of hearing to the owner of the building were conditions precedent for issuing an order for demolition of the building and unless, upon hearing, the Municipal Commissioner found that the construction on the disputed property was unauthorised and illegal, question of its demolition could not arise. Referring to the wide discretionary powers of the Municipal Corporation under Section 351(2), the appellants submitted that the writ court could not substitute such discretion of the Commissioner nor could it direct the Commissioner to exercise the discretion in a particular manner.

On the other hand, the respondents submitted that since despite several complaints, the Municipal Commissioner had not exercised the power vested in him under Section 354-A of the Act to demolish the illegal structure after he had issued a notice under that section, the High Court was right in ordering the Municipal Commissioner to demolish the structure and that when the executive failed to perform their duties or erred in performing their duties, the High Court acting under the extraordinary powers vested under Articles 226 and 227 of the Constitution had the necessary power to direct the executive to enforce the law.

The Corporation took the stand that the Trust had made a fresh application and that the same would be considered in accordance with law.

Allowing the appeal, the Supreme Court

Held :

No notice under Section 351 was issued by the Municipal Commissioner in the present matter against the appellants. The Corporation had issued a notice to stop the work under Section 354-A. After the service of stop-work notice under Section 354-A no work was carried out. Section 354-A of the Act deals with stop-work notice whereas Section 351 deals with show-cause notice for demolition of unauthorised structure. The power under Section 351 of the Act has to be exercised only by the Municipal Commissioner and it is left to the Municipal Commissioner under the provisions of Section 351(2) either to order or not to order the demolition of the alleged unauthorised temple. (Para 53)

Section 351 obliges the Municipal Commissioner if the construction of any building or the execution of any work is commenced contrary to the provisions of the Act to give notice requiring the person doing the work to show cause why the same should not be pulled down. The word used in that context is *shall*. If sufficient cause is not shown it is left to the Commissioner's discretion whether or not to demolish the unauthorised construction and, therefore, the High Court cannot impede the exercise of that discretion by the issuance of a mandatory order. Therefore, the Commissioner is directed to decide the question as to whether he should pass an order for demolition or not. The matter is to be decided absolutely on merits after affording opportunity to the respondent. (Paras 57 and 60)

Bilkishbhai Moizbhai Vasi v. *Municipal Corpn. for Greater Bombay*, WP No. 1286 of 1980, decided on 10-8-1983 (Bom HC); *Abdul Rehman Siddique* v. *Ahmed Mia Gulam Mohuddin Ahmedji*, (1996) 2 Mah LJ 1042, *impliedly approved*

Syed Muzaffar Ali v. *Municipal Corpn. of Delhi*, 1995 Supp (4) SCC 426, *followed*

Corpn. of Calcutta v. *Mulchand Agarwalla*, (1955) 2 SCR 995 : AIR 1956 SC 110 : 1956 Cri LJ 285; *U.P. SRTC* v. *Mohd. Ismail*, (1991) 3 SCC 239 : 1991 SCC (L&S) 893 : (1991) 17 ATC 234; *State (Delhi Admn.)* v. *I.K. Nangia*, (1980) 1 SCC 258 : 1980 SCC (Cri) 220; *Julius* v. *Lord Bishop of Oxford*, (1880) 5 AC 214 : (1874-80) All ER Rep 43 (HL); *M.C. Mehta* v. *Union of India*, (2006) 3 SCC 399 : (2006) 2 Scale 364; *M.I. Builders (P) Ltd.* v. *Radhey Shyam Sahu*, (1999) 6 SCC 464; *G.J. Kanga* v. *S.S. Basha*,

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a (1992) 2 Mah LJ 1573 : (1992) 3 Bom CR 582; *Mansukhlal Vithaldas Chauhan* v. *State of Gujarat*, (1997) 7 SCC 622 : 1997 SCC (L&S) 1784 : 1997 SCC (Cri) 1120, *referred to*

Maxwell on Interpretation of Statutes, 11th Edn., p. 231, *referred to*

H-M/ATZ/35083/C

b Advocates who appeared in this case :

F.S. Nariman and Shyam Diwan, Senior Advocates [P.H. Parekh, E.R. Kumar, Ms Shakun Sharma and Kush Chaturvedi (for P.H. Parekh & Co.), Advocates, with him] for the Appellant;

Mukul Rohatgi and Ranjit Kumar, Senior Advocates (Santosh Paul, Ms Vibha Datta Makhija and Lakshmi Raman Singh, Advocates, with him) for Respondent 1;

Pallav Shishodia, Atul Y. Chitale, Ms Suchitra Atul Chitale, Ms Sujeeta Srivastava and Madhup Singhal, Advocates, for Respondents 2 and 3;

U.U. Lalit, Senior Advocate (P.B. Sarpotdar, A.K. Rao, Praji K.J. and Prasanna Balkrishna Sarpotdar, Advocates) for the Intervenor.

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

1. (2006) 3 SCC 399 : (2006) 2 Scale 364, *M.C. Mehta* v. *Union of India* 605*c*
2. (1999) 6 SCC 464, *M.I. Builders (P) Ltd.* v. *Radhey Shyam Sahu* 606*d-e*
3. (1997) 7 SCC 622 : 1997 SCC (L&S) 1784 : 1997 SCC (Cri) 1120, *Mansukhlal Vithaldas Chauhan* v. *State of Gujarat* 608*g*
4. (1996) 2 Mah LJ 1042, *Abdul Rehman Siddique* v. *Ahmed Mia Gulam Mohuddin Ahmedji* 601*b-c*
5. 1995 Supp (4) SCC 426, *Syed Muzaffar Ali* v. *Municipal Corpn. of Delhi* 602*a-b*, 612*d*
6. (1992) 2 Mah LJ 1573 : (1992) 3 Bom CR 582, *G.J. Kanga* v. *S.S. Basha* 608*a-b*
7. (1991) 3 SCC 239 : 1991 SCC (L&S) 893 : (1991) 17 ATC 234, *U.P. SRTC* v. *Mohd. Ismail* 602*e*
8. (1980) 1 SCC 258 : 1980 SCC (Cri) 220, *State (Delhi Admn.)* v. *I.K. Nangia* 604*e-f*
9. WP No. 1286 of 1980, decided on 10-8-1983 (Bom HC), *Bilkishbhai Moizbhai Vasi* v. *Municipal Corpn. for Greater Bombay* 601*d-e*
10. (1955) 2 SCR 995 : AIR 1956 SC 110 : 1956 Cri LJ 285, *Corpn. of Calcutta* v. *Mulchand Agarwalla* 598*b-c*, 612*a-b*
11. (1880) 5 AC 214 : (1874-80) All ER Rep 43 (HL), *Julius* v. *Lord Bishop of Oxford* 604*f-g*

f The Judgment of the Court was delivered by

DR. AR. LAKSHMANAN, J.— Leave granted.

2. This appeal is directed against the final judgment and order dated 23-2-2006 passed by the High Court of Judicature at Bombay in Writ Petition No. 2841 of 2005 whereby the High Court while allowing the writ petition directed the Municipal Corporation to demolish the entire illegal and g unauthorised construction carried on by Respondents 3-17 on entire CTS Nos. 206, 206 (1 to 9), Kurla Part IV, New Mill Road, Kurla (W), Mumbai.

3. The short facts leading to the filing of the above appeal as stated in the SLP are as under:

Shri Fernandes and others (hereinafter referred to as "the original owners") owned a plot of land bearing CTS Nos. 206 and 206 (1 to 9) and h CTS Nos. 212 and 212/1 to 4, NA Survey Nos. 764 and 768, of Village/ Taluka Kurla, Mumbai, suburban district, consisting of two bungalows and

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one chawl of 8 tenements. It is to be noted that there is only one entrance to the property from A.H. Wadia Marg (New Mill Road) through a strip of land about 12 feet wide (hereinafter referred to as "the access road"). The tenants/occupants used the said access road to access their respective premises, including the writ petitioner before the High Court (Respondent 1 herein), who was a tenant of Chawl No. 523/7 of CTS Nos. 1 to 9 in the aforesaid property.

4. Shri Fernandes entered into a development agreement with Shri Ghag of Sadhana Builders in order to develop the property. A proposal for approval of proposed temple complex at CTS Nos. 206, 206 (1 to 9) was submitted before BMC.

5. The construction of temple was completed and the installation of idol ceremony (*pratishtha*) took place. It is to be noted that Respondent 1 participated in the celebration and did not make any complaint regarding the construction of the temple.

6. The original owner sold the aforesaid property (hereinafter referred to as "the trust property") to the appellant, a public trust, by a deed of conveyance, where Mr Ghag was a confirmation party. When the property was conveyed to the appellant the aforesaid property consisted of four shops, eight residential premises, Jain temple, Upashraya, Pravachan hall and open space. It is to be noted that the easementary rights from A.H. Wadia Marg (New Mill Road) through the access road of about 12 feet wide were also conveyed to the appellants.

7. One Mr Ismail Yakob Payak, the developer of the plot adjacent to the trust property i.e. plot of land bearing CTS Nos. 205, NA Survey Nos. 765, 766, 767 started construction on the said plot (hereinafter referred to as "the developer").

8. The said developer constructed a building of ground plus 6 floors known as "Saiba Palace". After constructing the said building the developer dug the land beneath the access road and tried to install a gate at the entrance of the access road.

9. Appellants 1 to 11 filed a suit being Suit No. 1478 of 2005 in the City Civil Court at Bombay for declaration and injunction.

10. The developer in an attempt to pressurise the appellants into not prosecuting the said suit had set up Respondent 1 herein (a tenant of the trust property) to initiate proceedings against the appellants. According to the appellants, the fact that Respondent 1 was set up is clear from the following—(*a*) though the construction of the temple was completed in the year 2001, Respondent 1 who was a tenant of the premises did not complain about the unauthorised construction till the appellants herein filed a suit against the developer; (*b*) that Respondent 1 had participated in the celebration of idol installation; (*c*) that the advocates of the developer as well as of Respondent 1 were same; and (*d*) that Respondent 1 and the developer belong to the same Nationalist Congress Party.

11. Respondent 1 through his advocate gave a representation to the Municipal Commissioner about the unauthorised structure/temple.

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Respondent 1 also wrote several letters of complaints to Hon'ble Ministers, Assistant Commissioner of Police, Deputy Chief Minister, Commissioner of Police, Inspector General of Police, Editors of newspapers, etc.

12. The appellant filed an interim application Notice of Motion No. 1201 of 2005 in Suit No. 1478 of 2005 for grant of ad interim relief. After hearing the parties the City Civil Court passed the following order:

> "The defendants have constructed part of their compound wall. The plaintiff's agree that the defendants shall extend that construction leaving 6 ft from the otla on the rear of the four shops in the plaintiffs' property.
>
> The defendants shall construct their compound wall as shown in blue extending it from the wall already constructed leaving 6 ft space from the otla on the rear of the shops of the plaintiffs as shown in blue in the sketch plan, Ext. A to the plaint.
>
> The plaintiffs shall be entitled to have access through the defendant's property for only pedestrian traffic (including palkhis) pending the suit.
>
> N/M is disposed of accordingly. NOC w/s if filed."

13. The aforesaid order was modified and it was added that "*By consent order dated 3-5-2005 is without prejudice to the rights and contentions of both parties*."

14. During the pendency of the said suit, the developer started constructing a compound wall on the southern side of the tenement, whereby the developer encroached upon a part of the land bearing CTS No. 212 and reduced the width of the access road from 12 feet to 6 feet. He also wrongfully constructed a gate at the entrance of the servient tenement, touching the land bearing CTS Nos. 212/1 to 4 and thereby attempted to disturb the free use of the right of way acquired by the Trust.

15. The appellant complained to the authorities about the illegal construction and unauthorised conduct of the respondents.

16. In reply, the Municipal Corporation informed the petitioner that as per order of Asstt. Joint Municipal Commissioner dated 6-8-2005, the occupation certificate to the building constructed by the developer and named Saiba Palace shall be issued after the proceedings in court are finally disposed of and the provisions of access to the subject temple will also be taken into account.

17. Respondent 1 filed a writ petition before the High Court at Bombay alleging that appellants were in the process of constructing a temple in the extremely crowded area without obtaining permission from the Municipal Corporation and that on account of this construction the atmosphere in the locality has been disturbed and disputes have arisen. In view of this he sought the following reliefs:

> (*i*) direct municipal authorities to demolish the entire unauthorised and illegal construction on CTS Nos. 206, 206 (1 to 9) called on by the petitioners herein;
>
> (*ii*) pending disposal of the writ, injunct the petitioners from carrying on any further construction;

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(*iii*) appointment of Court Commissioner to visit the property and give its report.

18. It is the case of the appellant that the construction of temple was not in progress at that time. Temple was already constructed in the year 2001.

19. It is also the case of the appellant that Respondent 1 being a tenant of Chawl No. 523/7 on the trust property claimed that he recently came to know about the illegal and unauthorised construction on the trust property, despite his further claim in the writ petition that the property was under his supervision continuously for 12 years and Mr Ghag had also executed power of attorney on 18-11-1998 in his favour.

20. Bombay Municipal Corporation (in short "BMC") issued notice to stop the work under Section 354-A of the BMC Act for construction of four RCC columns on the rear side of the temple.

21. The appellant submitted an application before BMC for regularisation of the temple building.

22. One of the trustees and the appellant herein, Shri Arvind Kothari filed counter-affidavit to the petition and stated in detail about the proxy litigation initiated by the builder and also the mala fides against Respondent 1. It was also pointed out that there had been no infringement of bye-laws relating to FSI. That lakhs of devotees visit the temple.

23. Respondent 1 filed a rejoinder before the High Court in which most of the averments have remained uncontroverted due to either bald denial or no denial. It would be pertinent to mention that nexus between the developer and Respondent 1 largely remained uncontroverted.

24. BMC also filed a counter-affidavit, wherein it was categorically stated that after service of a stop-work notice under Section 354-A of the BMC Act, no work was carried out.

25. The High Court passed an order directing the municipal authorities to demolish entire illegal and unauthorised construction carried on by Respondents 3 to 17 on entire CTS Nos. 206, 206 (1 to 9), Kurla Part IV, New Mill Road, Kurla (W), Mumbai 400 070 despite noting that the issue of regularisation was a matter between the respondent and BMC. The High Court stayed the operation of the order by 4 weeks, which was extended for another 4 weeks by order dated 5-4-2006. Hence the present appeal by way of SLP has been filed.

26. We heard Mr F.S. Nariman, learned Senior Counsel appearing for the appellants and Mr Mukul Rohatgi and Mr Ranjit Kumar, learned Senior Counsel for Respondent 1, Mr Pallav Shishodia, learned counsel for Respondents 2 and 3 and Mr U.U. Lalit, learned Senior Counsel for the intervenors.

27. When the matter came up for admission on 4-7-2006, this Court observed as under:

> "Issue notice limited to the question as to whether in the city of Bombay governed by the provisions of Section 351 of the *Bombay*

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Municipal Corporation Act, 1888 where it has been left to the Commissioner's discretion to demolish or not to demolish, the High Court could direct a mandamus for demolition.

Mr Lakshmi Raman Singh, Advocate, takes notice for Respondent 1. Issue notice limited to above question to all other respondents returnable within four weeks. Dasti, in addition is permitted. Learned counsel for the petitioner is also permitted to serve notice privately by registered AD post. Two weeks' time is granted to file counter-affidavit. Rejoinder, if any be filed within two weeks thereafter. List the matter for final hearing, by consent of parties, on 10-8-2006.

In the meanwhile, there shall be interim stay of demolition. It is also made clear that the petitioner shall not make any further construction until further orders."

28. The following submissions were made by Mr Nariman, learned Senior Counsel appearing for the appellants:

(*1*) The High Court proceeded on the erroneous footing that "*the petition is filed pointing out that Respondents 3 to 17 are in the process of constructing a temple in an extremely crowded area*". It was submitted that the temple was constructed in the year 2001 and the temple was not in the process of construction.

(*2*) The High Court while replying to the submission of the appellant that application for regularisation was pending on the one hand held, "*that is a matter between the respondent and the Municipal Corporation*" and in the same paragraph also held, "*it is very clear that the construction is illegal, without any authority of law and without any permission of the Municipal Corporation*". Thus it was submitted that the High Court assumed the powers granted to the Municipal Commissioner under the Bombay Municipal Corporation Act, 1888 (hereinafter referred to as "the Act") to decide whether the structure is legal/illegal without affording an opportunity of hearing to the appellants. It is submitted that issuance of a notice under Section 351 of the BMC Act and giving opportunity of hearing to the owner of the building are conditions precedent for issuing an order for demolition of the building and unless, upon hearing, the Municipal Commissioner holds that the construction on the disputed property is unauthorised and illegal, question of its demolition does not arise.

(*3*) The High Court failed to appreciate that the provisions of Section 351(2) of the Bombay Municipal Corporation Act, 1888 (the BMC Act) confer very wide discretionary powers upon the Municipal Corporation to remove, alter or pull down or not the building constructed without complying with the provisions of Section 342 or 347 of the said Act. It was submitted that the Court cannot substitute such discretion of the Commissioner nor can the writ court direct the Commissioner to exercise the discretion in a particular manner.

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(*4*) The High Court erred in passing a drastic direction for demolition of a structure/temple without affording an opportunity of hearing to the appellant especially when the Municipal Commissioner has the power to regularise a building constructed and the application for regularisation was pending before the Municipal Commissioner. It was submitted that there was enough material to show that the structure of the temple can be regularised. The total area of the plot on which the temple is situated is 1290.30 sq m, the area of the existing structures including the temple is 574.91 sq m and hence within the FSI limit of 1, which is 44.55% of the permissible FSI. This Court in the decision of *Corpn. of Calcutta* v. *Mulchand Agarwalla*[1] has held that if the structure is not otherwise violative of the building bye-laws, it need not be demolished. However, the said application has now been dismissed by the Municipal Commissioner by order dated 9-3-2006 in view of the impugned order. An appeal against the same is pending before the authorities.

(*5*) The High Court erroneously held in para 4 of the impugned order "*ultimately a stop-work notice was issued. In the utter disregard of such notice, the construction work had proceeded*". It was submitted that the Corporation itself had filed the affidavit stating "*the respondent Corporation had visited the site and issued notice under Section 354 of the BMC Act; at present there is no further construction work found in progress*".

(*6*) The High Court erred in issuing a direction for demolition under its writ jurisdiction where mandamus could only be issued directing the administrative authorities to act in accordance with law.

(*7*) The High Court erred in granting prayer of the appellant which seeks direction to demolish entire illegal and unauthorised structure standing on CTS Nos. 206, 206 (1 to 9) inasmuch as there are many structures on the said plot which were constructed prior to the year 1962 and were considered to be heritage.

(*8*) The High Court failed to appreciate the following evidence which clearly showed that the writ petition was filed by a person who was set up by the developer: (*a*) though the construction of the temple was completed in the year 2001, the writ petitioner who was a tenant of the premises did not complain about the unauthorised construction till the petitioners herein filed a suit against the developer; (*b*) that the writ petitioner participated in the celebration of idol installation; (*c*) that the advocates of the developer as well as the writ petitioner are same; (*d*) that the writ petitioner and the developer belong to the same Nationalist Congress Party. Admittedly, the petitioner was a friend of the developer for 18 years and the complaint against the present petitioner was made only after civil case was filed against the builder.

(*9*) The High Court erred in relying on stop-work notice to order demolition of the entire structure as the aforesaid stop-work notice was

1 (1955) 2 SCR 995 : AIR 1956 SC 110 : 1956 Cri LJ 285

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issued only for stopping the construction of four pillars on the rear side of the temple.

29. Mr Nariman also invited our attention to certain averments made in paras 5 and 7 of the writ petition filed by the first respondent herein being Writ Petition No. 2841 of 2005. Our attention was drawn to para 7 of the affidavit wherein the respondent as the writ petitioner stated that Respondent 2 informed Respondent 1 by letter dated 5-10-2005 that they were taking legal action against Jain temple/Dervasar as per Section 354-A of the Bombay Municipal Corporation Act. The learned Senior Counsel also drew our attention to the counter-affidavit filed by Respondent 14 to the writ petition and, in particular, para 17. The relevant portion reads thus:

> "The construction of temple had commenced in or around the year 1999 and the '*pratishtha*' (installation of idol ceremony) took place in the year 2001. The petitioner in fact joined the Trust in the celebration relating to *Pratishtha* Mahotsav. The petitioner never made any complaint during the period of construction or even when the said *Pratishtha* Mahotsav took place on or around the year 2001. Pertinently the petitioner started writing letters to authorities only after the disputes and differences between the Trust and the said Mr Payak started on account of unauthorised construction and attempted encroachment on the part of the said Mr Payak."

30. Our attention was also drawn to the prayer made in Writ Petition No. 2841 of 2005 which reads as follows:

> "(*a*) The High Court may be pleased to issue a writ of mandamus; any other writ, order or direction in the nature of mandamus directing Respondents 1 and 2 to demolish the entire unauthorised and illegal construction carried on by Respondents 3 to 17 on entire CTS Nos. 206, 206 (1 to 9), Kurla Part IV, New Mill Road, Kurla (West), Mumbai 400 070.
>
> (*b*) Pending hearing and final disposal of the petition, Respondents 3 to 17 may be restrained by an order of injunction of this Court from carrying on any further construction on CTS Nos. 206, 206 (1 to 9), Kurla Part IV, New Mill Road, Kurla (West), Mumbai 400 070."

31. Mr Nariman, in support of his contention, that the High Court cannot assume the power granted to the Municipal Commissioner under the Bombay Municipal Corporation Act, 1888 (in short "the Act") to declare whether the structure is legal or illegal, submitted that issuance of a notice under Section 351 of the Act and giving opportunity to the owner of the building are conditions precedent for issuing the order for demolition of the building and unless upon hearing the Municipal Commissioner holds that the construction on the disputed property is unauthorised and illegal, question of its demolition does not arise. He would further submit that provisions of Section 351(2) of the Act confer very wide discretionary powers on the Municipal Commissioner to remove, alter or pull down or not the building constructed without complying with the provisions of Section 342 or 347 of the said Act.

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Therefore, he submitted that the High Court cannot substitute such discretion of the Commissioner nor can the High Court direct the Commissioner to exercise the discretion in a particular manner. In support of the above contention, the learned Senior Counsel first invited our attention to Section 351 of the Act which reads thus:

"351. *Proceedings to be taken in respect of buildings or work commenced contrary to Section 347*.—(1) If the erection of any building or the execution of any such work as is described in Section 342, is commenced contrary to the provisions of Section 342 or 347, the Commissioner, unless he deems it necessary to take proceedings in respect of such building or work under Section 354, shall—

(*a*) by written notice, require the person who is erecting such building or executing such work, or has erected such building or executed such work, or who is the owner for the time being of such building or work, within seven days from the date of service of such notice, by a statement in writing subscribed by him or by an agent duly authorised by him in that behalf and addressed to the Commissioner, to show sufficient cause why such building or work shall not be removed, altered or pulled down; or

(*b*) shall require the said person on such day and at such time and place as shall be specified in such notice to attend personally, or by an agent duly authorised by him in that behalf, and show sufficient cause why such building or work shall not be removed, altered or pulled down.

Explanation.—'To show sufficient cause' in this sub-section shall mean to prove that the work mentioned in the said notice is carried out in accordance with the provisions of Section 337 or 342 and Section 347 of the Act.

(2) If such person shall fail to show sufficient cause, to the satisfaction of the Commissioner, why such building or work shall not be removed, altered or pulled down, the Commissioner may remove, alter or pull down the building or work and the expenses thereof shall be paid by the said person. In case of removal or pulling down of the building or the work by the Commissioner, the debris of such building or work together with one building material, if any, at the sight of the construction, belonging to such person, shall be seized and disposed of in the prescribed manner and after deducting from the receipts of such sale or disposal, the expenditure incurred for removal and sale of such debris and material, the surplus of the receipt shall be returned by the Commissioner, to the person concerned.

(3) No court, shall stay the proceeding of any public notice including notice for eviction, demolition or removal from any land or property belonging to the State Government or the Corporation or any other local authority or any land which is required for any public project or civil amenities, without first giving the Commissioner a reasonable opportunity of representing in the matter."

32. In support of the above legal submission, learned Senior Counsel first relied on the judgment of Bharucha, J. dated 10-8-1983 in Writ Petition No. 1286 of 1990 of the Bombay High Court wherein the learned Judge held:

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"Section 351 obliges the Municipal Commissioner, if the construction of any building or the execution of any work is commenced contrary to the provisions of the Act, to give notice requiring the person constructing or doing the work to show cause why it should not be pulled down. The word used in this context is 'shall'. If sufficient cause is not shown, the Commissioner 'may' remove, alter or pull down the building or work. It is left to the Commissioner's discretion whether or not to demolish the unauthorised construction if sufficient cause is not shown. The court cannot impede the exercise of that discretion by the issuance of a mandatory order."

33. The above judgment was followed in *Abdul Rehman Siddique* v. *Ahmed Mia Gulam Mohuddin Ahmedji*[2] wherein a learned Single Judge of the Bombay High Court held thus: (Mah LJ pp. 1047-48, paras 9, 10 & 10-A)

"*9.* … Such discretion of the Commissioner or such authority cannot be substituted by the court nor can court direct the Commissioner or such authority to exercise discretion in a particular manner. If the discretion by the Commissioner or such authority appears to have not been exercised in accordance with law then court can only call upon the Commissioner or such authority to consider the matter afresh in accordance with law.

10. I am fortified in my view by the judgment of this Court in *Bilkishbhai Moizbhai Vasi* v. *Municipal Corpn. for Greater Bombay*[3]. In the said judgment Hon'ble Justice S.P. Bharucha (as he then was) has considered the provisions of Section 351 of the BMC Act vis-à-vis the obligation of the Commissioner or the authority delegated such power to demolish the unauthorised construction. Bharucha, J. held thus—

'Section 351 obliges the Municipal Commissioner, if the construction of any building or the execution of any work is commenced contrary to the provisions of the Act, to give notice requiring the person constructing or doing the work to show cause why it should not be pulled down. The word used in this context is 'shall'. If sufficient cause is not shown, the Commissioner 'may' remove, alter or pull down the building or work. It is left to the Commissioner's discretion whether or not to demolish the unauthorised construction if sufficient cause is not shown. The court cannot impede the exercise of that discretion by the issuance of a mandatory order.'

10-A. Apparently, therefore, the direction given and the order passed by the City Civil Court and impugned in the present appeal making the notice of motion absolute in terms of prayers (*b*) and (*d*) impedes the exercise of discretion of the Commissioner or the authority delegated such power. The mandate issued to Defendant 1 in issuing notice in respect of the structures to Defendants 2 to 31 is clearly impediment in

2 (1996) 2 Mah LJ 1042

3 WP No. 1286 of 1980 decided on 10-8-1983 (Bom HC)

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the exercise of the discretionary power of the Commissioner or for that matter the authority delegated such power. Such mandatory order and that too pending trial of the suit where it is yet to be tried whether the alleged construction is unauthorised or not cannot be said to be justified."

34. In *Syed Muzaffar Ali* v. *Municipal Corpn. of Delhi*[4] this Court in paras 4 and 5 held as under: (SCC pp. 427-28)

"*4*. However, it is to be pointed out that the mere departure from the authorised plan or putting up a construction without sanction does not ipso facto and without more necessarily and inevitably justify demolition of the structure. There are cases and cases of such unauthorised constructions. Some are amenable to compounding and some may not be. There may be cases of grave and serious breaches of the licensing provisions or building regulations that may call for the extreme step of demolition.

5. These are matters for the authorities to consider at the appropriate time having regard to nature of the transgressions. It is open to the petitioners to move the authorities for such relief as may be available to them at law. The petitioners may, if so advised, file a plan indicating the nature and extent of the unauthorised constructions carried out and seek regularisation, if such regularisation is permissible. The dismissal of the petitions will not stand in the way of the authorities examining and granting such relief as the petitioners may be entitled to under law. The petitioners may move the authorities in this behalf within one week for such compounding or regularisation and also for stay of demolition pending consideration of their prayer. During the period of one week from today, however, no demolition shall be made."

35. In *U.P. SRTC* v. *Mohd. Ismail*[5] this Court in paras 11 and 12 at SCC p. 244 observed as under:

"*11*. The view taken by the High Court appears to be fallacious. The discretion conferred by Regulation 17(3) confers no vested right on the retrenched workmen to get an alternative job in the Corporation. Like all other statutory discretion in the administrative law, Regulation 17(3) creates no legal right in favour of a person in respect of whom the discretion is required to be exercised — other than a right to have his case honestly considered for an alternative job by the Corporation.

12. The High Court was equally in error in directing the Corporation to offer alternative job to drivers who are found to be medically unfit before dispensing with their services. The court cannot dictate the decision of the statutory authority that ought to be made in the exercise of discretion in a given case. The court cannot direct the statutory authority to exercise the discretion in a particular manner not expressly required by law. The court could only command the statutory authority by a writ of mandamus to perform its duty by exercising the discretion

4 1995 Supp (4) SCC 426
5 (1991) 3 SCC 239 : 1991 SCC (L&S) 893 : (1991) 17 ATC 234

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according to law. Whether alternative job is to be offered or not is a matter left to the discretion of the competent authority of the Corporation and the Corporation has to exercise the discretion in individual cases. The court cannot command the Corporation to exercise discretion in a particular manner and in favour of a particular person. That would be beyond the jurisdiction of the court."

36. Mr Mukul Rohatgi made elaborate submissions which were later supported by Mr Ranjit Kumar, Senior Counsel. He invited our attention to the counter-affidavit on behalf of Respondent 1. Mr Rohatgi submitted that Section 354-A is categoric in spelling out the powers of the Commissioner in respect of works unlawfully carried on, and in the instant case there is an unlawful and deliberate misrepresentation on the part of the appellant and, therefore, the civil appeal is ought to be dismissed on this very ground. He further submitted that the appellant continued the construction during the pendency of the petition in the High Court and is continuing to construct despite the orders of this Court and has covered the site with a cover to prevent access.

37. Mr Rohatgi submitted that despite several complaints made by the first respondent, Municipal Corporation of Greater Bombay did nothing to demolish the illegal structure and that the Municipal Commissioner did not exercise the power vested in him under the Act to demolish the illegal structure. It is further submitted that the Municipal Commissioner was under a duty and obligation to order or direct illegal structure to be removed as the same was *per se* illegal and that the Commissioner ought to have ordered demolition as the Municipal Corporation had issued a notice under Section 354-A of the Act and in spite of the same, the respondent had continued with the illegal construction. Learned Senior Counsel further submitted that owing to the inaction on the part of the Municipal Corporation in demolishing the illegal structure, the respondent had no other option but to move the Bombay High Court by filing Writ Petition No. 2841 of 2005. He also drew our attention to the order passed by the High Court which clearly stated that the order of the High Court dated 21-12-2005 will not prevent the Corporation from taking any action in accordance with the law if the construction is found to be unauthorised. After the order of the High Court, the counsel for the first respondent sent several letters calling upon BMC to take action against the unauthorised construction and despite these letters BMC failed to take any action in the matter and ultimately the High Court vide impugned order directed the Municipal Corporation to demolish the said illegal structure. It was submitted that the writ petition was filed for inaction of the Municipal Corporation and the writ petition was directed to ensure that the authority performed the duty cast upon it under the statute and that the High Court on considering that the Commissioner had not taken any action in respect of the said illegal structure directed the demolition of the same. Thus, it was submitted that the order passed by the High Court was a corrective order aimed at enforcing the law and if the Commissioner declined to use his

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powers or enforce the law, the High Court was fully competent to enforce the same and that the writ of the High Court runs superior to the statutory powers of the Corporation. Concluding his argument, learned Senior Counsel submitted that considering the material on record and provisions of the BMC Act, this Court would hold that the High Court was right in ordering the Municipal Commissioner to demolish the structure and that when the executive failed to perform their duties or erred in performing their duties, the High Court acting under the extraordinary powers vested under Articles 226 and 227 of the Constitution of India has the necessary power to direct the executive to enforce the law as laid down in the statutes and power to order demolition of illegal structures as the Commissioner has failed to do so.

38. Mr Rohatgi also invited our attention to the notice issued by the Municipal Corporation to the appellants under Section 68 of the BMC Act directing the appellant to stop the execution of the work forthwith and failing to produce permission, the Commissioner shall under Section 354-A and in exercise of powers and functions conferred upon him as aforesaid without any further notice cause the said building or work to be removed or pulled down at the owner's risk and cost. This notice was issued on 8-6-2005. Our attention was also drawn to the proceedings issued by the Deputy Chief Engineer dated 4-3-2006 regarding regularisation of temple on a plot bearing number CTS Nos. 206, 206(1-9) of Village Kurla. The appellant was informed that the plan submitted by them is not in consonance with the Development Control Regulations, 1991 and they have not submitted the NOC from the Commissioner of Police; being a place of public worship, their proposal of regularisation of temple was refused. Similar to this effect is the two letters issued by Brihanmumbai Mahanagarpalika dated 13-10-2005 and 12-7-2006 refusing the proposal of the appellant relating to the construction of temple on the plot in question.

39. In support of his contention, learned Senior Counsel relied on para 15 of the decision of this Court in *State (Delhi Admn.)* v. *I.K. Nangia*[6].

40. The above decision was cited for the proposition that the word *may* normally implies what is optional but for the reason stated, it should in the context in which it appears here should mean *must* and that there is an element of compulsion and that its power is coupled with a duty. It deals with the performance of public duty and that it comes within the dictum of Lord Cairns in *Julius* v. *Lord Bishop of Oxford*[7]. The dictum reads thus: (All ER p. 47 I)

> "[T]here may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed to exercise that power when called upon to do so."

6 (1980) 1 SCC 258 : 1980 SCC (Cri) 220
7 (1880) 5 AC 214 : (1874-80) All ER Rep 43 (HL)

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41. In *Maxwell on Interpretation of Statutes*, 11th Edn. at p. 231, the principle is stated thus:

"Statutes which authorise persons to do acts *for the benefit of others or, as it is sometimes said, for the public good* or the advancement of justice, have often given rise to controversy when conferring the authority in terms simply enabling and not mandatory. In enacting that they 'may' or 'shall, if they think fit', or, 'shall have power', or that 'it shall be lawful' for them to do such acts, a statute appears to use the language of mere permission, but it has been so often decided as to have become an axiom that in such cases such expressions may have — to say the least — a compulsory force, and so would seem to be modified by judicial exposition." (emphasis supplied)

42. Learned Senior Counsel next cited *M.C. Mehta* v. *Union of India*[8]: (SCC pp. 422-23 & 427, paras 53 & 68)

"*53.* Now, we revert to the task of implementation. Despite its difficulty, this Court cannot remain a mute spectator when the violations also affect the environment and healthy living of law-abiders. The enormity of the problem which, to a great extent, is the doing of the authorities themselves, does not mean that a beginning should not be made to set things right. If the entire misuser cannot be stopped at one point of time because of its extensive nature, then it has to be stopped in a phased manner, beginning with major violators. There has to be a will to do it. We have hereinbefore noted in brief the orders made in the last so many years but it seems that the same has had no effect on the authorities. The things cannot be permitted to go on in this manner forever. On one hand, various laws are enacted, master plans are prepared by expert planners, provision is made in the plans also to tackle the problem of existing unauthorised constructions and misusers and, on the other hand, such illegal activities go on unabated openly under the gaze of everyone, without having any respect and regard for law and other citizens. We have noticed above the complaints of some of the residents in respect of such illegalities. For the last number of years even the High Court has been expressing similar anguish in the orders made in large number of cases. We may briefly notice some of those orders.

* * *

68. Rule of law is the essence of democracy. It has to be preserved. Laws have to be enforced. In the case in hand, the implementation and enforcement of law to stop blatant misuse cannot be delayed further so as to await the so-called proposed survey by MCD. The suggestions would only result in further postponement of action against illegalities. It may be noted that MCD has filed zonewise/wardwise abstract of violations in terms of commercialisation as in November 2005. According to MCD, the major violation has been determined in respect of those roads where

8 (2006) 3 SCC 399 : (2006) 2 Scale 364

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commercialisation of the buildings is more than 50%. According to it, the major violations in 12 zones are spread on 229 roads. Roads on which there are major violations are, thus, known. In respect of these, there is no need for any survey or individual notice. Beginning must be made to stop misuser on main roads of width of 80 ft or more. The names of these roads can be published in newspapers and adequate publicity given, granting violators some time to bring the user of the property in conformity with the permissible user, namely, for residential use if the plans have been sanctioned for construction of a residential house. In case owner/user fails to do so, how, in which manner and from which date, MCD will commence sealing operation shall be placed on record in the form of an affidavit of its Commissioner to be filed within two weeks. On consideration of this affidavit, we will issue further directions including constitution of a monitoring committee, if necessary. The issue of accountability of officers and also the exact manner of applicability of polluter pays principle to owners and officers would be further taken up after misuser is stopped at least on main roads. Civil Appeal No. 608 of 2003 abovereferred relates to Ring Road, Lajpat Nagar II. The other cases relate to areas like Green Park Extension, Green Park Main, Greater Kailash, New Friends Colony, Defence Colony, West Patel Nagar, etc. These areas are illustrative. The activities include big furnishing stores, galleries, sale of diamond and gold jewellery, sale of car parts, etc."

43. Learned Senior Counsel next cited *M.I. Builders (P) Ltd.* v. *Radhey Shyam Sahu*[9], SCC para 73 which reads thus: (SCC p. 529)

"*73.* The High Court has directed dismantling of the whole project and for restoration of the park to its original condition. This Court in numerous decisions has held that no consideration should be shown to the builder or any other person where construction is unauthorised. This dicta is now almost bordering the rule of law. Stress was laid by the appellant and the prospective allottees of the shops to exercise judicial discretion in moulding the relief. Such discretion cannot be exercised which encourages illegality or perpetuates an illegality. Unauthorised construction, if it is illegal and cannot be compounded, has to be demolished. There is no way out. Judicial discretion cannot be guided by expediency. Courts are not free from statutory fetters. Justice is to be rendered in accordance with law. Judges are not entitled to exercise discretion wearing the robes of judicial discretion and pass orders based solely on their personal predilections and peculiar dispositions. Judicial discretion wherever it is required to be exercised has to be in accordance with law and set legal principles. As will be seen in moulding the relief in the present case and allowing one of the blocks meant for parking to stand we have been guided by the obligatory duties of the Mahapalika to construct and maintain parking lots."

9 (1999) 6 SCC 464

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44. Mr Pallav Shishodia, learned counsel for the Corporation invited our attention to the counter-affidavit filed in the writ petition and submitted that the appellant has raised several disputed questions of fact which cannot and ought not to be gone into by this Court and on that ground alone, the SLP deserves to be dismissed. Without prejudice to the aforesaid contention, he submitted that the owners through their architect submitted their proposal for the approval of the proposed temple complex along with notice under Sections 44/99 of the MTP Act† and notice under Section 337 of the BMC Act. Respondents 2 and 3 vide application dated 8-4-1999 and in reply to the same the AE vide his letter had said that the said proposal will be processed further in compliance with certain documents mentioned in the said letter. It is submitted that one of the conditions required documents to be submitted regarding access roads of adequate width to the property. It is further submitted that the Trust has now made an application vide letter dated 9-12-2005 through a new architect to the Executive Engineer (BP) ES for regularising the construction of the temple along with several documents such as copy of deed of trust, copy of the order and consent terms filed in Suit No. 1478 of 2005. It is further submitted that the said application made to Executive Engineer (BP) is pending and the same shall be considered as per the provisions of the DC Regulations and other provisions of law. In the meanwhile on receipt of complaint Respondents 2 and 3 visited the premises at Jain temple and detected that construction was in progress at site without permission from the respondents and hence stop-work notice under Section 354-A of the BMC Act dated 8-6-2005 was issued to the trustees. By the said notice, the addressee was called upon to stop the erection of the building/execution of the said work, that is, construction of RCC columns on rear side without permission from the respondents. The party was also called upon to produce permission/approval, if any by the competent authority in respect of the said work within 24 hours from the receipt of the said notice. Thereafter on 5-12-2005 the site was again inspected by the officers of the respondents when it was noticed that a temple was constructed with marble located in front of the existing plot and a shed on the rear side admeasuring 14.5 metres x 3.10 metres was also constructed as composite structure by using MSI section with angle section and AC sheet-roofing within the premises of the shed, one cabin admeasuring 6.5 metres x 2.85 metres having the off 2.0 metres is seen and that there is no activity at present conducted in the cabin. Besides the aforesaid structure there are 4 numbers of RCC columns existing on the site within the temple premises.

45. It was further submitted that on receipt of complaint, the respondents had visited the site and issued notice under Section 354-A of the BMC Act and at present there is no further construction work. It was further submitted that the said structure being a shrine and as there being no further work carried out at the site and there being pending proposal in respect of the said

† **Ed.**: Maharashtra Regional and Town Planning Act, 1966 (37 of 1966).

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structure, no further action was initiated by the authorities pending the said proposal. It is also submitted that the application submitted by the applicant, namely, Respondent 4 shall be considered by the authorities strictly on merits and in accordance with the provisions of law. Learned counsel for the Municipal Corporation cited *G.J. Kanga* v. *S.S. Basha*[10] Mah LJ para 35 which reads thus: (Mah LJ p. 1590)

> "*35*. Whether an order of demolition under Section 351 is an administrative order or a quasi-judicial order? It cannot be disputed that demolition results in serious civil consequences. It leads to loss and destruction of property entailing loss of money. It renders the occupiers homeless. It would, therefore, be futile to term the order an administrative order and the process leading to the order a quasi-judicial function. If I were to say, 'you be hanged', can it be said that this is an administrative order and the trial leading to the order is a judicial or quasi-judicial process. Just as there is discretion in the matter of passing judicial orders similarly there is discretion in the matter of passing orders under Section 351. A decision under Section 351 requires a decision whether the offending structure is authorised or unauthorised. Whether the whole of it or only a part of it is unauthorised, if unauthorised why it is unauthorised, whether it can be tolerated or whether it can be regularised. In my view, there lies a large area of discretion in the matter of passing orders under Section 351. An order under Section 351 leads to civil consequences, there is a large area of discretion in the matter of passing orders under Section 351, it is on this ground that the municipal authorities concerned are required to follow the principles of natural justice. An order passed under Section 351, therefore, is a quasi-judicial order and it cannot be termed an administrative order. Hence, such an order is neither revisable nor open to review. Had the legislature intended to make these orders subject to appeal, revision or review, it would have so provided in specific terms. Provisions of appeal, revision or review cannot be inferred by implication. They have to be provided for in specific terms. The power of review as is understood in common parlance is the exercise of a power by the very officer who passed the order and not by his superior officer. An order can only be made appealable or revisable by a superior officer. Hence, in the absence of a specific provision in that behalf, I hold that the order under Section 351 is neither revisable nor reviewable."

46. He also cited *Mansukhlal Vithaldas Chauhan* v. *State of Gujarat*[11] in respect of the question as to whether the High Court could issue a mandamus of this nature and whether the order of sanction in these circumstances is valid: (SCC pp. 632-33, paras 22-23)

> "22. Mandamus which is a discretionary remedy under Article 226 of the Constitution is requested to be issued, inter alia, to compel

10 (1992) 2 Mah LJ 1573 : (1992) 3 Bom CR 582
11 (1997) 7 SCC 622 : 1997 SCC (L&S) 1784 : 1997 SCC (Cri) 1120

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performance of public duties which may be administrative, ministerial or statutory in nature. Statutory duty may be either directory or mandatory. Statutory duties, if they are intended to be mandatory in character, are indicated by the use of the words 'shall' or 'must'. But this is not conclusive as 'shall' and 'must' have, sometimes, been interpreted as 'may'. What is determinative of the nature of duty, whether it is obligatory, mandatory or directory, is the scheme of the statute in which the 'duty' has been set out. Even if the 'duty' is not set out clearly and specifically in the statute, it may be implied as correlative to a 'right'.

23. In the performance of this duty, if the authority in whom the discretion is vested under the statute, does not act independently and passes an order under the instructions and orders of another authority, the Court would intervene in the matter, quash the order and issue a mandamus to that authority to exercise its own discretion."

47. Mr U.U. Lalit, learned Senior Counsel appearing for the intervenor (developer), Ismail Yakub Payak, submitted that the intervenor seeks neither to support nor challenge the impugned order dated 23-3-2006 passed by the High Court against the appellants but the intention of the intervenor was only to protect his property CTS Nos. 205, 205/1-34, New Mill Road, Kurla (West) from the claims of the appellant Trust. It was further submitted that the intervenor has a direct interest in the matter as he would be affected by order of this Court.

48. Respondent 1 has also filed IA No. 5 of 2006 for permission to place additional documents on record such as the indenture or conveyance entered into and executed on 16-8-2002 between Benjamin Sebastian Fernandes, Thomas Maxim Fernandes and Sadhana Builders, etc.

49. We have given our anxious and careful consideration to the rival claims made by the respective counsel appearing for the parties.

50. Before proceeding further to consider the rival contentions, it is very useful and pertinent to reproduce the proceedings of the Executive Engineer (Building Proposal) Eastern Suburbs dated 16-9-2005 of Brihanmumbai Mahanagarpalika which reads thus:

"In connection with the above subject, it is noted that the Joint Commissioner, Municipal Corporation has via order dated 6-8-2004 ordered that while issuing occupation certificate regarding the building Saiba Palace, the arrangement for access road to Jain temple will be considered *in accordance with the final order of the Court*."

51. The above order was issued on 16-9-2005 whereas the first respondent filed the writ petition in October 2005 in the Bombay High Court. On 20-1-2006, Brihanmumbai Mahanagarpalika refused the proposal for regularisation of temple. Stop-work notice was issued on 8-6-2005. In the counter-affidavit filed by the Corporation in Writ Petition No. 2841 of 2005, the Corporation has stated that since the construction work was in progress at the site without permission from the Corporation Authorities, a stop-work

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notice under Section 354-A of the BMC Act dated 8-6-2005 was issued to the trustees of the temple and by the said notice the addressees were called upon to stop the erection of the building/execution of the said work in the construction of RCC columns on the rear side in the above address without permission from the authorities. According to the appellant the work commenced in the year 2001 whereas the writ petition was filed after 5 years.

52. When the special leave petition was heard on 4-7-2006, this Court issued notice limited to the question as to whether the provisions of Section 351 of the BMC Act where it has been left to the discretion of the Commissioner to demolish or not to demolish, the High Court could direct a mandamus for demolition. Respondent 1 filed a counter-affidavit dealing not only with the limited question but also to deal with various other matters which have no bearing on the said question. Respondent 1 in the counter-affidavit mentioned various disputed facts.

53. It is seen that no notice under the provisions of Section 351 has been issued by the Municipal Commissioner in this matter against the appellant. In the special leave petition, it is clearly mentioned by the appellant that the Corporation had issued a notice to stop the work under Section 354-A of the BMC Act. No reference is made to any notice under Section 351 of the Act. It is specifically mentioned that the affidavit which was filed on behalf of the Corporation had categorically stated that after the service of stop-work notice under Section 354-A no work was carried out. Respondent 1 is fully aware that the provisions of Section 354-A of the Act deals with stop-work notice whereas the provisions of Section 351 of the Act deals with show-cause notice for demolition of unauthorised structure. The grievance of the appellant herein has been that without issuing a notice under Section 351 of the Act and without giving an opportunity to the appellant of being heard the structure of the temple could not be ordered to be demolished by the High Court. The power under Section 351 of the Act, in our opinion, has to be exercised only by the Municipal Commissioner and it is left to the Municipal Commissioner under the provisions of Section 351(2) either to order or not to order the demolition of the alleged unauthorised temple. In fact, Respondent 1 by himself through his advocate's letter dated 16-4-2005 (annexed to his counter-affidavit) requested the municipal authorities to take action under Section 351 of the Act. At the time of admission of this special leave petition, the provision of Section 351 of the Act was pointed out by the learned Senior Counsel to show that the Municipal Commissioner had only been conferred the power under the said provisions to demolish or not to demolish unauthorised structure and, therefore, the High Court ought not to have issued a mandamus for demolition of the temple before any order was passed by the Commissioner on the question of demolition. The provisions of Section 354-A have nothing to do with the question of demolition. It is specifically averred and contended at the time of hearing that Respondent 1 is an agent set up by the developer who is developing the adjoining land and who is interested in dividing the right of way claimed by the appellant through the said adjoining plot bearing CTS No. 206.

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54. It is also denied that Plot No. 206 on which the temple is situated is a landlocked plot. Both the plots now bearing CTS No. 206 and the adjoining plot bearing CTS No. 205 developed by the builder (the intervenor) originally belonged to one A.H. Wadia. Before the said plot now bearing CTS No. 205 was leased out, the land now bearing CTS No. 206 was sold by A.H. Wadia to one Fernandes who had constructed thereon a number of structures including a bungalow as shown in the city survey plan relied upon by Respondent 1 in Annexure 'A' to his writ petition before the High Court. The said plan shows that the temple is now located at the same site where originally the bungalow of Fernandes family was constructed. The said bungalow had become old and hence it was renovated in such a manner so as to convert it into a temple.

55. Thus the Fernandes family had a right of way of necessity through the land now bearing CTS No. 205 adjoining the land bearing CTS No. 206 as shown on the said plan. The said access was 12' wide and consisted of land bearing CTS No. 212 and part of CTS No. 205. However, while developing the adjoining land bearing CTS No. 205, the developer forcibly reduced the said access by digging about 7' wide stretch of land earlier used for the said access and encroach upon the part of CTS No. 212 which belongs to the appellant. This right of way has been claimed by the appellants in the suit which they have filed in the Bombay City Civil Court at Mumbai being Suit No. 5755 of 2005 which is now pending before the City Civil Court. The said 12' wide access was the only access available to the said Fernandes family and the appellant Trust from the main road which is now named as A.H. Wadia Marg for approaching the property bearing CTS No. 206. The said position is clear from the plans bearing Annexures 'PP-1' and 'P-2' annexed to the special leave petition.

56. Though Respondent 1 claims that he has been residing in a room in the chawl located on the temple plot since his birth, he has not referred to the existence of the said bungalow on the temple plot owned by the Fernandes family in his writ petition filed before the High Court.

57. According to the appellants, the Municipal Commissioner and his subordinate officers have been made aware that the construction of the temple has not violated in any manner the FSI Rule. However, the proposal submitted for regularising the construction of the temple was not granted on account of the mandatory order issued by the High Court as also on the ground that 12 feet access is not available for the temple plot from A.H. Wadia Marg. It is also submitted that in the event of the appellant succeeding the suit filed before the Bombay City Civil Court, they would get the 12' wide access to the temple plot in which event it would not be impossible for the appellant to get their proposals approved. In our opinion, Section 351 obliges the Municipal Commissioner if the construction of any building or the execution of any work is commenced contrary to the provisions of the Act to give notice requiring the person doing the work to show cause why it should not be pulled down. The word used in this context is *shall*. If sufficient cause is not shown it is left to the Commissioner's discretion

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whether or not to demolish the unauthorised construction and, therefore, the High Court, in our opinion, cannot impede the exercise of that discretion by the issuance of a mandatory order. We, therefore, direct the Commissioner to decide the question as to whether he should pass an order for demolition or not.

58. This Court in *Corpn. of Calcutta* v. *Mulchand Agarwalla*[1] was considering an identical question under Section 363 of the Calcutta Municipal Act, 1923. This Court held that the word *may* in Section 363 of the Act does not mean *shall* and the Magistrate had under that section discretion whether he should pass an order for demolition or not. This Court held that the orders of the courts below were passed on mistakes and misdirections and, therefore, could not be supported. But this Court did not think that to be a fit case for an order for the demolition of the building in view of certain special circumstances, namely, though Section 363(2), which directs that no application for demolition shall be instituted after the lapse of 5 years from the date of the work, did not in terms apply as the proceedings had been started in time; it was nearly 5 years since the building had been completed and the interest of the public did not call for its demolition.

59. As pointed out by this Court in *Syed Muzaffar Ali* v. *Municipal Corpn. of Delhi*[4] that the mere departure from the authorised plan or putting up of a construction without sanction does not ipso facto and without more necessarily and inevitably justify demolition of the structure. There are cases and cases of such unauthorised construction and some are amenable to compounding and some may not be. According to learned counsel for the first respondent, the appellants have constructed the temple without obtaining any sanction whatsoever. There is serious breach of the licensing provisions or building regulations which may call for extreme step of demolition. In our view, these are matters for the Municipal Commissioner to consider at the appropriate time.

60. Taking into consideration all the relevant facts and circumstances and while deciding the matter, we make it clear that we are not expressing any opinion on merits of the rival claims. The authorities are entitled to examine and grant such relief as the appellants may be entitled to under the law. The respondent Commissioner is directed to decide the matter absolutely on merits after affording opportunity to the first respondent herein within 3 months from the date of this judgment. During this period, however, no demolition shall be made.

61. We also make it clear that the appellant shall not put up any further construction or alter the construction already made.

62. The civil appeal therefore stands allowed with the above direction. No costs.

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1 (1955) 2 SCR 995 : AIR 1956 SC 110 : 1956 Cri LJ 285
4 1995 Supp (4) SCC 426

(*viii*) to levy and collect such fees, for the execution of work referred to in clause;

(*vii*) and for provision of other services and amenities, as may be specified by the regulations;

(*ix*) to exercise such other powers an perform such other functions as are supplemental, incidental or consequential to any of the forgoing powers and functions or as may be directed by the State Government.

(*2*) The Area Development Authority shall be a Planning Authority for the area under its jurisdiction excluding the area under jurisdiction of a local authority under this Act which is permitted to execute the functions of a Planning Authority.

(*3*) On the constitution or, as the case may be, appointment of an Area Development Authority for any development area, the following consequences shall ensue, namely :—

(*i*) the authority or authorities functioning within the development area immediately before such constitution or appointment shall cease to exercise the powers and perform the functions and duties which the Area Development Authority is competent to exercise and perform under this Act;

(*ii*) the provisions of Chapter VI-A, VIII and IX alongwith the First and Second Schedule of this Act shall apply to the Area Development Authority, as if it was a New Town Development Authority;

(*iii*) the provisions of section 21 shall not apply to the Area Development Authority.

(*4*) The Area Development Authority, may, with the approval of the State Government, delegate any of its powers and functions to any authority or authorities functioning within its jurisdiction.

(*5*) The Area Development Authority, shall have its office at such place as the State Government may, by order, specify.

42G. Expenses of Area Development Authority.— (*1*) The State Government shall, by an order in writing determine the amount which an authority or authorities functioning in the Development area shall pay as contribution, either in one *lump sum* or in instalments as may be specified in the order, towards the expenses incurred by an Area Development Authority, in the discharge of its functions.

(*2*) The authority, in respect of whom the order under sub-section (*1*) has been issued by the State Government, shall not later than six months from the receipt of the order under sub-section (*1*), pay to the Area Development Authority, concerned, the amount of contribution specified in the order in the manner indicated therein and if such authority fails to so pay such amount, the State Government shall, on receipt of necessary intimation from the Area Development Authority, recover the same from such authority, in the manner as the State Government may decide and pay it to such Area Development Authority.]

CHAPTER IV

CONTROL OF DEVELOPMENT AND USE OF LAND INCLUDED IN DEVELOPMENT PLANS

43. Restrictions on development of land.— After the date on which the declaration of intention to prepare a Development plan for any area in published in the *Official Gazette* [1][or after the date on which a notification specifying any undeveloped area as a notified area, or any area designated as a site for a new town, is published in the *Official Gazette*], no person shall institute or change the use of any land or carry out any development of land without the permission in writing of the Planning Authority:

Provided that, no such permission shall be necessary—

(*i*) for carrying out works for the maintenance, improvement or other alteration of any building, being works which affect only the interior of the building or which do not materially affect the external appearance thereof [2][except in case of heritage building or heritage precinct;]

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1 These words were inserted by Mah. 30 of 1972, s. 6.

2 These words were added by Mah. 39 of 1994, s. 11.

(*ii*) the carrying out of works in compliance with any order or direction made by any authority under any law for the time being in force;

(*iii*) the carrying out of works by any authority in exercise of its powers under any law for the time being in force;

(*iv*) for the carrying out by the Central or the State Government or any local authority of any works—

(*a*) required for the maintenance or improvement of a highway, road or public street, being works carried out on land within the boundaries of such highway, road or public street;

(*b*) for the purpose of inspecting, repairing or renewing any drains, sewers, mains, pipes, cable, telephone or other apparatus including the breaking open of any street or other land for that purpose;

(*v*) for the excavation (including wells) made in the ordinary course of agricultural operation;

(*vi*) for the construction of a road intended to give access to land solely for agricultural purposes;

(*vii*) for normal use of land which has been used temporarily for other purposes;

(*viii*) in case of land, normally used for one purpose and occasionally used for any other purpose, for the use of land for that other purpose on occasions;

(*ix*) for use, for any purpose incidental to the use of a building for human habitation of any other building or land attached to such building.

44. Application for permission for development.— [1][(*1*)] Except as otherwise provided by rules made in this behalf, any person not being Central or State Government or local authority intending to carry out any development on any land shall make an application in writing to the Planning Authority for permission in such form and containing such particulars and accompanied by such documents, as may be prescribed:

[2][Provided that, save as otherwise provided in any law, or any rules, regulations or bye-laws made under any law for the time being in force, no such permission shall be necessary for demolition of an existing structure, erection or building or part thereof, in compliance of a statutory notice from a Planning Authority or a Housing and Area Development Board, the Bombay Repairs and Reconstruction Board or the Bombay Slum Improvement Board established under the Maharashtra Housing and Area Development Act, 1976 (Mah. XXXVIII of 1977).]

[3][(*2*) Without prejudice to the provisions of sub-section (*1*) or any other provisions of this Act, any person intending to execute [4][an Integrated Township Project] on any land, may make an application to the State Government, and on receipt of such application the State Government may, after making such inquiry as it may deem fit in that behalf, grant such permission and declare such project to be [5][an Integrated Township Project] by notification in the *Official Gazette* or, reject the application.]

45. Grant or refusal of permission.— (*1*) On receipt of an application under section 44 the Planning Authority may, subject to the provisions of this Act, by order in writing—

(*i*) grant the permission, unconditionally;

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1 Section 44 was re-numbered as sub-section (*1*) thereof and after sub-section (*1*) as so re-numbered, sub-section (*2*) was added by Mah. 22 of 2005, s. 4.

2 This provision was added by Mah. 10 of 1994, s. 5.

3 Section 44 was re-numbered as sub-section (*1*) thereof and after sub-section (*1*) as so re-numbered, sub-section (*2*) was added by Mah. 22 of 2005, s. 4.

4 These words were substituted for the words "a Special Township project" by Mah. 43 of 2014, s. 11, *w.e.f.* 22-4-2015.

5 These words were substituted for the words "a Special Township project" by Mah. 43 of 2014, s. 11, *w.e.f.* 22-4-2015.

3. Recreational Open Space of private layout which is reflected in DP as reservation of POS or existing POS shall remain as layout open space only and shall not be subjected to acquisition. Further in such cases area of existing Layout Recreational Open Space shall have to be maintained by the owner/Co Op Hsg. So/federation etc. as the case may be.

28. Substation

(A) Electrical Consumer Substation (CSS)/Distribution Substation (DSS):

In case of development/redevelopment of any land, building or premises, provision for electric sub-stations may be permitted as under

Table No.11.

Requirements of plot area for Consumer Substation (CSS).

Sr. No	Plot Area (Sq. m)	Maximum area of land for CSS/DSS in sq. m
1	Upto 1000	Nil
2	Above 1000 & up to 2000	40.00 (single Transformer of 8.0 X 5.0)
3	Above 2000& up to 4000	66.00 (single Transformer of 12.0 X 5.5)
4	Above 4000 & up to 20000	143.00 (Two nos of Transformers with each size 13.0 X 5.5)
5	Above 20000 & up to 40000	720

Note:

(a) If the CSS is forming a part of a building, it shall comply with all the safety precautions insisted upon by the concerned Electricity Distribution Company and the requirements of Chief Fire Officer.

(b) Such allotted public spaces shall be developed and maintained by the concerned Electricity Distribution Company at its own cost, as directed by the Commissioner.

(c) For installation of above, the height as required by the technical requirements of such installations and the ancillary installations necessary for effective functioning of the system shall be permitted without taking into

(g) ***Structures/uses permitted in LOS:***

(i) In a LOS exceeding 400 sq. m in area (in one piece), elevated/underground water reservoirs/tanks, electric sub-stations, pump houses, facility for treatment of wet waste in situ may be built and shall not utilize more than 10 per cent of the LOS in which they are located.

(ii) In a LOSof 1000 sq. m or more in area (in one piece and in one place), structures for pavilions, gymnasia, club houses, swimming pools and other structures for the purpose of sports and recreation activities may be permitted with BUA not exceeding 15 per cent of the total required LOS, . The area of the plinth of such a structure shall be restricted to 10 per cent of the area of the total required LOS in these regulations. The total height of any such structure, which may be Ground + one storey shall not exceed 8 m. The height may be increased to 13 m to accommodate badminton court/squash court. Where club house is proposed in LOS, then provision for gymnasium/fitness centre/yogalaya in club house shall be insisted upon. Structures for such sports and recreation activities shall conform to the following requirements: -

(a) The ownership of such structures and other appurtenant users shall vest, by provision in a deed of conveyance, in all the owners on account of whose cumulative holdings the LOS is required to be kept as LOS, in the layout or sub-division/amalgamation/plot of the land.

(b) The proposal for construction of such structure should come as a proposal from the owner/owners/society/societies or federation of societies shall be meant for the beneficial use of the owner/owners/members of such society/societies/federation of societies.

(c) Such structures shall not be used for any other purpose, except for recreational activities.

(d) The remaining area of the LOS shall be kept open to sky and accessible to all members as a place of recreation.

(e) The owner/owners/or society or societies or federation of the societies shall submit to the Commissioner a registered undertaking agreeing to the conditions in (a) to (d) above.

(f) LOS in a private layout shall be for the exclusive use of the residents of such private layout only and shall not be subjected to acquisition by MCGM/Appropriate Authority. Further in such cases area of existing Recreational Open Space shall have to be maintained by residents of such private layout.

(h) Structures/Uses permitted in recreational open spaces"Construction of Solid Waste Management System as per the National Building Code of India, Part 9 Plumbing Services, Section 1-Water Supply, Drainage & Sanitation (including Solid Waste Management) paragraph 6 /bio degradable waste treatment plant, in the layout LOS , having area 2000 Sq.mt. & above within 10% of the LOS area."

(2) LOS in industrial plots/layout of industrial plots in any industrial plot admeasuring 1000 sq. m or more in area, 15 per cent of the total area shall be provided as LOS subject to:

(i.) such LOS shall have proper means of access and shall be so located that it can be conveniently utilised by the persons working in the industry;

such LOS shall be kept permanently open to sky and accessible to all the owners and occupants and trees shall be grown therein at the rate of 5 trees for every 100 sq. m of the said open space or at the rate of 1 tree for every 100 sq. m in other cases. In between the trees planted along the boundary of plot, shrubs with grass shall be planted.

Note:

1. The area of LOS shall be calculated on the area excluding the areas under DP road/ setback/ reservations area to be handed over to appropriate authority

2.The minimum 60% of the required LOS shall be provided exclusively on the ground and at least 50% of this shall be provided on mother earth to facilitate the percolation of water and balance 40% of required LOS may be provided on podium area extending beyond the building line. The LOS on mother earth shall not be paved and all LOS shall be accessible to all the occupants of the plot/layout.

Rest of the compound pavement other than stated above shall be paved with perforated paving having adequate strength, in order to facilitate percolation of rain water into the ground.

The entire LOS may be provided on top most podium open to sky subject to condition that 1.5 m. unpaved distance shall be kept for planting of trees and thereafter marginal open space required as per Regulation 47(1) for the maneuvering of fire fighting engine (& other equipments) on site from where light & ventilation is derived shall be provided on two sides. The area of said 1.5 m. wide strip shall not be counted in required LOS. If LOS is proposed on podium, then no parking shall be allowed on the same and rain water harvesting shall also be provided on podium .

VAKALATNAMA

I am not the member of the Maharashtra Advocates' Welfare Fund. Hence the Stamp of Rs.2/- is not affixed herewith.

Advocate for the Respondent No. 27

BEFORE THE NATIONAL GREEN TRIBUNAL, WESTERN ZONE BENCH, PUNE

APPLICATION NO. 43 OF 2023

Sagar Kantilal Devre **... Applicant**

VERSUS

The State of Maharashtra & Others **... Respondents**

To
The Ld. Registrar,
National Green Tribunal,
Western Zone Bench, Pune

Sir / Madam,

I, Mahendra Vaity, the Executive President of Rajnigandha Foundation the Respondent No. 27 above named, do hereby appoint *Mr. Yogesh S. Samant*, Advocate, High Court, Bombay to act, appear and plead for me in the above matter.

IN WITNESS WHEREOF, I have hereunto set and subscribed my respective hands to this writing on this ___ day of June 2026.

ACCEPTED:

YOGESH S. SAMANT
Advocate, Bombay High Court
A/ 7, Palm Acres CHSL, M.P. Road,
Mulund (East), Mumbai – 400 081.
Email: - kalinayogesh@gmail.com
Mob No.: 8657464608
MAH/9850/2023

Mahendra Vaity

BEFORE THE NATIONAL GREEN TRIBUNAL, WESTERN ZONE BENCH, PUNE

APPLICATION NO. 43 OF 2023

Sagar Kantilal Devre

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VERSUS

The State of Maharashtra & Others

... Respondents

AFFIDAVIT-IN-REPLY ON BEHALF OF RESPONDENT NO. 27

Mumbai, Date: 06 June 2026

YOGESH S. SAMANT
Advocate, Bombay High Court
A/ 7, Palm Acres CHSL, M.P. Road,
Mulund (East), Mumbai – 400 081.
Email: - kalinayogesh@gmail.com
Mob No.: 8657464608
MAH/9850/2023