

**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL**  
**WESTERN ZONE BENCH, PUNE, AT PUNE**

**ORIGINAL APPLICATION NO. 66/2019**

Kumar City Residents  
 Co-operative Housing Society Ltd. ... **APPLICANT**

V/s

Kumar Urban Development Pvt. Ltd. and others ... **RESPONDENTS**

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**PUNE**

**DATE 15/10/2020**

  
**ADVOCATE FOR THE APPLICANT**

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**REPLY ON BEHALF OF**  
**RESPONDENT NO.1 AND 2**

**MAY IT PLEASE BE THE HON'BLE TRIBUNAL**

1. The Respondent No.1 states that, the Respondent No.1 has already filed an Interlocutory Application raising preliminary objections regarding limitation, maintainability, jurisdiction and the locus standi of the Applicant. The Respondent No.1 adopts, reiterates, and confirms the statements, averments, and contentions raised therein as part and parcel of the present reply to avoid further repetition.
2. This Respondent has perused the copy of the Application. This Respondent has not specifically traversed each and every paragraph of the Application. Any averment not specifically answered may therefore not be deemed to be admitted and nothing in this reply shall be deemed to be admitted by this Respondent unless specifically admitted. The Applicant herein is a habitual and

unless specifically admitted. The Applicant herein is a habitual and a vexatious litigant. The Applicant herein has filed cases before the Hon'ble Civil Court Being Civil Suit No.556 of 2019, Maharashtra Pollution Control Board vide letter dated 10<sup>th</sup> July 2019, Pune Municipal Corporation vide letter dated 10<sup>th</sup> July 2019 and 26<sup>th</sup> July 2019, Hon'ble Chief minister, Cooperative Court /Dy. Registrar Cooperative Societies, Consumer Court.

3. The Respondent No.1 submits that the Applicant has conveniently and mischievously mislead this Hon'ble Tribunal by not disclosing that there has been substantial development on the said claimed land admeasuring 163985 sq. mtrs. And projects such as Kumar Kruti, Kumar Soplonia, and Cerebrum IT Park are already constructed and separate societies are formed and in case of Sophronia, Cerebrum B-3, Kumar Kruti, deemed conveyance Orders have been passed. Deemed Conveyance Orders have also been passed in case of Kumar city Residents Cooperative Housing Society. Even otherwise, the Applicant cannot claim any relief as against these Respondents by making certain averments in respect of the club house and carrying out construction on the suit plot. It is submitted, in fact as per the Agreement entered into by the members of the Applicant as purchasers and the Respondents there are no amenities promised by the Respondents to the members of the Applicant Society. The said Agreements do not mention of any amenity including a club house, now being claimed including the club building, the facilities and amenities, are shown to be private properties the facilities regarding which are only available to the

members of club on payment of maintenance fee or annual subscription and not to all members of the Applicant Society at large. There are external members also using facility and only some members of the Applicant society are members of the club also that the club is run and maintained by an independent entity right from beginning. The Respondents submit that the sanctioned layout and building plans sanctioned by PMC vide revised Commencement Certificate dated 14.05.2010 are disclosed to the Applicant. It was further disclosed to the Applicant that, the said plans shall be subject to revision from time to time which was to facilitate further construction and sale of premises comprised in Building/s to be built on plot B, the same of which is also mentioned in the letter, dated 23.07.2018, which is filed by the Applicant society and which was addressed by the Applicant to the Respondent. It is submitted there is no material change in the sanctioned plan, dated 14.06.2010 and 08.01.2018 and/or dated 23/12/2019. The Applicant have conveniently and mischievously avoided to mention that the brochure they are referring to has clearly mentioned commercial building in the said amenity plot and the current amenity building consisting of permissible shopping under bye laws are at the same location as shown in the brochures referred and annexed by the Applicant. The revision in the plans were sanctioned in due process of Law.

4. It is submitted the residential project by name Kumar City is developed upon a portion of the project land. It is submitted, that the Developer, allotted various plots, row houses, bungalow to

different purchasers under the provisions of MOFA and the Society of various plots, row houses, bungalow allottees in the Project "Kumar City" by the name Kumar City Residents Cooperative Housing Society Limited is formed and registered as Tenant Co-partnership Cooperative Housing Society Limited. However, it is not true and correct that, at the time of purchasing plot / Bungalow/ Row houses, the Respondent No.1 had requested and or demanded the purchasers to pay the club membership fee. It is denied that, while agreeing to sell the plot / row houses / Bungalows to the respective purchasers the Respondent No.1 as it was then had represented to the purchasers that, the Kumar City Project would be a grand project and will provide cosy cluster of exclusive bungalows as alleged. this further denied that, at the time of selling the plots / row houses / Bungalows, the Respondent No.1 had disclosed the layout and brochure and thereby represented that, the same were going to provide excellent amenities / facilities like exclusive club house consisting of swimming pool, health club, party lawns, amphitheatres, badminton court, tennis court, huge club house, jogging track, library etc. to the unit / plot purchasers. It is further vehemently denied that, all the members of the Applicant had paid the club membership fee as requested by the Respondent No.1. In fact, many members of the Applicant Society did not become members of the club. Further even outside persons who were not members of the Society were given membership of the club.

5. The Applicant has conveniently and mischievously avoided to mention that the brochure they are referring to has clearly mentioned commercial building in the said amenity plot and the current building consisting of permissible shopping under bye laws are at the same location as shown in the brochure referred by Applicants. The Respondent states that the Applicant did not have and does not have any right title and interest in the suit plot and the construction thereon. It is submitted that it is not even within the boundaries of society. It is submitted that the Applicant has not right title and interest in the suit plot and there is no prohibition to raise construction by the Respondents who has right to complete the construction. Applicant has no locus to seek any clarification with respect to the property which is not within the purview of the Applicant. This is the sole intention of filing the present Original Application.
6. The contents of the original application are not admitted by the Respondent No.1 except so far as they are expressly stated herein. With respect to para no.1, the Respondent does not wish to offer any response and hence the same are not admitted by the Respondent. With reference to para no.2, it is submitted that, the Applicant society is registered in the year 2006 and that they are in existence since 2006 and thus they are well aware about the present situation at the said plot.
7. With respect to para no.3 the date of development is imperative at this juncture. The Respondent No.1 states, that, the Applicant was

well aware about the development plan and thus the contents therein are false and denied by the present Respondent.

8. With respect to para no.4 and 5, the Respondent No.1 submits that, the Respondent No.1 has already filed a Civil Suit before the Hon'ble Civil Judge, Senior Division, Pune and has obtained an order of restraining the Respondents from going ahead with the construction. Thus, the Applicant is agitating same cause before different forums and thus this present application is not maintainable.
  
9. With respect to para no.6, the Respondent No.1 submits that, the Respondent No.1 has already obtained the permission for constructing the multi-storeyed mall and amenity plot. It is worthwhile to mention herein that, the said permission has not been challenged by the Applicant till date and without challenging that permission under the provisions of Maharashtra Regional and Town Planning Act, 1966, the Applicant does not have any locus to file the present application before this Hon'ble Tribunal. Be that as it may, the Hon'ble Tribunal will thus not have any jurisdiction to hear the case on any act which is not part of Schedule I of the National Green Tribunal Act, 2010.
  
10. The Respondent No.1 submits that, the commencement certificate No.2614/2017 has also not been challenged by the Applicant and as stated earlier is also the same subject matter of the Civil Suit which is filed before the Hon'ble Civil Court and thus this Hon'ble Tribunal will not be the appropriate forum to agitate the cause as raised by the Applicant in the said para.

11. With respect to para no. 7 it is submitted that, the Act mentioned therein i.e. Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975 is not part of the Schedule I of the National Green Tribunal Act, 2010. It is thus submitted that, an enactment which is not part of the Schedule I of the National Green Tribunal Act, 2010, this Hon'ble Tribunal will not have any jurisdiction to decide or adjudicate on the subject which is not part and parcel of the said enactments. Thus, the Applicant cannot enlarge the scope of the original application by averting to provisions which are not part of the enactments mentioned in the Schedule of the National Green Tribunal Act, 2010. Without prejudice it is denied that any trees are cut. Panchanama was done without any representative of the Owner Kumar City Cooperative Housing Society Limited or that of SHUBH Developers. At further outset it is submitted by the Respondent that the Respondent has filed an Appeal bearing No. 92414 of 2020 against the Order below Ex. 5 in Civil Suit No. 556/2019 . In the Said Appeal the Applicant has filed an Affidavit stating interalia –

“I say that construction of alleged multistoried shopping commercial mall” on the Suit Plot which is the “Amenity cum Club House Space” did not begin in 2018 ---“.

The Respondent submits that in its present Application before the Hon'ble Forum , the same Applicant in Para \_7\_-has alleged , in its words-

*“However, in Order of Develop the Multi storied Commercial Building on the Amenity Plot, the Respondent No. 1 to 3 have allegedly cut down many trees standing and growing in the*

*Amenity Plot. Even construction activity is being taken up by the Respondent Nos. 1 to 3 and space for it is being created by unauthorisedly cutting large number of trees. That in the month of April 2019, the Respondent Nos. 1 to 3 have felled large number of trees from the Amenity Plot and the said illegal act is still going on.”*

Copy of the said Affidavit as filed before the Hon’ble High Court is annexed hereto and marked as ANNEXURE – A-1.

12. With respect to para no. 9, it is submitted that, the Respondent Pune Municipal Corporation i.e. Respondent no. 4 has already filed a Criminal Complaint against the Respondent no.1 to 3 for the tree cutting purpose. Hence, the Applicant cannot agitate the same cause again before this Hon’ble Tribunal. The law will take its due course and the Respondent no. 1 to 3 will deal with the said allegations before the appropriate court in accordance to the provisions of Law. Be that as it may, the Respondent Nos. 1, 2 and 3 cannot be tried for the same offence twice before two different forums and it amounts to double jeopardy and against the doctrine/principle enshrined in the Constitution of India.
  
13. With respect to para No.10, the Respondent No.1 states that, the Respondent No.1 has already received a permission from the Respondent No.3 and thus the statement which has been made by the Applicant is totally incorrect and denied by the Respondent No.1. The Applicant has not challenged the said permission before any appropriate authority and thus that the present application will not be maintainable.

14. With respect to para nos. 11 and 12, the Applicant themselves state that, they came to know about the building permission in the year 2012 and thus it is amply clear that the present application is thus barred by Law of Limitation and is not maintainable before this Hon'ble Tribunal. The Respondent No.1 states that the Respondent No.4 i.e. the Pune Municipal Corporation had sanctioned the layout of the Respondent No.1 vide CC 4523/2006 dated 28/03/2007 and CC/481/2015 dated 18/05/2015. It is further submitted that a Civil Suit bearing Special Civil Suit No.1813 of 2008 has been filed by Kumar Housing Corporation Limited against the Municipal Corporation for City of Pune and Others in the Court of Civil Judge, Senior Division, Pune being a suit for declaration and permanent injunction. A notice dated 07-03-2008 was received by the Respondent No.1 which purported to be a notice U/S 260 (2) under the provisions of BMC Act, 1949 for alleged violation of the provisions of Section 254 read with Rule 6 of the said Act. The Respondent No.4 has alleged that the Respondent No.1 carried out the construction of the slab over a portion of the Nala passing through the suit property from North to South, without obtaining prior permission of PMC and therefore the same is illegal. The Respondent No.1's stand is that the slab is constructed on the said Nala has been reflected in all the sanctioned plans since the year 2000 and same is completely legal and necessary permission of Collector and PMC has already been obtained for the work of channelization of Nala. The said slab is

absolutely necessary for the occupiers to commute from one building to another building. The Hon'ble Civil Court was pleased to reject the Application for interim relief of the Respondent No.1. The Respondent No.1 thereafter approached the Hon'ble District Court. The Hon'ble District Court passed the interim status quo order on 12-08-2010 which was extended from time to time and on 24-02-2011 the Hon'ble District was pleased to pass the following Order –

*“[i]The appeal is allowed.  
 [ii] The order below Exhibit 5 passed by the learned 6th Jt. Civil Judge, S. D, Pune, in Special Civil Suit No. 1813 of 2008, on 4/08/2010, is hereby set aside.  
 [iii] The application for temporary injunction under Order XXXIX Rule (1) and (2) of C. P. C. at Exhibit 5 filed by the plaintiff in Special Civil Suit No. 1813 of 2008, is allowed.  
 [iv] The defendants are restrained from acting on the impugned notice dated 3/07/2008 issued to the plaintiff and they are further restrained from demolishing the suit slab put over the Nala, till disposal of the suit.  
 [v] In the circumstances of the case, no orders as to costs.”*

Copies of the sanctioned layouts, plans and the order of the Hon'ble District Court are annexed hereto and marked as **ANNEXURE – A-2, A-3 and A-4** respectively.

15. With respect to para no.13, the Respondent No.1 states that, the Respondent Nos.1 to 3 have already paid the fine as part of the violation which is reflected in Joint Committee Report filed before the Hon'ble Tribunal and therefore, the statement is no more applicable to the Respondent Nos.1 to 3 and this appropriate proof is submitted before this Hon'ble Tribunal. SEIAA meeting for

grant of Environmental Clearance was held on 17/07/2019 and the same is reflected in the communication dt. 13/12/2019 itself. It is pertinent to note that the present matter was filed on 17/08/2019, Objections were removed on 22/08/2019, the Respondent suo motu appeared on 16<sup>th</sup> June 2020 i.e. SEIAA Meeting was held earlier to filing of the present matter by the Applicant. The Respondent No.1 has already obtained the environmental clearance and there is no separate proceeding filed by the Applicant challenging the said environmental clearance and thus the Applicant cannot agitate or challenge the environmental clearance in this original application before this Hon'ble Tribunal. It is a trite law, that what a party cannot do directly it cannot do it indirectly. Infact, the MPCB, has subsequently granted the Consent to Establish to the Respondent No.1 herein. The Applicants have also not challenged the same. The Applicant herein has not challenged any of the permissions and is seeking a relief which is beyond the scope of the provisions of the NGT Act, 2010.

16. With respect to para No.14 and 15, the statements therein are denied and not admitted by the Respondent No.1 and thus the Respondent No.1 denies the statements.
17. The Applicant has also invoked the provisions of the certain statutes which are not a part of the Schedule I of the NGT Act and hence this Hon'ble Tribunal will not have the jurisdiction to try the present Original Application viz Maharashtra Municipal Corporation Act 1949 and Maharashtra Regional Town Planning Act 1966.

18. The Applicant herein has filed an Application seeking amendment to the Original Application. With response to para 13-A of the proposed Amendment, the Respondent No.1 submits that the Project Kairos and Fun n fair were in existence since long ago as is discernible from various sanctioned plans of PMC from time to time. In 2009 Plan , Kumar Kruti Phase II Tower 1, 2 and 3 , Later on named as Kairos. The Project Fun n Fair i.e. Amenity Building

- (a) Revised Building Plan sanctioned by PMC vide Commencement Certificate bearing No. CC/000904 dated 22/03/2000 (for Gymnasium/cafe, Badminton Hall Building)
- (b) Revised Building Plan sanctioned by PMC vide Commencement Certificate bearing No. CC/4084 dated 22/03/2002 (for Gymnasium/cafe, Badminton Hall Building)
- (c) Occupancy Certificate of Building on Amenity Plot – BCC/1413/633 dated 03/02/2003. As per Order dated 27/09/2017 in the Appeal before UD Minister under Section 47 of MRTP Act, DC rules for newly merged villages in Pune Municipal Corporation sanctioned on 6/12/2007 was not applicable to “Committed Development “prior to sanction of Development Control Rules for extended limits and hence Applicants are not bound to surrender Amenity Plot. Hence PMC shall sanction the Building Plan as per Rules. Copy of the said order is annexed hereto and marked

as ANNEXURE – A-5.

19. With respect to proposed Amendment para 16 L of the Application. The Projects have been mentioned properly in Application for Environmental Clearance. Validity of Environment Clearance: The Environmental Clearance accorded shall be valid as per EIA Notification, 2006, and amendments by MoEF&CC Notification dated 29th April, 2015. An Application was filed on 19/11/2019 for Consent to Establish/Operate/Renewal of consent under section 25 and 26 of the Water (Prevention & Control of Pollution) Act, 1974 as amended. Consent to Establish/Operate/Renewal of consent under Section 21 of the Air (Prevention and Control of Pollution) Act, 1981, as amended. Authorization/renewal of authorization under Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016 in connection with existing/proposed altered/additional manufacturing/processing activity from the premises as per the details given therein in respect of the Projects Kumar Kruti, Sophronia, Kairos & Fun N Fair (Shubh Global Street). Maharashtra Pollution Control Board vide Letter dated 1/07/2020 has granted consent to establish under Section 25 of the Water (Prevention and control of the Pollution) Act 1974 and under Section 21 of the Air (Prevention and control of the Pollution) Act 1981 and Authorization / Renewal of Authorization under Rule 6 of the Hazardous and other wastes (Management and transboundary movement) Rules 2016. The Applicant has chosen

not to challenge any of the aforesaid permissions. As per Report dated 22/01/2020 of the Joint Committee submitted to NGT –

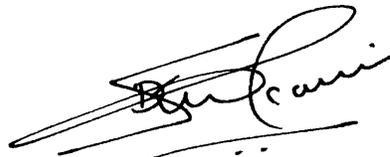
*“As a violation case EC is issued with a condition that PP submit a Bank Guarantee of Rs. 5.58 Crores to MPCB towards effective implementation of the remedial plan and natural and community resource plan. Accordingly, PP has submitted the Bank Guarantee of the stipulated amount to MPCB. Recently PP has submitted Application for consent to establish to MPCB”*

Hence, the Respondent No.1 has already been penalised by the Authorities. Infact, the Respondent No.4 has already filed a criminal case against the Respondent No.1 in respect of the Tree felling and the same is subjudice.

20. The present application is nothing but a proceeding just to threaten the Respondent no's. 1,2 and 3 from going ahead with the constructions which the Respondents have received approved permissions. The Applicant are trying to create obstacles which are no more valid in the eyes of Law. It is thus submitted that the present application may kindly be dismissed with costs.

PUNE

DATE 15/10/2020



**ADVOCATE FOR THE RESPONDENT No.1**



**BEFORE THE NATIONAL GREEN TRIBUNAL,  
WESTERN ZONE BENCH, PUNE, AT PUNE**

**ORIGINAL APPLICATION NO.66 OF 2019 (WZ)**

**KUMAR CITY RESIDENTS CO-OPERATIVE  
HOUSING SOCIETY LTD.**

**-- APPLICANT**

**V/S**

**KUMAR URBAN DEVELOPMENT PVT, LTD.  
AND OTHERS  
RESPONDENTS**

**--**

**AFFIDAVIT IN SUPPORT OF THE REPLY**

I, Mr. Lalitkumar Kesarimal Jain, Age: 56 years, Occu.: Business,, having address at Kumar Business Centre, 10th Floor, CTS No. 29, Bund Garden Road, Pune - 411001, the Authorised Signatory of the Respondent No.1 in the Original Application No.66 of 2019 hereinabove, do hereby state on the solemn affirmation that: -

I say that I am working as Director with the Respondent No.1 Company. I am duly authorised to file the present Affidavit. I am aware of the facts and circumstances of the present case and hence I am able to depose the same on oath.

That the Respondent No.1 is filing the Reply. The facts and circumstances are well set out in the main body of the Reply. The Respondent No.1 adopts, confirms, maintains, repeats and reiterates whatever has been stated in the main

body of the Reply and for the sake of brevity, convenience, and in order to avoid repetition, craves leave of this Hon'ble Tribunal to treat the statements, averments and submissions in the main body of the Reply as part and parcel of this Affidavit as if the same are reproduced herein ad-seriatim, with a view to avoid repetition and for the sake of brevity.

I say that whatever stated in the Reply and the present Affidavit is true and correct to the best of my knowledge, information and belief and the legal advice, which I believe to be true.

Solemnly Affirmed at Pune, on this 14<sup>th</sup> day of October, 2020.



*[Handwritten Signature]*  
X Affiant

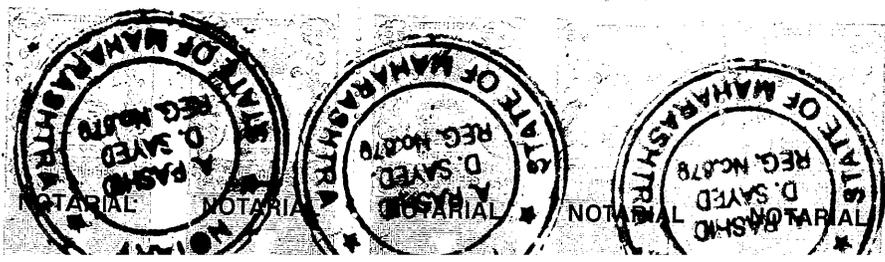


**BEFORE ME**  
*[Handwritten Signature]*  
A. RASHID D. SAYED  
NOTARY, STATE OF MAHARASHTRA  
PUNE.

15 OCT 2020

11.5. OCT 2020

**Noted & Registered**  
At. Sr. No. B12544/2020



IN THE HIGH COURT OF JUDICATURE OF BOMBAY,  
APPELLATE SIDE,  
AT BOMBAY

APPEAL FROM ORDER (ST) NO. 92414 OF 2020

Kumar Builders  
Through its Proprietor  
Shri. Laltikumar Kesarimal Jain and others

APPELLANTS

VERSUS

Kumar City Residents Co-operative  
Housing Society Ltd.  
and others

RESPONDENTS

AND

APPEAL FROM ORDER (ST) NO. 92454 OF 2020

FROM DISTRICT : PUNE

M/s. Shubh Capital

APPELLANT

VERSUS

Kumar City Residents Co-operative  
Housing Society Ltd.  
and others

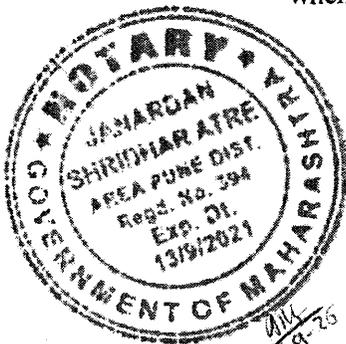
RESPONDENTS

AFFIDAVIT  
ON BEHALF OF REPENDENT

I, **MR. DIVENDER KUMAR DHAMIJA**, Age : 63 years, Occ :  
Business, being the Chairman and authorized representative of **KUMAR  
CITY RESIDENTS CO-OPERATIVE HOUSING SOCIETY LTD.**,  
having registered office at : S. No. 13 (1+2+3), (Part) + 14 (Part),  
Kalyani Nagar, Vadgaon Sheri, Pune 411014, do hereby state and  
declare on solemn affirmation as under :-

I say that I am filing this short Affidavit to answer to the following three  
questions. I reserve my right to file further detailed Affidavit as and  
when necessary.

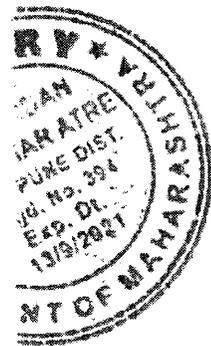
- i. *Did the construction start in 2018 and that we were aware of  
it & did not stop it?*
- ii. *Do we have any claim/right on the property?*
- iii. *Once conveyance has been taken, the consent decree has been  
acted upon & then how can it be called a fraud ?*



*[Handwritten signature]*

I

1. I say that the construction of the alleged 'Multi storey Commercial Shopping Mall' on the 'Suit Plot' which is the 'Amenity cum Club House space' did not begin in 2018 as is being falsely stated & claimed.
2. I say that society came to know that a Multi storey commercial shopping mall construction has been approved (and not started even as yet) in its 'Amenity cum Club House space' only through RTI in August, 2018 (copy enclosed to this Affidavit and marked as **EXHIBIT A**) when all of a sudden the Club house was shut down effective 01/07/2018, Club memberships were terminated, and when a bill-board appeared on the Suit Plot. This is a matter of record in the Civil Suit. The Exhibit A also consists of correspondence held with the Kumar Builder, Sanctioning Authority and RTI Application.
3. I say that what exists on the 'Suit Plot' even at present is a Badminton Hall, Swimming pool, Tennis court, Health Club, Amphitheater being part of the 'Club House & Recreational facilities infrastructure'. I say that the main 'Club House Building' on the 'Suit Plot' which was unilaterally demolished in the year 2006-7 leading to the filing of the earlier Civil Suit (RCS NO. 1262/2007) (copy of the Plaint is enclosed to this Affidavit and marked as **EXHIBIT B**) which led to the Consent Decree dated 18/07/2011 (copy of Consent Decree is enclosed as **EXHIBIT C**) is yet to be re-built on the 'Suit Plot'. I say that it is a matter of record in the Civil Suit.
4. I say that existing on the 'Suit Plot' are various Utilities connected with the Society like its drinking water receipt/storage, sewage system, water well etc. I say that a storm water / drainage Nala also flows through the 'Suit Plot' which has been diverted & boxed in RCC construction apparently without any permission to generate built up space.
5. I say that on the Suit Plot, along with its Eastern boundary wall, an 18m wide cement concrete access road has been made replacing the jogging track of the Club and its lawns/plantation. PMC has been



*[Handwritten signature]*

informed that it is temporary.

6. I say that there is no new construction yet at the Suit Plot as per building layout / plans sanctioned on dt. 08/01/2018 & 23/12/2019. The copies of said allegedly sanctioned Plans are enclosed to this Affidavit and marked as **EXHIBIT D** and **EXHIBIT E** on which the Hon. Civil Court has granted temporary injunction as per its order dated 10/08/2020.
7. I say that no construction could have been undertaken on the 'Suit Plot' as there was no '**Environmental Clearance**' available for the proposed project till 13/12/2019. SEIAA issued EC only on 13/12/2019. Copy enclosed to this Affidavit and marked as **EXHIBIT F**.
8. I say that PMC while issuing commencement certificate Ref: CC/2231/2019 dated 23/12/2019 with sanctioned layout dated 23/12/2019 had put a note that the approval is for seeking fresh environmental clearance which becomes necessary if the plan changes.
9. I say that No construction as per building layout drawing of 23/12/2019 in any case could have been undertaken on the 'Suit Plot' as **Pune Municipal Corporation has stayed the construction activity the Suit Plot vide its Letter dated 09/01/2020.** Copy of this letter is being put up for reference as **EXHIBIT G**.
10. I say that another Letter dated 09/01/2020 (copy enclosed as **EXHIBIT H**) of PMC addressed to MPCB is on record stating that during a joint site visit (Suit Plot) on 03/01/2020 (Report of Joint Committee dt. 23/01/2020 filed with Hon'ble NGT (WZ) Pune is enclosed as **EXHIBIT I**), it has been found that 'No construction activity has been started on the Amenity Plot' except as stated above and there appears to be no building construction.
11. I say that in a **Joint Report dated 23/01/2020 submitted by an EXPERT COMMITTEE to Honourable NGT** who is looking into the matter of Environmental & Ecological destruction by this



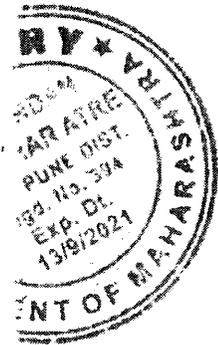
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*[Handwritten signature]*

huge commercial shopping mall project sanctioned under layout of 23/12/2019, it has been noted that a) No construction activity was observed except a 100 sq m of site office which appears to be a temporary structure. I say that a large number of trees were however cut illegally for which a criminal case is already filed by PMC against the Appellant. Air & water Act violations were noticed and a show cause notice served. The report further states that PMC has restrained the PP temporarily from carrying out work on the Amenity Space Plot i.e. Suit Plot on the grounds that Nalla has been shifted from its original position and covered with RCC structure.

12. I say that what has been done at the Suit Plot is illegally cutting of large number of full grown up trees for which a criminal case has been filed by PMC, illegally digging up the entire plot area for foundation purpose using heavy earth moving equipment without having EC in hand, Illegally diverting the Nala & Boxing it in RCC construction. I say that in this process the sewage & storm water drainage system of the Society has been badly damaged & made non functional creating water logging & serious health hazard in the area for hundreds of residents. Email sent by Respondent to the Honourable Chief Secretary Govt. Of Maharashtra is being put up for reference as **EXHIBIT J**. So also, the Ministry of Environment, Forest and Climate Change, Gov. Of India has already took cognize of Illegal Construction, Environmental & Ecological destruction and directed the Mah. Pollution Control Board to take necessary action in the cause. (The Copy of Letter dt. 29.07.2020 addressed by the Ministry of Environment, Forest and Climate Change, Gov. Of India to Mah. Pollution Control Board is enclosed as **EXHIBIT K**)

13. I say that during pendency of Suit the KUMAR URBAN DEVELOPMENT PVT. LTD. and KUMAR CITY CO. OP. HSG. SOCIETY LTD. have executed a DEVELOPMENT AGREEMENT in favor of M/S. SHUBH CAPITAL on dt. 04.07.2019, copy of which is enclosed to this Affidavit and marked as **EXHIBIT L**. The M/S. SHUBH CAPITAL was having full idea about the pending



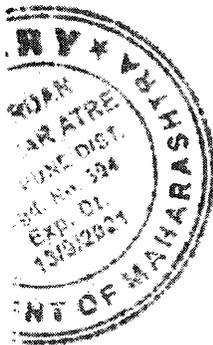
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P) mention 1,63,938 sq. meters. I say that as per MOFA, right of buyers/occupiers of KUMAR CITY project exists thus on the Suit Plot.

17. I say that in 2002-03, a full scale Club House and its infrastructure existed on the Suit Plot with jogging track all around the periphery, green lawns, and a huge Club House building in the middle before it was dismantled unilaterally in 2006-07 leading to the consent decree finally.

18. I say that Para No. 3 of the Consent Terms provides detailed List of Works to be completed by the Developer and it's timeline. That as per Clause No. iv (Appearing at Page No. 15 of Consent Decree) the Kumar Builders & Others had assured to construct/ develop new Club house with Banquet Room, gardens within two years from the date of executing Consent Terms. It is pertinent to note that till date the Kumar Builders & Others have not constructed and not even commenced the construction of any Banquet Room and/or Garden.



19. I say that the Clause No. (e) of Para No. 3 of the Consent Terms provides the provision for PMC approved Pump Room and it's Plan was also Annexed as Annexure - IV (copy enclosed as **EXHIBIT Q**) to the Consent Terms. The comparison of said Pump Room Plan with the allegedly sanctioned Layout Plans filed at Exhibit - D & E clearly shows that the Pump Room of the Respondent Society is situated within the Suit Land.

20. I say that the Clause No. (f) of Para No. 3 of the Consent Terms clearly states that area/portion between Water Tank and Amphitheatre can be used as a common area by the members of the Respondent Society. I say that the Layout Plans filed at Exhibit - D & E clearly shows that the Amphitheatre and Water Tank are also situated within the Suit Land only. I say that therefore, it is not at all open for the Appellant to allege that the Respondent Society and/or it's members are not at all concerned with the Suit Land and they have no locus to Object the proposed development of the Suit Land.

## III

21. I say that the consent decree stated that the conveyance of 51,967.85 sq m shall be passed on to the Society within 90 days of signing the consent decree. It was not done. For 3 years matter was dilly-dallied for one reason or the other.
22. I say that ultimately, frustrated by the situation, the Respondent Society was compelled to approach Govt. authorities for getting deemed conveyance based on the 'draft conveyance deed' which were part of the consent decree. They were considered to be truthfully framed.
23. After lot of hard work, and in-spite of opposing the matter by the appellant, Deemed Conveyance Order dt. 11.06.2015 came finally in 2015, and this could be got registered only in 2018. Copy of which is enclosed to this Affidavit and collectively marked as **EXHIBIT R.**
24. I say that the Developer had executed separate Unit Purchase Agreements in favor of Members of Plaintiff Society. All the said Agreements are governed by the provisions Maharashtra Ownership of Flats Act, 1963 (MOFA) and therefore as per the Section 10 and 11 of the said Act, the Appellant / Developer was/is bound to execute and register Conveyance Deed in favor of the Respondent Society.
25. In other words, it is the independent Statutory Right of members of Respondent Society to have a Conveyance Deed from the Appellant / Developer as promised. As such the Appellant / Developer cannot contend that as the Respondent Society has got executed and registered the Deemed Conveyance, the Respondent has acted upon the Consent Terms.
26. I say that the Principle of Estoppel has no application in the given circumstances.
27. I say that it is abundantly clear from above that conveyance was

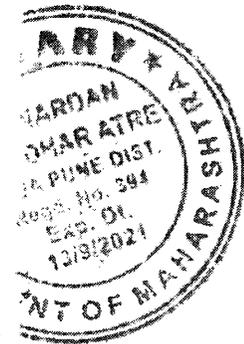


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*[Handwritten signature]*

never given in 90 days as was agreed in the consent decree. What the Society managed to get ultimately after years of hard labor, time & money was 'Deemed Conveyance' taking Govt. support.

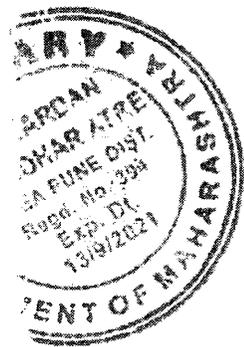
28. I say that It is also abundantly clear from above that there was no intention to give conveyance as the application of the respondent for Deemed Conveyance was opposed in front of the Govt. authorities. It is also a matter of record that, the Appellant had opposed the Deemed Conveyance proposal by filing detail Reply dt. 30.09.2014. Copy of Reply dt. 30.09.2014 is enclosed to this Affidavit and marked as EXHIBIT S.
29. I say that the layout drawing & architects certificate provided by the appellant at the time of signing the consent terms, and which were made part of the consent terms/decree, had a large land portion cut out and shown as reserved in the drawing. This had no legal sanctity as it was not as per the sanctioned layout as got revealed subsequently.
30. I say that it came to be known subsequently that Kumar City Club Ltd which was brought in through the consent decree for managing the Club house is in fact a sister company of the appellant, only which in collusion with appellant closed down the Club, terminated the memberships and thus facilitated the appellant to go for a different development — that is of a shopping mall complex.
31. I say that It came to be known subsequently that Kumar City Co.Op. Hsg. Society Ltd. . ltd is a society promoted by appellant, with the help of family members/business associates/employees and a large portion of the Project Land was transferred to this fake Society by passing the genuine buyers/occupiers of the Kumar City project inter-alia the members of the respondent society. I say that this was in complete breach of the MOFA. As the Kumar Builders and others are using the alleged Society i.e. Kumar City Co.Op. Hsg. Society Ltd. for their alleged commercial benefits, the Respondent Society has already filed Application U/s. 21A of the Mah. Co.Op. Societies Act, 1960 for de-registration of the said alleged Society i.e. Kumar



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City Co.Op. Hsg. Society Ltd. The said De-registration matter is currently before the Hon. Div. Joint Registrar, Co.op. Department, Maharashtra. Copy of De-registration Application is enclosed to this Affidavit and marked as EXHIBIT T.

- 32. I say that all above issues are part of the Civil Suit itself.
- 33. I say that as far as Shubh Capital is concerned, they have no locus in the matter except that on 04/07/2019 they entered into a Development Agreement with the Appellant and decided to jointly develop a multi-storey commercial shopping mall on Land adm. 16,682.04 sq m out of the Suit Plot.
- 34. I say that this area stands barricaded now (covering water well which feeds water to society for serving gardens/plantation and access to it stands blocked as is to the rest of the utilities existing in the area of Suit Plot) with a proper site office for selling the proposed construction (The recent Photos attached as EXHIBIT U). Tin sheds have been erected to store material. Trees have been cut illegally, and barricaded portion has been dug up using heavy earth moving equipment for building foundations without having EC in hand. Undertaking such work without EC is illegal.
- 35. I say that before entering into JV Agreement in July, 2019, various Letters dt. 27/03/2019, 10/05/2019 and 25/07/2019 written by Respondent to the Appellant remained un-replied. Copies Letters are enclosed and collectively marked as EXHIBIT V.
- 36. I say that the JV agreement captures the fact related to Suit 556/2019 pending before the Hon. Civil Court. Hence, M/s. Shubh Capital was thus aware what they were doing and therefore they can not agitate the issue of alleged Irreparable Loss.
- 37. I say that they were made party to the Suit during its pendency of the Civil Suit, once it became known that they are carrying out work on the Suit Plot knowing fully well that the matter is already before the Hon Civil Court.



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38. I say that before the Hon. High Court, they are now falsely projecting that their JV plot is different from Club house plot, and is not part of the Suit Plot, in fact all this is Suit Plot only measuring 23,096 sq meters of which the JV portion of 16,682.04 sq m is a part only.

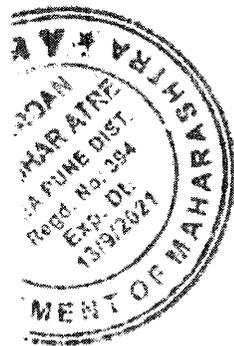
39. I say that investments done & the theory of loss etc has nothing to do with the merits & facts of the Civil Suit and has been a calculated business decision on the part of Shubh Capital.

40. I say that somehow they have managed to get this project registered on MahaRERA portal and are taking bookings for the proposed construction. Unsuspecting buyers are being roped in and this is a serious matter of public concern. In the Declaration filed with MahaRERA, Shubh Capital has provided false and misleading information and the same can be verified from the copy of the Declaration enclosed and collectively marked as **EXHIBIT W**

41. I say that MahaRERA has been informed in this regard and Letter dt. 14/08/2020 addressed by Respondent Society is being put up for reference as **EXHIBIT X**. Honourable Civil Court has been right thus in putting an injunction on creating third party interests.

42. I say that recently, they & their associates have again disturbed & damaged the sewage & water drainage system of the Society and as a result hundreds of residents have been exposed to health & safety risks. The matter is resting with the Honourable Chairman MPCB. Copies of Letter dt. 14/08/2020 addressed by Respondent to Honourable Chairman MPCB is enclosed as **EXHIBIT Y**.

43. It is further pertinent for Hon'ble Court to note that while granting Injunction, the Hon'ble Trial Court was of the firm opinion that proposed construction at the Suit Land, which is a Amenity Plot is against the provisions of D.C. Rules and therefore the Appellants are not entitled to construct alleged Commercial Complex at the Suit Land.



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44. I say that in the light of these facts and submissions both Appeal From Orders should be dismissed.

I say that the contents of this Affidavit are true to the best of my personal knowledge and the legal submissions made therein are true to the best of my belief which belief is based upon the legal instructions and advice given to me by my Advocate which I believe to be correct.

Solemnly affirmed at Pune on this 7<sup>th</sup> day of September 2020

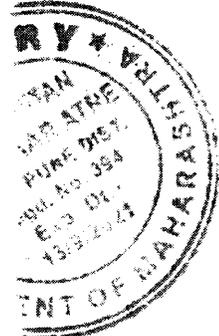
*[Handwritten Signature]*  
AFFIANT

The Deponent / Executant is known to me personally

The Deponent / Executant has been identified with reference to the document viz. Passport / Driving Licence / Voters Identity Card / Pan Card & Photo Identity Card.

A copy of that document is enclosed hereto and is to be treated as part of this Affidavit.

I explained and read the contents of the abovesaid matter in Marathi to the Deponent/ Affiant and He/ She admitted and understood the contents and then He / She signed in Marathi (He/ She has put the thumb impression) before me.



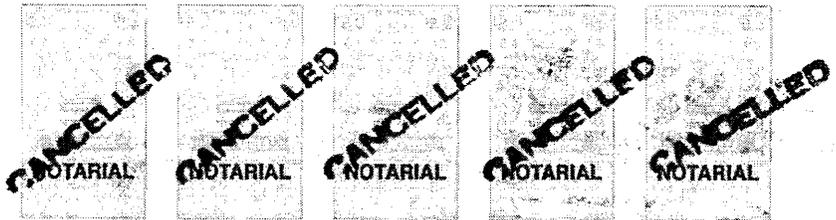
I KNOW AFFIANT

Attestation of Affidavit  
I do swear in the name of God that this is my name and Signature (or mark) and that the contents of this my affidavit are true and correct

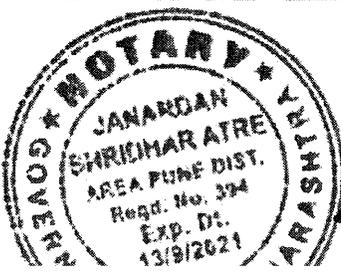
*[Handwritten mark]*

[ADVOCATE]

*[Handwritten Signature]*  
Deponent  
J. S. ATRE  
NOTARY MAHARASHTRA STATE  
PUNE DIST. PUNE



Noted and Registered at Serial Number 255/2020  
7 SEP 2020



BEFORE ME  
*[Handwritten Signature]*  
J. S. ATRE  
NOTARY MAHARASHTRA STATE  
PUNE DIST. PUNE  
44/41, Navsahyadri Co-op. Hsg. Secy.,  
Karve Nagar, Pune - 411 052,  
Phone No. 25447122



भारत सरकार



आधार

भारतीय विश्व अद्वितीय पहचान प्रणाली

भारत सरकार  
Unique Identification Authority of India  
Government of India

नोंदविण्याचा क्रमांक / Enrollment No 1177/70165/00815

To,  
दिवेंदर कुमार धमिजा  
Divender Kumar Dhamija  
11/15 Kumar City  
Near Gold Adlabs Kalyani Nagar  
Pune City  
Dukirkline Pune City Pune  
Maharashtra 411014  
9960026205

Ref: 235 / 16G / 467990 / 468825 / P



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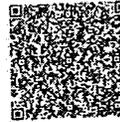
आपला आधार क्रमांक / Your Aadhaar No. :

9745 2446 2248

आधार - सामान्य माणसाचा अधिकार

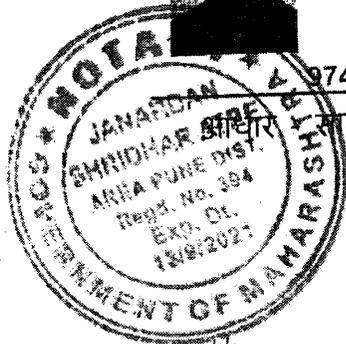
भारत सरकार  
Government of India

दिवेंदर कुमार धमिजा  
Divender Kumar Dhamija  
जन्म वर्ष / Year of Birth : 1954  
पुरुष / Male



9745 2446 2248

आधार - सामान्य माणसाचा अधिकार



dlc  
3/4/20

Self attested  
Dhamija

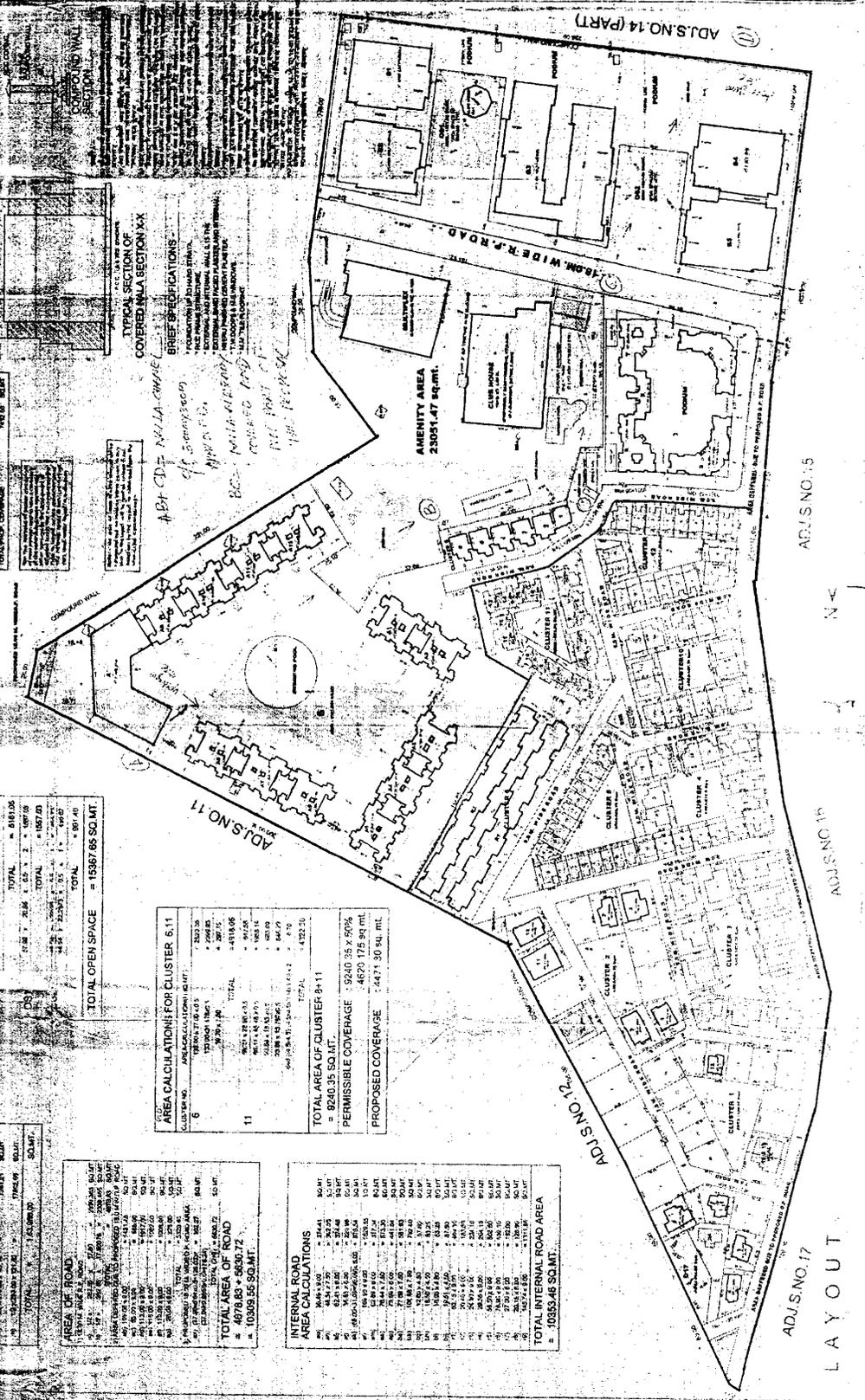
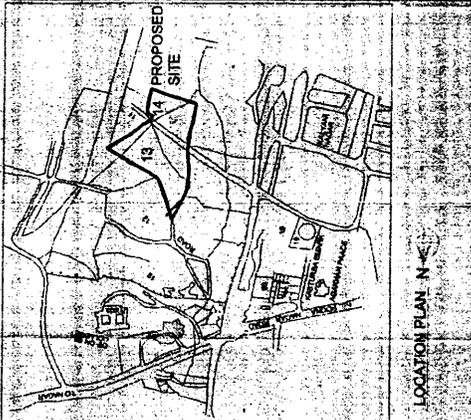


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**F.S.I STATEMENT FOR AMENITY**

AREA OF THE AMENITY PLOT	2305.47 SQ.MT.
COVERED AREA	148.22 SQ.MT.
OPEN SPACE	2157.25 SQ.MT.
TOTAL	2305.47 SQ.MT.

**AREA STATEMENT FOR CLUB HOUSE**

AREA STATEMENT FOR CLUB HOUSE	148.22 SQ.MT.
COVERED AREA	148.22 SQ.MT.
OPEN SPACE	0.00 SQ.MT.
TOTAL	148.22 SQ.MT.

**COVERED STATEMENT FOR AMENITY**

COVERED STATEMENT FOR AMENITY	148.22 SQ.MT.
COVERED AREA	148.22 SQ.MT.
OPEN SPACE	0.00 SQ.MT.
TOTAL	148.22 SQ.MT.

**AREA KEY PLAN OF AMENITY PLOT**

BY TRIANGULATION METHOD

LINE NO.	AREA (SQ.MT.)
1-2	148.22
2-3	0.00
3-4	0.00
4-5	0.00
5-6	0.00
6-7	0.00
7-8	0.00
8-9	0.00
9-10	0.00
10-11	0.00
11-12	0.00
12-13	0.00
13-14	0.00
14-15	0.00
15-16	0.00
16-17	0.00
17-18	0.00
18-19	0.00
19-20	0.00
20-21	0.00
21-22	0.00
22-23	0.00
23-24	0.00
24-25	0.00
25-26	0.00
26-27	0.00
27-28	0.00
28-29	0.00
29-30	0.00
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31-32	0.00
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35-36	0.00
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38-39	0.00
39-40	0.00
40-41	0.00
41-42	0.00
42-43	0.00
43-44	0.00
44-45	0.00
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84-85	0.00
85-86	0.00
86-87	0.00
87-88	0.00
88-89	0.00
89-90	0.00
90-91	0.00
91-92	0.00
92-93	0.00
93-94	0.00
94-95	0.00
95-96	0.00
96-97	0.00
97-98	0.00
98-99	0.00
99-100	0.00
TOTAL	148.22

**OPEN SPACE AREA (10% OF 153676.45)**

LINE NO.	AREA (SQ.MT.)
1-2	15367.64
2-3	15367.64
3-4	15367.64
4-5	15367.64
5-6	15367.64
6-7	15367.64
7-8	15367.64
8-9	15367.64
9-10	15367.64
10-11	15367.64
11-12	15367.64
12-13	15367.64
13-14	15367.64
14-15	15367.64
15-16	15367.64
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91-92	15367.64
92-93	15367.64
93-94	15367.64
94-95	15367.64
95-96	15367.64
96-97	15367.64
97-98	15367.64
98-99	15367.64
99-100	15367.64
TOTAL	153676.45

**AREA OF ROAD**

LINE NO.	AREA (SQ.MT.)
1-2	10368.55
2-3	10368.55
3-4	10368.55
4-5	10368.55
5-6	10368.55
6-7	10368.55
7-8	10368.55
8-9	10368.55
9-10	10368.55
10-11	10368.55
11-12	10368.55
12-13	10368.55
13-14	10368.55
14-15	10368.55
15-16	10368.55
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43-44	10368.55
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91-92	10368.55
92-93	10368.55
93-94	10368.55
94-95	10368.55
95-96	10368.55
96-97	10368.55
97-98	10368.55
98-99	10368.55
99-100	10368.55
TOTAL	1036855.00

**AREA CALCULATIONS FOR CLUSTER 6, 11**

CLUSTER NO.	AREA (SQ.MT.)
6	9240.35
11	4820.175
TOTAL	14060.525

**INTERNAL ROAD AREA CALCULATIONS**

LINE NO.	AREA (SQ.MT.)
1-2	10368.55
2-3	10368.55
3-4	10368.55
4-5	10368.55
5-6	10368.55
6-7	10368.55
7-8	10368.55
8-9	10368.55
9-10	10368.55
10-11	10368.55
11-12	10368.55
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23-24	10368.55
24-25	10368.55
25-26	10368.55
26-27	10368.55
27-28	10368.55
28-29	10368.55
29-30	10368.55
30-31	10368.55
31-32	10368.55
32-33	10368.55
33-34	10368.55
34-35	10368.55
35-36	10368.55
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40-41	10368.55
41-42	10368.55
42-43	10368.55
43-44	10368.55
44-45	10368.55
45-46	10368.55
46-47	10368.55
47-48	10368.55
48-49	10368.55
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51-52	10368.55
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57-58	10368.55
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68-69	10368.55
69-70	10368.55
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71-72	10368.55
72-73	10368.55
73-74	10368.55
74-75	10368.55
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78-79	10368.55
79-80	10368.55
80-81	10368.55
81-82	10368.55
82-83	10368.55
83-84	10368.55
84-85	10368.55
85-86	10368.55
86-87	10368.55
87-88	10368.55
88-89	10368.55
89-90	10368.55
90-91	10368.55
91-92	10368.55
92-93	10368.55
93-94	10368.55
94-95	10368.55
95-96	10368.55
96-97	10368.55
97-98	10368.55
98-99	10368.55
99-100	10368.55
TOTAL	1036855.00

**AREA CALCULATIONS FOR CLUSTER 6, 11**

CLUSTER NO.	AREA (SQ.MT.)
6	9240.35
11	4820.175
TOTAL	14060.525

**INTERNAL ROAD AREA CALCULATIONS**

LINE NO.	AREA (SQ.MT.)
1-2	10368.55
2-3	10368.55
3-4	10368.55
4	



(1) Misc. Civil Appeal No. 238/2010

Received on : 10-08-2010  
Registered on : 11-08-2010  
Decided on : 21-06-2011  
Duration- Y M D  
          - 10 11

Exhibit No. 25.

**IN THE COURT OF PRINCIPAL DISTRICT JUDGE, PUNE,  
AT PUNE**

(Presided over by A. M. Badar, Principal District Judge, Pune)

**MISC. CIVIL APPEAL No. 238/2010**

**Kumar Housing Corporation Limited,**

A Company registered under the  
Companies Act, 1956,  
having its registered office at  
Kumar Capital, 2<sup>nd</sup> Floor,  
2413, East Street, Camp,  
Pune- 411 001, by its authorised  
person Shri. Nikhil Kore,  
Age: 25 Years, Occup. Service,  
R/o. As above.

.. Appellant

**Versus**

**1. The Municipal Corporation  
for the City of Pune,**

a Corporation established under  
the Bombay Provincial Municipal  
Corporation Act, 1949, through  
Commissioner,  
Pune Municipal Corporation.

**2. Assistant Engineer,**

Permission Department,  
Pune Municipal Corporation, Pune,  
Shivajinagar,  
Pune- 411 005.

.. Respondents

(2) Misc. Civil Appeal No. 238/2010

**Appearances:**

- 1) Mr. Erande, Advocate for Appellant.
- 2) Mr. Jagtap, Advocate for Respondents.

**JUDGMENT**

**(Delivered on this 21<sup>st</sup> day of June, 2011)**

By this appeal under Order 43 Rule (1)(r) of C. P. C., the appellant/original plaintiff is challenging the order below Exhibit 5 passed by the learned 6<sup>th</sup> Jt. Civil Judge, S. D, Pune, on 4-08-2010 in Special Civil Suit No. 1813 of 2008, rejecting the application for temporary injunction. The respondents are the defendants in that suit. For the sake of convenience, parties shall be referred to in their original capacity.

2] Nutshell facts are thus:

The plaintiff filed a suit for declaration and permanent injunction in respect of property in Survey No. 13/B, Hissa No. 1+2+3 and Survey No. 14 (Part) admeasuring 163938 sq. meters, situated at Mauje Vadgaon Sheri in Haveli Tahsil of District- Pune, against the defendants. The plaintiff challenged the notice dated 3-08-2008 issued by defendant No.2- Assistant Engineer and prayed for declaration that the same is not binding. The plaintiff prayed for mandatory injunction to withdraw and cancel that notice and permanent injunction restraining the defendants from demolishing the slab over the Nala. It is the case of the plaintiff that the suit property is developed by it. Initially, it was out of jurisdiction of the Municipal Corporation, Pune and as the Collector, Pune was having jurisdiction over the suit land, he submitted layout plans and building plans for

(3) Misc. Civil Appeal No. 238/2010

sanction to that office. The construction was commenced and completed substantially. There is a Nala passing to the suit property in south north direction. The plaintiff got that Nala channelized with permission of the concern authorities/Pune Municipal Corporation. The plaintiff wanted to construct a slab admeasuring 15 x 10 feet over the said Nala as it was absolutely essential for safety of the persons occupying and using the buildings constructed by the plaintiff. The construction of slab was also necessary in order to enable the occupiers of the building to commute from one building to another. In the year 2000, the suit property was included in the area under jurisdiction of Pune Municipal Corporation. Thereafter, the plaintiff got various plans and designs sanctioned from the defendant-Corporation and completed the construction of the buildings. The slab constructed over the Nala has been reflected in all plans since the year 2000. However, on 3-07-2008, the plaintiff received notice from defendant No.2, under section 260(2) of the Bombay Provincial Municipal Corporation Act, 1949 (hereinafter referred to as the Municipal Corporation Act). Defendant No.2 alleged that the plaintiff has carried out construction of the slab over Nala without obtaining prior permission and the same is illegal. The plaintiff was called upon to demolish that slab within 15 days from receipt of the notice, failing which it was threatened that the defendant No.2 will demolish the same.

3] According to plaintiff, the notice is totally illegal, void and ultra-vires. The provisions of Municipal Corporation Act and Section 254 of the said Act are not applicable for the case. No permission is required under Section 254 of the Act for construction of

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slab on a Nala.

4] Alongwith suit, the plaintiff also filed an application for temporary injunction restraining the defendants from demolishing the slab over the Nala.

5] The defendants failed to file their say to the application for temporary injunction at Exhibit 5 and the matter proceeded without any reply or written statement from the defendants. The defendants produced some documents on record including the affidavit of Jayant Suryakant Joshi, Sub-Engineer working with it.

6] After hearing the parties, by the impugned order dated 4-08-2010, the learned 6<sup>th</sup> Jt. Civil Judge, S. D, Pune rejected the application for temporary injunction which has prompted the plaintiff to file the instant appeal.

7] I heard Shri. Erande, the learned counsel for the plaintiff who vehemently argued that Section 254 of the Municipal Corporation Act has no application to the facts of the present case. That apart, the documentary evidence placed on record by the plaintiff shows that the construction was done with due permission of the Collector as well as the Municipal Corporation. Per contra, according to Shri. Jagtap, the learned counsel for the defendants, impugned notice is proper and it is within the powers of Corporation to seek demolition. He relied on Section 53 of the Maharashtra Regional Town Planning Act, to justify the impugned action of issuing notice to the plaintiff.

(5) Misc. Civil Appeal No. 238/2010

8] Upon hearing the rival submissions and on perusal of evidence made available on record, following points arise for my consideration and determination and I record my findings thereon, for the reasons to follow :-

<u>POINTS</u>	<u>FINDINGS</u>
1) Whether the plaintiff has prima facie case ?	.. Yes.
2) Whether the balance of convenience is in favour of plaintiff ?	.. Yes.
3) Whether the plaintiff would suffer an irreparable loss if the temporary injunction as prayed is not granted ?	.. Yes.
4) What order ?	.. As per final order

#### REASONS

9] In order to have better understanding of the controversy involved in the present appeal, one will have to look at the impugned notice issued by the defendant-Corporation to the plaintiff. It is a notice issued in exercise of powers conferred under Section 260(2) of the Municipal Corporation Act. This notice issued by the defendant No.2 to the plaintiff states that the plaintiff has channelized the Nala and closed it by laying a slab without taking permission. This notice further directs the plaintiff to demolish this unauthorised construction. The notice also gives a warning that if this unauthorised construction is not demolished within 15 days, then the officers of the Corporation would demolish it at the cost of the plaintiff. The source of power usurped by the defendant as such is Section 260(2) of the

(6) Misc. Civil Appeal No. 238/2010

Municipal Corporation Act. Let us, therefore, consider the statutory provisions found in the Municipal Corporation Act in this regard.

10] It would be apposite to consider the definition of the term 'building'. Section 2(5) of the Municipal Corporation Act defines 'building'. It is an inclusive definition stating that the building includes a house, out-house, stable, shed, hut and other enclosures or structures whether used as a human dwelling or otherwise and includes veranda, fixed platforms, plinth, door-steps, fencing, etc.. Careful perusal of this definition shows that what is intended to gather by this definition is to super-structure intended to be used for occupation as a habitation for any purpose. One will have to keep in mind ordinary meaning of word 'building', i.e. enclosure of bricks or stone work covered by a roof.

11] Be that as it may, let us scrutinize the duty of the citizen while erecting a building. Section 253 of the said act requires a person intending to erect a building to issue notice to the Corporation. He has to give a notice in a prescribed form containing all information required by law to the Commissioner. The notice is required to be accompanied with prescribed documents as well as building plans. Section 253 of the Act itself defines what is mean by "to erect a building". This term includes erection as well as re-erection of a building. It also includes conversion of a dwelling house for any other purposes, change in use of the structure, laying down roof on open space between the walls, structural alterations of the tenements, etc.. What is intended as per the definition of this term, is to raise a super-structure or to re-erect the building pulled down or destroyed. By no

(7) Misc. Civil Appeal No. 238/2010

stretch of imagination, laying down a slab on water course or Nala is covered by the definition of the term 'building' or “ to erect a building”.

12] Then comes the provision of Section 260 of the said Act. It takes care of the eventualities in which the building is erected or re-erected without giving notice to the Commissioner or if the building or work is commenced contrary to rules or bylaws. According to Section 260 of the Act, if erection of any building is commenced or carried out contrary to the provisions of of rules or bylaws, the Commissioner can by a written notice direct issuance of show cause notice to the concerned person directing him to show cause why such work should not be removed, altered or pulled down. If such person fails to show sufficient cause, then as per provisions of Section 260(2) of the Act, the Commissioner can remove, alter or pull down such building or work at the expenses of concerned party.

13] Examination of the scheme of Section 2(5), Section 253 and Section 260 of the Municipal Corporation Act, do not contemplate that laying down a slab on a Nala comes under the definition of building or “to erect a building”. As such penal provisions of Section 260 of the said Act are not attracted if the Nala is covered by laying down a slab.

14] The plaintiff has placed on record copy of sanctioned layout plans which mentions section of the covered Nala. The letter dated 21-02-2005 of the Deputy Engineer (City) of the defendant-Corporation shows that it has no objection if cross-section of 4.57

(8) Misc. Civil Appeal No. 238/2010

meters x 7 meters is kept under the sub-way slab. The layout plan as well as this letter of the defendant prima facie shows that covering the Nala by the slab was not considered by the Corporation as unauthorised construction.

15] There was no say of the defendants opposing the application for temporary injunction. In such situation, it was not proper to rely on affidavit of the employee of the Corporation placed on record as a document to deny the relief to the plaintiff.

16] Shri. Jagtap, the learned counsel for the defendant has placed reliance on Pune Municipal Corporation Vs. Nanasaheb Bhosale, which is reported in 1995 (2) Bom. C. R. 162 as well as AIR 1995-Bom. 164 and copies of both these citations are produced by him. However, as Section 260 of the Municipal Corporation Act has no application, this ruling is of no assistance to the defendants.

17] For the foregoing reasons, prima facie it is seen that section 260 of the Municipal Corporation Act has no application to the facts of the case at hand. The powers under this section cannot be used for directing removal of a slab put on the Nala as it is not coming under the definition of term 'building'. The plaintiff has certainly an arguable prima facie. If the temporary injunction as prayed is not given to it, then certainly the plaintiff would suffer an irreparable loss and the subject matter of the suit itself would be lost rendering the suit infructuous. Therefore, comparative injury which the plaintiff may suffer is more than what which may be caused to the defendants by allowing the slab over Nala to remain there till disposal of the suit.

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Hence, by answering the points accordingly, I proceed to pass following order.

**ORDER**

[i] The appeal is allowed.

[ii] The order below Exhibit 5 passed by the learned 6<sup>th</sup> Jt. Civil Judge, S. D, Pune, in Special Civil Suit No. 1813 of 2008, on 4-08-2010, is hereby set aside.

[iii] The application for temporary injunction under Order XXXIX Rule (1) and (2) of C. P. C. at Exhibit 5 filed by the plaintiff in Special Civil Suit No. 1813 of 2008, is allowed.

[iv] The defendants are restrained from acting on the impugned notice dated 3-07-2008 issued to the plaintiff and they are further restrained from demolishing the suit slab put over the Nala, till disposal of the suit.

[v] In the circumstances of the case, no orders as to costs.

Pune,  
Date : 21<sup>st</sup> June, 2011.  
bdw/-

Sd/-xxx  
(A. M. BADAR)  
Principal District Judge, Pune.

"I affirm that the contents of this P.D.F. file Judgment are same word for word as per original Judgment.

Name of Steno : B. D. Wabale, P. A.  
Court Name : Principal District Judge, Pune  
Date : 27-06-2011.

Judgment signed by presiding officer on : 27-06-2011.  
Judgment uploaded on : 27-06-2011.

## महाराष्ट्र शासन

क्र.टिपीएस-१८१६/१६२३/प्र.क्र.६६९/नवि-१३,  
नगर विकास विभाग, मुख्य इमारत,  
चौथा मजला, मंत्रालय, मुंबई-३२.  
दिनांक : २८/०९/२०१७.

प्रति,

- १) कुमार अर्बन डेव्हलपमेंट प्रा.लि. पुणे
- २) मा.आयुक्त, पुणे महानगरपालिका पुणे.

विषय:- महाराष्ट्र प्रादेशिक व नगर रचना अधिनियम १९६६ चे कलम ४७  
अन्वये अपिल. मौजे - वडगाव शेरी, ता. हवेली, जि. पुणे  
स.नं.१३ब/१+२+३ व स.नं.१४ (पै) या जमिनीवरील मंजूर लेआऊट  
नकाशात दर्शविलेल्या अंमिनीटी स्पेसच्या जागेत वाढीव इमारत बांधकामाचे  
नकाशे मंजूरीबाबत.  
कुमार अर्बन डेव्हलपमेंट प्रा.लि.  
विरुद्ध  
पुणे महानगरपालिका पुणे.

संदर्भ:- कुमार अर्बन डेव्हलपमेंट प्रा.लि., यांचा महाराष्ट्र प्रादेशिक व नगर रचना  
अधिनियम १९६६ चे कलम ४७ अन्वयेचा अपिल अर्ज दि. ११/११/२०१६.

महोदय,

विषयांकित प्रकरणी संदर्भाधीन अर्जांन्वये दाखल अपिल अर्जांच्या अनुषंगाने मा.राज्यमंत्री (नगर विकास)  
महोदयांकडे दि.१८/०३/२०१७ रोजी सुनावणी झाली असून त्यांनी सदर प्रकरणी पारित केलेल्या निर्णयाची  
सत्यप्रत सोबत जोडली आहे.

सोबत - वरिल प्रमाणे

आपला,

(रा.म.पवार)

०/८ अवर सचिव, महाराष्ट्र शासन

28/09/2017

प्रत माहिती तथा कार्यवाहीसाठी :-

- १) मा. राज्यमंत्री (नवि) महोदयांचे खाजगी सचिव, मंत्रालय, मुंबई
- २) मा. संचालक, नगर रचना, महाराष्ट्र राज्य, पुणे.
- ३) मा. सह संचालक, नगर रचना, पुणे विभाग, पुणे.
- ४) सहायक संचालक, नगर रचना, पुणे शाखा, पुणे.

निर्गमित

राज्यमंत्री (नगर विकास) यांचे कडे मौजे-वडगाव शेरी, ता. हवेली जि. पुणे स.नं.१३ब/१+२+३ व स.नं.१४(पै) या जमिनीवरील मंजूर लेआऊट नकाशात दर्शविलेल्या अॅमिनीटी स्पेसच्या जागेत वाढीव इमारत बांधकामाचे नकाशे मंजूरीबाबत, कुमार अर्बन डेव्हलपमेंट प्रा. लि. यांनी दाखल केलेले महाराष्ट्र प्रादेशिक व नगर रचना अधिनियम १९६६ चे कलम ४७ अन्वये दाखल अपिल प्रकरणावरील आदेश.

कुमार अर्बन डेव्हलपमेंट प्रा. लि.

विरुध्द

पुणे महानगरपालिका, पुणे.

मौजे-वडगाव शेरी, ता. हवेली, जि. पुणे येथील स.नं.१३ब/१+२+३ व स.नं.१४(पै) या जमिनीवरील मंजूर लेआऊट नकाशात दर्शविलेल्या अॅमिनीटी स्पेसच्या जागेत वाढीव इमारत बांधकामाचे नकाशे मंजूरीबाबतचा प्रस्ताव पुणे महानगरपालिकेने दि.०३/१०/२०१६ रोजीच्या आदेशान्वये अमान्य केलेला आहे. त्याविरुध्द अर्जदार कुमार अर्बन डेव्हलपमेंट प्रा. लि. यांनी महाराष्ट्र प्रादेशिक व नगर रचना अधिनियम १९६६ चे कलम ४७ अन्वये दि. ०४/११/२०१६ रोजी शासनाकडे अपिल दाखल केलेले आहे. सदर अपिल प्रकरणी संबंधितांची सुनावणी दि. १८/०३/२०१७ रोजी राज्यमंत्री नगर विकास यांचेकडे झाली.

**०१. प्रस्तावना :-**

पुणे महानगरपालिका हद्दीतील मौजे-वडगाव शेरी, ता. हवेली, जि. पुणे येथील स.नं.१३ब/१+२+३ व स.नं.१४(पै) या मिळकतीचे कुलमुख्यत्यारधारक श्री. ललितकुमार जैन आहेत. श्री. जैन यांच्या नावे लेआऊट व निवासी, व्यापारी व आय टी इमारत बांधकाम वापराचे नकाशे वेळोवेळी मंजूर करण्यात आलेले आहेत. बांधकाम विकास नियंत्रण नियमावलीनुसार, नगर रचना विभाग व पुणे महानगरपालिका यांचेकडून मंजूर लेआऊटचे नकाशात १५% अॅमिनीटी स्पेस सोडून परवानगी देणेत आलेली आहे. मंजूर लेआऊट नकाशात दर्शविलेल्या अॅमिनीटी स्पेसच्या जागेत वाढीव इमारत बांधकामाचे नकाशे मंजूर करणेकामी अर्जदारांनी महानगरपालिकेकडे प्रस्ताव दाखल केला आहे. सदरचा प्रस्ताव पुणे महानगरपालिकेने दि. दि.०३/१०/२०१६ च्या पत्राने नाकारलेला आहे. त्याविरुध्द अपिलकर्ते यांनी महाराष्ट्र प्रादेशिक नियोजन व नगर रचना अधिनियम १९६६ चे कलम-४७ अन्वये अपिल दि.०४/११/२०१६ रोजी दाखल केले आहे. सदर अपिल परवानगी नाकारल्याच्या पत्राच्या दिनांकापासून विहित ४० दिवसांच्या मुदतीत दाखल करण्यात आलेले आहे.

**०२. आयुक्त पुणे महानगरपालिका यांचा अहवाल**

१. अर्जदार यांचा अॅमिनीटी स्पेस मधील बांधकामाचा प्रस्ताव पुढील आक्षेपास्तव मान्य करता येत नसल्याचे कळविले आहे.

"नवीन समाविष्ट गावातील विकास नियंत्रण नियमावलीस दि. ०६/१२/२००७ रोजी मंजूरी मिळाली असून यामध्ये नियम क्र. एम ४-१३.८ एम अन्वये अॅमिनीटीस्पेसचे क्षेत्र महानगरपालिकेस हस्तांतरीत



करण्याची तरतूद आहे. तसेच दर्शविण्यात आलेली अॅमिनिटी स्पेसची जागा ही बांधकाम व्यवसायिकाचे ताबेवहिवतीत व वापरात आहे. त्यामुळे सदर जागेत कोणा त्रयस्त व्यक्तीचा हक्क प्रस्तापित झालेला नाही. त्यामुळे अॅमिनिटीस्पेसच्या जागेत नव्याने लेआऊट व इमारत बांधकामास परवानगी मंजूर डी.सी. रूल मधील तरतूदीनुसार देता येणार नाही."

२. पुणे शहराच्या जुन्या हद्दीच्या सन १९८७ च्या मंजूर विकास नियंत्रण नियमावली व समाविष्ट गावातील विकास नियंत्रण नियमावलीस अधिन राहून पुणे महानगरपालिकेकडून दि. ०९/१०/२००७ चे कार्यालयीन परिपत्रक निर्गमित करण्यात आले आहे. त्यामध्ये अॅमिनिटी स्पेसच्या जागेत कुलमुखत्यारधारक/मालक यांना बांधकामास परवानगी देण्यात येऊ नये व अॅमिनिटी स्पेसची जागा पुणे महानगरपालिकेच्या ताब्यात देण्यात यावी असे नमूद केले आहे.

३. पुणे महानगरपालिकेने दि. १२/०५/२००९ रोजी सदर जागेचा दुरुस्त लेआऊट मान्य केला आहे. परंतु सदर लेआऊट मध्ये १५% अॅमिनिटी स्पेसची जागा सोडून घेण्यात आली आहे.

४. अॅमिनिटी स्पेसमधील इमारत बांधकामाचे दुरुस्त नकाशे अथवा पुनर्मान्यतेचे नकाशे महानगरपालिकेकडून मान्य करण्यात आलेले नाहीत. परंतु अॅमिनिटी स्पेसची जागा सोडून उर्वरीत मिळकतीतील दुरुस्त व पुनर्मान्यतेचे निवासी, व्यापारी व आय टी वापराचे नकाशे मान्य केले आहेत.

५. अर्जदार हे अॅमिनिटी स्पेसचे क्षेत्र पुणे महानगरपालिकेच्या ताब्यात देण्यास अनुकूल नसल्याने अर्जदार यांचा दि. २७/०६/२०१४ रोजीचा दाखल दुरुस्त लेआऊटचा प्रस्ताव मान्य करता आला नाही.

६. प्रस्तूत मिळकतीत अपिलकर्ते यांच्याकडून नियमानुसार १५% अॅमिनिटी स्पेसचे २३०९६.८०८ चहु. मी. सोडून घेतले आहे. सदर अॅमिनिटी स्पेसच्या जागेपैकी पश्चिमेकडील बाजूस काही भागात फक्त ६१७.१४ चौ.मी. क्षेत्राचे बॅडमिंटन हॉल, जिमनेशियम, स्विमींग पुल इत्यादी बांधकामाचे नकाशे मान्य केले आहेत. सदर मान्य केलेल्या जागेचे क्षेत्र वजा जाता उर्वरीत २२४७९.६६८ चौ.मी. क्षेत्र मोकळे आहे. त्यामुळे उर्वरीत मोकळे क्षेत्र अर्जदार यांनी पुणे महानगरपालिकेच्या ताब्यात देणे आवश्यक आहे.

७. प्रकरणी अर्जदार यांनी दाखल केलेले अपिल व त्यामध्ये नमूद केलेली मागणी ही महाराष्ट्र प्रादेशिक नियोजन व नगर रचना अधिनियम १९६६ चे कलम-४६, ४५(५) मधील तरतूदीशी सुसंगत नाही. तसेच सन २००७ च्या मंजूर विकास नियंत्रण नियमावली मधील नियम क्र. १३.८(एम) नुसार नसल्याने तो दाखल प्रस्ताव मान्य करण्यात आलेला नाही. तरी अपिल अर्जदार यांनी महाराष्ट्र प्रादेशिक नियोजन व नगर रचना अधिनियम १९६६ चे कलम-४७ अन्वये दाखल केलेले अपिल फेटाळण्यात यावे अशी विनंती आहे.

०३. अपिलकर्ते यांची विनंती :-

सदर जागेच्या मंजूर लेआऊटमधील पब्लीक अॅमिनिटी स्पेस या उपविभागाणी झालेला प्लॉट महानगरपालिकेस हस्तांतरीत करण्याची तरतूद नाही. सदर मिळकत भागशः विकसीत झालेली आहे व त्यास भागशः भोगवटा प्रमाणपत्र मिळालेले आहे. सदर मिळकतीबाबत त्रयस्थ व्यक्तींचा हक्क

(शाळेबाबत) प्रस्तापीत झालेला असल्याची अभिलेखात नोंद आहे. वरील वस्तुस्थिती विचारात घेवून सदर प्रकरणी खालील प्रमाणे विनंती करण्यात येत आहे.

- महानगरपालिकेच्या हद्दीतील समाविष्ट झालेल्या नवीन गावांच्या क्षेत्राच्या दि.०६/१२/२००७ च्या मंजूर विकास नियंत्रण नियमावली नुसार ऑमिनीटी स्पेस महानगरपालिकेस हस्तांतरित करण्याची तरतूद या प्रकरणी लागू करण्यात येवू नये.
- ऑमिनीटी प्लॉट हस्तांतरणाबाबतचे पुणे महानगरपालिकेचे दि.०९/१२/२००७ चे परिपत्रक सदर मिळकतीसाठी लागू करण्यात येवू नये.
- पुणे म.न.पा.ने दि.१२/५/०९ परवागनी क्र. SEC-V/००८१/०९/५ तसेच Revalidated क्र.४८१/१५, दि.१८/५/१५ नुसार नकाशे मंजूर केले असून त्यावेळी देखील Amenity Space ची मागणी केलेली नाही.
- मंजूर बांधकाम नकाशामधील सुविधा क्षेत्रामध्ये सन २००० रोजी मंजूर केलेल्या नकाशामध्ये Under construction club House दर्शविलेले आहे. सन २००१ रोजी मंजूर केलेल्या नकाशात सुविधा क्षेत्रामध्ये Under construction club House +२ इमारती मंजूर केल्या आहेत. सन २००२ मध्ये मुळ क्लब हाऊस बरोबरच मल्टीप्लेक्ससाठी परवानगी दिली आहे. सन २००८ मध्ये सुधारीत प्लिंथ मंजूर केली आहे. सन २०१० मध्ये प्लिंथ फेर मंजुरी दिली आहे. नविन प्लिंथ मंजुरी नंतर मुख्य क्लब हाऊसचे बांधकाम पाडण्यात आले. सन २०१५ मध्ये सुधारीत प्लिंथ मंजूर केली म्हणजेच सन २००० पासून २०१५ पर्यंत वेळोवेळी A.S. मध्ये म.न.पा.ने परवानगी दिलेली असताना सन २०१६ मध्ये अंशतः A.S. पैकी जागा मागणी उचित दिसत नाही. याबाबत आम्ही सविस्तर लेखी निवेदन दिले आहे.
- सदर मिळकतीवरील लेआऊट / बांधकाम परवानगी मंजूर करणेबाबत महानगरपालिकेस आदेश द्यावेत.
- २३०९६.८१ चौ.मी. क्षेत्रफळाची ऑमिनीटी स्पेस महानगरपालिकेस हस्तांतरित न करणेबाबत आदेश द्यावेत.
- महानगरपालिकेचे दि.०३/१०/२०१६ रोजीचे आदेश रद्द करणेत यावे.

#### ०४. सहायक संचालक नगर रचना पुणे शाखा, पुणे यांचे अभिप्राय:-

पुणे महानगरपालिकेच्या हद्दीमध्ये नवीन समाविष्ट गावातील विकास नियंत्रण नियमावलीस दि. ०६/१२/२००७ रोजी मंजुरी मिळाली असून यामध्ये नियम क्र. ४ - १३.८ एम अन्वये ऑमिनीटी स्पेसचे क्षेत्र महानगरपालिकेस हस्तांतरित करण्याची तरतूद आहे. तसेच दर्शविण्यात आलेली ऑमिनीटी स्पेसची जागा ही बांधकाम व्यवसायिकाचे ताबेवहिवाटित व वापरात आहे. त्यामुळे सदर जागेत नव्याने लेआऊट व इमारत बांधकामास परवानगी मंजूर डी.सी. रूल मधील तरतूदीनुसार देता येणार नाही.

पुणे महानगरपालिका हद्दीतील नव्याने समाविष्ट झालेल्या २३ गावांसाठी अधिसूचना दि. ०६/१२/२००७ नुसार विकास नियंत्रण नियमावली लागू केली आहे. त्यामधील तरतूद क्र. १३.८(एम) नुसार

ऑमिनिटी स्पेसखालील जागा FSI च्या मोबदल्यात पुणे महानगरपालिकेच्या ताब्यात देणे आवश्यक आहे. सबब प्रकरणी उक्त प्रमाणेची वस्तुस्थिती विचारात घेता अर्जदार यांनी दाखल केलेले कलम ४७ अन्वयेचे अपिल फेटाळणे योग्य राहिल.

०५. अपिल प्रकरणांतील निष्कर्ष:-

सुनावणीच्यावेळी सर्व संबंधितांनी सादर केलेली कागदपत्रे व म्हणणे विचारात घेता खालील निष्कर्ष दिसून येतात.

१. पुणे महानगरपालिकेच्या हद्दीमध्ये नव्याने समाविष्ट २३ गावाच्या संदर्भात विकास नियंत्रण नियमावलीस दि. ०६/१२/२००७ रोजी मंजूरी मिळाली असून यामध्ये नियम क्र. १३.८ एम अन्वये ऑमिनिटीस्पेसचे क्षेत्र महानगरपालिकेस हस्तांतरीत करण्याची तरतूद आहे.

२. अर्जदार हे ऑमिनिटी स्पेसचे क्षेत्र पुणे महानगरपालिकेच्या ताब्यात देण्यास अनुकूल नसल्याने अर्जदार यांचा दि. २७/०६/२०१४ रोजीचा ऑमिनिटी स्पेस मधील सुधारीत बांधकाम परवानगीचा प्रस्ताव पुणे महानगरपालिकेने मंजूर केलेला नाही.

३. अर्जदार यांच्या मिळकतीच्या मुळ लेआऊटला पुणे महानगरपालिकेने दि. ०६/०७/१९९५ रोजी मान्यता दिलेली असून या लेआऊटमध्ये ऑमिनिटी स्पेस २३२४२.०७ चौ.मी. दर्शविली असून त्यामध्ये एकूण दोन इमारती (क्लब हाऊस, स्विमिंग पुल), (जी+२) अंडर कंस्ट्रक्शन व दुसरी इमारत तळ + तीन मजले पूर्व मान्य असल्याचे नमूद आहे. सदरहू लेआऊट तदनंतर वेळोवेळी दुरुस्त करून त्यास महानगरपालिकेने मान्यता दिलेली आहे. तसेच मान्य केलेल्या इमारतीस जोते तपासणी दाखला व काही इमारतीस भोगवटा प्रमाणपत्रही दिलेले आहे. ऑमिनिटी स्पेसचे एकूण क्षेत्र २३०९६.८१ चौ.मी. असून त्यामधील बॅडमिंटन हॉल, जिमनेशियम इमारतीचे ६१७.१४ चौ.मी. बांधीव क्षेत्रास महानगरपालिकेने दि. ०३/०२/२००३ रोजी भोगवटा प्रमाणपत्र दिलेले आहे. असे महानगरपालिकेने सादर केलेल्या अहवालावरून दिसून येते. सदर प्रकरणात सुविधा भूखंडाची सन २००१ मधील बांधकाम परवानगी पहाता त्यामध्ये महानगरपालिकेने सुविधा भूखंडामध्ये बहुतांश क्षेत्रावर बांधकाम अनुज्ञेय केल्याचे दिसून येते. तसेच यानंतरही सदर रेखांकन वाढीव हद्दीची विकास नियंत्रण नियमावली मंजूर झाल्यानंतर वेळोवेळी सुधारीत मंजूर केलेले असून त्यावेळी सुविधा भूखंडाचे क्षेत्र हस्तांतरण करणेबाबत अर्जदारांना कळविलेले दिसून येत नाही. सबब दि. ०३/१०/२०१६ रोजी सुधारीत रेखांकन व बांधकाम परवानगी देतेवेळी रेखांकनातील पूर्वबांधिलकी असलेले सुविधा भूखंडाचे क्षेत्र हस्तांतरीत करणेचा आग्रह धरणे उचित वाटत नाही.

४. अर्जदार यांचा मुळ लेआऊट हा दि. ०६/०७/१९९५ रोजी मंजूर झालेला आहे व त्या मंजूर नकाशाप्रमाणे जागेवर ऑमिनिटी स्पेस मध्ये काही बांधकामे होऊन त्यास महानगरपालिकेने भोगवटा प्रमाणपत्रही दिलेले आहे. सदरची कार्यवाही वाढीव हद्दीची विकास नियंत्रण नियमावली मंजूर होणेपूर्वीची असल्याने पूर्वबांधीलकी (Committed Development) म्हणून विचारात घेणे आवश्यक आहे. त्यामुळे

पूर्वमंजूर रेखांकनातील विकसीत क्षेत्राकरीता त्यानंतर लागू झालेल्या नियमावलीनुसार सुविधा क्षेत्र हस्तांतरीत करणेबाबत अर्जदारांना बंधनकारक करता येणार नाही.

उपरोक्त निष्कर्ष विचारात घेता खालीलप्रमाणे निर्णय घेण्यात येत आहे.

### निर्णय

अपिलार्थी यांचे अपिल मान्य करण्यात येत आहे.

पुणे महानगरपालिका हद्दीतील मौजे-वडगाव शेरी, ता. हवेली, जि. पुणे येथील स.नं.१३ब/१+२+३ व स.नं.१४(पै) या जागेचा मुळ लेआऊट हा दि. ०६/०७/१९९५ रोजी मंजूर झालेला आहे व त्या मंजूर नकाशाप्रमाणे जागेवर ॲमिनिटी स्पेस मध्ये काही बांधकामे होऊन त्यास महानगरपालिकेने भोगवटा प्रमाणपत्रही दिलेले आहे. सदरची कार्यवाही वाढीव हद्दीची विकास नियंत्रण नियमावली मंजूर होणेपूर्वीची असल्याने पूर्वबांधीलकी (Committed Development) म्हणून विचारात घेणे आवश्यक आहे. त्यामुळे पूर्वमंजूर रेखांकनातील विकसीत क्षेत्राकरीता त्यानंतर लागू झालेल्या नियमावलीनुसार सुविधा क्षेत्र हस्तांतरीत करणेबाबत अर्जदारांना बंधनकारक करता येणार नाही. सबब प्रकरणी अर्जदार यांनी सादर केलेले बांधकाम नकाशे नियमानुसार मंजूर करणेबाबतची पुढील योग्य ती कार्यवाही पुणे महानगरपालिकेने करावी.

दि. 26/02/2016  
स्थळ : मंत्रालय, मुंबई.

  
(डॉ. रणजित पाटील)  
राज्यमंत्री, नगर विकास.



True translation from Marathi to English

GOVERNMENT OF MAHARASHTRA

No.TPS-1826/1623/P.No.

669/Ur.-Dev-13

Urban Development

Deptt.

Main Building, Fourth

Floor,

Mantralay, Mumbai – 32.

To

- 1) Kumar Urban Development Pvt. Ltd. Pune.
- 2) The Commissioner, Pune Mun. Corporation,  
Pune.

Subject : Appeal regarding approval of plan for construction of additional building in the amenity space as shown in the approved lay our plan of the land at S. No. 13B/1+2+3 and S. No. 14(P) at village Wadgaon Shery, Tal. Haveli, District Pune, under section 47 at Maharashtra Region and Town Planning Act, 1966.

Kumar Urban Development Pvt. Ltd.

Versus

Pune Municipal Corporation, Pune.

Reference: Appeal application dated 11.11.2016 of  
Kumar Urban Development Pvt. Ltd.  
under section 47 of the Maharashtra  
Region and Town Planning Act, 1966.

Sir,

In the context of appeal application submitted  
vide the reference on the subject matter, a hearing  
was held before the Resp. State Minister (Urban  
Development) on 18.03.2017 and the certified  
copy of the decision passed in the said matter is  
enclosed herewith.

Yours faithfully.

Sd/-

(R.M. Pawar)

Addl. Secretary,

Government of

Maharashtra

Enclosed as above.

Copy for information and action:-

1. The Private Secretary to the Resp. State Minister (UD), Mantralaya, Mumbai.
2. The Director, Town Planning, Maharashtra State, Pune.
3. Dy. Director, Town Planning, Pune Division, Pune.
4. Asstt. Director, Town Planning, Pune Branch, Pune.

Order in the matter of appeal filed with the State Minister (Urban Development) by Kumar Urban Development Pvt. Ltd. under section 47 of the Maharashtra Region and Town Planning Act 1966 regarding approval of the plan for additional construction of building in the amenity space area shown in the approved lay out plan in respect of S. No. 13B/1+2+3 & S. No. 14(P) at village – Wadgaon Shery, Tal. Haveli, District Pune.

Kumar Urban Development Pvt. Ltd.  
Versus  
Pune Municipal Corporation, Pune.

Against the order dated 03.10.2016 rejecting the proposal for approval of the plan for construction of additional building in the amenity space shown in the approved layout plan on the land at S. No. 13B/1+2+3 & S. No. 14(P) at village Wadgaon Shery, Tal. Haveli, Dist. Pune by Pune

Municipal Corporation against that order the applicant Kumar Urban Development Pvt Ltd filed an appeal to the Government on 04/11/2016 under Section 47 of Maharashtra Region & Town Planning Act, 1966. The hearing of the concerned in the case of said appeal was held on 18.03.2017 before the State Minister, Urban Development.

01. Introductory:-

Mr. Lalit Kumar Jain is the power of attorney of the property at S. No. 13B/1+2+3 & S. No. 14(P) at village Wadgaon Shery, Tal. Haveli, Dist. Pune within the boundary of Pune Municipal Corporation. The layout and residential, commercial and IT building construction plan was approved in the name of Mr. Jain. As per the permission given by Building Development Control Regulation, Town Planning Department and Pune Municipal Corporation 15% is excluded in the

approved layout plan for amenity space. The applicant has submitted to the Municipal Corporation for approval of additional building construction in the amenity space as shown in the approved layout plan. The said proposal was rejected by Pune Municipal Corporation vide letter dated 03.10.2016. The appellant filed an appeal on 04.11.2016 under Section 47 of Maharashtra Regional Planning & Town Planning Act, 1966. The said appeal has been filed within 40 days period from the date of permission refusal letter.

02. The report of the Commissioner, Pune Municipal Corporation.

(i) It has been informed that the proposal of the applicant for construction in the amenity space cannot be approved due the following objections.

“Having received approval for new inclusion in the Development Control Regulation on 06.12.2007 in that there is a provision under Rule No. M 4-13.8M to transfer the amenity space area to Municipal Corporation. Similarly, the area shown as amenity space is in the possession and use of the construction developer. Therefore, no third person rights has been created in the said land. Therefore, in the amenity space area, layout and building construction permission cannot be approved as per the provisions in DC Rules”.

2. Subject to the approved Development Control Regulation & Development Control Regulation of the included villages in the old boundary of Pune city in the year 1987, the office circular has been issued on 09.10.2007 by the Pune Municipal Corporation. Therein it is mentioned that in the area of amenity space,

construction permission should not be given to the power of attorney/owner and the area of amenity space maybe handed over to Pune Municipal Corporation.

3. Pune Municipal corporation has accorded revised lay out approval on 12.05.2009 for the said area. But, 15% amenity space was left out in the said lay out.

4. The revised plan of building construction in the amenity space or the pre-approved plan were not approved by the Municipal Corporation. But excluding the amenity space, the revised and pre-approved residents in the property, businessmen and the plan of IT use were approved.

5. As it was not convenient for the applicant to hand over the amenity space to Pune Municipal Corporation, the proposal for revised lay out

submitted by the applicant on 27.06.2014 could not be accorded approval.

6. 15% amenity space of 23096.808 sq.mtrs. has been got excluded from the present property of the appellant as per rules. Out of the said amenity space area, at some part on the western side only 617.14 sq.mtrs. area has been approved in the construction plan for badminton hall, gymnasium, swimming pool etc. After deduction of the said approved area, the remaining area of 22479.668 sq.mtrs. is vacant. Therefore, it is necessary for the applicant to hand over the possession of the remaining vacant area to Pune Municipal Corporation.

7. In the present case filed by the applicant and the demands mentioned therein is not as per the provisions in section 46, 45(5) of the Maharashtra Regional Planning and Town Planning Act, 1966.

Also, as it is not as per Rule No. 13.8(M) of the Approved Development Control Regulation in the year 2007, the proposal has not been approved. Therefore, it is requested that the appeal filed by the appellant under section 47 of the Maharashtra Regional Planning and Town Planning Act, 1966 may be rejected.

03. The request of the appellant :-

There is no provision to transfer the plot of public amenity space area in the said approved lay out of sub-divided plot to Municipal Corporation. The said property has been partly developed and Part Occupancy Certificate has been received for that. There is entry in the records that third party rights are created in the said property (for school). By taking into consideration of the above, it is requested as follows in the said matter.

- As per the approved Development Control Regulation dated 06.12.2007 for the areas of new village included within the boundary of Municipal Corporation, the provision to transfer the amenity spare are to Municipal Corporation should not be applied in this case.
- The Circular of Pune Municipal Corporation dated 09.12.2007 regarding the transfer of amenity plot should not be made applicable for the said property.
- The plans having been accorded approved as per Pune Mun. Cor. Permission No. SEC-V/0081/09/5 dated 12.05.09 and also Revalidated No. 481/15 dated 18.05.15, at that time also no demand has been made for amenity space.

- In the approved plan of amenity area in the approved construction plan in the year 2000, it is shown under construction Club House. In the plan approved in the year 2001, in the amenity space area Under construction Club House + 2 buildings are accorded approval. Along with the original Club House approval for multiplex has been accorded approval in the year 2002. The revised plinth has been approved in the year 2008. In the year 2010 revised approval for plinth has been accorded. After the new plinth approval, the main Club House structure was demolished. In the year 2015 a revised plinth has been approved. That is, since the year 2000 upto 2015 even when permission has been accorded by Mun. Corpn in A.S. from time to time, in the year 2016 demanding area from

the part amenity space does not seem to be reasonable. In this regard we have submitted details request in writing.

- Order may be passed to the Municipal Corporation regarding according permission for the lay out / construction in the said property.
- Order may be issued to the Municipal Corporation regarding not transferring the amenity space area of 23096.81 sq.mtrs.
- The order of the Municipal Corporation dated 03.10.2016 may be cancelled.

04. Opinion of the Assistant Director, Town Planning Pune Branch, Pune. :-

Approval having been accorded on 06.12.2007 under the Development Control

Regulation for inclusion of new villages in the boundary of Pune Municipal Corporation, in that there is the provision to transfer the amenity space area to Municipal Corporation as per Rule No. 4-13.8 M. Similarly, the area shown as amenity space is in the possession and use of the construction businessman. Therefore, new lay out and building construction permission cannot be accorded permission afresh on the said area as per the provisions in the D.C.Rules.

As per the Notification dated 06.12.2007 passed in respect of 23 villages included newly in the boundary of Pune Municipal Corporation, the Development Control Regulation has been applied. In that, as per the provision No. 13.8(M), it is necessary to hand over the area under the amenity space in compensation of FSI. Therefore, in the said matter by taking the above

circumstances into consideration, the appeal filed by the applicant under section 47 is liable to be rejected.

05. Conclusion in the matter of the appeal :-

On taking consideration of the documents and their say submitted by all concerned in the hearing, the following is observed.

1. Approval having been received regarding the 23 villages newly included in Pune Municipal Corporation as per Development Control Regulation on 06.12.2007, in that there is a provision to transfer the amenity space area to Municipal Corporation under Rule No. 13.8
2. As the applicant is not prepared to hand over the amenity space area to Pune Municipal Corporation, the proposal of the applicant dated 27.06.2014 for revised construction permission in

the amenity space area was not approved by Pune Municipal Corporation.

3. The Pune Municipal Corporation having accorded approval on 06.07.1995 to the original layout of the property of applicant, in this layout an area of 23242.07 sq. m. is shown as amenity space in which it is mentioned as approved for a total 2 buildings (club house, swimming pool), (Gr +2) under construction and another building ground + 3 floors. After the said layout, by revising from time to time, the Municipal Corporation has accorded approval for that. Similarly, the plinth verification certificate for the approved building and occupancy certificate for some buildings has been issued. A total area of 23096.81 sq.m. being in the amenity space, the badminton hall, gymnasium building with a constructed area of 617.14 sq. m. for which the occupancy certificate

has been issued by Municipal Corporation on 03.02.2003. This is being seen from the report submitted by the Municipal Corporation. By seeing the construction permission in the year 2001 of the amenity plot in the said case, in that it is observed that the Municipal Corporation has authorized construction on much of the area in the amenity plot. Similarly, even after that after approval of Development Control Regulation revised approval for extra boundary in the said layout has been issued from time to time and at that time it is not seen that the applicant has been informed regarding transfer of amenity space area. Therefore, while issuing the revised layout and construction permission dated 03.10.2016, it is not felt reasonable to insist for transfer of amenity space area in the layout of committed development.

4. The original layout of the applicant has been approved on 06.07.1995 and after some construction in the amenity space area on the land as per approved plan, occupancy certificate has been issued for that the by Municipal Corporation. As the said action of additional boundary is before approval of Development Control Regulation, it is necessary to consider it as committed development. Therefore, for the developed area in the previously approved layout, the applicant cannot be made bound to transfer the amenity space area as per rules brought into force later.

By taking the above conclusion into consideration, the following decision is being taken.

#### Decision

The appeal of the appellant is admitted.

The original layout of the land of S. No. 13B/1+2+3 & S. No. 14(P) at village Wadgaon Shery, Tal. Haveli, Dist. Pune within the boundary of Pune Municipal Corporation was passed on 06.07.1995 and after some construction in the amenity space on the land according to that approved plan, the Municipal Corporation has issued the occupancy certificate for that. The said action of additional boundary as was approved before the approval of Development Control Regulation, it is necessary to take the committed development into consideration. Therefore, it cannot be made binding on the applicant to transfer the amenity space area for the developed area by previously approved layout plan as per the regulation applied. Therefore, in the matter, Pune Municipal Corporation may take further suitable action regarding approval of construction plan as per rules submitted by the applicant.

Sd/-  
(Dr. Ranjeet Patil)  
Urban

Development  
Date:- 27.09.2017  
Place: Mantralaya, Mumbai.