

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
WESTERN ZONE BENCH PUNE
ORIGINAL APPLICATION NO. 147/2016

IN THE MATTER OF:

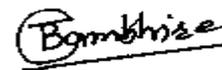
MR. TANAJI BALASAHEB GAMBHIRE & ANR. ... APPLICANT
VERSUS
PRINCIPAL SECRETARY-DoE & ORS. ... RESPONDENTS
FILE-A (VOLUME-_____)

INDEX

Sr.	Description	Page No.
1.	Reply on behalf of Original Applicant No. 1 to the IA No. 221/2023 and Rejoinder to Reply of R-13 to R-16 to R-18 to R-20	1789-1811
2.	Copy of Memo of OA No. 163/2016 (WZ) dated 29.09.2016	1812 - 1857
3.	Copy of Memo of OA No. 164/2016 (WZ) dated 06.10.2016	1858 - 1897
4.	Copy of Amended Memo of parties in OA No. 163/2016 (WZ) dated 31.07.2017	1898 - 1899
5.	Copy of Amended Memo of parties in OA No. 164/2016 (WZ) dated 31.07.2017	1900 - 1901
6.	Copy of Orders passed in OA No. 163/2016 vide dated 31.10.2017	1902
7.	Copy of Orders passed in OA No. 164/2016 vide dated 28.02.2017, 23.03.2017, 26.10.2017, 30.10.2017, 31.10.2017	1903 - 1909
8.	Copy of Memo of Civil Appeal No. 1258/2018	1910 - 1939
9.	Copy of Orders passed by Hon'ble SC in CA No. 1258/2018	1940 - 1959
10.	Copy of Order passed by Hon'ble NGT in OA No. 164/2016 vide dated 05.10.2022	1960 - 1962
11.	Copy of Order passed by Hon'ble SC in CA No. 4782/2023 vide dated 07.08.2023	1963 - 1964
12.	Copy of Order passed by Hon'ble SC in POPAT AND KOTECHA PROPERTY v. STATE BANK OF INDIA STAFF ASSOCIATION on 29.08.2005	1965 - 1976
13.	Copy of Order passed by Hon'ble SC in [2022] 4 S.C.R. 46; SATHYANATH & ANR. v. SAROJAMANI; (Civil Appeal No. 3680 of 2022) on 06.05.2022	1977 - 1998
14.	Copy of Order passed by Hon'ble NGT in OA No. 65/2019 On 24.04.2023	1999 - 2001

15.	Copy of Order passed by Hon'ble SC in Civil Appeal No. 5707 OF 2023 (@ <i>Special Leave Petition (Civil) No.18727 OF 2023</i>) Union Territory Of Ladakh & Ors. V. Jammu And Kashmir National Conference & Anr. On 06.09.2023	2002 - 2052
-----	--	-------------

Date: 21.05.2024



(TANAJI B. GAMBHIRE)
ORIGINAL APPLICANT No. 1

BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL,
WESTERN ZONE BENCH PUNE
ORIGINAL APPLICATION NO. 147/2016

IN THE MATTER OF:

MR. TANAJI BALASAHEB GAMBHIRE & ANRAPPLICANT
VERSUS
PRINCIPAL SECRETARY-DOE, GOM & ORS.....RESPONDENTS

**REPLY AFFIDAVIT ON BEHALF OF THE ORIGINAL APPLICANT
TO THE IA NO. 221/2023 FILED BY R-12-PP AND REJOINDER
TO THE REPLY OF R-13 to R-16 & R-18 to R-20-HOUSING
SOCIETIES**

I, Mr. Tanaji Gambhire S/o Shri. Balasaheb Gambhire Age: 40
Years, Profession: Advocate, R/at: CTS No. 296, Shukrawar Peth,
Laxmi Apartment, Near Shivaji Maratha High School, White House
Lane, Pune-411002, do hereby solemnly affirm and state on oath as
follows;

PART-A: REPLY TO IA NO. 221/2023

1. I state that, Respondent No. 12-PP: M/s. Arun Developers has filed Interlocutory Application No. 221/2023 seeking order of this Hon'ble NGT to keep the OA No. 148/2016 in abeyance till final disposal of CA No. 1258/2018 from Hon'ble Supreme Court and tag this OA with OA No. 163/2016 & OA No. 164/2016 and this shows the unethical tactics on part of PP to delay the matter and also on part of professionals acting in unprofessional manner. That the R-12-PP have also, filed MA No. 410/2016 seeking dismissal of OA on account of preliminary objections and this Original Applicant have filed detailed reply affidavit to the MA No. 444/2016.
2. **COMPLETION OF PLEADING LONG BACK & MALAFIDE INTENTION OF PP TO PROLONG THE CASE:** I state that the pleading in OA No. 147/2016 are completed long back in the year 2017 and PP is filling MA & IA in OA before Hon'ble NGT and Civil Appeal & IA before Hon'ble SC only to prolong the matter and to create nuisance in the case.

Sr.	Particulars	Date	Page
1.	OA No. 147/2016 Filed before NGT	17.09.2019	1-413
2.	Reply of R. 12	23.11.2016	414-644
3.	Reply of R. 11	24.11.2016	645-668
4.	Affidavit of R.3 & R. 4	05.12.2016	669-677
5.	Affidavit-in-Reply of R. 5 to R. 8	06.12.2016	678-716
6.	Reply of R. 10	28.12.2016	717-733
7.	Affidavit-in-Reply of R. 1 & R. 2	05.1.2017	734-764
8.	Rejoinder of Applicant 1	14.2.2017	765-842
9.	Rejoinder of Applicant 2	14.2.2017	843-844
10.	Affidavit of Applicant	10.4.2017	845-1044
11.	Additional Affidavit-in-Reply of R. 5 to R. 8	07.07.2017	1045-1051
12.	Affidavit-in-Reply of R. 12 on	21.9.2017	1052-1069
13.	Affidavit-in-Reply of R. 10 on	14.9.2018	1070-1071
14.	IA No. 410/2016 by PP preliminary objections	03.12.2016	
15.	Reply to IA No. 410/2016 by Original Applicants	14.02.2017	
16.	Hon'ble NGT-WZ-Pune not in function regularly and only urgent matters was heard by PB/Special Bench @Principal sitting	18.01.2018	Jan.2022
17.	Civil Appeal No. 1258/2018 filed before Hon'ble SC by Ganga Skies Societies (Having no connection with this Case)	24.01.2018	
18.	Hon'ble NGT-WZ-Pune start functioning regularly	Feb. 2022	
	Tactics to prolong the matter, following baseless IA's & Civil Appeal are filled		
19.	IA No. 43/2023 (WZ) by PP (PP not pressed this IA till matter took up for final argument)		
20.	IA No. 221/2023 (WZ) by PP	27.11.2023	723-765
21.	CA No. 4782/2023 by PP before Hon'ble SC	30.06.2023	
22.	Case Laws on behalf of Original Applicant	17.08.2023	1072-1530
23.	Compilation Judgment by R-12	28.11.2023	1531-1696
24.	Affidavit of Service	20.02.2024	1737-1739
25.	Reply by R-13 to R-16 & 18	20.02.2024	1763-1788

I state that, the Civil Appeal No. 1258/2018 is filed before Hon'ble Supreme Court on 24.01.2018 by Ganga Skies Housing Complex and IA No. 221/2023 has been filed by PP herein on 27.11.2023 i.e. after lapse of 4 years 9 months. There is no connection in these cases. Moreover, Hon'ble NGT listed this OA for final hearing vide order dated 11.05.2023 as pleading were already completed in this matter long back on

the year 2017. Thereafter, R-11-PP filed Civil Appeal No. 4782/2023 before Hon'ble Supreme Court challenging NGT Order dated 11.05.2023 and seeking direction to NGT to decide the preliminary objections at first. However, Hon'ble SC did not give any such direction to Hon'ble NGT.

3. GROUND FOR DISMISSAL OF MA & IA's FILED BY PP:

- A) BECAUSE**, the IA's No. 221/2023 is sworn on 15.07.2022 and filed on 27.11.2023 and registered on 28.11.2023. This tactics of filling such IA is only to delay the case and nothing else. This Hon'ble NGT ought not to entertain such IA in the interest of justice and also, take serious judicial note of conducts of PP and its advocate.
- B) BECAUSE**, the MA No. 410/2016 and all the IA's vide No. 221/2023 are abuse of process of law and filed with malafide intention by PP playing tactics to prolong the case and to get escape from the liability for restitution of environment & ecology. Moreover, OA No. 147/2016 is the admitted case of violation and preliminary issues are based on the disputed facts with mixed question of law.
- C) BECAUSE**, the MA No. 410/2016 and all the IA's vide No. 221/2023 dealing with the preliminary objections are not maintainable and tenable in the eyes of law as these MA & IA's against the settled position of law as held by this Hon'ble NGT as well as Hon'ble Supreme Court and therefore, these MA/IA's needs to be considered at the final stage while deciding the OA No. 147/2016 on its merit finally.
- D) BECAUSE**, disputed question of fact cannot be decided while considering application for rejection of Plaint. “[2005] 2 Suppl. SCR 1030; Held No. 1 & 2, P@1037 ¶D, P@1039 ¶D¶E¶F; Popat & Kotecha V. SBI Staff Association”

- E)** **BECAUSE**, Preliminary Objection seeking dismissal of OA on disputed facts is mixed question of law & facts ought to be decide at final stage.
- F)** **BECAUSE**, the preliminary objection on issue of limitation is substantial mixed question of law and also based on disputed questions of facts and it has to be decided at final stage as its required to go through entire records & evidences in the matter and it has to be decided at the final hearing on merit only.
- G)** **BECAUSE**, the settled position of law to decide the preliminary issues challenging the maintainability of plaint is mixed question of law & fact is involved with disputed facts is only at final stage and in such cases shall be heard as whole at final stage and hearing the case in parts is not permissible.
- H)** **BECAUSE**, the NGT is the special statute for expeditious disposal of environmental cases to avoid the unbridled & uncontrolled situation of environmental degradation derived from the object behind the statute of NGT Act, 2010.
- I)** **BECAUSE**, the present case is the admitted case of violations, wherein Respondent No. 12-PP have caused serious irreparable substantial damage to the environment and ecology and have not obtained a single mandatory environmental permission and PCMC, MPCB & SEIAA have admitted the violation.
- J)** **BECAUSE**, the Respondent No. 12-PP is trying to get escape from his strict & absolute liability of Environment Protection & its restitution & restoration by adopting such tactics of preliminary issue and Respondent No. 12-PP is abusing the process of this Hon'ble NGT.
- K)** **BECAUSE**, if the issue is a mixed issue of law and fact, or issue of law depends upon the decision of fact, such issue cannot be tried as a preliminary issue. In other words, preliminary issues can be those where no evidence is

required and on the basis of reading of the plaint or the applicable law, if the jurisdiction of the Court or the bar to the suit is made out, the Court may decide such issues with the sole objective for the expeditious decision. Thus, if the Court lacks jurisdiction or there is a statutory bar, such issue is required to be decided in the first instance so that the process of civil court is not abused by the litigants, who may approach the civil court to delay the proceedings on false pretext.

- L) BECAUSE**, the in present case the facts surrounding the issue of limitation are disputed and the determination of the issue of limitation in this case is not a pure question of law. Therefore, it cannot be decided as a preliminary issue.
- M) BECAUSE**, this Hon'ble NGT have powers granted Under Rule No. 24 of The NGT (P&P) Rules, 2011 R/W. Section 18(3) & 19(4) (K) Of NNGT Act, 2010 to recall of its order to secure end of justice and to prevent the abuse of its process being pro-environment court and onus of proof lies on the Polluter to prove his innocence as per the Vellore citizen forum case.
- N) BECAUSE**, this Hon'ble NGT required to strictly adhere to the procedures laid down in the NGT Act, 2010 & NGT (P&P) Rules, 2011 and shall not exercise inherent powers to support the polluters or suo moto powers dehors the specific provisions contained/not contained in the Act or rule. If, the case will be heard in part on the issue of limitation and then the outcome will be impugned orders will utter disregard of the objective behind NGT Act, 2010 & Rules for speedy disposal of Environment Cases and also said order will be against the settled legal position,
- O) BECAUSE**, the applicant have made out prima-facie case and there will be unbridle uncontrolled situation is stay is not granted.
- P) BECAUSE**, the PP cannot stare in the eyes of the law to continue his illegal operations and construction activity

without any mandatory permission and in admitted case of violation.

- Q) BECAUSE**, the Hon'ble NGT has to consider the settle position of law and ill intention of the Respondent No. 12-PP and shall decide the case finally at its requires full hearing, instead of deciding in part.
- R) BECAUSE**, this OA is filed on 17.09.2016 and same is pending since 14.09.2016 to till date even after completion of 92 months and pleadings are completed long back, therefore this OA has to be heard on merit as well as preliminary issued decided as whole at final stage.
- S) BECAUSE**, the provisions of Section 18 (3) of NGT Act, 2010 is barrier on hearing of matters in part as environmental cases ought to be decided within six months from its filling with mandate of law on speedy disposal-“*expeditiously as possible and endeavor*” and mandates to hear the matter as whole at final stage only.
- T) BECAUSE**, the OA No. 147/2016 & OA No. 163/2016, OA No. 164/2016, CA No. 1258/2018 have different facts & violations-law and needs to be considered separately and independently and have no similarity in any manner and differences are as below;

Sr.	Parameters	OA No. 147/2016	OA No. 163/2016	Remark
1.	PP	R-12: M/s. Arun Develoeprs	R-10: M/s. Goel Ganga Construction	different facts
2.	Project Details	Ganga Ashiyana Sr. No. 33(P) of Village-Thergaon, Taluka-Mulshi, District-Pune	Swar Ganga & Ganga Skies, Sr. No. 174(P), 175(P), 176(P), 177(P) of Village-Pimpri Waghere, Taluka-Haveli, District-Pune,	different facts
3.	Land Area	24431.27 M ²	41781.37 M ²	different facts
4.	TBUA	50041.19 M ²	EC=34700.66 M ² Actual=10532 M ²	different facts
5.	Facts-EC	No EC,	EC-21.08.2007	different facts

6.	Facts-CTE	No CTE,	CTE-17.11.2006	different facts
7.	Facts-CTO	No CTO,	CTO-25.11.2011	different facts
8.	Flood Line	Illegal construction in blue flood line	Illegal construction in natural water body	different facts
9.	Facts-Violations	No EC, No CTE, No CTO, Non-installation of Environmental Infrastructure,	Violations of terms & condition of EC & CTE, CTO, illegal discharge of sewage water in water body, encroachment in water body, Illegal construction of Parking Complex on 10% RG Area,	different facts
10.	EIA Notification, 2006	#Restrictions & Prohibitions # on new projects or activities, or on the expansion or modernization of existing projects or activities based on their potential environmental impacts Restrictions with EC & Prohibitions without EC ¶ 1 & 2 of notification {P@1074-1115}	Violations of terms & condition of EC & CTE, CTO,	different facts
11.	Facts-CC	30.03.2007, 09.10.2009, 09.03.2010, 02.09.2011, 03.03.2012, 04.04.2012, 30.03.2012, 17.07.2013, 30.04.2016 {P@13}	28.03.2006, 04.05.2006, 29.03.2007, 22.04.2008, 19.03.2011	different facts
12.	Facts-Plinth	23.11.2009, 11.03.2010, 12.10.2011, 07.10.2011, 10.10.2012, {P@14}	22.07.2008, 31.12.2008	different facts
13.	Fact-OCC	30.03.2012, {P@450} ; 30.04.2016 {P@451}	10.12.2009, 15.02.2010, 03.11.2010, 31.03.2011	different facts
14.	Expansion of project	From 30.03.2007 up to 30.04.2016	From 28.03.2006 up to 31.03.2011 & damage to Natural Water body due to discharge of sewer & non-operation of STP in 2014	different facts
15.	SEIAA Notice	02.01.2017 {P@764}		
16.	MPCB Notice	30.11.2016; {P@675}		
17.	MA No. 410/2016	¶ 3: Limitation		

18.	Reply to MA 14.02.2017	¶2-15: Limitation & Cause of Action		
19.	Hon'ble NGT: Position	Forward Foundation Case-Mantri Techzone		
20.	Hon'ble SC Position	Forward Foundation Case-Mantri Techzone		

Therefore, there is no connection between the OA No. 147/2016 and CA No. 1258/2018 and IA No. 221/2023 is baseless and meaning less and just to create the nuisance in this OA as well as in CA No. 1258/2018.

U) BECAUSE, the Hon'ble Supreme Court have not stayed the proceeding in this OA No. 147/2016 and that the Civil Appeal No. 4782/2023 is disposed of by Hon'ble SC and there is no specific direction to this Hon'ble NGT for deciding the preliminary objections at the early stage.

V) BECAUSE, the SLP (Civil) No. 10078/2019 & SLP (Civil) No. 32134/2019 is not having any connection with the present proceedings and Review Petition, Curative Petition is also disposed of in Goel Ganga Case and judgment in the Goel Ganga Case has attended the finality.

W) BECAUSE, the Hon'ble Supreme Court in POPAT AND KOTECHA PROPERTY V. STATE BANK OF INDIA STAFF ASSOCIATION on 29.08.2005 have held that;

1. Order VII Rule 11 (d) of the Code of Civil Procedure, 1908 speaks suit as appears from the statement in the plaint to be barred by any law. Disputed questions cannot be decided at the time of considering an application filed under Order VII Rule 11 CPC. Order VII Rule 11(d) applies in those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute, shows that the suit is barred by any law in force. **[1037-D]**

2. There cannot be any compartmentalization, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a

passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into the pleading has to be construed as it stands without addition or subtraction of the words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities. [1039-D, E, F]”

X) BECAUSE, the Hon’ble Supreme Court in [2022] 4 S.C.R. 46; SATHYANATH & ANR. v. SAROJAMANI; (Civil Appeal No. 3680 of 2022) on 06.05.2022 have held that;

“Held 1.1 The provisions of Order XIV Rule 2 CPC are part of the procedural law, but the fact remains that such procedural law had been enacted to ensure expeditious disposal of the lis and in the event of setting aside of findings on preliminary issue, the possibility of remand can be avoided, as was the language prior to the unamended Order XIV Rule 2. If the issue is a mixed issue of law and fact, or issue of law depends upon the decision of fact, such issue cannot be tried as a preliminary issue. In other words, preliminary issues can be those where no evidence is required and on the basis of reading of the plaint or the applicable law, if the jurisdiction of the Court or the bar to the suit is made out, the Court may decide such issues with the sole objective for the expeditious decision. Thus, if the Court lacks jurisdiction or there is a statutory bar, such issue is required to be decided in the first instance so that the process of civil court is not abused by the litigants, who may approach the civil court to delay the proceedings on false pretext. [Para 20][61-G-H; 62-A-B]”

Y) BECAUSE, the Hon’ble NGT in OA No. 65/2019 on 24.04.2023 have held that;

“4. We have heard the arguments of the learned counsel for the parties and we are of the view that it cannot be denied that limitation in the present case is a mixed question of law and fact and it would require that the entire pleadings are heard as all the parties have filed their respective reply-affidavits. Therefore, it would be appropriate to hear the matter in its entirety. The earlier observation made by us in the impugned

order dated 09.11.2022 that “it would be appropriate to hear the matter on limitation issue first” is set aside and we allow this application (I.A.No.68/2023). ...”

Z) **BECAUSE**, the Hon’ble Supreme Court in Civil Appeal No. 5707 OF 2023 (*@ Special Leave Petition (Civil) No.18727 OF 2023*) Union Territory Of Ladakh & Ors. V. Jammu And Kashmir National Conference & Anr. On 06.09.2023 have held that; Hon’ble NGT cannot wait for disposal of CA No. 1258/2018 and decide the matter on last settle position,

“35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in ***National Insurance Company Limited v Pranay Sethi, (2017) 16 SCC 6805***. The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it.”

AA) Therefore, OA may kindly be heard finally a/w all MA & IA.

4. DISPOSAL OF ENVIRONMENTAL CASES BY HON’BLE NGT SHALL BE AS EXPEDITIOUSLY AS POSSIBLE AND ENDEAVOUR:

I state that, the Sub-section (3) of Section: 18 Application or appeal to Tribunal of the NGT Act, is ad below;

“(3) The application, or as the case may be, the appeal filed before the Tribunal under this Act shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the application, or, as the case may be, the appeal, finally within six months from the date of filing of the application, or as the case may be, the appeal, after providing the parties concerned an opportunity to be heard.”

5. HON’BLE SUPREME COURT OPINION ON “NGT IS A SPECIALISED JUDICIAL BODY FOR EFFECTIVE AND EXPEDITIOUS DISPOSAL OF CASES:

- a) I state that the Hon’ble Supreme Court, in three judge bench judgment in the case of **(2012) 8 SCC 326**, Bhopal Gas Peedith Mahila Udyog Sangathan v. Union of India, and same is also reiterated in **2021 SCC OnLine SC 897** highlighted the NGT's role in the context, in the following words:—

“40. Keeping in view the provisions and scheme of the National Green Tribunal Act, 2010 (for short “the NGT Act”) particularly Sections 14, 29, 30 and 38(5), it can safely be concluded that the environmental issues and matters covered under the NGT Act, Schedule I should be instituted and litigated before the National Green Tribunal (for short “NGT”). Such approach may be necessary to avoid likelihood of conflict of orders between the High Courts and NGT. Thus, in unambiguous terms, we direct that all the matters instituted after coming into force of the NGT Act and which are covered under the provisions of the NGT Act and/or in Schedule I to the NGT Act shall stand transferred and can be instituted only before NGT. This will help in rendering expeditious and specialised justice in the field of environment to all concerned.

- b) I state that the Hon’ble Supreme Court, in the case of **(2019) 18 SCC 494**, Explaining the purpose for constituting the special court to deal with environmental issues, in **Mantri Techzone (P) Ltd. v. Forward Foundation**, Justice S. Abdul Nazeer writing for the three Judge Bench, made the following pertinent observations on the status of the NGT:—

“40. The Tribunal has been established under a constitutional mandate provided in Schedule VII List I Entry

13 of the Constitution of India, to implement the decision taken at the United Nations Conference on Environment and Development. The Tribunal is a specialised judicial body for effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to the environment. The right to healthy environment has been construed as a part of the right to life under Article 21 by way of judicial pronouncements. Therefore, the Tribunal has special jurisdiction for enforcement of environmental rights.”

6. OBJECTIVE BEHIND SPECIAL ENACTMENT OF NGT:

- a) The National Green Tribunal (NGT) is a specialized body that was formed under the NGT Act, 2010 for effective and expeditious disposal of cases that are related to the protection and conservation of the environment, forests, and other natural resources. India has become the third country in the world after Australia and New Zealand, for setting up a specialized environmental tribunal and also the first developing country to do so.
- b) The Statement of Objects and Reasons of the NGT Act will now require attention. Paras 1 to 6 of the Statement of Objects and Reasons being relevant are extracted herein below:-

“Statement of Objects and Reasons,- *The rapid expansion in industrial. Infrastructure and transportation sectors and increasing urbanization in recent years have given rise to new pressures on our natural resources and environment. There is a commensurate increase in environment related litigation pending in various Courts and other authorities. The risk to human health and environment arising out of hazardous activities has also become a matter of concern.*

2. India is a party to the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, in which India participated, calling upon the States to take appropriate steps for the protection and improvement of the human environment. The United Nations Conference on Environment and

Development held at Rio de Janeiro in June, 1992, in which India participated, has also called upon the States to provide effective access to judicial and administrative proceedings, including redress and remedy, and to develop National laws regarding liability and compensation for the victims of pollution and other environmental damage.

3. The right to healthy environment has been construed as a part of the right to life under article 21 of the Constitution in the judicial pronouncement in India.

4. The National Environment Tribunal Act, 1995 was enacted to provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance and for the establishment of a National Environmental Tribunal for effective and expeditious disposal of cases arising from such accident, with a view to giving relief and compensation for damages to persons, property and the environment. However, the National Environment Tribunal, which had a very limited mandate, was not established. The National Environment Appellate Authority Act, 1997 was enacted to establish the National Environment Appellate Authority to hear appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986. The National Environment Appellate Authority has a limited workload because of the narrow scope of its jurisdiction.

5. Taking into account the large number of environmental cases pending in higher courts and the involvement of multidisciplinary issues in such cases, the Supreme Court requested the Law Commission of India to consider the need for constitution of specialized environmental courts. Pursuant to the same, the Law Commission has recommended the setting up of environmental courts having both original and appellate jurisdiction relating to environmental laws.

6. In view of the foregoing paragraphs, a need has been felt to establish a specialized tribunal to handle the

multidisciplinary issues involved in environmental cases. Accordingly, it has been decided to enact a law to provide for the establishment of the National Green Tribunal for effective and expeditious disposal of civil cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment.”

- c) Therefore, I state that from the object No. 6 itself clear that this Hon’ble NGT shall hear the matter as a whole as expeditiously as possible to decide the said matter within 6 months from its filing at final stage as per the objects and Section-18 (3) of the NGT Act, 2010.

7. BURDEN/ONUS OF PROOF LIES ON POLLUTERS IN ENVIRONMENTAL CASES:

I state that, the Hon’ble Supreme Court have casted burden on Polluter in environmental cases as held in **(1996) 5 SCC 647**, in the case of “**Vellore Citizens Welfare Forum Versus Union of India**” that the onus of proof is on the polluter;

“(11) SOME of the salient principles of "Sustainable Development", as culled out from Brundtland Report and other international documents, are Inter-Generational Equity, Use and Conservation of Natural Resources, Environmental Protection, the Precautionary Principle, Polluter Pays Principle, Obligation to Assist and Cooperate, Eradication of Poverty and Financial Assistance to the developing countries. We are, however, of the view that "The Precautionary Principle" and "The Polluter Pays Principle" are essential features of "Sustainable Development". The "Precautionary Principle" - in the context of the municipal law - means:

- (I) Environmental measures - by the State government and the statutory authorities—must anticipate, prevent and attack the causes of environmental degradation.*
- (II) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.*

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

Therefore, I state that, wherever there is specific burden of proof on developer/industrialist, then developer/industrialist cannot adopt the abuse of process of law to get escape from its liability.

8. That the MA No. 410/2016 & IA No. 221/2023 are baseless, meritless, against the law and not tenable in the eyes of law and therefore, this Hon'ble NGT may kindly dismiss these MA & IA.

**PART-B: REJOINDER TO THE REPLY OF RESPONDENT
NO. 13 TO 16 & 18 TO 20**

9. REJOINDER TO THE REPLY OF RESPONDENT NO. 13 TO 16 & 18 TO 20:

- 9.1 I state that, the reply Affidavit of the Respondent No. 13 to 16 & 18 to 20 filed vide dated 20.02.2024 is partly false, baseless, misleading to the extent of personal allegations on Applicant and partly true to the extent of Para-9.
- 9.2 I state that, the Reply affidavit of the Respondent No. 13 to 16 & 18 to 20 is filed on behest of the Respondent No. 12-PP and to cover-up the gaps from reply affidavit of the R-12-PP & MA No. 410/2016 raising preliminary objections.
- 9.3 I state that the following table is the rejoinder to the reply of Respondent No. 13 to 16 & 18 to 20.

Sr.	Para	Contention	Rejoinder of Applicants
1.	¶1-2	Grievances in OA	Part of record, Deserve no comment at this juncture
2.	¶3	Contents of OA are false, frivolous, bogus, vexatious	Contents of OA are true & correct and it is admitted case of violations;
3.	¶4A	Limitation: OA is barred by Limitation	OA is well within the limitation as the R-12-PP have carried out the expansion in project from 30.03.2007 to 30.04.2016

			from 0 M ² to 50041.19 M ² having 497 flats and 25 shops without prior EC, CTE & CTO, No CGWA Permission, No installation of environment infrastructure, illegal construction in prohibited blue flood line, illegal construction on 10% RG Area etc. Original Applicants have already filed detailed reply to this issue vide dated 14.02.2017 in MA No. 410/2016.
4.	¶4B	Locus: Applicants have no locus	Locus is liberal and any person can report the environmental violations to the Hon'ble NGT and also, Hon'ble Supreme Court in the case of "MCGM Vs. Ankita Shinha" have clarified that the locus is liberal concept to report the environmental cause to the NGT. Therefore, this is the nuisance of professionals showing their appearance for R-13 to 16 & 18 to 20, but in actual these professionals are acting for polluters.
5.	¶4C	Plural Remedies:	Application is based on the single cause of action and RTI quarry to the PCMC have invited attention of Applicant for environmental violations. That the allegations to the extent of reduction in DP road reservation, ULC, Death of labour, Amenity Area Scam have direct bearing on the illegal construction raised by R-12-PP and these violations supposed to dealt by R-12-PP and not by the Societies. However, the Professionals are paid by PP under the garb of holding vakalatnama for societies and reply is not in the interest of flat purchasers and entire reply is only to protect the builder and not the societies.
6.	¶5	Huge Investment by Member of Societies; Malafide intentions of Applicant for personal Gain	That the well-established principle is "Buyer be aware" and here, flat purchasers knowingly have purchased their flats in illegal construction, therefore, flat purchasers shall be responsible to their own loss. However, these Respondents failed to show the malafide intention of the Applicants and mere words are not enough to consider/reply this allegation. Moreover,

			such false & baseless allegations are come out from mind of professional adopting unprofessional practice and same is well known to the NGT. Since filling of this OA to till date, this Applicant is chasing this cause in letter & spirit, which not required any certification of bonafide from unprofessional & criminal peoples.
7.	¶6	“Principles of equity and good conscience.”	This principles have to apply only to the innocents and not the criminals. In this case flat buyers are siting inline with the polluters or may be due to ill advise of professionals, flat purchasers are not seeking any reliefs to protect their interest, but flat buyers are seeking protection of polluter-PP. Therefore, flat buyers are not entitle for any relief under this “Principles of equity and good conscience.” And these respondent cannot seek the relief under emotional drama.
8.	¶7	CA No. 4292/2018 and OA No. 163/2016	That there is no CA no. 4292/2018 before Hon’ble SC having concern with any matter before this Hon’ble NGT. And OA No. 163/2016 is also not having any connection with the present OA and there is no similarity facts wise or circumstances wise. This hopeless try by professionals to mislead this Hon’ble NGT.
9.	¶8	Decide primary issue before merit	That the PP under the garb of flat buyers cannot act the dictator to the Hon’ble NGT. That the cause of action & limitations in the present cases are mixed question of facts & law based on disputed facts and therefore, it shall be decided on final hearing along with merit of matter. Moreover, Hon’ble Supreme Court have clarified in its Order dated 07.08.2023 passed in CA No. 4782/2023 that the “The preliminary objections raised by the appellant are bound to be considered by the Tribunal while the Tribunal finally hears the original application. In fact, that

			is the order passed by the Tribunal in 2018. Hence, subject to what is observed above, no case of interference is made out. The appeal is dismissed.”
10.	¶9	PCMC various permissions; layout sanctions, building sanctions, plinth check certificates, Occupancy Certificates;	That the various permissions granted by the PCMC to PP are part of record and this OA is dealing with the environmental issues.
11.	¶10	Taken Necessary Permission; No challenged by Applicants	That the PP have not obtained necessary permissions like EC, CTE, CTO, CGWA Permission from competent authority and mere obtaining PCMC permissions is not enough for raising such huge construction as per law. Whether Applicant have challenged or not challenged those permissions have no relevance in deciding this matter before NGT. However, flat buyers are mute spectators despite knowing such blatant violations and also, accepting & appointing the advocates of builders choice is very surprising. However, it is now proved that the flat buyers and PP are in collusions from beginning and therefore, flat buyers are not liable for any relief from this Hon’ble NGT.
12.	¶11	Adopt R-12-PP reply	That the flat buyers have deep collusions with the PP and PP is trying to get escape from his liability with cover of these flat buyers.
13.	¶12	Liberty to file additional reply	As these Respondents have adopted reply of PP and pleadings are completed long back, no further opportunity is required to be given.
14.	¶13	Dismiss OA	That these respondents are siting in line with the Polluters and also, liable for the operational damage of discharge of untreated sewage to the PCMC sever line

			and throwing of untreated solid waste to the PCMC dump yard and creating burden on the public infrastructure. And these Respondents have collusion with PP and not entitle for any reliefs.
--	--	--	---

9.4 I state that this Hon'ble NGT may kindly impose the heavy cost as well as Environmental damages upon these Respondents.

10. JUDGMENTS/CASE LAWS ON BEHALF OF ORIGINAL APPLICANT IN SUPPORT OF HIS CONTENTIONS ARE AS BELOW; That the Original Applicant would like to rely on the following case law;

Sr	Description	Purpose & Page No.
1.	M.C. Mehta Vs. UoI, (1987) 1 SCC 395,	¶ 31-32: Environment Damage Computation, Magnitude of PP, P@1167-1169
2.	Indian Council for Enviro-Legal Action Vs. Union of India, (1996) 5 SCC 281,	¶ 47: Locus, P@1192-1193
3.	Vellore Citizens Welfare Forum Vs. UoI & Ors, (1996) 5 SCC 647,	¶ 11 (II): Onus of proof, P@1206
4.	Sterlite Industries (I) Ltd. Vs. UoI & Ors., 2013 (4) SCC 575,	¶ 46-47: Environment Damage Computation, Co-relate with magnitude & Capacity of Polluter, deterrent effect, Larger & more prosperous polluter, greater amount of compensation payable, P@1248-1249
5.	The Forward Foundation Vs. State of Karnataka, 2015 SCC OnLine NGT 5,	¶ 24-33: Cause of Action & Limitation, recurring cause: P@1264-1269 ¶ 29: Plural Remedies/Single Cause of action, P@1266
6.	Sunil Kumar Chugh Vs. DoE in Appeal No. 66/2014(PB),)	¶ 34-36: RG Area/Open Space, P@ 1331-1334 ¶ 45-46(2): EDC & Compensation for deficient RG Area, P@1343-1344
7.	Tanaji B Gambhire Vs. Union of India & Ors. 2016 SCC OnLine NGT 4213,	¶ 41: Illegal construction cannot be saved, P@1356 ¶ 46-47: Environmental Compliance is supreme; defaulting entity at economical disadvantage, P@1357 ¶ 53: Careless & reckless of polluter, mute spectator govt. authority P@1359
8.	Goel Ganga Developers India Pvt. Ltd. Vs. UoI-MoEFCC (2018) 18 SCC 257,	¶ 17: FSI & Non-FSI no concern with grant of EC, natural resources, P@1347 ¶ 58-64: Quantification of EDC, Carbon Footprint, intransigent & unapologetic

		PP, manoeuvred & manipulation of PP, P@1388-1390
9.	Mantri Techzone Pvt. Ltd. Vs. Forward Foundation (2019) 18 SCC 494,	¶ 39-50 : Maintainability of OA, cause of action, limitation, environmental degradation as established gives rise to independent cause of action, jurisdiction of court-erroneous mention & non-mention would not vitiate NGT jurisdiction, P@1415-1417
10.	Goel Ganga Developers India Pvt. Ltd. Vs UoI-MoEFCC & Ors. (2019) 9 SCC 288,	¶ 2-8 : Okhla Bird sanctuary case, Activity area open to sky, built-up area, confirms Goel Ganga Case judgments, P@1422-1425
11.	Hanumant Laxman Aroskar Vs. UoI, (2019) 15 SCC 401,	¶ 164 : Environmental Matter, Bonafide of applicant, personal agenda, Respondent argument not accepted, Vague aspiration on intention of public spirited individuals does not constitute an adequate response to those interested in protection of environment, court finding-lacking bonafide-issue appropriate direction, court duty to assess environmental cases on merit, P@1494
12.	Keystone Realtor Pvt. Ltd. Vs. Anil V. Tharthare (2020) 2 SCC 66	¶ 13-15 : Interpretation of Para-2 & 7 of EIA Notification, 2006: prior EC mandatory for expansion or modernisation, P@1503-1504 ¶ 19 : interpretation of statute in consonance with object of legislation or delegated legislation as whole, bright-line test-marginal increase & material increase, P@1505 ¶ 20 : Expansion of project 32395.17 M ² to 40480.88 M ² beyond threshold limit, prior EC is mandatory, P@ 1506
13.	MCGM Vs Ankita Sinha & Ors. 2021 SCC Online SC 897,	¶ 38-40 : Rule 24: to prevent abuse of its process or to secure the ends of justice, P@1516-1517 ¶ 41 : NGT is conferred with power of moulding any relief. justified in the facts and circumstances of the case, P@1517 ¶ 42 : locus standi; P@1517 ¶ 43 : Stockholm and the Rio De Janeiro Conventions towards protection of the environmental rights under Article 21 of the Constitution ¶ 75 : Principle 10 of the Rio Declaration which speaks of three fundamental rights i.e., access to

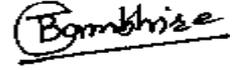
		<p><u>information, access to public participation and access to justice,</u></p> <p>¶76-80: S-20 of NGT Act, precautionary principle, widest amplitude, P@1523-1524</p> <p>¶86: locus standi: Larger societal interest, whether that be in the form of 'Public Interest Litigation' or widening the scope of locus standi. P@ 1525</p> <p>¶88: liberalizing the concept of <i>locus standi</i> in environmental matters , P@ 1525</p>
14.	Tanaji B Gambhire Vs Union of India & Ors, In OA No. 34/2020(WZ)	¶ : Expansion in Construction project, prior EC mandatory, violation of EIA Notification,
15.	Tanaji B Gambhire Vs Union of India & Ors, In OA No. 33/2020(WZ)	¶5: Patently integral project,
16.	Tanaji B Gambhire Vs Union of India & Ors, OA No. 64/2020(WZ)	¶ : Expansion in Construction project, prior EC mandatory, violation of EIA Notification, ¶13: Past violations does not exonerate subsequent grant of EC
17.	Tanaji B Gambhire Vs UoI-MoEFCC & Ors., Appeal No. 32/2020(WZ)	¶13: Damage: EDC 10 Crores of total project cost
18.	Tanaji B Gambhire Vs UoI-MoEFCC & Ors., Appeal No. 34/2020(WZ)	¶14: Damage: EDC 15 Crores of total project cost
19.	SP Muthuraman Case 2015 SCC OnLine NGT 169	¶147-152: prior EC required
20.	Common Cause Case-(2017) 9 SCC 499	¶125: Ex-post facto EC cannot be granted
21.	Cavelossim Villagers Forum Vs Village Panchayat of Cavelossim, 2019 SCC Online NGT 1662	¶14: Cause of Action & Limitation "Forward foundation case ¶24- 32", ¶15: Limitation ¶19: Sec. 20: 'Precautionary' principle, 'Sustainable Development' principle and 'Polluter Pays' principle. It may be <u>inevitable to pass orders in the nature of public interest</u> . It may be said to be <u>comparable or otherwise to PIL jurisdiction</u> . Fact remains that jurisdiction under Section 15 read with Section 20 of the Act has to be <u>exercised meaningfully to protect environment</u> .
22.	Hon'ble NGT judgment in OA No. 48/2020(WZ) dated 10.08.2020;	¶45-46: Cause of action is recurring
23.	Hon'ble Hon'ble Supreme Court Judgment in	¶35: Court has to decide the cases as per last settled position

CA No. 5707/2023 out of SLP-18727/2023 dated 06.09.2023;	
--	--

- 11. SUGGESTIONS ON BEHALF OF APPLICANT:** OA No. 147/2016 may kindly be heard on merit finally along with All MA & IA for final adjudication and this Hon'ble NGT may kindly direct the demolition of illegal construction without EC, illegal construction on 10% RG Area and Illegal construction on prohibited blue flood line of Pawana River a/w imposition of exemplary Environmental compensation to have deterrent effect on polluters.
- 12.** Hence this affidavit in Reply to IA No. 221/2023 and Rejoinder to the Reply of Respondent No. 13 to 16 & 18 to 20.

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

Date: 21.05.2023



MR. TANAJI B. GAMBHIRE
ORIGINAL APPLICANT No. 1

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

ORIGINAL APPLICATION NO. 147 OF 2016

IN THE MATTER OF:

MR. TANAJI BALASAHEB GAMBHIRE & ANRAPPLICANTS

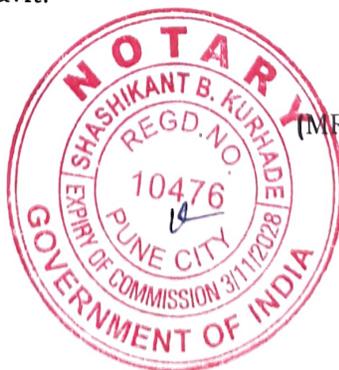
VERSUS

PRINCIPAL SECRETARY-DoE & ORS.RESPONDENTS

AFFIDAVIT IN SUPPORT OF REPLY ON BEHALF OF THE ORIGINAL APPLICANT TO THE IA NO. 221/2023 FILED BY R-12-PP AND REJOINDER TO REPLY OF R-13 to R-16 & R-18 to R-20

I, Mr. Tanaji Gambhire S/o Shri. Balasaheb Gambhire Age: 40 Years, Profession: Advocate, R/at: CTS No. 296, Shukrawar Peth, Laxmi Apartment, Near Shivaji Maratha High School, White House Lane, Pune-411002, do hereby solemnly affirm and state on oath as follows:

1. I state that, I am Original Applicant in the aforesaid matter and I am well aware with the facts and circumstances of the case and in such capacity competent to depose by way of this affidavit.
2. I have read the contents of the accompanying Reply to the IA No. 221/2023 and Rejoinder to the Reply of Respondent No. 13 to 16 & 18 to 20, the same are drafted by me and that the contents of said reply & rejoinder are true facts in my personal knowledge.
3. I state that, the annexures attached with the Reply are true copies of their respective and content of this affidavit are true and correct to the best of my knowledge and belief.
4. Hence this Affidavit.



Bgmhize

AFFIANT

(MR. TANAJI B. GAMBHIRE)

BEFORE ME

Shashikant B. Kurhade
Shashikant B. Kurhade
Notary Govt. of India

Noted and Registered
at Sr. No. *428/2024*
Date:- **21 MAY 2024**



428/2024

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

MEMORANDUM OF APPLICATION

UNDER SECTIONS 14 & 15 OF NGT ACT, 2010

APPLICATION NO. **163**/2016

IN THE MATTER OF

1. MR. TANAJI BALASAHEB GAMBHIRE

AGE: ADULT OCCUPATION: SERVICE

R/O - FLAT NO-16, CTS-296, LAXMI APARTMENT,

NEAR SHIVAJI MARATHA HIGH SCHOOL, WHITE HOUSE LANE,

SHUKRAWAR PETH, PUNE-411002,

... APPLICANT

VERSUS

1. UNION OF INDIA

THROUGH SECRETARY,

MINISTRY OF ENVIRONMENT AND FOREST

PARYAVARAN BHAWAN, CGO COMPLEX, LODHI ROAD,

NEW DELHI - 110001

2. THE PRINCIPAL SECRETARY, ENVIRONMENT DEPARTMENT

GOVERNMENT OF MAHARASHTRA,

15TH FLOOR, NEW ADMINISTRATIVE BUILDING,

MANTRALAYA, MUMBAI-400 032

3. STATE LEVEL ENVIRONMENT IMPACT ASSESSMENT AUTHORITY

THROUGH MEMBER SECRETARY

15TH FLOOR, NEW ADMINISTRATIVE BUILDING,

MANTRALAYA, MUMBAI-400 032

4. MAHARASHTRA POLLUTION CONTROL BOARD

THROUGH ITS MEMBER SECRETARY,

KALPTARU POINT, 3RD FLOOR, NEAR SION CIRCLE,

OPP. CINE PLANET, CINEMA, SION (E), MUMBAI.

5. MAHARASHTRA POLLUTION CONTROL BOARD

THROUGH ITS REGIONAL OFFICER, SRO
JOG CENTRE, 3RD FLOOR, MUMBAI-PUNE ROAD, WAKADEVADI,
PUNE-411003

6. PIMPRI CHINCHWAD MUNICIPAL COMMISSIONER

PIMPRI CHINCHAWAD MUNICIPAL CORPORATION,
PIMPRI, PUNE-411 018

7. SHRI. MAHAVIR THALLYAPPA KAMBLE

CITY ENGINEER

PIMPRI CHINCHAWAD MUNICIPAL CORPORATION,
PIMPRI, PUNE-411 018

8. DISTRICT COLLECTOR - PUNE

PRESIDENT-DISTRICT ENVIRONMENT COMMITTEE, PUNE

9. SHRI. SHASHANK PHADAKE

ARCHITECT & AUTHOSIDED PERSON OF SOLE SPACE

1+2, BUILDING NO.7,
SHRADDHA HERITAGE, PIMPRI,
PUNE-411019

10. M/s GOEL GANGA CONSTRUCTION

A PARTNERSHIP FIRM THROUGH
ATUL JAYPRAKASH GOEL
AMIT JAYPRAKASH GOEL
3RD FLOOR, SAN MAHU COMPLEX,
OPP. POONA CLUB, 5, BUND GARDEN,
PUNE-411 001

....RESPONDENTS

AND IN THE MATTER OF
GROSS INTENTIONAL VIOLATION OF
RULES AND REGULATIONS IN VARIOUS

ENVIRONMENTAL LAWS AND TERMS &
CONDITIONS OF ENVIRONMENTAL
CLEARANCE BY RESPONDENT NO.10
WITH THE HELP OF OTHER
RESPONDENTS

1. The address of the applicant is as given above for the service of notices of this application.
2. The addresses of the respondents are as given above for service of notices of this application.
3. The applicant above named beg to submit this memorandum of application against violation of terms and condition comprised in environmental clearance dated 21.08.2007, consent to establish dated 17.11.2006, consent to operate dated 25.11.2011, interalia on the grounds setout hereunder.

BRIEF FACTS:

4. Serious violation of the terms and conditions of the environmental clearance by a developer need to be dealt with sternly so that a clear and unambiguous message is passed on to the entire business community and the issue of one such gross violation by the developer and turning deaf ears to such violations despite bringing it to the notice of authorities responsible for upholding the law is the reason and basis of this application.
5. That on scrutiny of documents received under the Right to Information Act, the applicant found many irregularities, illegal activities, intentional violations & breaches of law and many more violations which causes huge financial loss to the government machinery in

various ways as well as the **very serious violations of Environment Protection Act and Pollution Control Laws.**

6. That the applicant brought the entire scam and environmental violations to the notice of various respondents amongst nos. 1 to 8 for investigation and further strongest action against developer with a hope that the further illegalities would be prevented by the said authorities. However to the utter shock and surprise to the applicant, the applicant realised that the government machinery in various offices is trying its best to help and facilitate developer to violate laws left right and center for reasons best known to such authorities.

**7. BRIEF INFORMATION OF PROJECT PROPONENT
BUILDER RESPONDENT NO. 10 :-**

M/s. Goel Ganga Construction is a partnership firm registered under the partnership Act 1932 having its registered office at 3rd Floor, San Mahu Commercial Complex, 5 Bund Garden Road, Pune-411001, carrying the business of builder, promoter and developer through its partners 1. Atul Jaiprakash Goel and 2. Amit Jaiprakash Goel as its responsible persons for every activity of M/s. Goel Ganga Construction.

8. PARTICULARS OF PROJECT UNDER CHALLENGE:-

That M/s. Goel Ganga Construction has developed the property at Survey No. 174A(Pt), 174A(Pt), 175A(Pt), 176A(Pt) & 177 A(Pt), and their respective C.T.S. No. 4859 (Pt), 4862(Pt), 4863 (Pt) & 4865(Pt), At-Pimpri-Waghere, Taluka-Haveli, District-Pune and present site falls within the jurisdiction of Pimpri Chinchwad Municipal corporation. That the project consists of Two residential societies namely Swar-Ganga & Ganga Skies, One Amenity Building, One Bungalow and One

Commercial Building. **The project site being subject matter of this application is situated at Survey No. 174A(Pt), 174A(Pt), 175A(Pt), 176A(Pt) & 177 A(Pt), and their respective C.T.S. No. 4859 (Pt), 4862(Pt), 4863 (Pt) & 4865(Pt), At- Pimpri-Waghare, Taluka-Haveli, District-Pune and admeasuring total area of 41781.37 Sq. Mtrs.**

9. PARTICULARS AND SPRCIFIC ROLE OF OTHER RESPONDENTS.

- a. The secretary, MoEF, Government of India, the respondent no. 1 is the higher bureaucratic authority responsible for various actions and procedures under environmental laws and in formulating and implementing the policies and legislations on environmental protection and as such has failed in the instant case to uphold the environmental laws despite there being sufficient documentary evidence on record. The said authority for reasons best known has been ignoring the complaints.
- b. The principal secretary, MoEF, Government of Maharashtra, the respondent no. 2 is also the higher bureaucratic authority at state level responsible for various actions and procedures under environmental laws and in formulating and implementing the policies and legislations on environmental protection and as such has failed in the instant case to uphold the environmental laws despite there being sufficient documentary evidence on record. The said authority for reasons best known has been also ignoring the complaints intentionally.

- c.** State Level Environment Impact Assessment Authority, the respondent no. 3 is responsible for environment impact assessment of any development project and is aided by SEAC and is final authority for issuing Environmental Clearance and it is responsible for correct assessment and issue of EC to any project proponent. In the instant matter the said respondent has deliberately and intentionally neglecting to take action for violation of terms and conditions of EC despite there being complaints on record.
- d.** Maharashtra Pollution Control Board the respondent no. 4 is responsible for pollution control and accord sanction for consent to establish and consent to operate to project proponent and as such need to confirm the performance of mandatory pre requisites. The said respondent has failed to bring on record the correct site conditions and is therefore responsible for miscarriage of justice.
- e.** Maharashtra Pollution Control Board the respondent no. 5 is regional officer of the board and is practically acting as ears and eyes of the MPCB authority and the boards and whose site visits reports become the basis for decisions in favour of or against the project proponent and the said officer has not taken appropriate steps in accordance with law and has been supporting the project proponent for reasons best known to them.
- f.** Pimpri-Chinchwad Municipal Corporation-PCMC the respondent no. 6 is the local authority for all purposes of sanctions related to construction activity and as such is duty bound and responsible for strict implementation of environmental

laws as well as development control rules and regulations. The said authority has completely failed to perform its duties and thereby has caused and aided in causing the severe environmental damage in the instant case.

- g.** Mr. Mahavir T. Kambale, city engineer, as highly technical expert in the building permission department and as head of department for strict implementation of development plans/ scheme of PCMC and as the administration of the PCMC is depend upon him for his professional advice and technical expertise to take action against the defaulting builder those who are committing the violations of the laws for safeguarding the interest of citizens. This respondent as higher authority of building permission department has become blind intentionally to protect the illegality and violation committed by the project proponent, but the conduct of this respondent smells connivance with project proponent. The said respondent has completely failed to perform its duties and thereby has caused and aided in causing the severe environmental damage allowing illegal construction in the instant case.
- h.** District Collector – Pune the respondent no. 8 is an important authority responsible for upholding the environmental protection by strict implementation of the revenue and other laws along with environmental laws as he is the president of the district environmental protection committee. The said authority is sleeping like a lazy serpent and has not taken any action to protect environment in any matters so far and even if it is taken, it is far from adequate and this authority needs to be reminded about its powers to

take action and be directed to take action against the errant builders like the project proponent.

- i. Shri. Shashank Phadake Architect & Authosided Person of Sole Space, the respondent no. 9 is an architect, technical consultant and advising various developers in obtaining the Building Permission. The Respondent No. 9 (Shri. Shashank Phadake Architect-Sole Space,) is the design and regulatory architect appointed by and working as such for the Respondent No.10 Project Proponent for the purpose of preparing all plans, documents, statements, affidavits, compliance of direction sought by the PCMC. But Respondent No. 9 has been involved in intentionally advising project proponent to provide false & misleading information and preparing fudged documents for onward submission to the PCMC Authorities without verifying the information & suppress the true facts from the authority to obtain Building Permission. This firm/ architect needs to be investigated into and further is required to be banned from acting as Architect since it has been ill advising its clients in many cases and is helping them prepare false documents and thereby cheating and aiding the criminals, which is resulting in huge environmental damage. The same is consultant and has furnished/ has advised to furnish false and misleading information to the PCMC while manipulating the Green belt area marking, reduction of MHADA reservation, non-making of sub-division of plots even having natural sub-division of plot, illegal reduction in the statement of areas, illegal loading of TDR, illegal construction of parking complex on 10

% open space i.e. recreational space and suppression of lease out land in the present development.

10. Being aggrieved by and dissatisfied with the inaction on the part of various environment protection authorities, this applicant prefers this application inter-alia on the following grounds.

11. BLATANT VIOLATION OF THE ENVIRONMENTAL LAWS AND TERMS AND CONDITIONS OF ENVIRONMENTAL CLEARANCE. FULL USE OF VAGUE ORDERS OF AUTHORITY IN ALLOWING 700 FLATS AGAINST 34700 SQ. MTRS

Table No.1:- Comparison of EC Permission and Actual Construction at site.

Description	EC Permission	Actual Construction
Amenity Building (No. of Offices/Room)	0	60
Shops/ Offices	0	9
Bungalow	0	1
No of Flats	700	716
Built-Up Area (Sq. Mtrs)	34700.66	100532

It is to be noted that the approval was for **34700 Sq. Mtrs.** and the respondent no. 10 PP has constructed the **100532 Sq. Mtrs.** PP has actually constructed 18 (Eighteen) multistoried Residential Building having 716 total number of flats instead of 700 flats approved by Environment Department, in addition to that **One Bungalow** none of Bungalow is approved by Environment Department, **One Commercial Building** having 9 (Nine) Shops, none of the shop is approved by

Environment Department, **One Amenity Building** having 60 (Sixty) Rooms/ offices, none of Amenity building approved by Environment Department.

Also it is to be noted that, the PP has constructed the **covered parking complexes on the 10 % Open space**, that open space shall remain open to sky as per the provisions of DC rule as recreational space.

The applicant humbly submits that it is a classic case of violation of environmental laws, rules, regulations, terms and conditions, undertakings right in the eyes of the unscrupulous authorities. It is evident from the above chart that the Respondent No. 10 has not bothered to care while constructing almost **290** percent over and above its sanctioned limit.

All stated above is the actual construction made out by this Project Proponent on the said project land and which is the part of intentional violation of environment clearance is explained in details as below.

12. EXTRA CONSTRUCTION WITHOUT ANY APPROVAL OF SEIAA AND SUPPRESSION OF FACTS ABOUT THE TOTAL BUILT UP AREA OF THE PROJECT, NO AMENDMENT IN ENVIRONMENTAL CLEARANCE :-

ENVIRONMENTAL CONDITIONS

It is to be noted that the Builder (Project Proponent) has obtained environment clearance by order no-EC-21-74/2007-IA.III dated 21 August 2007 after going through the Expert Appraisal Committee (EAC) meetings no 17th held on 1-2 June-2007. It was mandatory and

obligatory on the part of the project proponent to follow the following conditions imposed on him while proceeding for construction.

As per the above environment clearance, the builder had permission for construction strictly in accordance with the below condition

- The Total Plot Area is 47881.37 Sq. Mtrs.
- The Total Built-up Area as indicated is 34700.44 Sq. Mtrs.
- The Project Involves construction of multistoried building for 700 residential units.
- Total Parking space proposed for parking of vehicles is 312.
- Total water requirement will be 473 Cu. m/ day.
- Total waste water generation will be 378 Cu. m/ day.
- The waste water generated from the complex will be treated in STP (400 Cu. m.).
- The Solid waste generated from the complex will be 1400 kg/day.
- Operation Phase: - Condition No X "The green belt design along the periphery of the plot shall achieve attenuation factor conforming to the day and night noise standards prescribed for residential land use. The Open spaces inside the plot should be suitably landscaped and covered with vegetation of indigenous variety."
- Part B. General Condition: - V)"6 monthly monitoring reports should be submitted to the Ministry and its Regional Office."
- Part B. General Condition: - 6."In case of any changes (s) in the scope of the project, the project would require a fresh appraisal by this Ministry."
- Part B. General Condition: - 10. "The project proponent should advertise in at least two Newspapers widely circulated in the region, one of which shall be in the vernacular language informing that the project has been accorded environmental clearance and copies of clearance letters are available with the Maharashtra State Pollution Control Board and may also be seen on the website of the Ministry Of

Environment and Forests at <http://www.envfor.nic.in>. The advertisement should be made within 7 days from the day of issue of clearance letter and a copy of the same should be forwarded to the Regional office of this Ministry at Bhopal."

- It is significant to note that the Project Proponent has failed to follow the above mandatory conditions of environment clearance and made illegal excess construction by violating the provision of Environment Protection Act 1986 intentionally, as explained below in detail.

13. BREACH OF EC CONDITIONS

It is amply clear from actual site condition that, the project proponent has made excess construction and all the respondent authorities have neglected to initiate actions for reasons best known to them and have failed to protect the environment.

- It is evident from above Table no.4 & 5 that the project proponent has constructed 716 residential flats, 9 shops, 1 bungalow and Amenity building having 60 rooms in actual by violating the Environment Clearance issued.

- It is evident from the below **table No's-6, 7 & 7A** that the FSI built-up area used in this project is 52273.77 Sq. Mtrs. and It can also be observed from the above tables that the Non-FSI built-up area for this project excluding the Parking area is 27610.72 Sq. Mtrs.

- It is evident from the below **table No's- 8 & 9** that the Environment Clearance approved parking area for residential bldg is only 3900 Sq. Mtrs but in fact Project proponent made construction of 20647.51 Sq. Mtrs. and the excess parking area in violation is 20647.51 minus 3900 equals to 16747.51 Sq. Mtrs.

- It is evident from the below **table No's-10**, that the Actual Built-Up area for this project including the Parking area is 100532 Sq. Mtrs., While the EC approved Built-Up is only 34700.66 Sq. Mtrs and

Present Project Proponent has constructed **65831.34** Sq. Mtrs in excess to the EC No. 21-74/2007-IA.III dated- 21/08/2007 and this is clear cut violation of Environment Protection Act 1986 read with EIA notifications issued time to time.

A copy of the environment clearance by order no-EC-21-74/2007-IA.III dated 21 August 2007 is annexed herewith as **ANNEXURE - I**.

14. SUPPRESSION OF FACTS WHILE OBTAINING AND INTENTIONAL VIOLATIONS /BREACH OF CONSENT TO ESTABLISH CONDITIONS.

The project proponent has obtained consent to establish bearing no-BO/RO(P&P)/723 Dated - 17/11/2006 for new construction activity named as M/s. Swar Ganga Construction Sr. No. 174A (pt) to 177A (pt), CTS No. 4859P, 4862, 4863, 4865 at Pimpri Waghere, Pune on 47881.37 Sq. Mtrs. including utilities and services such as residential 700 no. of flats etc as per construction commencement certificate issued by local body.

- ❖ **It is to be noted that the condition under water act is "2. i.** The daily quantity of (a) sewage effluent from above construction project including (b) waste water from swimming tank /water sport shall not exceed 379 cubic meters per day.
- ❖ **It is to be noted that the Other conditions "3. d.** Green belt of 33% of the open space shall be developed excluding lawns."
- ❖ **It is to be noted that the condition under water Cess act 1977 is "4.** The daily water consumption for the following categories shall not exceed, for (i) Domestic b) after completion 473 CMD and the applicant shall regularly submit to the Board, the returns of water consumption in the prescribed form and pay Cess as specified under section 3 of the said Act.

- ❖ **It is to be noted that the condition no.11 is** "The applicant shall not-handover the residential complex unless obtains consent to operate /NOC from Maharashtra Pollution Control Board and compliance of Environment Clearance granted by MoEF Government of India".
- ❖ It is significant to note that the Project Proponent has failed to follow the above mandatory condition of Consent to Establish and made excess construction by violating the provisions of Water Act, Air Act & Hazardous Waste (Management, Handling & Transboundry Movement) Rule intentionally, as explained below in detail.

A copy of the Consent to Establish by order no-BO/RO/ (P&P)/723 dated 17 November 2006 is annexed herewith as **ANNEXURE – II**.

BREACH OF CONSENT TO ESTABLISH CONDITIONS

- It is to be noted that, as per consent to establish the daily water consumption is 473 CMD but actual water consumption is about 1200 CMD.
- It is to be noted that, as per consent to establish the daily waste water generation is 379 CMD but actual waste water generation is about 1000 CMD.
- It is to be noted that, as per consent to establish the daily solid waste generated is 2000 Kg/day but actual solid waste generated is about 2275.6 Kg/day.
- It is to be noted that as per condition no.05, None of the DG set was allowed to be Installed, But Project Proponent has installed **05** no of DG Sets.
- It is to be noted that the undertaking given by the PP reveals that the Project Proponent has handed over the possession of the premises

on 14.12.2009 before obtaining the Consent to Operate dated 25.11.2011.

- It is to be noted that the Green belt is not developed as per the conditions prescribed in the Consent to Establish and Consent to Operate.

This is clear cut violation of Pollution Control Acts read with all notifications issued time to time.

15. POST-FACTO CONSENT TO OPERATE IS ISSUED AND CONSENT TO OPERATE CONDITIONS ARE BREACHED.

That the Maharashtra Pollution Control Board issued the project proponent consent to operate bearing no-BO/RO(HQ)/Pune/CO/CC-193 Dated 25.11.2011 to M/s. Goel Ganga Constructions, "Swar Ganga & Ganga Skies" sr. no. 174A (pt) to 177A (pt), CTS No. 4859P, 4862, 4863, 4865 at Pimpri Waghere, Pune on total plot area 47881.37 sq. mtrs. & total built up area of 34700.44 Sq. Mtrs including utilities of residential project as per occupancy certificate issued by local body.

- ❖ **It is to be noted that** "The consent to operate is granted for a period up to 30.11.2015."
- ❖ It is to be noted that the condition under water (Prevention & Control of Pollution) act 1974 is "2. (i). The quantity of sewage effluent from above construction project shall not exceed 379 M³/day.
- ❖ **It is to be noted that the condition under water Cess act 1977 is** "4. The daily water consumption for the Domestic categories shall not exceed, 473 CMD.
- ❖ **It is to be noted that the condition no.9 is** "The applicant shall comply with the conditions stipulated in Environment Clearance granted by GOI, Vide no: 21-74/2007-IA.III, Dated: 21.08.2007.

A copy of the Consent to Operate by order no-BO/RO (HQ)/Pune/CO/CC-193 dated 25.11.2011 is annexed herewith as **ANNEXURE - III.**

ACTUAL USE OF PREMISES STARTED BEFORE OBTAINING CONSENT TO OPERATE.

PP has obtained the Consent to Establish vide no. BO/RO(P&P)/723 Dated - 17/11/2006 as per the terms and condition stipulated in the EC, MoEF, GOI vide No. 21-74/2007-IA.III dated 21.08.2007 along with Terms and Condition Stipulated in Pollution NOC.

The PP has violated the conditions under Pollution Control Act that the PP has made excessive construction which leads to increase in occupancy load which increases the water requirement, Waste Water, Solid Waste, Sewage Effluent etc.

The PP ought to have obtained the Consent to Operate from MPCB before commissioning of project or handing over the possession, but PP has obtained the post-facto Consent to Operate, As he has given the possession of almost all the flats discussed above to the respective owner before obtaining consent to operate from the board.

16. MODUS OPERANDI IN BUILDING PERMISSION, REVISION OF PLAN, PLINTH CHECK AND COMPLETION CERTIFICATE AND FRAUD PLAYED ON WITH THE AID OF THE LOCAL AUTHORITY.

16.1 BUILDING PERMISSIONS

It is to be noted that the present PP applied for the building permission on 28/12/2005 through his notice to local Authority and

PCMC who is playing role of local authority granted the building sanction to PP vide Commencement Certificate no. BP/Pimpri/Layout/18/2006 dated 28/03/2006 through M/s. Goel Ganga Construction (PAH Amit Jaiprakash Goel) called as Original sanction.

A copy of the Commencement Certificate and plan no. BP/Pimpri/Layout/18/2006 dated 28/03/2006 is annexed herewith as **ANNEXURE – IV (Colly)**.

16.2 FRADULENT REVISION OF PLANS.

- a.** It is to be noted that the PP made first amendment in sanction plan with notice dated 10/04/2006 and local authority granted the building sanction to PP vide Commencement Certificate no. BP/Pimpri/26/2006 dated 04/05/2006 through M/s. Goel Ganga Construction (PAH Amit Jaiprakash Goel) so called first revised sanction. After this revision, the EIA notification requiring the prior environmental clearance was in place.

A copy of the Commencement Certificate and plan no. BP/Pimpri/26/2006 dated 04/05/2006 is annexed herewith as **ANNEXURE – V (Colly)**.

- b.** It is to be noted that the PP made second amendment in sanction plan with notice dated 25/01/2007 and local authority granted the building sanction to PP vide Commencement Certificate no. BP/Pimpri/24/2007 dated 29/03/2007 through M/s. Goel Ganga Construction (PAH Amit Jaiprakash Goel) so called second revised sanction and this sanction was including the construction proposed for amenity space building.

A copy of the Commencement Certificate and plan no. BP/Pimpri/24/2007 dated 29/03/2007 is annexed herewith as **ANNEXURE - VI (Colly)**.

- c. It is to be noted that the PP made third amendment in sanction plan with notice dated 27/12/2007 and local authority granted the building sanction to PP vide Commencement Certificate no. BP/Pimpri/25/2008 dated 22/04/2008 through M/s. Goel Ganga Construction (PAH Amit & Atul Jaiprakash Goel) so called third revised sanction and this sanction was also including the construction proposed for amenity space building.

A copy of the Commencement Certificate and plan no. BP/Pimpri/25/2008 dated 22/04/2008 is annexed herewith as **ANNEXURE - VII (Colly)**.

- d. It is to be noted that the PP made fourth amendment in sanction plan with notice dated 19/10/2010 and local authority granted the building sanction to PP vide Commencement Certificate no. BP/Pimpri/12/2011 dated 19/03/2011 through M/s. Goel Ganga Construction (PAH Amit & Atul Jaiprakash Goel) so called Fourth revised sanction.

A copy of the Commencement Certificate and plan no. BP/Pimpri/12/2011 dated 19/03/2011 is annexed herewith as **ANNEXURE - VIII (Colly)**.

- e. It is very surprising to note that PP applied for Amenity Building sanctioned on the amenity space in the same lay-out of said project with notice dated 30/01/2009 and local authority granted the building sanction to PP vide Commencement Certificate no. BP/Pimpri/20/2010 dated 30/03/2010 through M/s. Goel Ganga

Construction (PAH Amit & Atul Jaiprakash Goel), but PP did not apply for amendment in EC deliberately,

A copy of the Commencement Certificate and plan no. BP/Pimpri/20/2010 dated 30/03/2010 is annexed herewith as **ANNEXURE - IX (Colly)**.

16.3 PLINTH CHECK CERTIFICATE

It is to be noted that it is not clear when the plinth check certificate for the residential buildings A1 to A8, B1 to B3 & C- Commercial Building is obtained. While the residential buildings C1, C2, D1, D2, E1, F1, F2, is obtained vide no. BP/Pimpri/195/1/2008 dated 31/12/2008 and "Bungalow -G" received the plinth check vide no. BP/Pimpri/176/2/2008 dated 22/07/2008. Also it is not clear when the plinth check is obtained for the Amenity building.

Copies of the plinth check certificate are annexed herewith as **ANNEXURE - X (Colly)**.

16.4 COMPLETION AND OCCUPANCY CERTIFICATE

It is to be noted that the residential buildings no. A1, A2, A4, A5, A6, A7, A8, B1, B2, B3 total ten building (10) obtained the completion certificate vide no. 168/2009 dated 10/12/2009.

It is to be noted that the residential building no. A3, Bungalow-G, and Commercial building-C total Three buildings (3) obtained the completion certificate vide no. 18/2010 dated 15/02/2010.

It is to be noted that the residential buildings no. C1, C2, D1, D2, E1, F1, F2, total Seven buildings (07) obtained the completion certificate vide no. 61/2011 dated 31/03/2011 along with club house on open space no-1 (142.13 Sq. Mtrs) and club House on open space no-2 (57.44 Sq. Mtrs).

It is to be noted that the Amenity building obtained the completion certificate vide no. 146/2010 dated 03/11/2010.

Completion certificates are issued to all the buildings after the buildings/ flats were handed over and they had started the enjoyment of the same. Such illegal occupation and post facto completion has resulted in humongous environmental damage. It can be observed from the letters/ undertaking given by the PP to PCMC for issuance of Completion certificate.

Copies of Completion Certificates and undertaking are annexed here as **ANNEXURE-XI (Colly.)**.

17. DEVELOPER AMASSED NEAR ABOUT 200 CRORES RUPEES BY VIOLATING THE ENVIRONMENTAL NORMS, PROVIDING FALSE/ MISLEADING INFORMATION AND SUPPRESSING THE FACTS.

17.1 TOTAL BUILT-UP AREA: -

At the cost of repetition, going through the table below as prepared from authentic records of PCMC and Environment Department, it can be seen that the PP has violated the Environment Protection Act as well as Pollution Control Act.

Table No-2: - Comparison of EC Permission and Actual Construction

Description	EC Permission	Actual Construction
Amenity Building (No. of Offices/Room)	0	60
Shops/ Offices	0	9
Bungalow	0	1
No of Flats	700	716
Built-Up Area	34700.66	100532

(Sq. Mtrs)		
------------	--	--

It can be seen that the PP has constructed the buildings as per the table laid down below, as per the Plan sanctioned by the PCMC & actual construction at site.

17.2 AREA STATEMENT

Table No. 3- Area Statement

	Description / Plan	28.03.2006	04.05.2006	29.03.2007	22.04.2008	19.03.2011
1	Area Of The Plot (GROSS)	41781.37	45781.37	46881.37	47881.37	47881.37
	A As per 7/12 Extract					
	B As per Property Card					
	C As per Demarcation					
	D As per Sanction layout					
	E As per ULC order					
	F As per Development Agre./PAH			46881.37	47881.37	47881.37
	Least of All Plot Area For Proposal			46881.37	47881.37	47881.37
2	DEDUCTIONS					
	A MHAD As per T.P. Remark (Fresh)	1064.91	1064.91	1064.91	443.75	443.75
	B Green Belt	3382.23	6750.62	6750.62	6750.62	6750.62
	Total Deduction (a+b)			7815.53	7194.37	7194.37
3	Balance Area of the Plot (1-2)	37334.23	37965.84	39065.84	40687.00	40687.00
4	DEDUCTIONS					
	A Amenity Space 5%	2003.29	2003.29	2003.29	2034.35	2034.35
	B Open Space 10%	3833.42	4006.58	4006.58	4068.70	4068.70
	C Internal Road	1217.85	1217.85	0	0	0
	Total Deduction (a+b)	7054.56	7227.72	6009.87	6103.05	6103.05
5	Net Area Of The Plot (3-4)	30279.67	30738.12	33055.97	34583.95	34583.95
6	ADDITION FOR F.S.I.					
	I Internal Road		1217.85			
	II					
	III T.D.R. (MAX. 40%)			13322.39	13622.39	13833.58
	Total Additional Area			13322.39	13622.39	13833.58
7	Total Area Of The Plot (5+6)	30279.67	31955.97	46278.36	48206.34	48417.53
8	Permissible F.S.I.		1	1	1	1
9	Total Permissible Floor Area (7x8)		31955.97	46278.36	48206.34	48417.53
10	Permissible Residential Area			46097.73	48021.33	48232.52
11	Existing Residential Area					21233.80
12	Proposed Residential Area		31743.54	46062.68	47891.47	26998.57
13	Total Residential Area		31743.54		47891.47	48232.37
14	Permissible Commercial Area		184.93	185.01	185.01	185.01
15	Existing Commercial					
16	Proposed Commercial		184.93	185.01	185.01	185.01
17	Total Commercial		184.93	185.01	185.01	185.01

18	Total Existing Area (11+15)					21418.81
19	Total Proposed Area (12+16)		31928.47	46247.69	48076.48	26998.57
20	Total B'UP Area (18+19)			46247.69	48076.48	48417.38
21	Total F.S.I. Consumed		0.999	0.999	1.39	0.999
22	Permissible Ground Coverage 20%		15977.99	6611.19	6916.79	6916.79
23	Existing Ground Coverage					3807.28
24	Proposed Ground Coverage		9435.40	8699.64	6696.94	2937.14
25	Total Ground Coverage			8699.64	6696.94	6744.42

As per the DC rules, it is to be noted that the permission for building sanction shall be based on the area whichever is minimum out the a) what is the total area of the plot according to the documents? b) Does it tally with the revenue/ C.T.S. Record? c) What is the actual area available on the site inspected by Licensed Architecture/ Engineer/ Structural Engineer?

It is to be noted that the Total Plot area as per the NA Order dated 12.05.2006 says that the Project proponent have only 41781.37 Sq. Mtrs, for this project.

It is to be noted that the Total Plot area as per the PCMC building sanction no. BP/Pimpri/Layout/18/2006 dated 28.03.2006 says that the Project proponent have only 41781.37 Sr. Mtrs, for this project.

It is to be noted that the Total Plot area as per the various development agreements says that the Project proponent have only 41781.37 Sr. Mtrs, for this project.

It is significant to note that the project proponent had Total Plot area 41781.37 Sq. Mtrs. only and PP has increased the Total Plot Area to 47881.37 Sq. Mtrs. illegally.

It is to be noted that the Project proponent has leased the land 8660 Sq. Mtrs. to the Gyanganga Foundation out of 41781.37 Sq. Mtrs with registered document no. 10535/2008 in Haveli-11 dated. 05.11.2008 and hence the Project proponent has only 33121.37 Sq. Mtrs for development including green belt, MAHAD reservation, open space, amenity space and no-development agreement land i.e. owners plot.

That the project proponent has illegally increased the total plot area by 8660 Sq. Mtrs and has lead for unauthorized construction by misleading the PCMC and such construction shall be demolished.

A Index-II copy of registered document no. 10535/2008 in Haveli-11 dated 05.11.2008 is annexed here as **ANNEXURE-XII**

17.3 TENEMENT STATEMENTS

Table No.4: - Number of Tenements per Building (Residential & Commercial)

Sr.	Bldg. Name / No.	No. of Tenement As Per PCMC	Actual Tenement Constructed	EC Approved Tenement
1	Commercial	9	9	NIL
2	A1	28	28	700
3	A2	27	28	
4	A3	28	28	
5	A4	27	28	
6	A5	28	28	
7	A6	28	28	
8	A7	28	28	
9	A8	28	28	
10	B1	28	28	
11	B2	26	28	
12	B3	28	28	
13	C1	59	60	
14	C2	59	60	
15	D1	70	72	
16	D2	70	72	
17	E1	45	48	
18	F1	47	48	
19	F2	47	48	
20	G-Bungalow	1	1	NIL
21	AMENITY	60	60	NIL
	FLATS	701	716	700
	SHOPS	9	9	NIL
	BUNGALOW	1	1	NIL
	AMENITY	60	60	NIL

It can be observed from above table no.2 that the project proponent has constructed 716 residential flats, 9 shops, 1 bungalow and One Amenity Building having 60 rooms / offices in actual by violating the Environment Clearance issued dated 21.08.2007.

17.4 AMENITY BUILDING CONFIGURATION

Table No.5: - Configuration of Amenity Building

Amenity Bldg. Floor	No. of Hall, Room, Offices As Per PCMC & Actual Constructed			EC Approved Configuration	
	Hall	Rooms	Offices		
Ground	1			NIL	
1 Floor		6	2		
2 Floor		6	6		
3 Floor		6	6		
4 Floor		6	6		
5 Floor		6	6		
TOTAL	1	30	26	3	NIL

17.5 FSI AREA STATEMENT

Table No.6: - FSI Area Statement for Residential, Commercial, Bungalow & Amenity Building

Sr.	Bldg. Name / No.	FSI As Per PCMC Sq. Mtrs.	Actual FSI Constructed Sq. Mtrs.	EC Approved Total Built-up Area Sq. Mtrs.
1	Commercial	185.01	185.01	NIL
2	A1	1740.09	1740.09	34700.44
3	A2	1741.50	1765.41	
4	A3	1740.09	1740.09	
5	A4	1741.50	1765.41	
6	A5	1740.09	1740.09	
7	A6	1740.09	1740.09	
8	A7	1740.09	1740.09	
9	A8	1740.09	1740.09	
10	B1	2304.96	2304.96	
11	B2	2147.36	2304.96	
12	B3	2304.96	2304.96	
13	C1	3699.70	3766.26	
14	C2	3699.70	3766.26	
15	D1	4395.49	4525.38	
16	D2	4392.71	4525.38	
17	E1	2789.40	2856.27	
18	F1	8021.57	8186.82	
19	F2			
20	G-Bungalow	552.98	552.98	NIL
21	AMENITY	3023.17	3023.17	NIL
	FLATS	47679.39	48512.61	34700.66
	SHOPS	185.01	185.01	NIL
	BUNGALOW	552.98	552.98	NIL
	AMENITY	3023.17	3023.17	NIL

TOTAL	51440.55	52273.77	34700.66
--------------	----------	----------	----------

It is significant to note that, the FSI used in this project is 52273.77 Sq. Mtrs. and which is very meticulous than the EC permitted total Built-up Area of 34700.66 Sq. Mtrs." This is nothing but the clear-cut violation of the Environmental Clearance committed by the Project Proponent.

17.6 NON-FSI AREA STATEMENT

Table No.7: - Non-FSI Area Statement Residential, Commercial, Bungalow & Amenity Building

Sr.	Bldg. Name / No.	Balcony Sq. Mtrs.	Terrace Sq. Mtrs.	Staircase Sq. Mtrs.	Passage Sq. Mtrs.	Left Well Sq. Mtrs.	Left Room Sq. Mtrs.
1	Commercial						
2	A1	270.81	460.50	100.31	58.31	2.55	
3	A2	246.24	443.06	100.31	58.31	2.55	
4	A3	270.81	460.50	100.31	58.31	2.55	
5	A4	246.24	443.06	100.31	58.31	2.55	
6	A5	270.81	460.50	100.31	58.31	2.55	
7	A6	270.81	460.50	100.31	58.31	2.55	
8	A7	270.81	460.50	100.31	58.31	2.55	
9	A8	270.81	460.50	100.31	58.31	2.55	
10	B1	348.06	450.75	86.80	45.29	2.55	
11	B2	318.18	417.75	86.80	45.29	3.71	
12	B3	348.06	450.75	86.80	45.29	2.55	
13	C1	547.38	1054.45	206.04	573.96	8.34	
14	C2	547.38	1054.45	206.04	573.96	8.34	
15	D1	678.51	1212.65	194.64	568.08	8.64	
16	D2	678.51	1212.65	194.64	568.08	8.64	
17	E1	444.93	534.60	151.83	278.10	3.24	
18	F1	1110.06	2338.62	765.00	1377.08	16.68	
19	F2						
20	G-Bungalow	121.17	18.75		26.15		
21	AMENITY	448.00		32.25	10.51	7.22	35.60
	FLATS	7138.41	12375.79	2772.07	4541.61	83.19	
	SHOPS						
	BUNGALOW	121.17	18.75		26.15		
	AMENITY	448.00		32.25	10.51	7.22	35.60
	TOTAL	7707.58	12394.54	2804.32	4578.27	90.41	35.60

Table No. 7A: - SUMMARY OF NON-FSI AREA

Sr.	Description	Area In Sq. Mtrs
-----	-------------	------------------

1	Balcony	7707.58
2	Terrace	12394.54
3	Staircase	2804.32
4	Passage	4578.27
5	Lift Well	90.41
6	Lift Room	35.60
	Total	27610.72

"It is significant to note that the Non-FSI area for this project excluding the Parking area is 27610.72 Sq. Mtrs."

17.7 PARKING AREA STATEMENT

Table No.8: - Non-FSI Parking Area Statement Residential, Commercial, Bungalow

Sr.	Description	As Per PCMC Sanction	EC Approved
1	Car	356	312
2	Scooter	1418	Nil
3	Cycle	1410	Nil

EC Approved Parking Built-up Sq. Mtrs.	As Per PCMC Sanction Parking Built-up Sq. Mtrs.	Actual Constructed Parking Built-up Sq. Mtrs.
3900	10678	19724

It is to be note that as per the environmental clearance the parking space proposed for parking of vehicles is 312. As per DC rule the built-up area per vehicle is 12.5 sq. mtrs. Then the total area for 312 vehicles is 312 x 12.5 equals to 3900 sq. mtrs.

"Therefore EC approved parking built-up area is 3900 sq. mtrs for 312 parking space"

It is to be noted that as per DC rules the parking area required for increased built-up is 10678 sq. mtrs but project proponent made the excess construction of parking spaces and the total parking area including the podium parking space is 19724 sq. mtrs.

Table No.9: - Built-up Area Statement (Non-FSI Parking) Amenity

Building

Sr.	Description	As Per PCMC Sanction	EC Approved
1	Car	31	Nil
2	Scooter	62	
3	Cycle	248	

EC Approved Parking Built-up Sq. Mtrs.	As Per PCMC Sanction Parking Built-up Sq. Mtrs.	Actual Constructed Parking Built-up Sq. Mtrs.
Nil	920.70	923.51

here is no environment clearance obtained by project proponent to the Amenity building at all, so no question arises for approval of parking and the entire parking space provided for Amenity is 923.51 sq. mtrs and this amounts to violation.

Total Parking Area = 19724 + 923.51 = 20647.51 Sq. Mtrs.

It can be observed from the above tables that the approved parking area as per Environment Clearance for residential bldg is only 3900 sq. mtrs but in fact Project proponent made construction of 19724 sq. mtrs. and the excess parking area in violation is 20647.51 minus 3900 equals to 16747.51 sq. mtrs. for Residential, Commercial, Amenity bldg and Bungalow"

17.8 TOTAL BUILT-UP AREA STATEMENT

Table No.10: - Built-up Area Statement (FSI & Non-FSI) Residential, Commercial, Bungalow & Amenity Building

Sr	Description	Residential	Commercial	Bungalow	Amenity	Total
1	Actual FSI Constructed	48512.61	185.01	552.98	3023.17	52273.77
2	Balcony Area	7138.41		121.17	448.00	7707.58
3	Terrace Area	12375.79		18.75		12394.54
4	Staircase Area	2772.07			32.25	2804.32
5	Passage Area	4541.61		26.15	10.51	4578.27
6	Left Well Area	83.19			7.22	90.41
7	Left Room Area				35.60	35.60

8	Total Parking Area	19724			923.51	20647.51
9	Actual B/U Used					100532
10	EC Approved B/U Area					34700.66

It is significant to note that the Actual Built-Up area for this project including the Parking area is 100532 Sq. Mtrs., While the EC approved Built-Up Area is only 34700.66 Sq. Mtrs and this Project Proponent has constructed 65831.31 Sq. Mtrs in excess.

17.9 ILLEGAL PERMISSION TO LOAD TRANSFER OF DEVELOPMENT RIGHTS (TDR) BY PCMC HAVING NEGATIVE IMPACT ON THE ENVIRONMENT.

It is to be noted that the present PP has used the Total Transfer of Development Rights (TDR) of 13833.58 sq. Mtrs in addition to the FSI of 34583.95 Sq. Mtrs.

It is to be noted that, the present development is naturally divided in to two plots by separation of 12 Mtrs DP road passing through the plots. First developed plot is called as the Swar-Ganga having residential buildings A1 to A8, B1 to B3, Commercial Shops, one bungalow, and amenity building. Second developed plot is called Ganga-Skies having residential buildings C1, C2, D1, D2, E1, F1, & F2.

As per the DC rules, it is important to load only 40% of TDR of net plot area of the receiving plot and this project proponent has loaded the entire TDR only on the Ganga-skies plot reasons best known to him.

It is illegal to load the TDR also of Swar-Ganga plot on Ganga-Skies and this act of illegal loading cause's severe imbalance and environmental damage on account of illegal additional construction

made on the Ganga-skies plot. The details of total TDR loading are as below.

Table No.-11: TDR Statement

Sr.	Date	DCR No.	Area Of DCR Utilized (Sq. Mtrs)	Remark
1	23/02/2007	123	2322.56	
2	23/02/2007	120	1999.83	
2	22/01/2007	115	9000.00	
3	22/01/2007	124	100.00	
4	22/01/2007	125	100.00	
5	22/01/2007	126	100.00	
6	23/11/2010	303	211.19	
	Total TDR		13833.58	

It is to be noted that there is no amended environmental clearance obtained by the project proponent intentionally and more over the PCMC is allowing the PP to use the TDR to make additional construction. As the effect of the TDR loading is that PP has made additional excess construction, that affected additional population or occupancy and additional load on the public services generating the waste water, solid waste, excess energy consumption, Temperature increase of the surrounding etc. and that is resulted into drastic increase in CO₂ generation causing environmental damage. Due to fraud in total plot area, net plot area there is illegal increase in the TDR loading which further affected environment.

Copies of TDR Certificates and PCMC consent letters to load TDR are annexed here as **ANNEXURE-XIII (Colly.)**.

17.10 ILLEGAL CONSTRUCTION CARRIED OUT BY PROJECT PROPONENT BY USING ILLEGAL FSI AND ILLEGAL LOADING OF TDR BY VIOLATING THE DC

**RULE OF PCMC AND PROVISIONS OF MR&TP THAT
IS DAMAGING TO ENVIRONMENT.**

It is to be noted that, as per the Development Agreements between the Project proponent and the respective land owners, it seems that the Project proponent has development rights over an area admeasuring 47206.38 Sq. Mtrs. Assuming but not admitting that the PP has development rights for an area 47206.38 Sq. Mtrs., there are some other interested parties having the legal rights in the same property and the same thing is admitted by project proponent himself by virtue of which the builder is not left with the said area but still area more and FSI more than that is utilized for construction as per details given herein below.

It is to be noted that, the project proponent has illegally stated that he has the plot for development having an area 47881.37 Sq. Mtrs.

It is to be noted that, the project proponent has illegally reduced the area of MHADA reservation by 621.16 Sq. Mtrs. (1064.91 Sq. Mtrs minus 443.75 Sq. Mtrs.) with the help of the corrupt PCMC officers despite not having any legal permission from the State Government to reduce such area of reservation that is reserved from middle and poor class innocent citizens.

It is to be noted that, it reveals from the record of development agreement executed between the respective plot holders and Project proponent that, the total plot out of Survey No. 174(pt), 175(pt), 176(pt) and 177(pt) belong to the original owner Rathi Family was admeasuring 54600.00 Sq. Mtrs. That the Rathi family divided the land in to plots for sale. After scheming the parts of the land were acquired by the PCMC for the various reservations. Out of the 54600 Sq. Mtrs that the area acquired by PCMC for Garden reservation (site No. 55) is 4581.425 sq. mtrs., the area acquired by PCMC for Primary School (site No.54) is 1392.40 Sq. Mtrs. and the area acquired by

PCMC for 12 Mtr wide DP road is 2810.80 Sq. Mtrs. Total Area Acquired by the PCMC out of 54600 Sq. mtrs is 8784.63 Sq. Mtrs.

It is important to note that, the area acquired by PCMC 8784.63 Sq. Mtrs. shall be reduced from 54600 Sq. Mtrs. at the first instance and remaining area after reduction is 45815.37 sq. Mtrs. and also the area 1000 Sq. Mtrs of part survey no. 177/A/1/3 of one who Mr. Ramdas Bhaurao Avhad shall also be reduced, because that there is no Development agreement executed with the present proponent is found in record and remaining area after reduction is 44815.37 sq. Mtrs.

At the second instance, an area admeasuring 8660 Sq. Mtrs. leased out by the present project proponent vide agreement no. 10535/2008 registered at Haveli-11 dated 05.11.2008 and suppressed this fact from PCMC, this area must be reduced from 44815.37 sq. Mtrs. and remaining area after reduction is 36155.37 sq. Mtrs.

At the next instance, an area admeasuring 1064.91 Sq. Mtrs. reserved for the MHADA must be reduced from 36155.37 sq. Mtrs. and remaining area after reduction is 35090.46 sq. Mtrs.

At the next instance, an area admeasuring 6750.62 Sq. Mtrs. for the Green Belt must be reduced from 35090.46 sq. Mtrs. and remaining area after reduction is 28339.84 sq. Mtrs.

At the next instance, an area admeasuring 2833.98 Sq. Mtrs. for the 10 % Open Space for recreation Ground and 1416.99 Sq. Mtrs. in total 4250.97 Sq. Mtrs. must be reduced from 28339.84 sq. Mtrs. and remaining area after reduction is 24088.87 sq. Mtrs.

And thus, the area admeasuring 24088.87 sq. Mtrs. is the Net Plot Area available with the present project proponent for the development.

But the project proponent has developed the Swarganga (Phase-I) (residential + Commercial) at the beginning with FSI of 21418.81 Sq.

Mtrs. So the net plot remaining for the development of Ganga Skies (Phase-II) is only 2670.06 Sq. Mtrs. (24088.87 sq. Mtrs. minus 21418.81 Sq. Mtrs.)

It is important to note that, the 40% TDR of the net plot area is allowed to be loaded on the Phase-II i.e. Ganga Skies is 1068.02 Sq. Mtrs. in total available FSI+TDR for the development of Phase-II is 3738.08 Sq. Mtrs. only. But the project proponent has illegally loaded the total TDR of 13833.58 Sq. Mtrs. on Phase-II and carried out the illegal construction of 26998.57 Sq. Mtrs FSI+TDR on phase-II i.e. Ganga-Skies.

It becomes possible to project proponent to make such illegal construction on the Phase-II i.e. Ganga-skies because of the illegal encroachment in the green belt and due to illegal construction on open spaces. And in this illegality the architect and the officers of PCMC have played a major role.

The applicant states and submits that the PCMC has illegally allowed the project proponent to load the entire 40% TDR of 24088.87 sq. Mtrs. on phase-II i.e Ganga-skies and that comes to 33724.42 Sq. Mtrs. Even after reduction of Phase-I FSI of 21418.81 Sq. Mtrs. from 33724.42 Sq. Mtrs. the FSI remaining for Phase-II development is 12305.61 Sq. Mtrs. only.

But the project proponent has carried out construction of 26998.57 Sq. Mtrs FSI+TDR on phase-II i.e. Ganga Skies instead of 12305.61 Sq. Mtrs. illegally.

Also as per this calculation as stated above, the ground coverage (20%) available for this project is 4817.77 Sq. Mtrs. but project proponent has used the ground coverage of 6744.42 Sq. Mtrs. and this is excess by 1926.65 Sq. Mtrs.

In total the project proponent had carried out the construction with use of 48417.38 Sq. Mtrs of FSI+TDR instead of 33724.42

Sq. Mtrs. of FSI+TDR by violating the provisions of DC rules causing the huge damage to the environment.

Copies of Index-II of development agreements are annexed here as **ANNEXURE-XIV (Colly.)**.

Copies of award statements for an area acquired for Garden, Primary School and 12 Mtr Road by PCMC are annexed here as **ANNEXURE-XV (Colly.)**.

Copies of Index-II and important extracted pages of the Loan Agreements between project proponent and HUDCO are annexed here as **ANNEXURE-XVI (Colly.)**.

Copies of ULC Orders are annexed here as **ANNEXURE-XVII (Colly.)**.

Copy of sale agreement of flat No.D2-703 annexed here as **ANNEXURE-XVIII**.

18. WASTE WATER AND SOLID WASTE GENERATED BY THE PROJECT PROPONENT IS HUGE WHICH IS CAUSING HUGE ADDITIONAL BURDEN ON THE RESOURCES AND ON ECOSYSTEM.

It is to be noted that the following table shows that the Actual Water Requirement, Waste Water Generated & Hazardous Waste, DG Sets installed at the site.

Table No.-12: Total Water Requirement

Sr.	Description	Population	Water Required	Total Water Required
1	Residential	3510	135	473850 Ltrs.
2	Commercial	62	45	2790 Ltrs.
3	Amenity	755	45	33975 Ltrs.
	Total Water Requirement Per Day			510615 Ltrs /Day

It is to be noted that, as per consent to establish the daily water consumption is 473 CMD but actual water consumption in 510 CMD.

Table No.13: - Total Fresh Water Supply By PCMC

Sr.	Description	Population	Water Required	Total Water Required
1	Residential	3510	90	315900 Ltrs.
2	Commercial	62	25	1550 Ltrs.
3	Amenity	755	25	18775 Ltrs.
Total Water Supply By PCMC Per Day				336325 Ltrs /Day

Table No.-14: Total Waste Water Generated

Sr.	Description	Population	Waste Water	Total Waste Water
1	Residential	3510	45	157950 Ltrs.
2	Commercial	62	20	1240 Ltrs.
3	Amenity	755	20	15100 Ltrs.
4	68 % Of PCMC Supply			228701 Ltrs
Total Waste Water Generated Per Day				402991 Ltrs / Day

It is to be noted that, as per consent to establish the daily waste water generation is 379 CMD but actual waste water generation in 402 CMD.

Table No.-15: Total Solid Waste Generated

That the solid waste generated is including the Organic waste, paper, plastic, Metals, Glass, Rubber, Inert, STP Sludge etc.

Sr.	Description	Population	Solid Waste	Total Solid Waste Generated
1	Residential	3510	0.6	2106 Kg/Day
2	Commercial	62	0.3	18.6 Kg/Day
3	Amenity	755	0.2	151 Kg/Day
Total Solid Waste Generated Per Day				2275.6 Kg/Day

It is to be note that the, as per consent to establish the daily solid waste generated is 2000 Kg/day but actual solid waste generated in 2275.6 Kg/day.

Table No.-16: Total DG Sets Permitted in Consent to Establish

Permitted DG Sets	Installed DG Sets
00 Nos.	05 Nos.

It is to be note that as per condition no. 05, None of the DG set was allowed to be Installed, But Project Proponent have installed 05 no of DG Sets.

19. GROSS VIOLATIONS OF CONDITION TO SUBMIT SIX MONTHLY REPORTS STIPULATED IN EC:-

As per Part B General Conditions of the previous EC, PP had to submit the monitoring report or compliance report to the ministry or Regional Office at every six month from August 2007.

The Respondent No. 10 has not submitted the six monthly reports at the end of every six month till end of August-2016 and was not willing to do so for reasons best known to the said respondent.

Hence the condition of six monthly monitoring report submissions is violated.

20. ILLEGAL ENCROACHMENT IN WAGHERE/ TEJA ODHA BY PROJECT PROPONENT

It is to be noted that the present project site is situated on the bank of Waghere /Teja Odha, From the actual construction and DP plan it can be observed that the Project proponent has made the construction in the Odha itself by illegally shifting the project boundary. Encroachment is not limited to the Odha but it is also extended to the Green belt. Project Proponent has made clear cut

encroachment in the Odha by shifting the Green belt. It is important to note that the same Odha is carrying the water from long distance and was also performing the important role in the rainy season to control the flood. But due to this encroachment the neck of the Odha is chocked by the project proponent. Now it becomes important to remove the encroachment from this Odha made by the Proponent.

There is the slab laid down in the Odha to stop, divert and to cover the flow and to increase the plot area of the development.

Respondent No. 9 has made the manipulation in the original sanction lay-out to increase the net plot area and to allow encroaching the green belt, illegal reduction in the reservation plot and violated the DC Rule provision intentionally.

Copy of the Photographs, development plan and Google image of the project site are annexed herewith as **ANNEXURE-XIX (Colly.)**

21. INTENTIONAL MISLEADING CONDUCT OF THE PROJECT PROPONENT

Following aspects have intentionally been suppressed by Project Proponent from the Environment Department & Pollution Control Board with the help of PCMC.

-PP constructed the illegal parking complex on the Open Space. As per DC rule Open Space shall always be open to sky and no construction is allowed on open space, In this case PP has made construction of parking complex on open space but PCMC is intentionally avoiding to take action against PP.

-EC dated 21.08.2007 permits only 34700 Sq. Mtrs of Built-up Area but in fact Proponent has made construction of 100532 Sq. Mtrs of Built-Up Area.

- Project Proponent has not made any amendment in the EC but has made excess construction. Amendment in EC was also important in

this case but PP deliberately avoided making such amendment to escape from crime that he has been committed by leasing the land to Gyanganga Foundation. It was resulting in the reduction in FSI.

-Suppression of material facts from the Environment Dept. and MPCB as stated above.

-PP has made illegal encroachment in the Waghere Odha and Green belt, This fact is also suppressed from the concerned authority as this is the environment sensitive issue and have damaged environment.

22. VIOLATION OF RULES AND GUIDELINES BY PIMPRI CHINCHWAD MUNICIPAL CORPORATION CAUSED HUGE ENVIRONMENTAL DAMAGE: -

The condition of the Municipal Corporation is like a blind woman grinds and dogs eat. It is noteworthy that the Notification released by Ministry of Environment & Forest regarding the Building construction projects and township or Area Development has been circulated and received in PMC for the further actions. The condition in the notification is very clear that the "**For project under category 8 (a) or (b) shall obtain the EC before proceeding for any construction at site**".

It is the duty of every local authority to insist the PP to obtain the revised EC if the PP is about to cross the previous EC limit, but the PCMC neither insisted PP to obtain the Revised EC nor they Stopped PP from further construction of Project, even the PP violated the EC. Moreover it is surprising to note that, PCMC did not find any importance to inform the Environment dept. about this violation of such serious issue.

23. GROSS NEGLIGENCE OF THE LOCAL AUTHORITY-**PIMPRI CHINCHWAD MUNICIPAL CORPORATION**

It is to be noted that the said project which is under violation of Environment Protection Act 1986, Water & Air Act and other environmental laws time being in force is situated in the limit of "Pimpri-Chinchwad Municipal Corporation" (PCMC). The PCMC was & is the local authority legally responsible to permit & control the said building construction through the office of Municipal Commissioner and City Engineer, Building Permission & Control Department. It is to be noted that PCMC is the fundamental authority to monitor, Control & prevent such type of illegal constructions which are intentionally committing the violation of Environment Protection Act 1986, Water & Air Act. It is the duty of PCMC to brought to notice and knowledge of Environment Department and Maharashtra Pollution Control Board that this type of illegal act of intentional violations damaging the environment infinitely. But in this case it seems that PCMC is playing the role of blind person even they have full knowledge of the violations committed by present PP and it is nothing but PCMC corrupt officials are hand in glove with the PP. Therefore the officers at PCMC are not taking any action against PP despite complaints being filed with them

24. VIOLATION OF NA PERMISSION BY PROJECT**PROPONENT:-**

It is to be noted that, the Project proponent applied for the Non-Agricultural permission of total measuring 41781.37 Sq. Mtrs. and NA permission is granted /obtained for 37334.23 Sq. Mtrs. i.e.

excluding P.C.M.C acquisition for MHADA & Green Belt Area 4447.14 Sq. Mtrs. vide no. PRH/NA/SR/142/2006 Dated-12.5.2006

- No permission for commercial use
- No permission other than residential use
- There is illegal increase in the plot area and decrease in MHADA reservation.
- It is to be noted that, NA permission is fraudulently obtained for 37334.23 Sq. Mtrs. instead of 24938.87 sq. Mtrs. of net plot area.
- Assumed but not admitted that, the PP has area 47881.37 Sq. Mtrs. but the project proponent has obtained NA order by considering only for 41781.37 Sq. Mtrs. There is no NA permission obtained by project proponent for 6100 Sq. Mtrs. (47881.37 Sq. Mtrs. minus 41781.37 Sq. Mtrs.)
- And also the project proponent has made the illegal construction on 6100 Sq. Mtrs. by violating the rules and regulation and caused the damage to the environment.

Copy of NA Order PRH/NA/SR/142/2006 Dated-12.5.2006 is annexed herewith as **ANNEXURE-XX**.

25. ILLEGAL INCREASE IN THE NET PLOT AREA OF THE

PLOTS: -

There is illegal reduction in the MHADA reservation plot adjacent to the present development. In the sanction dated 28.03.2006, MHADA reservation was 1064.91 Sq. Mtrs. also in the sanctions dated 04.05.2006 & 29.03.2007, MHAD reservation was 1064.91 Sq. Mtrs. but in the sanction dated 22.04.2008, the MHADA reservation was reduced to 443.75 Sq. Mtrs on account of some TP Remark (fresh). But there is no such TP remark to reduce the MHADA reservation.

It is to be noted that the area of the plot is illegally increased from 41781.37 sq. mtrs. to 47881.37 Sq. Mtrs. only to increase the illegal construction and to get illegal financial benefits.

So it is important and necessary not to allow further development of any type in the said project for any construction till the disposal of this matter in the interest of justice.

OTHER GROUNDS

- 26.** Because the EIA Notification, 2006 nowhere provides for the grant of post facto clearance after the completion of the project.
- 27.** Because the SEIAA and its Expert Appraisal Committee has imposed several conditions to be complied during the construction phase of the project which became immaterial in the light of fact that construction was already completed by the project proponent.
- 28.** Because the SEIAA failed to take any action for the violation of the provision of EIA notification, 2006 and Environment (Protection) Act, 1986.
- 29.** Because the SEIAA and its Expert Committee is equally liable for allowing the illegal structures of expansion and also they are equally liable for failure to monitor the environment clearance so granted to the project.
- 30.** Because the project proponent has not even bothered to apply for amended Environmental Clearance and carried out excess illegal construction with active aid and connivance of other respondents.

- 31.** Because the Project Proponent started the use of the facility before obtaining the consent to operate and thereby has polluted the environment.
- 32.** Because the PP has breached the terms and conditions of the EC and the Consent to establish and consent to operate and the same has not be taken action against by the authorities for reasons best known to them.
- 33.** PP has breached conditions of NA order.
- 34.** Because PP has taken for granted the MRTP and DC rules and has bend and violated the same to his advantage illegally.
- 35.** Because the intentional ignorance of the complaints filed by this applicant, by all the authorities concerned is a serious threat to mother nature as the fence itself wrecks the field, the justice seems a dream.
- 36.** Because the PP is causing continuous damage to the environment and the PP is notorious polluter having orders to pay heavy penalty against him in past.
- 37.** Because the EIA notification does not provide for grant of the expost facto grant of EC.
- 38.** Because there is complete non application of mind by the local authorities while issuing building sanctions.
- 39.** Because the building sanction by the local authority without valid EC is illegal and has no sanctity.
- 40.** Because the DoE and SEIAA failed, deliberately avoided to take any action against the project proponent for reasons best known to them.
- 41.** Because there is carbon footprint impact of Rs. 350 Crores has been caused due to this illegal construction.

- 42.** Because if the procedure of the ex post facto environmental clearance is allowed, the developers like this PP would pollute the environment and would cause irreparable loss, which would render the environmental laws infructuous.
- 43.** Because the applicant has put to notice by concerned authorities about the violations and likely action.
- 44.** Because in **M.I Builders vs RadheyShyamSahu, [1999 (6) SCC 464]**, the Hon'ble Supreme Court upheld the decision of the Allahabad High Court in directing the demolition of an underground shopping complex which has come up in a Public Park in violation of the laws. The Hon'ble Court held:

“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 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.”

- 45.** Because in **Indian Council for Environ Legal Action versus Union of India and Ors, (1996) 5 SCC 281** the Hon'ble Supreme Court has observed:

“Enactment of a law, but tolerating its infringement, is worse than not enacting a law at all. The continued infringement of law, over a

period of time, is made possible by adoption of such means which are best known to the violators of law. Continued tolerance of such violations of law not only renders legal provisions nugatory but such tolerance by the enforcement authorities encourages lawlessness and adoption of means which cannot, or ought not to, be tolerated in any civilized society. Law should not only be meant for the law-abiding but is meant to be obeyed by all for whom it has been enacted. A law is usually enacted because the legislature feels that it is necessary. It is with a view to protect and preserve the environment and save it for the future generations and to ensure good quality of life that Parliament enacted the anti-pollution laws, namely, the Water Act, Air Act and the Environment (Protection) Act, 1986. These Acts and Rules framed and notification issued thereunder contain provisions which prohibit and/or regulate certain activities with a view to protect and preserve the environment. When a law is enacted containing some provisions which prohibit certain types of activities, then, it is of utmost importance that such legal provisions are effectively enforced. If a law is enacted but is not being voluntarily obeyed, then, it has to be enforced. Otherwise, infringement of law, which is actively or passively condoned for personal gain, will be encouraged which will in turn lead to a lawless society. Violation of antipollution laws not only adversely affects the existing quality of life but the non-enforcement of the legal provisions often results in ecological imbalance and degradation of environment, the adverse effect of which will have to be borne by the future generations.”

46. LIMITATION

The present Application is filed within the prescribed period as provided under the National Green Tribunal Act, 2010. The cause of action to file

this Application first arose on 02 April 2016 when the applicant got the entire information and knowledge about gross violation of various environmental laws and thereafter the applicant sent legal notice dated 26 April 2016 to the respondents for stoppage of said violations and strict action thereon the violations continues till today.

47. JURISDICTION

The applicant resides, the respondents have their area of operations within and the project under challenge is located within the jurisdiction of this Hon'ble Tribunal and therefore this Hon'ble tribunal has jurisdiction to try and entertain present application.

48. PRAYER FOR INTERIM RELIEF

In the present facts and circumstances it is most respectfully prayed that this Hon'ble Tribunal may be pleased to pass an interim order thereby:

- A.** Direct the project proponent to stop all the activities including construction after loading additional TDR at the site forthwith, during the pendency of this application.
- B.** Direct the project proponent not to create any third party interests of whatsoever nature with respect to the subject property of this application, during the pendency of this application.
- C.** Appoint as court commissioner, a group of a surveyor, a regulatory architect, an independent advocate and a representative of applicant and the respondent nos. 2, 5, 6, 7 and 10 to submit a detailed actual site visit report in context of all the plans and EC along with video shooting of the entire proceedings of the said commission.

49. PRAYER

In the present facts and circumstances it is most respectfully prayed that this Hon'ble Tribunal may be pleased to pass an order thereby:

- A.** Direct the Respondents to demolish the illegal structures at the site in question and restore the area to its original position.
- B.** Having regard to the damage to the public health, property and environment, principles of sustainable development and polluter pays principles, Direct the Respondent No. 10 to deposit a heavy amount of compensation to the environment relief fund.
- C.** Direct the Respondent No. 10 to further deposit a heavy amount of compensation to the environment relief fund for construction of buildings on area reserved for open space in the sanctioned building plans.
- D.** Direct the Respondent No. 10 to further deposit a heavy amount of compensation to the environment relief fund for encroachment of Odha (Teja/ Waghare Odha) and further direct to demolish the construction on the same and direct the authorities to ensure green belt falling in the said project.
- E.** Direct the State Level Impact Assessment Authority and the Maharashtra State Pollution Control Board to initiate appropriate action against the project proponent for violation of the provisions of EIA notification, 2006 and other applicable laws.
- F.** Direct the Respondent No. 6 to take serious action of cancelling registration of the architect respondent no. 9 at PCMC for his illegal activity of manipulation in plans and allowing the project proponent to raise the illegal construction at site causing damage to the environment. Impose fine of minimum Rs. 5 crore on the said Architect firm.

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

MEMORANDUM OF APPLICATION

UNDER SECTIONS 14 & 15 OF NGT ACT, 2010

APPLICATION NO.**164**.../2016**IN THE MATTER OF****Mr. Tanaji Balasaheb Gambhire**

Age: Adult, Occupation: Service,
 R/o- Flat No-16, CTS-296, Laxmi Apartment,
 Near Shivaji Maratha High School,
 White House Lane, Shukrawar Peth,
 Pune-411002

... APPLICANT

VERSUS**1. THE SECRETARY****Environment Department**

Government of Maharashtra,
 Room No. 217, Annex Building,
 Mantralaya, Mumbai-400 032

2. THE MEMBER SECRETARY-SEIAA**State Level Environment Impact Assessment Authority**

Government of Maharashtra,
 15th Floor, New Administrative Building,
 Mantralaya, Mumbai-400 032

3. THE CHAIRMAN**Maharashtra Pollution Control Board**

Kalptaru Point, 3Rd Floor, Near Sion Circle,
 Opp. Cine Planet, Cinema, Sion (E), Mumbai-.400022

4. REGIONAL OFFICER**Pollution Control Board-Maharashtra State,**

Jog Centre, 3Rd Floor, Mumbai-Pune Road,
 Wakadewadi, Pune-411003

5. PIMPRI-CHINCHAWAD MUNICIPAL CORPORATION

Pimpri, Pune-411 018

6. MUNICIPAL COMMISSIONER,

Pimpri-Chinchawad Municipal Corporation,

Pimpri, Pune-411 018

7. SHRI. MAHAVIR THALLYAPPA KAMBLE**CITY ENGINEER,**

Pimpri-Chinchawad Municipal Corporation,

Pimpri, Pune-411 018

8. DISTRICT COLLECTOR - PUNE

President-District Environment Committee,

Dist. Collector Office, Pune

9. IRRIGATION DEPARTMENT

Executive Engineer,

Pune Irrigation Division,

Pune-411011

10. SPACE DESIGN SYNDICATE**ARCHITECT ACTING THROUGH**

1. SHRI. PRAKASH DESHMUKH

2. SHRI. ZUBER RASHID SHAIKH

Megaspace, 1st Floor, 13 Solapur Bazar Road,

Off East Street,

Pune - 411001

11. M/s. SHREE GANESH PROMOTERS.

Acting Through

1. JAIPRAKASH SITARAM GOEL,

2. ATUL JAIPRAKASH GOEL,

3. AMIT JAIPRAKASH GOEL,

OFFICE AT

3rd Floor, San Mahu Complex, Opp. Poona Club,

5 Bund Garden Road, Camp, Pune-411001

....RESPONDENTS

AND IN THE MATTER OF

AN APPLICATION SEEKING RELIEF
AND RESTITUTION AGAINST GROSS
INTENTIONAL VIOLATION OF RULES

AND REGULATIONS IN VARIOUS ENVIRONMENTAL AND POLLUTION CONTROL LAWS, BY RESPONDENT NO. 11 WITH THE HELP OF OTHER RESPONDENTS.

1. The addresses of the applicant are as given above for the service of notices of this application.
2. The addresses of the respondents are as given above for service of notices of this application.
3. The applicant above named beg to submit this memorandum of application against the violation of provisions of EIA notification, 2006, rules and regulations in various environmental laws and pollution control laws and all the amendments for the time being in force in regard to said project as per information received under right to information act, inter-alia on the grounds setout hereunder.
4. Violation to its brim with the active aid of the officers of various department, of the various environmental laws need to be dealt with sternly so that a clear and unambiguous message is passed on to the entire community and the issue of one such gross violation by the developer and turning deaf ears to such violations despite bringing it to the notice of authorities responsible for upholding the law is the reason and basis of this application.
5. The applicant vide an application dated. 08.01.2016 had sought information from the PCMC, part information was provided on 27.01.2016 vide letter no. BP/PN/7/2016/Pra.48 regarding the details of construction area, illegality in project & Plans. Applicant vide an application dated 19.01.2016 had sought information from

the MPCB, Which was replied on 04.02.2016 vide letter no. MPCB/SRO/447/2016 which clearly stated that there is no data available for prior environmental clearance & no Consent to Establish granted to the said project and Applicant vide an online application dated. 31.01.2016 had sought information from the Environment Department, which was replied on 15.04.2016 vide letter no. RTI-2016/Pra.Kra.57/T.C.-3 dated. 01.04.2016, which clearly stated that there is no prior environmental clearance granted & even there is no application for EC to the said project.

6. The applicant on the basis of information available found the illegal construction activity. Being aggrieved by the reply dated 27.01.2016 of PCMC, reply dated. 19.02.2016 of MPCB, Reply dated 15.04.2016 of Environment Department, prefers this application inter-alia on grounds mentioned in this application. Copies of the RTI application, their Replies are annexed herewith and marked as **ANNEXURE-I (Colly.)**.

FACTS IN BRIEF

7. INFORMATION OF PROJECT PROPONENT BUILDER / DEVELOPER RESPONDENT NO. 11 :-

That the present project is constructed by M/s. Shree Ganesh Promoters so called project proponent (PP) is a partnership firm registered under provisions of partnership act, 1932 having their Registered office at-3rd Floor, San Mahu Complex, Opp. Poona Club, 5 Bund Garden Road, Camp, Pune-411001 and the responsible partners are 1. Jaiprakash Sitaram Goel, 2. Atul Jaiprakash Goel, 3. Amit Jaiprakash Goel.

8. PARTICULARS OF PROJECT UNDER CHALLENGE:-

The present alleged project under environmental violation is building construction project situated at Sr. No. 6/1/1, 6/1/2 and 6/1/3 and their respective C.T.S. No. 748 to 749, At Village-Pimple Nilakh, Taluka-Haveli and District-Pune. That the project in actual consists of Four residential building (one under construction), One proposed conventional shopping complex, One Club House, one parking complex, one transformer room.

Copies of the photographs of the Project site under violations are marked and annexed as an **ANNEXURE-II (Colly.)**

Copies of the brochure of the Project site under violations are marked and annexed as an **ANNEXURE-III.**

Copies of the development Plan & Google Map of PCMC for the Project site under violations are marked and annexed as an **ANNEXURE-IV (Colly.)**

9. PARTICULARS AND SPECIFIC ROLE OF OTHER RESPONDENTS.

- a. The principal secretary, MoEF, Government of Maharashtra, the respondent no. 1 is also the higher bureaucratic authority at state level responsible for various actions and procedures under environmental laws and in formulating and implementing the policies and legislations on environmental protection and as such has failed in the instant case to uphold the environmental laws. The said authority for reasons best known has been also ignoring the complaints intentionally or information provided in case of violation.

- b.** State Level Environment Impact Assessment Authority, the respondent no. 2 is responsible for environment impact assessment of any development project and is aided by SEAC and is final authority for issuing Environmental Clearance and it is responsible for correct assessment and issue of EC to any project proponent.
- c.** Maharashtra Pollution Control Board the respondent no. 3 is responsible for pollution control and accord sanction for consent to establish and consent to operate to project proponent and as such need to confirm the performance of mandatory pre requisites.
- d.** Maharashtra Pollution Control Board the respondent no. 4 is regional officer of the board and is practically acting as ears and eyes of the MPCB authority and the boards and whose site visits reports become the basis for decisions in favour of or against the project proponent and the said officer has not taken appropriate steps in accordance with law and has been supporting the project proponent for reasons best known to them.
- e.** Pimpri-Chinchwad Municipal Corporation-PCMC the respondent no. 5 and PCMC- Commissioner the respondent no. 6, is the local authority for all purposes of sanctions related to construction activity and as such is duty bound and responsible for strict implementation of environmental laws as well as development control rules and regulations. The said authority has completely failed to perform its duties and thereby has caused and aided in causing the severe environmental damage in the instant case.
- f.** Mr. Mahavir T. Kambale, city engineer- respondent no-7, as highly technical expert in the building permission department and as

head of department for strict implementation of development plans/ scheme of PCMC and as the administration of the PCMC is depend upon him for his professional advice and technical expertise to take action against the defaulting builder those who are committing the violations of the laws for safeguarding the interest of citizens. This respondent as higher authority of building permission department has become blind intentionally to protect the illegality and violation committed by the project proponent, but the conduct of this respondent smells connivance with project proponent. The said respondent has completely failed to perform its duties and thereby has caused and aided in causing the severe environmental damage allowing illegal construction in the instant case.

- g.** District Collector – Pune the respondent no. 8 is an important authority responsible for upholding the environmental protection by strict implementation of the revenue and other laws along with environmental laws as he is the president of the district environmental protection committee. The said authority is sleeping like a lazy serpent and has not taken any action to protect environment in any matters so far and even if it is taken, it is far from adequate and this authority needs to be reminded about its powers to take action and be directed to take action against the errant builders like the project proponent.
- h.** Executive Engineer-Irrigation Department as respondent no. 9 is the responsible to prohibit the respondent –PP from making the illegal construction in the blue line, in the instant case the respondent no. 9 has failed to take action against the PP for his illegal construction carried out in the blue line having knowledge

of the fact. The officers by no way can plead ignorance in this case.

- i. Shri. Prakash Deshmukh & Shri. Zuber Shaikh -Architect & Authorized Person of Space Design Syndicate, the respondent no. 10 is an architect, technical consultant and advising various developers in obtaining the Building Permission. The Respondent No. 10 (Space design syndicate) is the design and regulatory architect appointed by and working as such for the Respondent No.11 Project Proponent for the purpose of preparing all plans, documents, statements, affidavits, compliance of direction sought by the PCMC. But Respondent No. 10 has been involved in intentionally advising project proponent to provide false & misleading information and preparing fudged documents for onward submission to the PCMC Authorities without verifying the information & suppress the true facts from the authority to obtain Building Permission. The architects knowing fully well that the project falls in blue line, got it sanctioned and prompted to construct illegal buildings in blue line of Mula River. This firm/ architect needs to be investigated into and further is required to be banned from acting as Architect since it has been ill advising its clients in illegal loading of TDR in the present development.

FACTS LEADING TO THIS APPLICATION

10. That during visit to the said project site and later on by scrutiny of documents received under the Right to Information Act, the applicant found many irregularities, illegal activities, intentional violations, illegal construction with connivance of PCMC corrupt officers in blue line having advance knowledge of blue line marking

& breaches of environmental law and many more violations which causes environmental degradation and huge financial loss to the government machinery in various ways as well as **very serious violations of Environment Protection Act and Pollution Control Laws, EIA notification 2006.**

11. It is to be noted that, the record reveals that all the authorities have the knowledge of this environmental violations and illegal construction in blue line, there is no strongest action against project proponent Respondent No.11 has been initiated by any authorities till toady except the notices of demolition of illegal construction. The applicant is filing present application with a hope that the further illegalities would be prevented by the said authorities. However to the utter shock and surprise to the applicant, the applicant realized that the government machinery in various offices is trying its best to help and facilitate developer to violate laws left right and center for reasons best known to such authorities.

12. Being aggrieved by and dissatisfied with the inaction on the part of various environment protection authorities, this applicant prefers this application inter-alia on the following grounds.

Table No. 1

1	Construction without Environment Clearance
2	Construction without Consent to Establish
3	Occupancy without Consent to Operate
4	Construction in blue line having knowledge in advance
5	Resident life in danger due to construction made in blue line.
6	Obstacle to natural flow.
7	Illegal construction of "A4" building from (9 th to 12 floor for 16 flats) having no FSI

8	Building Permission issued by PCMC is illegal
9	Illegal Diversion of Nala.
10	Construction of Basements and then refilling, caused illegal excavation.
11	Clear cut hand in glove work by PCMC and irrigation dept. officers.
12	Court order for Stay of construction work.
13	Project Proponent has intention to carry out further illegal construction as reveled from declaration deed.
14	Project Proponent has damaged environment & ecology irreparably.

13. CONSTRUCTION BEING CARRIED OUT WITHOUT ANY ENVIRONMENTAL CLEARANCE AND CONSENT TO ESTABLISH IN BLATANT VIOLATION OF THE ENVIRONMENTAL LAWS, POLLUTION CONTROL ACT AND EIA NOTIFICATION, 2006.

The applicant states that, as per the EIA notification 2006 dated 14.09.2006, it is mandatory to obtain the prior environment clearance from SEIAA and consent to establish from MPCB before commencement of any construction work on part of Project proponent. But the project proponent has started and completed most of the construction activity.

Table No.2: - Actual Construction carried out at site without Environmental Clearance and Consent to Establish.

Description	EC Permission	PCMC Permission	Actual Construction	Construction In blue line	Proposed Construction (B1 & Shop)
No of Flats	00	128	144	144	44
Shops/ Offices	00	00	00	00	4
Built-Up Area (Sq. Mtrs)	00		21384.90	21384.90	6215.91

This application inter alia is based on the following important grounds.

14. It is to be noted that, none of the buildings have received the completion/occupancy till filling of the present application. Further it is to be noted that the entire development under the violation of Environment Act and Pollution Control Act is the part of the same layout and entire development is illegal & coming under the blue line of the **Mula River**.

15. Further it is to be noted that, the building A3, A4 & B2 have total no. of 128 flats and one proposed commercial space as per the afterthought PCMC sanctioned plan. In fact there is construction of 144 units at site, for moment it is assumed but not admitted the Project proponent has received the legal sanction in 2011 for three building. But the same sanction was allowing to constructed only 128 residential units, but PP has constructed 144 units that 16 units extra more than permission.

The PCMC has given permission on 19.11.2011 vide sanction no. BP/Layout/PN/70/2011

Table No.3

Sr. No.	Description		Building			
			B1	B2	A3	A4
1	PCMC Permission	Floors	Nil	G+12	G+12	G+8
	Actual Construction		B+G+1	B+G+12	B+G+12	B+G+12
2	PCMC Permission	Units	0	48	48	32
	Actual Construction		4*	48	48	48
3	PCMC Permission	FSI	0	4395.25	3595.08	2396.72
	Actual Construction		457.80	4395.25	3595.08	3595.08
4	PCMC Permission	Balcony	0	495	349.44	232.96
	Actual		41.25	664.80	529.68	535.12

	Construction					
5	PCMC Permission	Staircase		218.79	215.54	215.54
	Actual Construction		33.66	218.79	215.54	215.54
6	PCMC Permission	Lobby	0	233.28	212.64	212.64
	Actual Construction		19.44	233.28	212.64	212.64
7	PCMC Permission	Lift	9.48	9.48	9.48	9.48
	Actual Construction		9.48	9.48	9.48	9.48
8	PCMC Permission	Lift M. Room	0	23.17	23.17	23.17
	Actual Construction		0	23.17	23.17	23.17
9	PCMC Permission	Terrace	0	878.88	533.04	353.36
	Actual Construction		73.62	878.88	533.04	533.04
10	PCMC Permission	Parking	2691.70			
	Actual Construction		2691.70+732.67=3424.37			
11	PCMC Permission	Refugee-Area	0	113.53	90.42	
	Actual Construction		0	113.53	90.42	
12	PCMC Permission	Club House	179.40			
	Actual Construction					
13	PCMC Permission	Transformer	111.02			
	Actual Construction					
14	PCMC Permission	Overhead Tank	0	30	30	30
	Actual Construction		0	30	30	30
15	PCMC Permission	U.G. Tank	80			
	Actual Construction					

* Building B1 under Construction

TABLE NO. 4: - TOTAL BUILT-AREA (Actual Construction)

Sr.	Description	Area in Sq. Mtrs. (Work Completed)	Area in Sq. Mtrs. (Work Proposed)
1	FSI	12043.21	179.18+4042.25
2	Balcony	1765.41	623.55
3	Staircase	683.53	185.13
4	Lobby	678.	213.84

5	Lift	37.92	0
6	Lift M. Room	69.51	23.17
7	Terrace	2018.58	805.26
8	Parking	3424.37	0
9	Refugee Area	203.95	113.53
10	Club House	179.40	0
11	Transformer	111.02	0
12	Overhead Tank	90	30
13	U.G. Tank	80	0
	Total	21384.90	6215.91

16. INTERRIM STAY ORDER FROM DISTRICT COURT

It is to be noted that, the dispute had arisen between the original land owner and developer & power of attorney holder for the non-compliance of the terms and condition of the development agreement. The Spl. Civil Suit No. 691/2008 before the Hon'ble Civil Judge Senior Division Pune at Pune, dated 05.04.2008 was filed by land owner Mrs. Anjanabai Janardan Balvadkar & Ors against Vilas Eknath Nandgude & Ors. Interim application filed by the original owners was allowed with the following direction on 06.05.2008,

“ Order

- 1) *Application Exh.-5 is allowed*
- 2) *Defendants are hereby temporarily restrained from carrying out any sort of development work & dealing any way with the suit property and are further restrained from creating third party interest in it pending hearing of the main suit.*
- 3) *Costs in cause.”*

The project proponent has shown the dust bin to the said order and has carried out the construction in blatant violation of the said order.

Copy of the Interim order against the Project proponent under violations are marked and annexed as an **ANNEXURE-V**.

17. ILLEGAL CONSTRUCTION IN BLUE LINE

Also it is revealed from the record that, the dispute was settled between the parties on 26.04.2010, It is clear from the above fact that, the defendant-Project proponent was restrained to carry out any construction and also to create third party interest on the alleged project land in this application from 06.05.2008 to 26.05.2010.

Further it is very important to note that, the permission granted by the PCMC on 30.03.2007 was only for a year and that too for **Six building** A1 to A6 with parking + 6 floors for FSI 10409.60 Sq. Mtrs. It is important to note that the Non-FSI area was not disclosed in the plan for the said sanction. Project proponent has not carried out the construction as the 2007 sanction, Project proponent has tried to get sanction in year 2008 but the said proposal was rejected by PCMC and moreover there was interim order prohibiting the project proponent to carry out any construction till 05.09.2010 as the suit was withdrawn on same date and subsequently the irrigation department has submitted the blue line marking plan to the PCMC in February-2009 and as per these plans, it was observed the said project is completely under the blue line of **MULA RIVER**.

It is to be noted that, the sanction dated 30.03.2007 had become invalid as per the Development Control regulation and there was no new sanction approved by the PCMC for the further construction till 19.11.2011.

It is important to note that, the project proponent had carried out construction without any sanction even having the knowledge of the blue line marking and his entire development is coming under the blue line of the Mula River and also the project proponent was made aware by the notice on 30.12.2010 as project proponent was seeking the permission for revised permission by his application on 13.10.2010.

It is important to note that, the project proponent had changed the entire scope of the project as compared the proposal of 2007 and 2010.

It is to be noted that, the irrigation department had informed the PCMC vide letter no. 6341 dated 03.07.2010 to use the flood marking maps provided by irrigation department dated 18.02.2009 only to make super imposition on the development plan to avoid the mistakes.

Further it is to be noted that, the irrigation department was informed the PCMC vide letter no. 6422 dated 07.07.2010 to make sure the imposition of the block contour plan on development plan, if there is any mistake in the development plan, that will cause to mistake the super imposition of the flood line map.

Further it is to be noted that, the irrigation department had informed the PCMC vide letter no. 6668 dated 14.07.2010 that, to avoid the flood disaster no construction shall be allowed to raise in blue line and make actual marking of boundaries on site.

Also it is important to note that, the project proponent was also forbidden by the Government of Maharashtra resolution passed by the ministry of irrigation department vide no. FPW/1089/243/89/SI. VYA. (KAME), Dated 21.9.1989.

So it is important to note that, the project proponent was restrained to carry out the construction in the blue line, but the project proponent had intentionally constructed the buildings in the blue line of the Mula River.

It is important to note that, the project proponent had illegally constructed the buildings in the blue line without having no sanction from PCMC and with having advance knowledge of the blue line affecting the project site. The project proponent is a habitual polluter and in Ram Nadi also has deliberately constructed buildings in red/blue line. This clearly shows the like I care attitude of the project proponent.

Copies of the Irrigation Department Letters dated. 03.07.2010, 07.07.2010, 14.07.2010, G.R. dated. 21.09.1989, PCMC office notes/letters dated 17.07.2010, 27.08.2010, 17.09.2010, 21.12.2010, Notice to PP dated. 30.12.2010, PCMC order of first hearing dated. 01.01.2011, PP reply dated 10.01.2011, PCMC office notes 29.01.2011, 17.02.2011, PCMC notice to PP dated 21.03.2011, Site Panchnamas dated 23.03.2011, PCMC office note dated 07.04.2011, PCMC notice to PP dated xx.04.2011, PCMC say in the proceeding before Commissioner dated. Nil, PCMC Draft Guideline for construction affecting Flood line dated xx.xx.2011 and PP additional reply dated 16.05.2011 are marked and annexed as an **ANNEXURE-VI (Colly.)**.

18. FARCE OF PCMC HEARING AND ORDERS

It is to be noted that, the local authority PCMC has received blue line marking plans in February 2009 from irrigation department as reveled from the office note of PCMC dated NIL, and other office Note of PCMC dated 21.12.2010 states that, the blue line marking plans are received on 21.05.2009 vide no. UDD/Ka Vi/3B2/203/2009.

Also it revels from PCMC record, PCMC commissioner vide letter dated 13.12.2010 has decided to take action against those proposals coming under blue line and cut of document is decided as August 2009 under sec. 51 of MR & TP 1966 and PCMC commissioner has issued the right to City Engineer PCMC for these hearing. It was very surprising to note that the Commissioner has issued the rights to the City Engineer on such serious issue.

But here this applicant would like to point out that, even the original proposal was sanctioned on 30.07.2007, that the project proponent had not started the construction. Neither had he made the construction as per the 2007 sanction. Scope of the project is completely different if we compare the proposal of 2007 and 2010.

It is important to note that, the project proponent had started the construction on the project land without getting any sanction from the PCMC, as he was even well aware the said project site is coming under the blue line is totally illegal and the PP was not making the construction as per the previous sanction dated 30.03.2007 and hence the PP was not carrying out any construction till the issuance of notice dated 13.12.2010 and also there was no development on the said project land.

After starting the actual construction without permission from PCMC at later stage, the project proponent applied for the revised sanction on 13.10.2010, but the PCMC has issued the notice to the project proponent on 30.12.2010 calling to be present for hearing on 01.01.2011 before the City Engineer PCMC.

It is also to be noted that the order dated 01.01.2011 is allowing the project proponent to carry out illegal construction by passing such direction at no. "4. *Matter is adjourned for six months for detail submissions*". It is nothing but the illegal help given to the project proponent to carry out the construction as the notice under MR & TP Sec. 51 was issued to the project proponent on 13.12.2010 even the additional time of six month was granted to the project proponent. Obviously not in the interest of justice but it seems in the interest of the PCMC staff who were carrying out these proceedings.

Notice dated 13.12.2010 was replied by the project proponent on 10.01.2011 and additional reply on 16.05.2011, Also the PCMC officers submitted their reply, but it seems that none of the office strongly opposed the issue of construction in the blue line and shown promptness to pass an order to allow the project proponent to carry out the construction in blue line.

It is to be noted that, the judgement / order passed by the PCMC city engineer having diligent powers received from PCMC commissioner to decide the serious issue of constructions coming under the Blue line dated 18.05.2011 reads as below;

ORDER

1. Representation made by Developer, Developer against the notice

U/s 51 is accepted and allowed subject to following.

- a. That the Developer, Developer shall file the revised plan to regularize the construction within 90 days from the date of judgement.*
- b. That the Developer, Developer shall not make any additional construction than the sanctioned FSI of 10409.60 Sq. Mtr. Which is to be consumed on the existed 3 building only, provided that the structure stability allows it.*
- c. Developer, Developer is not entitled to claim any sort of compensation.*
- d. The Developer shall ensure that every measure is taken for the safety of lives and property of the residents in the housing project from the flood water by constructing a strong retaining wall, compound wall etc.*

Sd/-

City Engineer

Pimpri Chinchwad Municipal Corporation, Pimpri-411018.

Copies of the PCMC office note in Marathi for Judgement dated Nil and Judgement or order dated 18.05.2011 are marked and annexed as an **ANNEXURE-VII(Colly.)**.

19. BUILDING PERMISSION & REVISION OF PLANS, PLINTH CHECK AND COMPLETION CERTIFICATE BEYOND 20000 Sq. Mtrs.

18.1 BUILDING PERMISSION

It is to be noted that, the present PP applied for the building permission to local Authority PCMC and PCMC granted the building sanction to PP vide Commencement Certificate No.

BP/PN/33/2007 dated 30.03.2007 through M/s. Shree Ganesh Promoters (PAH Atul J. Goel) is considered as the Original sanction for 6 buildings with P+7 floor.

Copy of commencement certificate and plans BP/PN/33/2007 is marked and annexed as **ANNEXURE-VIII (Colly.)** dated 30.03.2007.

18.2 TOTAL BUILT-UP AREA AS PER APPLICATION SEEKING BUILDING SANCTION DATED. 28.03.2008

It is to be noted that, the PP had applied for the revised sanction. But PCMC had rejected the proposal because of the non-compliance of conditions and due to interim order of court in Spl. Civ. Suit. 692/2008 as stated in the order passed by the PCMC Commission on 18.05.2011 in the hearing of notice issued for revocation of the permission on account of project coming under the blue line.

It is to be noted that the PP proposed three multi-story residential buildings and one commercial buildings having built-up area **27841.43 Sq. Mtrs.** with total residential tenements **134** and in this sanction no details for Underground tank, Overhead tank, Club House and transformer area were provided intentionally. It is important and mandatory to obtain the prior environment clearance and consent to establish from the board as the proposed built-up area was **27841.43 Sq. Mtrs.** as the EIA notification 2006 was applicable for this development. But it seems that the PP has intentionally not obtained the EC as well as consent to establish and proceeded with the construction.

Total built-up area of the said sanction was as given in below table

Table No. 5: - Total Built-up Area as per sanction dated 28.03.2008

Sr.	Description	Area in Sq. Mtrs
1	FSI	10754.80
2	Balcony	1585.67
3	Staircase	566.22
4	Lobby	619.68
5	Lift	28.44
6	Lift M. Room	69.57
7	Terrace	2018.88
8	Refugee Area	272.97
9	Parking	11555.80
10	Overhead Tank	90
11	Underground Tank	50
12	Club House	179.40
13	Transformer	50
	Total	27841.43

Copy of commencement certificate and plans BP/BP/xx/2008 is marked and annexed as **ANNEXURE-IX (Colly.)** dated 28.03.2008.

18.3 TOTAL BUILT-UP AREA AS PER ILLEGAL BUILDING SANCTION DATED. 19.11.2011

It is to be noted that, the project proponent had applied for the revised sanction again as per the direction given in the order dated. 18.05.2011 passed by the PCMC Commissioner while deciding the issue of the present construction coming under the

blue line. It seems that, the said order of PCMC Commissioner is passed is illegal and also the post-facto permission is given by the Commissioner to develop the project as the project proponent had started the construction without seeking any permission for the said development.

It is very important to note that the project proponent had made illegal construction even beyond the proposed construction of A4 building from 9th floors to 12th floors for 16 units. It is really scaring and shocking to note the conduct of the project proponent. It is to be noted that the PP proposed three multi-story residential buildings having built-up area **20591.97 Sq. Mtrs.** with total residential tenements **128 but actual constructed 144 tenements** and in this sanction no details for Underground tank, Overhead tank, Club House and transformer area were provided intentionally. It is important and mandatory to obtain the prior environment clearance and consent to establish from the board as the proposed built-up area was **20591.97 Sq. Mtrs.** as the EIA notification 2006 was applicable for this development. But it seems that the PP has intentionally not obtained the EC as well as consent to establish and proceeded with the construction.

Total built-up area of the said sanction was as given in below table

Table No. 6: - Total Built-up Area as per sanction dated 19.11.2011

Sr.	Description	Area in Sq. Mtrs	Bldg (A4-9th to 12th) floors in Sq. Mtrs.
1	FSI	10387.05	1198.36
2	Balcony	1547.60	116.48

3	Staircase	566.97	66.32
4	Lobby	587.68	70.88
5	Lift	28.44	
6	Lift M. Room	69.51	
7	Terrace	1767.28	177.68
8	Refugee Area	203.95	
9	Parking	2691.70	
10	Overhead Tank	90	
11	Underground Tank	60	
12	Club House	179.40	
13	Transformer	50	
14	B1 - Parking	732.67	
	Sub-Total	18962.25	1629.72
	Total		20591.97

Copy of commencement certificate and plans BP/PN/70/2011 is marked and annexed as **ANNEXURE-X** dated 19.11.2011.

18.4 PLINTH CHECK CERTIFICATE

It is to be noted that, there is no plinth check certificate issued to the present development and is not found in the information received under the RTI.

18.5 OCCUPANCY / COMPLETION CERTIFICATE

It is to be noted that, there is no Occupancy/ Completion certificate issued to the present development and is not found in the information received under the RTI.

20. ILLEGAL DIVERSION OF NALA WITH CONNIVANCE OF PCMC CORRUPT OFFICERS:

This incidence brings out the plight of PCMC like a blind woman grinds and the dogs eat.

It is to be noted that, it is revealed from the record of PCMC that, the one Mr. Amol Rohidas Ingawale dated 03.12.2012 had made the genuine complaint about the illegal diversion of the NALA passing through the project property and damaging his house. It is important to note that, PCMC officers had intentionally and having personal interest, instead of taking action on the complaint of Mr. Ingawale, the PCMC officers had shown that the house of the complainant is coming under blue line which is constructed long 20 years ago. It means the house of the complainant was constructed in the year of 1992. But the DP for Pimple Nilakh was sanctioned in the year of 1996. Moreover in year 1996 the house of complainant was seems to be constructed in the farm/ agricultural land.

It is important to note that, the inspection report dated 06.12.2012 is promoting the ongoing illegal construction of project proponent and declaring the construction of the complainant is illegal which is constructed 20 years ago.

It is to be noted that, the PCMC office notes dated 27.12.2012 is manipulated while finalising the note reasons best known to the officers. Also it is to be note that, the PCMC intentionally to divert the mind of the complainant had recorded the false observations in the report dated 29.01.2013.

Copy of the complaint dated 01.12.2012, Inspection report dated 06.12.2012, PCMC office note dated 27.12.2012, PCMC letter dated 25.03.2013, PCMC letter No. 934 dated 01.01.2013, PCMC letter

No. 967 dated 09.01.2013, PCMC office letter dated 10.01.2013 along with office noting & order dated 18.05.2011 (Marathi) and PCMC office report dated 29.01.2013 are marked and annexed as **ANNEXURE-XI (Colly.)**.

21. INTENTION OF PROJECT PROPONENT IS TO CONTINUE THE VIOLATION BY DECLARATION DEED

It is to be noted that, the project proponent has admitted that he has made illegal construction in the blue line, he has made illegal diversion of nala, he has made illegal construction of A4 building for 9th floor to 12th floor for 16 flats, he has shown his intention to undertake the illegal construction of B1 building & Commercial building.

It is to be noted that, the project proponent and PCMC is trying to regularize the illegal construction by taking the possession of the land under blue line and committing to give the FSI of 855.63 sq. mtrs. for nothing as the land is the no-development zone and there is no provision to give the FSI or TDR on account of no-development land.

Further it is to be noted that, the PCMC has not issued the Fire NOC for the building A4 due to illegal construction.

Copy of the Declaration Deed HVL10-3652-2014 dated 10.04.2014 agreement no. HVL5-4895-2016 Dated 08.06.2016 and Fire NOC dated 29.12.2012 & 31.10.2011 are marked and annexed as **ANNEXURE-XII (Colly.)**.

22. CLEAR CUT ILLEGAL CONSTRUCTION OF 4 FLOOR OF A4 BUILDING i.e. 16 FLATS AND PCMC NOTICES FOR DEMOLITION

It is to be noted that, the PCMC had issued the notice dated 17.12.2012 to project proponent to demolish the illegal construction carried out by them on building A4 from 9th floor to 12th floors as there is sanction only for 8th floors and project proponent has carried out the construction in excess beyond the permitted limit of 10409.60 Sq. Mtr by the order dated 18.05.2011

It is important to note here, the project proponent had replied the above notice with reply dated 24.12.2012 and sought the time for filling the reply stating the reasons of X'mas vacation. But just after three days on 27.12.2012 the project proponent moved an application for loading TDR.

It also reveals that, the project proponent had filed the reply dated 13.01.2013 which is rejected by the PCMC by the letter dated 29.01.2013.

It to be noted that, the PCMC had issued the notice dated 04.02.2013 under MR & TP act sec. 53 and the project proponent has again sent the baseless letter to the PCMC on 20.06.2015 and sought the completion certificate on account of deemed permission of TDR sanction and relied up the decision of Minister of State dated 23.04.2015.

It is to be noted that the again the PCMC has sent the notice dated 05.10.2015 for third time for demolition, but there was no action from project proponent.

It is to be note that the project proponent has deliberately moved to before the state government for loading of TDR on 27.12.2015. But

the PCMC has opposed the said proceeding with strong reply dated 30.11.2015.

It is to be noted that, the construction is prohibited in the blue line then no question of TDR loading arises. So this applicant states that the entire construction of the project proponent is illegal and liable to demolish.

Copy of the PCMC notice for demolition dated 17.12.2012, PP first reply dated 24.12.2012, PP Application for TDR Loading dated 27.12.2012, PP second reply dated 11.01.2013, PP letter dated Nil for compensation of Nala, PCMC Notice No. 13 dated 29.01.2013, PCMC Notice dated 04.02.2013, PP letter dated 20.06.2015, PCMC notice for demolition dated 05.10.2012, UDD State Minister Hearing Notice dated 27.11.2015, PCMC say to the hearing dated 30.12.2015 and Citation dated 23.04.2015 are marked and annexed as **ANNEXURE-XIII (Colly.)**.

23. ILLEGAL CONSTRUCTION OF TRANSFORMER/ GENERATOR ROOM BY PROJECT PROPONENT WITH CONNIVANCE OF PCMC

It is to be noted that, the project proponent had constructed the illegal generator room that is creating the obstacle for visibility to the traveler moving from 24 mtrs road to 12 mtr road and PCMC vide letter dated 06.09.2012 & 24.09.2012 informed the PP to remove such construction immediate, but project proponent has not removed the same from the site.

Copy of the PCMC notice for demolition dated 24.09.2012 and PCMC letter dated 06.09.2012 are marked and annexed as **ANNEXURE-XIV (Colly.)**.

24. ENVIRONMENT CLEARANCE AND MPCB CONSENT IS NOT OBTAINED BY PROEJCT PROPONENTS INTENTIONALLY AND HAS CAUSED HUMONGOUS ENVIRONMENTAL DAMAGE:

It is to be noted that, the Ministry of Environment & Forest, Government of India issued a Notification dated. 14.09.2006 titled the Environment Clearance Regulations of 2006 in short EIA Notification 2006. As per the provisions of the EIA Notification of 2006, the project or activities falling under Category 'A' of the Schedule require prior permission from the Central Government while project and activities falling under Category 'B' require prior permission from the State Environment Impact Assessment Authority (SEIAA). These permissions are to be obtained before any construction work or preparation of the land by the project management except for fencing the land is started on project or activity.

In this case the construction has already commenced and/or even completed partly, the provisions of Environment Protection Act, 1986 read with EIA Notification 2006 are violated. It is to be noted that the Notification of 2006 has been issued in furtherance to exercise of subordinate delegated legislation for satisfying and complying with the provisions of Section 3 of the Act of 1986 which mandates that Central Government shall have the power to take all such measures as it deems necessary or expedient for the

purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution.

Here is the case that the project proponent has flouted the law in force on one hand and has caused the environmental damage and degradation on the other hand.

It is to be noted that environmental management or planning is the study of unintended consequences of a project. Its purpose is to identify, examine, assess and evaluate the likely and probable impacts of a proposed project on the environment and, thereby, to work out remedial action plans to minimize these adverse impacts on the environment. All this is required to be done at a stage before the commencement of the project. The law does not visualize such examination post-commencement and upon completion of the project, in relation to the covered projects and activities and here the project proponent has failed and deliberately avoided to do so and gave go by to the mandatory provision of the EIA Notification 2006.

It is to be noted that, the aim and purpose of Environmental Impact Assessment ('EIA-2006') is to inform the process of decision-making by identifying the potentially significant environmental effects and risks of development proposals and to promote sustainable development by ensuring that development proposals do not undermine critical resource and ecological functions or the well-being, lifestyle and livelihood of the communities and people who depend on them. The importance of conducting an exhaustive EIA before any project is granted Environmental Clearance has been acknowledged internationally.

The United Nations Environment Programme's (UNEP) Charter states that EIA should be ensured to minimize adverse effects on nature and nature assessments should be included in the fundamental elements of all planning and should be publicly disclosed and deliberated.

The very purpose of conducting an EIA before a project is granted clearance is to ensure that no development takes place without sufficient assessment of the risks and damages that would be caused to the environment due to the project's construction and development. The authorization should follow such study and imposition of conditions rather than the converse. The application for seeking Environmental Clearance has to be made in Form 1 or the Supplementary Form 1A, as the case may be. The requisites required under Form 1 have to be supplied prior to the date of commencement of the project except to the extent of arranging land.

However the confidence of the PP in not complying with environmental laws is high due to corrupt officers of Pimpri-Chinchwad Municipal Corporation.

**25. GROSS NEGLIGENCE OF THE LOCAL AUTHORITY-
PIMPRI-CHINCHWAD MUNICIPAL CORPORATION:-**

It is to be noted that the said project which is under violation of Environment Protection Act 1986, Water & Air Act and other environmental laws time being in force is situated in the limit of "**Pimpri-Chinchwad Municipal Corporation**" (PCMC). The PCMC was & is the local authority legally responsible to permit & control the said building construction through the office of Municipal Commissioner and City Engineer, Building Permission & Control

Department. It is to be noted that PCMC is the fundamental authority to monitor, Control & prevent such type of illegal constructions which are intentionally committing the violation of Environment Protection Act 1986, Water & Air Act. It is the duty of PCMC to brought to notice and knowledge of Environment Department and Maharashtra Pollution Control Board that this type of illegal act of intentional violations damaging the environment infinitely. But in this case it seems that PCMC is playing the role of blind person even they have full knowledge of the violations committed by present PP and it is nothing but PCMC corrupt officials are hand in glove with the PP. Therefore the officers at PCMC are not taking any action against PP.

26. OTHER GROUNDS

- a.** No application for prior Environment Clearance from Environment Department and construction carried out by the present Project Proponents.
- b.** No application for prior Consent to Establish from MPCB and construction carried out by the present Project Proponents.
- c.** No application for prior Consent to Operate from MPCB and enjoyment of premises stated by the present Project Proponents.
- d.** Intentional Non-action of all authorities for construction in blue line.
- e.** Project proponent has caused the pollution by generating the huge solid waste, waste water, used water for construction and by running the DG sets.

- f. All authorities are allowing Project Proponents for further construction without action and prior Environment Clearance.
- g. Project Proponent is causing continuous damage to the Environment.
- h. Because the EIA notification 2006, nowhere provides the grant of *post facto* clearance after the part completion of the project.
- i. Because there is complete non-application of mind by the local authority while issuing building sanction.
- j. Because the building sanction by local authority without prior EC is illegal and has no legal sanctity.
- k. Because the Environment Department and SEIAA failed to take any action for violation of the provisions of EIA Notification, 2006 and Environment (Protection) Act, 1986.
- l. Because there is carbon footprint impact to the tune of Rs. 175 Crore Rupees due to these illegal activities of construction.
- m. Because if the procedure of the post facto Environment Clearance is allowed to be followed, any project proponent would complete his project by causing irreversible damages to the environment and then seek post-facto environmental clearance making the provisions of EIA notification infructuous. The grant of post facto clearance defeats the very purpose of environmental protection law and the mandate of obtaining environmental clearance as per the provisions of EIA Notifications 2006.
- n. Because In **Dipak Kumar Mukherjee Versus Kolkata Municipal Corporation and others, 2012 DGLS(Soft.) 509**, the Hon'ble Supreme Court set aside the decision of the Kolkata High Court in directing the demolition of an illegal and

unauthorised constructions of buildings and other structure in violation of the laws. The Hon'ble Court held:

Kolkata Municipal Corporation Act, 1980 -- Sections 396, 400 & 401(A) -- Rule 25 of the Kolkata Municipal Corporation Building Rules, 1990 -- Illegal construction --Demolition -- Illegal and unauthorised constructions of buildings and other structure not only violate the municipal laws and the concept of planned development of the particular area but also affect various fundamental and constitutional rights of other persons -- The failure of the State apparatus to take prompt action to demolish such illegal constructions has convinced the citizens that planning laws are enforced only against poor and all compromises are made by the State machinery when it is required to deal with those who have money power or unholy nexus with the power corridors -- Since, respondent No. 7 has not disputed that the building was constructed in violation of the sanctioned plan and the Mayor-in-Council passed order dated 14.1.2010 for demolition of the disputed construction, the direction given by the Division Bench of the High Court to the competent authority of the Corporation to pass appropriate order after giving opportunity of hearing to respondent No. 7 cannot be sustained -- Respondent No. 7 had raised construction in violation of the plan sanctioned under Section 396 of the 1980 Act and continued with that activity despite the order of the Mayor-in- Council -- In the prevailing scenario, the representative of respondent No. 7 might have thought that he will be able to pull strings in the power corridors and get an order for regularisation of the illegal construction but he did not know that

there are many mortals in the system who are prepared to take the bull by horn and crush it with iron hand -- Demolition of building justified -- Impugned judgment set aside -- Appeal allowed -- Kolkata Municipal Corporation Building Rules, 1990 -- Rule 25 (2). Held, Before parting with the case, we consider it necessary to observe that respondent No. 7 is guilty not only of violating the sanctioned plan and the relevant provisions of the 1980 Act and the Rules framed thereunder but also of cheating those who purchased portions of unauthorized construction under a bona fide belief that respondent No. 7 had constructed the building as per the sanctioned plan. With the demolition of unauthorized construction some of such persons will become shelterless. It is, therefore, necessary that respondent No. 7 is directed to compensate them by refunding the cost of the flat, etc., with interest. Respondent No. 7 must also pay for raising construction in violation of the sanctioned plan. It must be remembered that while preparing master plans/zonal plans, the Planning Authority takes into consideration the prospectus of future development and accordingly provides for basic amenities like water and electricity lines, drainage, sewerage, etc. Unauthorized construction of buildings not only destroys the concept of planned development which is beneficial to the public but also places unbearable burden on the basic amenities and facilities provided by the public authorities. At times, construction of such buildings becomes hazardous for the public and creates traffic congestion. Therefore, it is imperative for the concerned public authorities not only to demolish such

construction but also impose adequate penalty on the wrongdoer.

28. In the result, the appeal is allowed and the impugned judgment is set aside. With a view to ensure that the illegal construction raised by respondent No. 7 is pulled down without delay, we issue the following directions:

1. Within three months from today, respondent No. 7 shall pay the price of the flats etc. to the purchasers with interest @ 18% per annum from the date of payment.

2. The occupiers of illegal/unauthorized construction shall vacate such portions of the building within next one month.

3. Within next one month, the Corporation shall demolish unauthorized construction after taking adequate precautionary measures.

4. Respondent No. 7 shall pay cost of Rs. 25,00,000/- for brazen violation of the sanctioned plan and continuance of illegal construction despite stop work notice.

The amount of cost shall be deposited with the Kolkata State Legal Service Authority within three months and the same be utilized for providing legal aid in deserving cases.

- o. Because in **M.I Builders Vs Radhey Shyam Sahu, [1999 (6) SCC 464]**, the Hon'ble Supreme Court upheld the decision of the Allahabad High Court in directing the demolition of an underground shopping complex which has come up in a Public Park in violation of the laws. The Hon'ble Court held:

"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 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.”

- p.** Because in **Indian Council for Environ Legal Action versus Union of India and Ors, (1996) 5 SCC 281** the Hon'ble Supreme Court has observed:

“Enactment of a law, but tolerating its infringement, is worse than not enacting a law at all. The continued infringement of law, over a period of time, is made possible by adoption of such means which are best known to the violators of law. Continued tolerance of such violations of law not only renders legal provisions nugatory but such tolerance by the enforcement authorities encourages lawlessness and adoption of means which cannot, or ought not to, be tolerated in any civilized society. Law should not only be meant for the law-abiding but is meant to be obeyed by all for whom it has been enacted. A law is usually enacted because the legislature feels that it is necessary. It is with a view to protect and preserve the environment and save it for the future generations and to ensure good quality of life that Parliament enacted the anti-pollution laws, namely, the Water Act, Air Act and the Environment (Protection) Act, 1986. These Acts and Rules framed and notification issued thereunder contain provisions

which prohibit and/or regulate certain activities with a view to protect and preserve the environment. When a law is enacted containing some provisions which prohibit certain types of activities, then, it is of utmost importance that such legal provisions are effectively enforced. If a law is enacted but is not being voluntarily obeyed, then, it has to be enforced. Otherwise, infringement of law, which is actively or passively condoned for personal gain, will be encouraged which will in turn lead to a lawless society. Violation of antipollution laws not only adversely affects the existing quality of life but the non-enforcement of the legal provisions often results in ecological imbalance and degradation of environment, the adverse effect of which will have to be borne by the future generations.”

27. LIMITATION

The present application is filed within the prescribed period as provided under the National Green Tribunal Act, 2010. The cause of action to file this Application arose on 15 April 2016 when the applicant got required information from the environment department and knowledge about gross violation of various environmental laws and thereafter continues till date.

28. JURISDICTION

The applicant resides, the respondents have their area of operations within and the project under challenge is located within the jurisdiction of this Hon'ble Tribunal and therefore this Hon'ble tribunal has jurisdiction to try and entertain present application.

29. PRAYERS FOR INTERIM RELIEF

In the present facts and circumstances it is most respectfully prayed that this Hon'ble Tribunal may be pleased to pass interim orders to:

- A.** Direct the project proponents to stop any and all the construction activities at the site forthwith and restrain the project proponents from creating any further third party interest in the construction raised and in project land comprised in Survey no. 6/1/1 to 6/1/3, during the pendency of this application.
- B.** Appoint as court commissioner, a group of a surveyor, a regulatory architect, an independent advocate and a representative of applicant and the Respondents to submit a detailed actual site visit report with measurements in context of all the plans along with video shooting of the entire proceedings of the said commission.
- C.** Direct the respondent no. 9 to file the true and correct record regarding blue line and red line pertaining to project in question.
- D.** Direct the PCMC to strictly monitor the stay of construction and submit weekly report.

30. PRAYERS

In the present facts and circumstances it is most respectfully prayed that this Hon'ble Tribunal may be pleased to pass an order thereby:

- A.** Direct the Respondents to demolish the illegal structures at the site in question and restore the area to its original position.

- B.** Direct the State Level Impact Assessment Authority and the Maharashtra State Pollution Control Board to initiate appropriate action against the project proponent for violation of the provisions of EIA notification, 2006 and other applicable laws.
- C.** Having regard to the damage to the public health, property and environment, principles of sustainable development and polluter pays principles, Direct the Respondent No. 11 to deposit a heavy amount of compensation to the environment relief fund.
- D.** Direct the PCMC to conduct inquiry of officers responsible for not following the mandatory provisions of the EIA notification and take appropriate action.
- E.** Direct the Commissioner, Pimpri Chinchwad Municipal Corporation to take serious action against Shri. Mahavir T. Kamble, City Engineer for his intentional negligence of duties on account of inaction and allowing the project proponent to raise the illegal construction causing for environmental damage by allowing PP to make construction in blue line and recover the amount of damage from salary of Respondent No. 7.
- F.** Direct the Commissioner, PCMC to take serious action of cancelling registration of the architect respondent no. 10 at PCMC for his illegal activity of allowing the project proponent to raise the intentional illegal construction in blue line at site causing damage to environment. Impose fine of minimum Rs. 50 crores on the said Architect Firm.
- G.** Cost of this application may be directed to be paid to the applicant.

H. Pass any other just and equitable orders in the interest of justice.

Dated: 06/10/2016

Pune

Bombhise
Applicant

Drawn and filed by

Pingle P.

Shriram P. Pingle
Advocate on Record,
Supreme Court of India

I know the applicant
(Advocate for applicant)

VERIFICATION

Verified at Pune on this 6th day of October, 2016 that the contents of the aforesaid application are true and correct to the best of my knowledge and belief. No part of it is false and nothing material has been concealed therefrom.

Bombhise
DEPONENT

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

MEMORANDUM OF APPLICATION
UNDER SECTIONS 14 & 15 OF NGT ACT, 2010

APPLICATION NO. 163/2016

IN THE MATTER OF**1. MR. TANAJI BALASAHEB GAMBHIRE**

AGE: ADULT OCCUPATION: SERVICE

R/O - FLAT NO-16, CTS-296, LAXMI APARTMENT,

NEAR SHIVAJI MARATHA HIGH SCHOOL, WHITE HOUSE LANE,

SHUKRAWAR PETH, PUNE-411002,

... APPLICANT

VERSUS**1. UNION OF INDIA**

THROUGH SECRETARY,

MINISTRY OF ENVIRONMENT AND FOREST

PARYAVARAN BHAWAN, CGO COMPLEX, LODHI ROAD,

NEW DELHI - 110001

2. THE PRINCIPAL SECRETARY, ENVIRONMENT DEPARTMENT

GOVERNMENT OF MAHARASHTRA,

15TH FLOOR, NEW ADMINISTRATIVE BUILDING,

MANTRALAYA, MUMBAI-400 032

3. STATE LEVEL ENVIRONMENT IMPACT ASSESSMENT AUTHORITY

THROUGH MEMBER SECRETARY

15TH FLOOR, NEW ADMINISTRATIVE BUILDING,

MANTRALAYA, MUMBAI-400 032

4. MAHARASHTRA POLLUTION CONTROL BOARD

THROUGH ITS MEMBER SECRETARY,

KALPTARU POINT, 3RD FLOOR, NEAR SION CIRCLE,

OPP. CINE PLANET, CINEMA, SION (E), MUMBAI.

5. MAHARASHTRA POLLUTION CONTROL BOARD

THROUGH ITS REGIONAL OFFICER, SRO

JOG CENTRE, 3RD FLOOR, MUMBAI-PUNE ROAD, WAKADEWADI,

PUNE-411003

6. PIMPRI CHINCHWAD MUNICIPAL COMMISSIONER

PIMPRI CHINCHAWAD MUNICIPAL CORPORATION,

PIMPRI, PUNE-411 018

7. SHRI. MAHAVIR THALLYAPPA KAMBLE**CITY ENGINEER**

PIMPRI CHINCHAWAD MUNICIPAL CORPORATION,
PIMPRI, PUNE-411 018

8. DISTRICT COLLECTOR - PUNE

PRESIDENT-DISTRICT ENVIRONMENT COMMITTEE, PUNE

9. SHRI. SHASHANK PHADAKE**ARCHITECT & AUTHOSIDED PERSON OF SOLE SPACE**

1+2, BUILDING NO.7,
SHRADDHA HERITAGE, PIMPRI,
PUNE-411019

10. M/s GOEL GANGA CONSTRUCTION

A PARTNERSHIP FIRM THROUGH
ATUL JAYPRAKASH GOEL
AMIT JAYPRAKASH GOEL
3RD FLOOR, SAN MAHU COMPLEX,
OPP. POONA CLUB, 5, BUND GARDEN,
PUNE-411 001

11. FEDERATION OF SWAR-GANGA CO-OPERATIVE HOUSING SOCIETY LTD.

THROUGH CHAIRMAN/SECRETARY/AUTHORIZED MEMBER
SURVEY NO. 174/A, 176/A, 177/A,
SANT TUKARAM NAGAR, PIMPRI,
PUNE-411018

12. GANGA SKIES CO-OPERATIVE HOUSING SOCIETY LTD.

THROUGH CHAIRMAN/SECRETARY/AUTHORIZED MEMBER
SURVEY NO. 174/A, 176/A, 177/A,
SANT TUKARAM NAGAR, PIMPRI,
PUNE-411018

13. MR. YOGESH MANGLASEN BEHAL

VRUNDAVAN BUNGALOW, NEAR VIRANGULA CENTRE,
INFRONT OF RAJESH BEHAL GARDEN,
SURVEY NO. 174/A, 176/A, 177/A,
SANT TUKARAM NAGAR, PIMPRI,
PUNE-411018

...RESPONDENTS

Date: 31.07.2017

Pune

APPLICANT

AMENDED COPY**BEFORE THE HON'BLE NATIONAL GREEN TRIBUNAL
WESTERN ZONE AT PUNE**

MEMORANDUM OF APPLICATION

UNDER SECTIONS 14 & 15 OF NGT ACT, 2010

APPLICATION NO. 164/2016**IN THE MATTER OF****Mr. Tanaji Balasaheb Gambhire**

Age: Adult, Occupation: Service,
R/o- Flat No-16, CTS-296, Laxmi Apartment,
Near Shivaji Maratha High School,
White House Lane, Shukrawar Peth,
Pune-411002

... APPLICANT**VERSUS****1. THE SECRETARY****Environment Department**

Government of Maharashtra,
Room No. 217, Annex Building,
Mantralaya, Mumbai-400 032

2. THE MEMBER SECRETARY-SEIAA**State Level Environment Impact Assessment Authority**

Government of Maharashtra,
15th Floor, New Administrative Building,
Mantralaya, Mumbai-400 032

3. THE CHAIRMAN**Maharashtra Pollution Control Board**

Kalptaru Point, 3Rd Floor, Near Sion Circle,
Opp. Cine Planet, Cinema, Sion (E), Mumbai-.400022

4. REGIONAL OFFICER**Pollution Control Board-Maharashtra State,**

Jog Centre, 3Rd Floor, Mumbai-Pune Road,
Wakadewadi, Pune-411003

5. PIMPRI-CHINCHAWAD MUNICIPAL CORPORATION

Pimpri, Pune-411 018

6. MUNICIPAL COMMISSIONER,

Pimpri-Chinchawad Municipal Corporation,
Pimpri, Pune-411 018

7. SHRI. MAHAVIR THALLYAPPA KAMBLE**CITY ENGINEER,**

Pimpri-Chinchawad Municipal Corporation,
Pimpri, Pune-411 018

8. DISTRICT COLLECTOR - PUNE

President-District Environment Committee,
Dist. Collector Office, Pune

9. IRRIGATION DEPARTMENT

Executive Engineer,
Pune Irrigation Division,
Pune-411011

10. SPACE DESIGN SYNDICATE

ARCHITECT ACTING THROUGH

1. SHRI. PRAKASH DESHMUKH

2. SHRI. ZUBER RASHID SHAIKH

Megaspace, 1st Floor, 13 Solapur Bazar Road,
Off East Street, Pune - 411001

11. M/s. SHREE GANESH PROMOTERS.

Acting Through

1. JAIPRAKASH SITARAM GOEL,

2. ATUL JAIPRAKASH GOEL,

3. AMIT JAIPRAKASH GOEL,

OFFICE AT

3rd Floor, San Mahu Complex, Opp. Poona Club,
5 Bund Garden Road, Camp, Pune-411001

12. THE GREATER GANGA PANAMA APARTMENT CONDOMINIUM

THROUGH PRESIDENT/SECRETARY/ AUTHORIZED MEMBER

SURVEY NO.6, HISSA NO. 1/1, 1/2, 1/3,

INGOWALE NAGAR, PIMPLE NILAKH,

TALUKA-HAVELI, DISTRICT-PUNE411027

....RESPONDENTS

Dated: 31.07.2017

Pune

Applicant

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

Original Application 163/2016 (WZ)
M.A.22/2017

Tanaji Balasaheb Gambhire. V/s The Principal Secretary, Environment
Department & Ors.

**CORAM: HON'BLE MR JUSTICE U.D.SALVI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Appln No.163/2016

Present: Applicant/Appellant : Ms Rashmi S.Pingle Adv a/w
Mr. Nilesh K. Bhandari Adv
Mr. Abhijit Ingle Adv
Respondent No.1 : Mr. R.B. Mahabal Adv
Ms.Supriya Dangare Adv
Respondent Nos. 4,5 : Mr. Aniruddha S. Kulkarni Adv
Mr. Prashant More Adv
Respondent Nos.10,11 ; Mr. Saket Mone Adv
Respondent Nos. 12, 13 : Mr. Sangramsingh Bhonsle Adv
Ms.Aarti Bhonsle Adv

Date and Remarks	Orders of the Tribunal
Item No. 20 October 31, 2017 Order No.13	<p align="center">Heard parties on preliminary exceptions.</p> <p align="center">Order reserved.</p> <p align="right">....., JM (Justice U.D.Salvi)</p> <p align="right">....., EM (Dr. Nagin Nanda)</p>

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

Application No. 163/2016 (WZ)
M.A. No.22/2017
And
Application No. 164/2016 (WZ)
M.A. No.21/2017

In the matter of:-

Tanaji Balasaheb Gambhire. V/s The Principal Secretary, Environment
Department & Ors

And

Tanaji Balasaheb Gambhire. V/s The Principal Secretary, Environment
Department & Ors

**CORAM: HON'BLE MR. JUSTICE U.D. SALVI, JUDICIAL MEMBER
HON'BLE MR. RANJAN CHATTERJEE, EXPERT MEMBER**

Application No.163/2016

Present: Applicant/Appellant : Mr. Nilesh K. Bhandari, Adv.
Respondent No.1 : Mrs. Supriya Dangare, Adv.
Respondent Nos.4, 5 : Mr. Prashant P. More, Adv.
Respondent No.6 : Mr. Shashikant Jagtap, Adv.
Respondent No.10 : Mr. Saket Mone, Adv.

Application No.164/2016

Applicant/Appellant : Mr. Nilesh K. Bhandari, Adv.
Respondent No.1 : Mrs. Supriya Dangare, Adv.
Respondent Nos.3, 4 : Mr. Prashant P. More, Adv.
Respondent No.5 & 6 : Mr. Shashikant Jagtap, Adv.
Respondent No.9 : Mr. Asim Sarode, Adv.
Respondent No.10,11 : Mr. Saket Mone, Adv.

Date and Remarks	Orders of the Tribunal
Item No.15 & 16 28 th February, 2017 Order No.5,5	<p><u>Application No.163/2016</u></p> <p>No reply filed by Respondent Nos.1 and 7.</p> <p>Reply has been filed by Respondent No.10. The Applicant submits that he will have to rejoin the contentions of the Respondent No.10 and some time be granted for filling rejoinder. Two weeks' time granted for filing rejoinder.</p> <p><u>Application No.164/2016</u></p> <p>No reply has been filed by Respondent Nos.5, 6, 7 and 10.</p> <p>Learned Counsel appearing on behalf of Respondent No.10 submits that the reply of Respondent No.11 shall be the reply of Respondent No.10.</p>

Item No.15 &
16
28th
February,
2017
Order No.5,5

Learned Counsel appearing on behalf of Respondent Nos.5 and 6 submits that the reply is ready and will be filed in the course of the day. Copies of the reply shall be furnished to the Applicant who may file rejoinder thereto within a week.

List these cases on 23rd March, 2017.

....., JM
(Justice U.D. Salvi)

....., EM
(Ranjan Chatterjee)



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

**Original Application No. 163/2016 (WZ)
(M.A.No.22/2017)**

In the matter of :-

**Tanaji Balasaheb Gambhire Vrs. The Principal Secretary, Environment
Department & Ors.**

AND

**Original Application No. 164/2016 (WZ)
(M.A.No.21/2017)**

In the matter of :-

**Mr. Tanaji Balasaheb Gambhire Vrs. The Principal Secretary, Environment
Department & Ors.**

**CORAM : HON'BLE MR. JUSTICE U.D. SALVI, JUDICIAL MEMBER
HON'BLE DR. AJAY A. DESHPANDE, EXPERT MEMBER**

O.A.No.163/2016 :

Present: Applicant/Appellant : Mr. Shriram P. Pingle, Adv.
Respondent No.1 & 2 : Mr. D.M. Gupte, Adv. a/w
Mrs. Supriya Dangare, Adv.
Respondent No.3 & 4 : Mr. Prashant P. More, Adv.
Respondent No.4 & 5 : Mr. Shashikant Jagtap, Adv.
Respondent Nos.9 & 10 : Mr. Saket Mone, Adv.

O.A.No.164/2016 :

Present: Applicant/Appellant : Mr. Shriram P. Pingle, Adv.
Respondent No.1 & 2 : Mr. D.M. Gupte, Adv. a/w
Mrs. Supriya Dangare, Adv.
Respondent No.3 & 4 : Mr. Prashant P. More, Adv.
Respondent No.5 & 6 : Mr. Shashikant Jagtap, Adv.
Respondent Nos.9 & 10 : Mr. Saket Mone, Adv.

Date and Remarks	Orders of the Tribunal
<p>Item No.17 & 18 23rd March, 2017 Order No. 6, 6</p>	<p>In both these matters, exceptions have been taken on the ground of non-joinder of necessary parties and claim to plural remedies. It is submitted on behalf of contending Respondents that the Applicants are seeking demolition of the properties sold and the purchasers being put in possession thereof followed by formation of their societies/association of Apartment owners.</p> <p>Learned counsel appearing on behalf of the Applicants in the main Applications seeks time to take requisite steps for joinder of the parties.</p>

Item No.17 & 18
23rd March, 2017
Order No. 6, 6

In the meanwhile liberty granted to the parties to complete their pleadings.

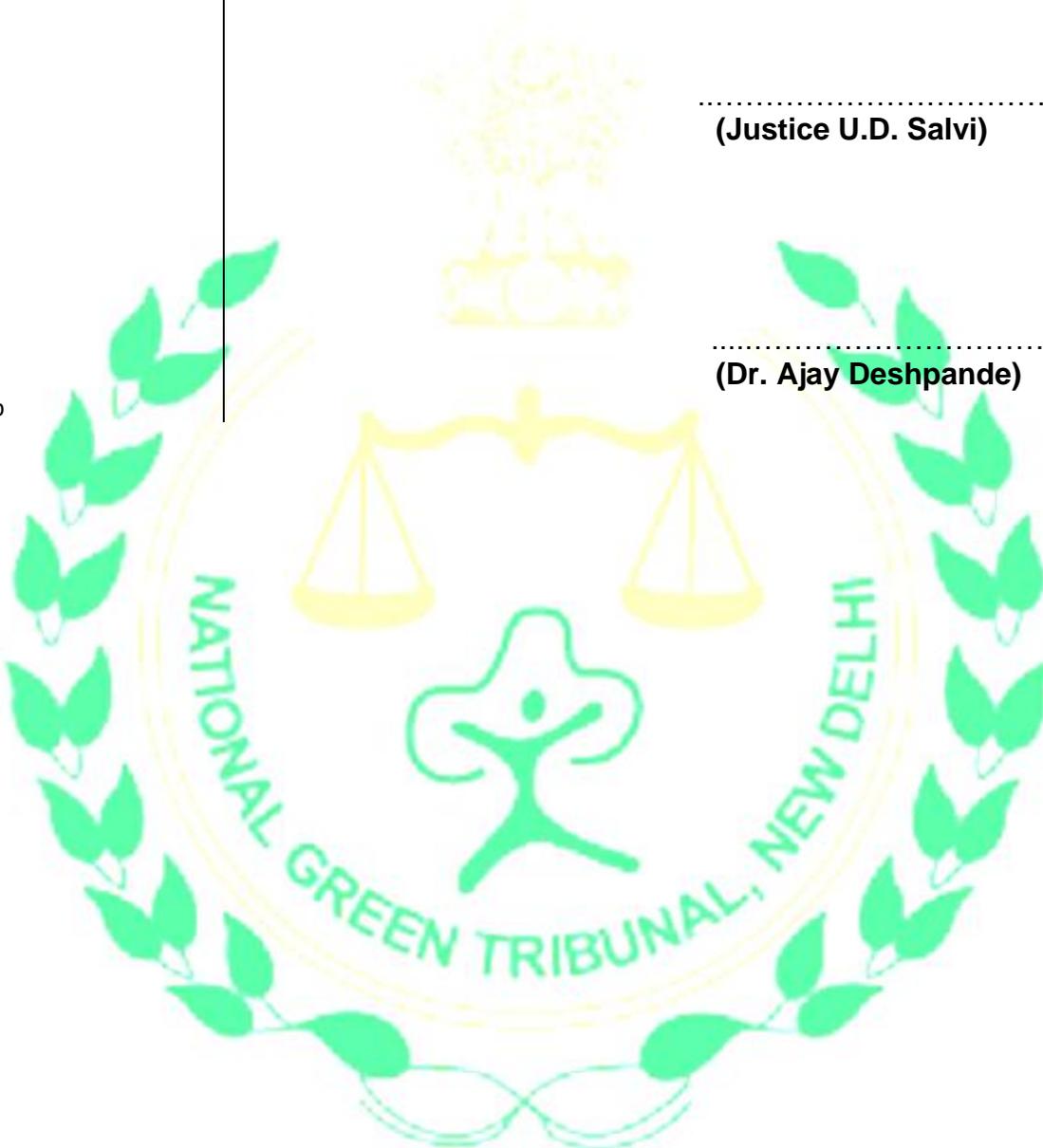
List this case for considering the preliminary exceptions to the Applications.

List the case on 24th April, 2017.

....., **JM**
(Justice U.D. Salvi)

....., **EM**
(Dr. Ajay Deshpande)

ajp



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

Original Application 163/2016 (WZ)
M.A.22/2017 And
Original Application 164/2016 (WZ)
M.A.21/2017

In the Matter of:

Tanaji Balasaheb Gambhire. V/s The Principal Secretary, Environment
Department & Ors.

And

Tanaji Balasaheb Gambhire. V/s The Principal Secretary, Environment
Department & Ors.

**CORAM: HON'BLE MR JUSTICE U.D.SALVI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Appln No.163/2016

Present: Applicant/Appellant : Ms Rashmi S.Pingle Adv
Respondent No.1 : Mr. Milind M. Mahajan Adv
Respondent No.ED : Ms.Supriya Dangare Adv
Respondent No.10 ; Mr. Saket Mone Adv
Respondent Nos. 12, 13 : Mr. Sangramsingh Bhonsle Adv
Ms.Aarti Bhonsle Adv
Ms. Aarti Dongrawat Adv

Appln No.164/2016

Present: Applicant/Appellant : Ms Rashmi S.Pingle Adv
Respondent No.Irrgn.D : Ms.Supriya Dangare Adv
Respondent No.11 ; Mr. Saket Mone Adv
Respondent No.13 : Mr. Sangramsingh Bhonsle Adv
Ms.Aarti Bhonsle Adv
Ms. Aarti Dongrawat Adv

Date and Remarks	Orders of the Tribunal
Item Nos. 23,24 October 26, 2017 Order No.13	<p align="center">Part heard.</p> <p align="center">List these cases on 30th October, 2017.</p> <p align="right">....., JM (Justice U.D.Salvi)</p> <p align="right">....., EM (Dr. Nagin Nanda)</p>

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

**Orig. Application No.164/2016 (WZ)
(M.A. No. 21/2017)**

In the matter of :-

**Tanaji Balasaheb Gambhire Vrs. The Principal Secretary, Environment
Department & Ors.**

**CORAM : HON'BLE MR. JUSTICE U.D. SALVI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Present:

Applicant	:	Mrs. Rashmi Shriram Pingale, Adv. a/w. Mr. Nilesh Bhandari, in person.
Respondent No.1	:	Mr. R.B. Mahabal, Adv.
Respondent-MPCB	:	Mr. Aniruddha S. Kulkarni, Adv. a/w. Mr. Prashant More, Adv.
Respondent-Irri.Deptt.	:	Mrs. Supriya Dangare, Adv.
Respondent No.11	:	Mr. Saket Mone, Adv.
Respondent No.12 & 13	:	Mr. Sangramsingh Bhonsle, Adv. Aarti D. Bhonsle, Adv

Date and Remarks	Orders of the Tribunal
<p>Item No.18 230th October, 2017 Order No.13</p>	<p align="center">List the case on 31st October, 2017 for further hearing.</p> <p align="right">....., JM (Justice U.D. Salvi)</p> <p align="right">....., EM (Dr. Nagin Nanda)</p>

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

Original Application 164/2016 (WZ)
M.A.21/2017

Tanaji Balasaheb Gambhire. V/s The Principal Secretary, Environment
Department & Ors.

**CORAM: HON'BLE MR JUSTICE U.D.SALVI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Appln No.164/2016

Present:	Applicant/Appellant	:	Ms Rashmi S.Pingle Adv a/w Mr. Nilesh K. Bhandari Adv Mr. Abhijit Ingle Adv
	Respondent No.1	:	Mr. R.B. Mahabal Adv Ms.Supriya Dangare Adv
	Respondent Nos. 3,4	:	Mr. Aniruddha S. Kulkarni Adv Mr. Prashant More Adv
	Respondent Nos.10,11	;	Mr. Saket Mone Adv
	Respondent No.13	:	Mr. Sangramsingh Bhonsle Adv Ms.Aarti Bhonsle Adv Ms. Aarti Dongrawat Adv

Date and Remarks	Orders of the Tribunal
Item Nos. 21 October 31, 2017 Order No.13	<p align="center">List this case on 27th November, 2017.</p> <p align="right">....., JM (Justice U.D.Salvi)</p> <p align="right">....., EM (Dr. Nagin Nanda)</p>

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 1258 OF 2018

POSITION OF PARTIES

BETWEEN

**Ganga Skies Complex Co-operative
Housing Society Ltd.**

Through its Secretary having its address
at Survey No. 174/A, 176/A, 177/A Sant
Tukaram Nagar, Pimpri, Pune - 411
018.

**In the Hon'ble
Tribunal**

Respondent
No. 12

**In this
Hon'ble
Court**

Appellant

VERSUS

1. **The Union of India**

Through the Secretary of Ministry
of Environment & Forest,
Paryavaran Bhawan, CGO
Complex, Lodhi Road, New Delhi
- 110 001

Respondent
No. 1

Proforma
Respondent
No.1

2. **The Principal Secretary,
Environment Department**

Government of Maharashtra, 15th
Floor, New Administrative
Building, Mantralaya, Mumbai -
400 032.

Respondent
No. 2

Proforma
Respondent
No. 2

3. **State Level Environment Impact
Assessment Authority**

Through its Member Secretary
having office at 15th Floor, New.

Respondent
No. 3

Proforma
Respondent
No.3

Administrative Building,
Mantralaya, Mumbai - 400 032.

4. **Maharashtra Pollution Control Board**

Through its Member Secretary,
Kalptaru Point, 3rd Floor, Near
Sion Circle, Opp. Cine Planet
Cinema, Sion (E), Mumbai

Respondent
No. 4

Proforma
Respondent
No.4

5. **Maharashtra Pollution Control Board**

Through its Regional Officer,
SRO Jog Centre, 3rd Floor,
Mumbai - Pune Road,
Wakadewadi, Pune - 411 003

Respondent
No.5

Proforma
Respondent
No.5

6. **Pimpri Chinchwad Municipal Commissioner**

Pimpri Chinchwad Municipal
Corporation, Pimpri, Pune - 411
018.

Respondent
No.6

Proforma
Respondent
No.6

7. **Shri. Mahavir Thaliyappa Kambe**

City Engineer Pimpri Chinchwad
Municipal Corporation, Pimpri,
Pune - 411 018.

Respondent
No. 7

Proforma
Respondent
No.7

8. **District Collector-Pune**

President of District Environment
Committee, having its office
Opposite Sassoon Hospital,
Station Road, Pune - 411001.

Respondent
No. 8

Proforma
Respondent
No. 8

25

9. **Shri. Shashank Phadake**
Architect & Authorised person of
sole space 1 + 2, Building No. 7,
Shraddha Heritage, Pimpri, Pune –
411 019.
- Respondent
No. 9
- Proforma
Respondent
No. 9
10. **M/s. Goel Ganga Construction**
A Partnership Firm
Through its partners Mr. Atul
Jayprakash Goel and Mr. Amit
Jayprakash Goel having office at
3rd Floor, San Mahu Complex,
Opp. Poona Club, 5, Bund Garden,
Pune – 411 001.
- Respondent
No. 10 /
Applicant in
M.A.
- Proforma
Respondent
No. 10
11. **Federation of Swar-Ganga Co-
operative Housing Society Ltd.**
Through its secretary having
office at Survey No. 174/A,
176/A, 177/A Sant Tukaram
Nagar, Pimpri, Pune – 411 018.
- Respondent
No. 11
- Proforma
Respondent
No. 11
12. **Mr. Yogesh Manglasen Behal**
Vrundavan Bungalow, Near
Virangula Centre, Survey No.
174/A, 176/A, 177/A Sant
Tukaram Nagar, Pimpri, Pune –
411 018.
- Respondent
No. 13
- Proforma
Respondent
No. 12
13. **Mr. Tanaji Balasaheb
Gambhire** Age: Adult,
Occupation: Service R/o Flat No.
16, CTS-296, Laxmi Apartment,
Near Shivaji Maratha High
- Applicant
- Contesting
Respondent
No. 13

26

School, White House Lane,
Shukrawar Peth, Pune – 411 002.

**AN APPEAL UNDER SECTION 22 OF THE
NATIONAL GREEN TRIBUNAL, 2010**

TO
THE HON'BLE CHIEF JUSTICE OF INDIA AND
HIS COMPANION JUSTICES OF THE HON'BLE
SUPREME COURT OF INDIA.

THE HUMBLE APPEAL OF THE APPELLANT
ABOVE NAMED.

MOST RESPECTFULLY SHOWETH:

1. That the present Civil Appeal is being filed under Section 22 of the National Green Tribunal Act, 2010 (hereinafter referred to as "the NGT Act") against the impugned Judgment and Final Order dated 08.01.2018 passed by the Ld. National Green Tribunal (Western Zone) Bench, Pune (hereinafter referred to as "the Ld. NGT) in Miscellaneous Application No. 22 of 2017 in Original Application No. 163 of 2016, whereby the Ld. NGT has erroneously dismissed the preliminary objections to the maintainability of the Original Application.
- IA. It is submitted that Appellant's name in the Impugned Order is incorrect and the correct name of the Appellant has been given in the Reply filed by the Appellant before the Lower court i.e. Hon'ble NGT annexed at Annexure A-16 of the Civil Appeal at page 328.
2. That the following substantial questions of law arise for the consideration of this Hon'ble Court:
 - (i) Whether the words "**person aggrieved**" under section 18(2) of the NGT Act, 2010 read with Rule 8 (5) of the National Green Tribunal (Practice & Procedure) Rules, 2011 (hereinafter referred to as "NGT Rules, 2011"), can include any person to file an application under section 14

and 15 of the NGT Act, 2010 who is not related to the construction impugned?

- (ii) Whether the "person aggrieved" needs to be "person affected" by the activity carried out by the project proponent as mandated by Rule 8 (5) of the NGT Rules, 2011?
- (iii) Whether the words "person aggrieved" can be construed in a diluted manner to bring within its ambit any person who has no nexus with the construction impugned or its impact on the environment?
- (iv) Whether the Ld. NGT could have computed the period of limitation from the date of knowledge even when the words used in section 14 and 15 of the NGT Act, 2010 specifically use the words "first arose"?
- (v) Whether the words "first" alongwith "dispute arose" in section 14(3) of the NGT Act, 2010 excludes subsequent, multiple and/ or continuous causes of action as the point from where the limitation begins?
- (vi) Whether the Ld. NGT had jurisdiction to entertain the Application which raises issues not arising under the enactments specified under Schedule I of the NGT Act, 2010?
- (vii) Whether the Ld. NGT rightly exercised jurisdiction even when the Application was based on multiple causes of action which is specifically barred by Rule 14 of the NGT (Practice and Procedure) Rules 2011.

3. **Brief facts of the case:**

28

- A. That the Appellant is a Society incorporated on 16.03.2013 under the Maharashtra Co-operative Societies Act, 1960. The Appellant society presently comprises of 397 members who are residents of building known as Ganga Skies.
- B. The Respondent No. 10 is the Developer of the Project consisting of two residential societies including the Appellant and Swar Ganga Society situated at Survey No. 174A(Pt), 174A(Pt.), 175A(Pt.), 176A(Pt.) and 177A(Pt.) and their respective CTS No. 4859(Pt.), 4862(Pt.), 4863(Pt.) and 4865(Pt.) at Pimpri - Waghere, Taluka Haveli, District - Pune admeasuring approximately 41781.37 sq. mtrs. (hereinafter referred to as "the said Project").
- C. That on 28.03.2006, the Respondent No. 10 Developer was granted the Commencement Certificate by the Pimpri Chinchwad Municipal Corporation in respect of the said Project.
- D. That on 17.11.2006, the Respondent No. 10 obtained consent to establish for construction activity on the said Project.
- E. That on 21.08.2007, the Respondent No. 1 Ministry of Environment and Forests (MoEF) was pleased to issue Environmental Clearance for the construction of the said Project involving construction of 700 residential units on terms and conditions as mentioned in the Environment Clearance.

29

Copy of Environmental Clearance dated 21.08.2007 issued by Respondent No. 1 is annexed hereto and marked as ANNEXURE-A/1 (pgs. 63 to 74).

- F. That on 10.12.2009, after the completion of construction of buildings, Occupation Certificate was granted vis-à-vis the Appellant including for building nos. A1, A2, A4, A5, A6, A7, A8, B1, B2, B3 from the Pimpri Chinchwad Municipal Corporation.

Copy of Completion Certificate No. 168/2009 dated 10.12.2009 for building nos. A1, A2, A4, A5, A6, A7, A8, B1, B2, B3 granted by Pimpri Chinchwad Municipal Corporation is annexed hereto and marked as ANNEXURE-A/2 (pgs. 75 to 79).

- G. That further on 15.02.2010, 03.11.2010 and 31.03.2011 the Completion certificate in respect of remaining buildings also came to be issued.

Copy of Completion Certificate No. 18/2010 dated 15.02.2010 is annexed hereto and marked as ANNEXURE-A/3 (pgs. 80 to 82).

Copy of Completion Certificate No. 146/2010 dated 03.11.2010 is annexed hereto and marked as ANNEXURE-A/4 (pgs. 83 to 86).

Copy of Completion Certificate No. 81/2011 dated 31.03.2011 is annexed hereto and marked as ANNEXURE-A/5 (pgs. 87 to 91).

- H. That thereafter on 25.11.2011, the Maharashtra Pollution Control Board issued Consent to Operate to the Respondent No. 10 for M/s. Swar Ganga and the Appellant herein i.e. Ganga Skies under section 26 of the

Water (Prevention and Control of Pollution) Act, 1974 and section 21 of the Air Act, 1981 and Hazardous Wastes Rules 2008.

Copy of Consent to Operate dated 25.11.2011 to the Respondent No. 10 is annexed hereto and marked as ANNEXURE-A/6 (pgs. 92 to 100).

- I. That the issue of "person aggrieved" in the context of the NGT Act 2010 is pending before this Hon'ble Court in Transfer Petition (Civil) No. 1326 of 2012 *M/s Lavasa Corporation Ltd. v Dyaneshwar Vishnu Shedge & Ors* wherein this Hon'ble Court was pleased to issue notice and stay the proceedings before the Hon'ble NGT by Order dated 19.10.2012.

Copy of order dated 19.10.2012 passed by this Hon'ble Court in Transfer Petition (Civil) No. 1326 of 2012 is annexed hereto and marked as ANNEXURE-A/7 (pgs. 101 to -).

- J. That on 16.03.2013, the Appellant society was formed and registered under the provisions of the Maharashtra Cooperative Societies Act, 1960.

Copy of Registration Certificate dated 16.03.2013 of the Appellant Society is annexed hereto and marked as ANNEXURE-A/8 (pgs. 102 to -).

- K. The issue of "person aggrieved" in the context of the NGT Act 2010 is also pending in Civil Appeal No. 4280 of 2013 titled *M/s Lavasa Corporation Ltd. vs. Dyaneshwar Vishnu Shedge and Ors.* wherein this

Hon'ble Court was pleased to issue notice by its Order dated 10.05.2013.

Copy of order dated 10.05.2013 passed by this Hon'ble Court in Civil Appeal No. 4280 of 2013 is annexed hereto and marked as ANNEXURE-A/9 (pgs. 103 to -).

- L. The Respondent No. 10 was issued a notice dated 17.11.2014 by the PCMC to operate the Sewage Treatment Plant (hereinafter referred to as "STP") regularly. The same was responded to by the Respondent No. 10 vide its letter dated 21.12.2014. Further, as of today, the STP in the layout is functioning properly in accordance with Consents granted by the Maharashtra Pollution Control Board. The same is evident from the photographs of the same.

Photographs of the Sewage Treatment Plant are annexed hereto and marked as ANNEXURE-A/10 (pgs. 104 to 106)

- M. That suddenly on 30.09.2016, after a gap of approximately 6-7 years from the date of occupation of the premises by the members of the Appellant society, a wholly misconceived and erroneous application came to be filed by the Respondent no. 13 under Section 14 & 15 of the NGT Act, 2010 bearing No. 163 of 2016 before the National Green Tribunal, Western Zone, Pune seeking *inter alia* the following prayers:-

(a) *Direct the Respondents to demolish the illegal structures at the site in question and restore the area to its original position.*

- (b) *Having regard to the damage to public health, property and environment, principles of sustainable development and polluter pays principles, direct the Respondent No. 10 to deposit a heavy amount of compensation to the Environment Relief Fund.*
- (c) *Direct the Respondent No. 10 for deposit a heavy amount of compensation to the Environment Relief Fund for construction of buildings on area reserved for open space in the sanctioned building plans.*
- (d) *Direct the Respondent No. 10 to further deposit a heavy amount of compensation to the Environment Relief Fund for encroachment of Odha and further direct to demolish the construction the same and direct the authorities to ensure green belt falling in the said Project.*
- (e) *Direct the State Level Impact Assessment Authority and Maharashtra State Pollution Control Board to initiate appropriate action against the Project proponent for violation of the provisions of AIE Notification 2006 and other applicable laws.*
- (f)
- (g)
- (h) *Direct the District Collector, Pune to take appropriate action for violation of NA permission and environmental damage against the Project proponent..... "*

N. That on January 2017, the Respondent No. 10 Developer filed Miscellaneous Application No. 22 of 2017 in O.A. No. 163 of 2016 raising preliminary objections to the maintainability of the original application. The Respondent No. 10 accordingly prayed for the dismissal of the O.A. No. 163 of 2016.

Copy of Miscellaneous Application No. 22 of 2017 in O.A. No. 163 of 2016 dated 24th January 2017 is annexed hereto and marked as ANNEXURE-A/11 (pgs. 107 to 121).

O. That on 22.02.2017, the Respondent No. 10 filed its Reply in O.A. No. 163 of 2016.

Copy of Reply filed by Respondent No. 10 in O.A. No. 163 of 2016 dated 22.02.2017 is annexed hereto and marked as ANNEXURE-A/12 (pgs. 122 to 151).

P. That on 22.03.2017, the Respondent No. 13 Tanaji Balasaheb Gambhire filed its Affidavit in Reply to Misc. Application No. 22 of 2017 in O.A. No. 163 of 2016.

Copy of Affidavit in reply to Misc. Application No. 22 of 2017 in O.A. No. 163 of 2016 dated 22.03.2017 filed by Respondent No. 13 is annexed hereto and marked as ANNEXURE-A/13 (pgs. 152 to 191).

Q. Further, the Respondent No. 13 filed its Rejoinder Affidavit in O.A. No. 163 of 2016 wherein he raised additional issues of non-operation of Sewage Treatment Plant in the Project.

34

Copy of Rejoinder Affidavit in O.A. No. 163 of 2016 filed by Respondent No. 13 dated 22.03.2017 is annexed hereto and marked as ANNEXURE-A/14 (pgs. 192 to 289).

- R. That on 31.07.2017, upon the objection of non joinder of parties, the Original application came to be amended by adding the Appellant society and Swar Ganga society to the array of parties.

Copy of Amended Application No. 163 of 2016 dated 31.07.2017 is annexed hereto and marked as ANNEXURE-A/15 (pgs. 281 to 327).

- S. That on 12.10.2017, upon being added as a party, the Appellant filed its Reply to O.A. No. 163 of 2016, wherein the Appellant raised preliminary objections to the maintainability of the application on the following grounds:-

- (a) non-joinder of necessary parties
- (b) no locus standi
- (c) plural remedies not permissible under the NGT Act, 2010
- (d) Application being barred by limitation.

Copy of Appellant's Reply dated 12.10.2017 in O.A. No. 163 of 2016 is annexed hereto and marked as ANNEXURE-A/16 (pgs. 328 to 338).

- T. That however, on 08.01.2018 the Hon'ble NGT passed an order erroneously dismissing the Misc. Application No. 22 of 2017 and thereby rejecting all objections to the maintainability of O.A. No. 163 of 2016, The Original Application has now been directed to be listed on 12.02.2018.

35

4. GROUND

The Appellant Society is filing the present Civil Appeal on inter alia the following grounds which are taken without prejudice to each other:

The Respondent No. 13 being a complete stranger to the project of the Appellant is not a 'person aggrieved' within the provisions of the NGT Act, 2010.

- A. That the Ld. NGT failed to appreciate that the Respondent No. 13 i.e. the Original Applicant does not have any *locus standi* to file an Application under the provisions of section 14 and 15 of the National Green Tribunal Act, 2010. That the Respondent No. 13 is not a "person aggrieved" under section 18(2) of the NGT Act, 2010 and is therefore not entitled to make an Application under the provisions of section 14 and 15 read with section 18 (2) of the NGT Act, 2010 read with Rule 8 (5) of the NGT Rules, 2011.
- B. That the Ld. NGT ought to have appreciated that admittedly the Respondent No.13 is not a member of the Appellant Society and is therefore not concerned with the project in question more specifically the operation of the Sewage Treatment Plant. On the contrary, the Respondent No. 13 is a busy body and has filed the Original Application without there being any element of public interest.
- C. That the Ld. NGT committed a patent error in coming to the conclusion that Respondent No. 13 is a "person aggrieved" on a completely incoherent reasoning that the Respondent No. 13 shares the environment

with the locals in the project area, being a resident of Pune situated in the riverine system and is therefore aggrieved by the environment damage. That in view of the reasoning adopted by the Ld. NGT in bringing the Respondent No. 13 within the scope of a "person aggrieved", each and every person who is residing in a city will be entitled to make an application under section 14 and 15 of the NGT Act, 2010 *de hors* the provisions of section 18(2) of the NGT Act 2010 which specifically provides for the persons who may make an application to the Ld. Tribunal.

- D. That the interpretation sought to be accorded by the Ld. NGT to the words "person aggrieved" are against the purport of section 18(2) which specifically restricts the categories of persons who can move the Ld. NGT by way of an application under section 14 and 15 of the NGT Act, 2010.
- E. The Ld. NGT erred in holding that notice of PCMC to the Respondent No. 10 Developer to operate STP shows damage to the environment which adversely influence the riverine system commonly shared by the locals as well as those who are part of such adversely impacted environment in the entire riverine system. That there was no damage to the environment on account of the Sewage Treatment Plant of the Appellant Society which has been functioning since April 2012.
- F. The Ld. NGT failed to appreciate the ratio laid down by this Hon'ble Court in the case of *Aya Aubkhan Noorkhan Pathan vs State of*

Maharashtra and Ors (2013) 4 SCC 465 wherein the Court has held that the person aggrieved does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must, therefore, necessarily be one whose right or interest has been adversely affected or jeopardized.

- G. That the Ld. NGT erred in coming to the conclusion that the Respondent No. 13 has prima facie shown that his legal right relating to the environment i.e. right to clean environment is affected by acts of Respondent No. 10 Developer and it calls for restitution and that the injury alleged by the Respondent cannot be dismissed as imaginary injury. That the Ld. NGT did not appreciate that the Respondent No. 13 has failed to demonstrate that he is directly or indirectly concerned with the adverse environmental impacts likely to be caused as a result of the alleged violation.
- H. That the Ld. NGT ought to have appreciated that in the entire Original Application, the Respondent No. 13 has raised grievances about the violations of various permissions by carrying on excess construction, illegal loading of TDR, non-construction of STP and rain water harvesting system amongst others. That the Appellant has nowhere made out a case of environment damage resulting due to the Appellant residing in the common riverine system.
- I. The Ld. NGT ought to have appreciated that members of the Appellant society have been residing in the construction impugned since past 7

years approximately. That at no point of time, has any occasion arisen for the members for making any grievance for degradation or damage to the environment due to the construction by the Respondent No. 10 or due to non functioning of the STP.

- J. That the Ld. NGT ought to have appreciated that non functioning of STP is a matter which concerns the residents of the Appellant society. Therefore, on the said alleged ground, the Respondent No. 13 who is a busy body has no cause of action to file the Application seeking reliefs.

The Original Application being barred by limitation under section 14 and 15 of the NGT Act, 2010 as the Sections use the words 'first arose' before the words 'cause of action', taking away continuous, continuing or even knowledge to file the Original Application.

- K. That the Ld. NGT failed to appreciate that Application u/s 14 of the NGT Act 2010 is barred by limitation u/s 14(3) of the NGT Act 2010 which prescribes a period of six months for filing an application from the date on which the cause of action for such dispute "first" arose, extendable by a further period of 60 days thereafter, provided that the Applicant may show by a sufficient cause that the Applicant was prevented from filing such an application in time.

- L. That the Ld. NGT failed to appreciate that the Respondent No.13 has also sought to file an application under Section 15 of the said Act which also provides for the aforesaid words "the date", "cause of action" and "first arose". The Respondent No. 13 has clearly failed to provide the

date on which the cause of action first arose for filing the dispute under Section 15 of the said Act.

- M. That the Ld. NGT committed a patent error in relying upon the notice dated 17.11.2014 selectively to hold that cause of action arose when the incidence of overflowing of nalla came to light. That the Ld. NGT ought to have considered that the Application No. 163 of 2016 has been filed alleging numerous violations *inter alia* of the Environment Clearance, consent to operate, Consent to establish, MRTP laws, Development Control Regulations, Municipal laws etc and further allegations of corruption against various local authorities. Therefore, the cause of action cannot by any stretch be said to have arisen for the first time on 17.11.2014. Even assuming without admitting the cause of action first arose on 17.11.2014, the Original Application under Section 14 of the NGT Act, 2010 filed on 29.09.2016 is clearly barred by limitation. Further, for Section 15 of the NGT Act, 2010 to trigger, an adjudication of environmental issues under Section 14 is mandatory. Thus, even otherwise, the entire Original Application is barred by limitation.
- N. That the Ld. NGT erred in holding that in the instant case the cumulative effects of various illegalities and infractions of law became evident when the incident of overflowing of the sewage and its percolation in the land and the nalla along the said project could be noticed by notice dated 17.11.2014.

40

- O. That the Ld. NGT completely overlooked that in the present case, the Respondent No. 13 has himself stated that the cause of action for filing the original application first arose on 02.04.2016 when the Respondent got knowledge of the alleged gross violation of Environmental laws and addressed a legal notice dated 26.04.2016 to the Respondent No. 10 Developer for stoppage of said violations.
- P. That the Ld. NGT failed to appreciate that admittedly, the commencement certificate was given by Pimpdi-Chinchwad Municipal Corporation on 28.03.2006 and the occupation certificate itself is granted on 10.12.2009. Thus, the cause of action, if any, for filing such dispute, would arise from the date on which such permissions were granted by the concerned authorities. The Respondent No. 13 however, for the reasons best known to him has waited for all these years and has chosen to file the present application only in the month of September-October, 2016 which clearly shows that the present application is also not a bonafide application but is clearly a malafide application filed only to harass the members of the Appellant society and the Respondent No.10.
- Q. That the Ld. NGT ought to have appreciated that the use of words "first arose" in the said provisions are of immense significance. These words are not only the indicators of the unambiguous legislative intent and scheme expressed in the plain words, but statutorily fixes the starting point of the period of limitation. These words, no doubt, relate to the earliest point of time of inception of the cause of action. This is further

reinforced by the use of the words "from the date", which again would imply that there is a definite occurrence of the cause of action.

- R. That the Ld. NGT failed to consider that the averments as made by the Respondent No. 13 that cause of action for filing such dispute first arose on 02.04.2016, is thoroughly irrelevant for the purposes of deciding the issue of limitation. It is submitted that the date of knowledge has absolutely no application while interpreting the provisions of Section 14 and 15 of the NGT Act. That the concept of continuing cause of action is foreign to the express provisions of the statute of limitation engrafted under the provisions of Sections 14(3) and 15(3) of the said Act. The said Act is a special enactment and hence, there is a statutory prescription of the special period of limitation under Sections 14(3) and 15(3) of the said Act, which will certainly exclude general law of limitation.
- S. That the Ld. NGT ought to have appreciated that application of the principles of continuing cause of action for the purposes of disputes under Sections 14 and 15 of the said Act would lead to serious anomalous and undesirable consequences. Apart from that, it would be contrary to express prescription of the statutory limitation under the said Act. If the theory of continuing cause of action is to be accepted, any action or application or proceedings may be instituted at any point of time on the occurrence of a small fact, which may be construed to be a part of cause of action. This would mean even for projects, which have

been completed or nearing completion with huge investments, may be put in question. This is not the intent of the said Act.

T. That the Ld. NGT ought to have appreciated that when the words "not thereafter" and "not exceeding" are used in a Section, there is clearly an intention of divesting the Court's/ Tribunal's power to condone the delay beyond the prescribed period of limitation. Once such negative language is used, the application of provision of Section 5 of the Limitation Act or such analogous provision would not be applicable.

The use of negative words has an inbuilt element of mandatory. The intent of legislature would be to necessarily implement those provisions as stated. The introduction or alteration of words, which would convert mandatory into directory, may not be permissible in cases where negative language is used by the legislature. The affirmative words stand at a weaker footing than negative words for reading the provisions as mandatory. It is possible that in some provisions, the use of affirmative words may also be so limiting as to imply a negative. Once negative expression is evident upon specific or necessary implication, such provision must be construed as mandatory. The legislative command must take precedence over the equitable principles. Section 14, 15 and 16 of the said Act does not admit of any ambiguity, rather it is expressly clear that framers of law did not desire to vest the Tribunal with powers, specific or discretionary, of condoning the delay in excess of period prescribed therein.

- U. That the Legislature while enacting the statute purposely used the words "first" for "cause of action" to file an action before the Tribunal. That this Hon'ble Court in the case of *L.C. Hanumanthappa vs. H.B. Shivakumar (2016) 1 SCC 332* has held that the word 'first' has been used between the words 'sue' and 'accrued'. This would mean that if a suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. To put it differently, successive violation of the right will not give rise to fresh cause and the suit will be liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrued.
- V. That the Ld. NGT committed a patent error in substituting the specific pleadings in original Application relating to the cause of action by its own interpretation and holding that the cause of action first arose in the present case when the environment, more particularly its water dimension was found adversely impacted with overflowing of sewage as pleaded in the application.
- W. That the Ld. NGT ought to have appreciated that assuming without admitting that the cause of action will be incidence of overflowing of nalla, the same will also arise prior to 17.11.2014 which is the date of notice given by PCMC to the Respondent No 10 Developer to operate STP in the project regularly. That the Respondent No. 13 has failed to disclose the said date when the alleged incidence of overflow of nalla took place. Therefore, the date when the cause of action arose even on

44

account of overflow of nalla is not known. Therefore, the calculation of period of limitation from 17.11.2014 is patently incorrect.

- X. That the Ld. NGT completely overlooked that the Respondent No.13 has himself pleaded in its Affidavit in Rejoinder dated 22.03.2017 that as per condition no. 2 (iii) of the Consent to Operate dated 25.11.2011, it was mandatory to operate the STP plant by the project proponent for the five years from the date of obtaining Occupancy Certificate. That the Occupancy Certificate having been obtained on 31.03.2011, the cause of action if any, due to non operation of the STP will arise on the first date when the STP was not operational after 31.03.2011 and not on the date when the PCMC issues notice dated 17.11.2014.
- Y. That the Ld. NGT ought to have appreciated that the Respondent No. 13 has further pleaded that it was the responsibility of the Project Proponent to operate the STP till 30.03.2016, but since the same has not been operated during this period, it has given rise to effluent water in the Waghere-Teja Odha which has created pollution of natural water course. Therefore, even as per Respondent No. 13's own pleaded case, the cause of action first arose once the Occupation Certificate was granted on 30.03.2011 and not on 17.11.2014 as held by the Ld. NGT.
- Z. That the Ld. NGT erred in holding that the application for restitution of environment is thus filed within the period of five years prescribed under section 15 of the NGT Act, 2010.

45

- AA. That the Ld. NGT failed to decide the issue of the Application under section 14 of the NGT Act 2010 being barred by limitation as the same is filed beyond the prescribed period of six months even if as per Tribunal's own finding, the date of cause of action is taken to be 17.11.2014.
- BB. That the Ld. NGT failed to consider that the original Application has been filed purportedly under the provisions of section 14 and 15 of NGT Act 2010 raising a substantial question vis-à-vis violation of the terms and conditions of the Environment Clearance dated 21.08.2007, consent to establish dated 17.11.2006 and consent to operate dated 25.11.2011. That vis-à-vis the present Appellant, the cause of action could be said to have arisen on 10.12.2009 when the Pimpri Chinchwad Municipal Corporation granted an Occupation Certificate to the Project. Thus, on the bare perusal of the language of section 14(3) and 15(3) of NGT Act, 2010 the period of limitation needs to be computed from the date on which the cause of action first arose i.e. 10.12.2009. In the instant case, as the cause of action arose on 10.12.2009, the present application as filed on 29.09.2016 is beyond the period of limitation as contemplated under the provisions of section 14(3) and 15(3) of the NGT Act, 2010.
- CC. That the Ld. NGT erroneously distinguished the judgement passed by it in the case of *Mr. Surendra Waman Dhavale Vs MOEF and Ors. in O.A. No. 95 of 2014* even though in that case the NGT has categorically held that Discovery Rule cannot be made applicable when the construction was patently visible. That in the instant case also, the construction has

been completed way back in 2009. Therefore, the application at such a belated stage is liable to be rejected with exemplary costs.

- DD. That the Ld. NGT failed to appreciate the decision of this Hon'ble Court in *Khatri Hotels Pvt. Ltd. & Anr. vs Union of India and Anr. 2011(9) SCC 126* wherein while interpreting Article 158 of the Limitation Act 1963, this Hon'ble Court has held that when the word first has been used between the words "sue" and "accrued" it would mean that when the suit is based on multiple causes of action, the period of limitation will begin to run from the date when the right to sue first accrues. The Court has further held that successive violation of the right will not give right to fresh cause and the suit is liable to be dismissed if it is beyond the period of limitation counted from the day when the right to sue first accrues.
- EE. Further, the Ld. NGT completely failed to appreciate the ratio laid down in a catena of cases by the Hon'ble Bombay High Court that a bare perusal of section 14(3) of the NGT Act clearly discloses that period of limitation is six months from the date on which the cause of action first arose. Prima facie therefore it cannot be interpreted by any stretch of imagination that it would arise from the date of knowledge of the original applicant of the alleged violation taking place or from the date on which the Environmental Authorities were informed about violation and inaction on their part.
- FF. That the Ld. NGT failed to appreciate the ratio of judgements passed by the NGT in *Application No. 33 of 2016 Jai Javan Jai Kisan and Ors. Vs*

47

Vidarbha Cricket Association and Ors. ; OA NO. 179 of 2016 Graminee Environment Foundation vs Balaji Infrastructures Ltd. and Ors. ; OA No. 95 of 2014 Mr. Suresh Waman Dahvale and Ors. Vs MOEF and Ors.

The Original Application is based on multiple causes of action which is contrary to Rule 14 of the NGT (Practice and Procedure Rules) 2011, which prescribes that every Application before the Hon'ble NGT shall be based on a single cause of action.

- GG. That the Ld. NGT failed to appreciate that the Original Application is based upon multiple causes of action which are distinct from each other which practice is specifically proscribed under Rule 14 of the NGT (Practices & Procedure) Rules, 2011 which provides that an Application shall be based on a single cause of action and may seek one or more relief provided that they are consequential to each other.
- HH. That the Ld. NGT erred in coming to the conclusion that there is no violation of Rule 14 of the NGT (Practices & Procedure) Rules, 2011 by holding that the Respondent No. 13 has specifically pleaded in the limitation clause that what prompted him to initiate the application are revelations made to him in response to the RTI query and that no other cause of action except for the facts is pleaded in the case.
- II. That the Ld. NGT failed to consider that in its omnibus Application, the Respondent No. 13 has sought to raise various issues pertaining to violations of the building permissions, fraudulent revision of building

plans, issues pertaining to plinth check, illegal permission to load transfer of development rights, illegal construction carried out using illegal FSI, illegal loading of TDR by violating DC rules, violation of EC conditions, breach of conditions of Consent to Establish, and breach of conditions of Consent to Operate all of which constitute separate and distinct causes of action. Therefore, the Application ought to have been rejected on this ground alone.

- JJ. Further, the Ld. NGT has acted in a contrary manner in as much as for the purpose of delineating the cause of action it has relied upon the Limitation clause in the Application, however for the purpose of the finding as to when the cause of action first arose, it has completely ignored the limitation clause and substituted it for its own reasoning.
- KK. That if the cause of action is taken to be overflow of nalla and operation of STP as considered by the Ld. NGT, the Respondent No. 13 ought to be estopped from raising any other pleas with respect to the construction of the building as not only the same constitutes a separate cause of action, but the same has been filed at a highly belated stage as the occupation certificate was issued by back on 10.12.2009.
- LL. That the Ld. NGT committed a patent error in holding that there is no violation of Rule 14 of the NGT (Practice and Procedure) Rules, 2011 despite coming to a categoric finding that Application pleads infraction of Municipal laws, Maharashtra Regional Town Planning Act, Development Control Rules and Maharashtra Land Revenue code and

violation of conditions of Environment Clearance, Consent to operate and other Acts.

MM. That the Ld. NGT erred in holding that the Application is based on a single cause of action on the ground that environmental damage is what prompted the present application and that as per pleadings of application, he was prompted to initiate action due to revelations made to him in response to the RTI query.

NN. That the Ld. NGT itself notices that no cause of action except for the facts is pleaded in the present case. This means that the diverse facts pleaded by the Applicant constitute his multiple and distinct causes of actions.

Hon'ble NGT does not have jurisdiction to deal with the Application as the same alleges violations of the provisions of Maharashtra Regional Town Planning Act, Development Control Regulations, Municipal laws etc which are not covered under Schedule I of the Act.

OO. That the Ld. NGT failed to consider that the original application is required to be dismissed on the ground of jurisdiction as the issues raised by the Applicant in respect of the Municipal laws, MRTP Act and the Development Control Regulations (DCR) are not within the realm of this Hon'ble Tribunal. The Hon'ble Tribunal while exercising powers under Section 14 has jurisdiction over civil cases where substantial question relating to environment is involved and such question arises out of implementation of enactments specified in Schedule I.

50

- PP. Thus, on the plain reading of Section 14 of the Schedule I, the municipal laws, MRTP Act and the DCR do not find place in Schedule I of the said Act and are thus beyond the powers and jurisdiction of this Hon'ble Tribunal. The Respondent No. 13 has raised various issues relating to the municipal laws, MRTP Act and then DCR which are totally not covered by the said Act and on this ground also the original application is required to be dismissed.
- QQ. That the Ld. NGT committed a grave error in entertaining the Application despite coming to a finding that the Appellant has raised contentions in relation to the Acts other than those specified under Schedule I of the NGT Act i.e. the Municipal laws, MRTP Laws, Development Control Regulations, Land Revenue Code etc.
- RR. That from a bare perusal of the Application, the same seems to have filed in the form of Public Interest Litigation, which is clearly impermissible as the same can only be agitated before this Hon'ble Court and the Hon'ble High Court, exercising its power under Article 32 and Article 226 of the Constitution of India. That the Tribunal being creation of a statute does not have the plenary powers which are available to this Hon'ble Court and the Hon'ble High Courts under the Constitution. The Hon'ble NGT being creation of statute is required to decide issues which are within the four-corners of a statute, under which it is created and cannot transgress the jurisdiction by deciding the issues which are not within its purview.

Equitable Grounds

51

- SS. That the Appellant has 397 members who have paid huge amounts to purchase Flats in the Society and thereby created an equitable right in the in the Respondent No. 12 Society. That the Respondent No. 13 has prayed for demolition of buildings. Thus, an irreparable damage shall be caused to the members of the Appellant Society, who shall be rendered homeless if the building is demolished.
- TT. That the Ld. NGT ought to have appreciated that such an Application seeking demolition of a residential building at the behest of a busy body is nothing but an attempt to settle scores with the Respondent No. 10 at the cost of members of Appellant society.
- UU. That the Respondent No. 13 has approached the Ld. NGT with unclean hands solely with a malafide intention to demolish the structures of the Appellant Society.
- VV. Further, it is pertinent to note that although the aforementioned objections were raised on behalf of the Appellant society through its Affidavit in reply as well as at the time of oral submissions, the Hon'ble NGT has failed to even consider the objections on behalf of the society.
5. That the Appellant has not filed any other Appeal or Petition challenging the order impugned in the present Appeal before any other Court or before this Hon'ble Court.

52

6. That the Annexures to the instant Appeal are true copies of their respective originals.

PRAYER

It is therefore most respectfully prayed that this Hon'ble Court may kindly be pleased to:

- (i) Admit and allow the Civil Appeal filed by the Appellant and set aside the Judgement dated 08.01.2018 passed by the Ld. National Green Tribunal (Western Zone) Bench, Pune in Miscellaneous Application No. 22 of 2017 in Original Application No. 163 of 2016;
- (ii) Pass such order and orders as this Hon'ble Court may deem fit and proper under the facts and circumstances of the cases.

FILED BY:

(AMAN VARMA)
Advocate for the Appellant

DRAWN ON: 22.01.2018
FILED ON: 23.01.2018

ITEM NO.14

COURT NO.6

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 1258/2018

GANGA SKIES COMPLEX COOPERATIVE
HOUSING SOCIETY LTD.

Appellant(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(IANo.14921/2018-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT
and IA No.14920/2018-STAY APPLICATION and IA
No.14922/2018-EXEMPTION FROM FILING O.T.)

WITH

C.A. No. 1492/2018 (XVII)

(IA No.17366/2018-EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT and IA No.17364/2018-STAY APPLICATION and IA
No.17368/2018-EXEMPTION FROM FILING O.T.)

Date : 16-02-2018 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ASHOK BHUSHANFor Appellant(s) Mr. Dhruv Mehta, Sr. Adv.
Mr. Neeraj Kishan Kaul, Sr. Adv.
Mr. Ninad, Adv.
Mr. Aman Varma, AOR
Ms. Anshula Grover, Adv.
Mr. Sangram Bhonsale, Adv.
Ms. Samridhi Jain, Adv.
Mr. Anjuman Tripathy, Adv.For Respondent(s) Mr. Shriram P. Pingle, AOR
Mr. Nitin Lonkar, Adv.
Ms. Sonali Suryawanshi, Adv.UPON hearing the counsel the Court made the following
O R D E R

Signature Not Verified
Digitally signed by
ASHWANI KUMAR
Date: 2018.02.17
12:15:05 IST
Reason: 

Issue notice, returnable in six weeks.

Dasti, in addition, is permitted.

Mr. Shriram P. Pingle, Advocate accepts notice on behalf of

respondent no. 13. Therefore, service on respondent no. 13 is waived.

Other respondents shall be served.

In the meantime, there shall be stay of further proceedings.

(ASHWANI THAKUR)
COURT MASTER (SH)

(MALA KUMARI SHARMA)
COURT MASTER

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 1258/2018

GANGA SKIES COMPLEX COOPERATIVE
HOUSING SOCIETY LTD.

Appellant(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(IA No.14921/2018-EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT and and IA No.14922/2018-EXEMPTION FROM FILING O.T.)

WITH

C.A. No. 1492/2018 (XVII)

(IA FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA
17366/2018

FOR EXEMPTION FROM FILING O.T. ON IA 17368/2018)

Date : 27-04-2018 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ASHOK BHUSHAN

For Appellant(s)

Mr. Aman Varma, AOR

For Respondent(s)

Mr. Shriram P. Pingle, AOR

Mr. Vijay Kumar, Adv.

Ms. Aparna Jha, AOR

Mr. Rohit Gupta, Adv.

Ms. Shiveenkhar, Adv.

UPON hearing the counsel the Court made the following
O R D E RIn view of letter circulated by the learned counsel for the
respondent(s), matter stands adjourned for four weeks.

Signature Not Verified


Digitally signed by
ASHWANI THAKUR
Date: 2018.04.27
16:48:13 IST
Reason: I am the author

COURT MASTER (SH)

(MALA KUMARI SHARMA)
COURT MASTER

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s).1258/2018

GANGA SKIES COMPLEX COOPERATIVE HOUSING SOCIETY LTD Appellant(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(IA 14920/2018-Stay Application, IA No.14921/2018-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and and IA No.14922/2018-EXEMPTION FROM FILING O.T)

WITH

C.A. No. 1492/2018 (XVII)

(IA FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA 17366/2018 FOR EXEMPTION FROM FILING O.T. ON IA 17368/2018)

Date : 06-05-2019 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHUSHAN
HON'BLE MR. JUSTICE K.M. JOSEPH

Counsel for the parties:

Mr. Aman Varma, AOR
Mr. Anjuman Tripathy, Adv.

Mr. Mukesh Verma, Adv.
Mr. Pawan Kumar Shukla, Adv.
Mr. Yashpal Dhingra, AOR

Mr. Nitin Lonkar, Adv.
Ms. Sonali Suyawanshi, Adv.
Mr. Shankey Agrawal, AOR

Mr. Vijay Kumar, Adv.
Mr. Arnav Dangi, Adv.
Mr. C.R.P. Chhibber, Adv.
Ms. Aparna Jha, AOR

UPON hearing the counsel the Court made the following
O R D E R

Signature Not Verified
Digitally signed by
ARJUN BISPLA
Date: 2019.05.08
10:50:28 IST
Reason: I am the

In view of the letter circulated by the learned counsel for the respondent No.13 seeking adjournment, list the matter after

four weeks.

In the meanwhile, counsel for the respondents No.1 to 5 may file vakalatnama and counter affidavit.

(ARJUN BISHT)
COURT MASTER (SH)

(RENU KAPOOR)
BRANCH OFFICER

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 1258/2018

GANGA SKIES COMPLEX COOPERATIVE HOUSING SOCIETY LTD Appellant(s)

VERSUS

UNION OF INDIA & ORS. Respondent(s)
(IA No.14921/2018-EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT and and IA No.14922/2018-EXEMPTION FROM FILING O.T. and
IA No. 14920/2018 - STAY APPLICATION)

WITH

C.A. No. 1492/2018 (XVII)

(FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA
17366/2018 and FOR EXEMPTION FROM FILING O.T. ON IA 17368/2018 and
IA No. 17364/2018 - STAY APPLICATION)

Date : 18-12-2019 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ASHOK BHUSHAN
HON'BLE MR. JUSTICE M.R. SHAH

For Appellant(s) Mr. Anjuman Tripathy, Adv.
Mr. Aman Varma, AOR

For Respondent(s) Mr. A.N.S. Nadkarni, ASG
Mr. D.L. Chidanand, Adv.
Mr. Rajan Kumar Chourasia, Adv.
Mr. G.S. Makker, AOR

Mr. Vijay Kumar, Adv.
Mr. R.C. Sharma, Adv.
Mr. Abdul Gaffar, Adv.
Ms. Aparna Jha, AOR

Mr. Nitin Lonkar, Adv.
Mr. Shankey Agrawal, AOR

Mr. Mukesh Verma, Adv.
Mr. Pawan Kumar Shukla, Adv.
Mr. Sidhinath Singh Sengar, Adv.

UPON hearing the counsel the Court made the following
O R D E R

In view of letter circulated by learned counsel for the
appellant, list the matters after two weeks.

Signature Not Verified
Digitally signed by
MEENAKSHI KOHLI
Date: 2019.12.19
14:29:05
Reason:

(MEENAKSHI KOHLI)
COURT MASTER

(RENU KAPOOR)
COURT MASTER

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 1258/2018

GANGA SKIES COMPLEX COOPERATIVE HOUSING SOCIETY LTD. Appellant(s)

VERSUS

UNION OF INDIA & ORS. Respondent(s)
(IA No.14921/2018-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and and IA No.14922/2018-EXEMPTION FROM FILING O.T. and IA No. 14920/2018 - STAY APPLICATION)

WITH

C.A. No. 1492/2018 (XVII)
(FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA 17366/2018 and FOR EXEMPTION FROM FILING O.T. ON IA 17368/2018 and IA No. 17364/2018 - STAY APPLICATION)

Date : 06-01-2020 These matters were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE ASHOK BHUSHAN
HON'BLE MR. JUSTICE M.R. SHAH

For Appellant(s) Mr. Neeraj Kishan Kaul, Sr. Adv.
Mr. Anjuman Tripathy, Adv.
Ms. Megha Tyagi, Adv.
Mr. Aman Verma, AOR

Mr. Ninad Laud, Adv.
Mr. Sangram Bhosle, Adv.
Mr. Aditya Pratap Swain, Adv.
Mr. Siddharth A. Mehta, Adv.
Mr. Samridhi S. Jain, Adv.
Ms. Aditee Dangrawat, Adv.
Mr. Aman Varma, AOR

For Respondent(s) Mr. A.N.S. Nadkarni, ASG
Mr. Rajan Kumar Chourasia, Adv.
Mr. D.L. Chidanand, Adv.
Mr. G.S. Makker, AOR

Mr. Mukesh Verma, Adv.
Mr. Pawan Kumar Shukla, Adv.
Mr. Sanjeet Paliwal, Adv.
Mr. Yash Pal Dhingra, Adv.
Ms. Aparna Jha, AOR

Mr. Mehul M. Gupta, Adv.
Mr. Saket Mone, Adv.

Mr. R.P. Gupta, Adv.

Mr. Nitin Lonkar, Adv.

Mr. Alok Mohan, Adv.

Mr. Shankey Agrawal, AOR

Mr. Vijay Kumar, Adv.

Ms. Khushboo Oswal, Adv.

Mr. R.C. Sharma, Adv.

Ms. Bharti Tyagi, Adv.

UPON hearing the counsel the Court made the following

O R D E R

Respondent No.10 prays for and is allowed four weeks' time to file counter affidavit.

Two weeks' time is granted to file rejoinder affidavit.

List the matters after six weeks.

(MEENAKSHI KOHLI)
COURT MASTER

(RENU KAPOOR)
COURT MASTER

ITEM NO.23 Court 8 (Video Conferencing) SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 1258/2018

GANGA SKIES COMPLEX COOPERATIVE HOUSING SOCIETY LTD Appellant(s)

VERSUS

UNION OF INDIA & ORS. Respondent(s)

(IA No.14921/2018-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and and IA No.14922/2018-EXEMPTION FROM FILING O.T. IA No. 14920/2018 - STAY APPLICATION)

WITH

C.A. No. 1492/2018 (XVII)

(IA FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA 17366/2018 FOR EXEMPTION FROM FILING O.T. ON IA 17368/2018 IA No. 17364/2018 - STAY APPLICATION)

Date : 15-11-2021 These matters were called on for hearing today.

CORAM : HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE J.K. MAHESHWARI

For Appellant(s) Ms. Megha Tyagi, Adv.
Mr. Aman Varma, AOR

For Respondent(s) Mr. vikramjit Banerjee, ASG
Mr. D.L. Chidnanda, Adv.
Mr. Rajan Chourasia, Adv.
Mr. Sudhanshu Prakash, Adv.
Ms. Nachiketa Joshi, Adv.
Mr. G.S. Makker, Adv.

Mr. Mukesh Verma, Adv.
Mr. Yash Pal Dhingra, AOR

Mr. Vijay Kumar, Adv.
Ms. Aparna Jha, AOR
Mr. R.C. Sharma, Adv.
Mr. Dhiraj Kumar, Adv.

Mr. R. P. Gupta, AOR

Mr. Ajit Pravin Wagh, AOR

Mr. Nitin Lonkar, Adv.
Ms. Sonali Suryawanshi, Adv.
Mr. Shankey Agrawal, AOR

UPON hearing the counsel the Court made the following
O R D E R

In terms of the letter circulated by learned counsel for
Respondent No.1, let the matter be adjourned for four weeks.

(GULSHAN KUMAR ARORA)
AR-CUM-PS

(MATHEW ABRAHAM)
COURT MASTER (NSH)

ITEM NO.32 Court 8 (Video Conferencing) SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 1258/2018

GANGA SKIES COMPLEX COOPERATIVE HOUSING
SOCIETY LTD

Appellant(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(IA No.14921/2018-EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT and and IA No.14922/2018-EXEMPTION FROM FILING O.T.

IA No. 14921/2018 - EXEMPTION FROM FILING C/C OF THE IMPUGNED
JUDGMENT

IA No. 14922/2018 - EXEMPTION FROM FILING O.T.

IA No. 14920/2018 - STAY APPLICATION)

WITH

C.A. No. 1492/2018 (XVII)

(IA FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA
17366/2018

FOR EXEMPTION FROM FILING O.T. ON IA 17368/2018

IA No. 17364/2018 - STAY APPLICATION)

Date : 17-12-2021 These matters were called on for hearing today.

CORAM : HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE J.K. MAHESHWARI

For Appellant(s) Mr. Utsav Mukherjee, Adv.
Ms. Megha Tyagi, Adv.
Mr. Aman Varma, AOR

For Respondent(s) Mr. Vikramjit Banerjee, ASG
Mr. D.L. Chidananda, Adv.
Mr. Rajan Chaurasia, Adv.
Mr. Sudhanshu Prakash, Adv.
Mr. Nachiketa Joshi, Adv.
Mr. Gurmeet Singh Makker, AOR

Mr. Mukesh Verma, Adv.
Mr. Yash Pal Dhingra, AOR

Mr. Vijay Kumar, Adv.
Ms. Aparna Jha, AOR

Mr. Mehul M. Gupta, Adv.
Mr. R. P. Gupta, AOR

Mr. Ajit Pravin Wagh, AOR
Ms. Astha Prasad, Adv.

Mr. Nitin Lonkar, Adv.
Ms. Sonali Suryawanshi, Adv.
Mr. Shankey Agrawal, AOR

UPON hearing the counsel the Court made the following
O R D E R

In terms of the letter circulated by the learned counsel for
the petitioner, the matter is adjourned for four weeks.

(MANISH ISSRANI)
COURT MASTER (SH)

(MATHEW ABRAHAM)
COURT MASTER (NSH)

ITEM NO.33 Court 8 (Video Conferencing) SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 1258/2018

GANGA SKIES COMPLEX COOPERATIVE HOUSING SOCIETY LTD. Appellant(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(IA No.14921/2018-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and and IA No.14922/2018-EXEMPTION FROM FILING O.T. IA No. 14920/2018 - STAY APPLICATION)

WITH

C.A. No. 1492/2018 (XVII)

(IA FOR EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT ON IA 17366/2018 FOR EXEMPTION FROM FILING O.T. ON IA 17368/2018 IA No. 17364/2018 - STAY APPLICATION)

Date : 14-03-2022 These matters were called on for hearing today.

CORAM : HON'BLE MS. JUSTICE INDIRA BANERJEE
HON'BLE MR. JUSTICE J.K. MAHESHWARI

For Appellant(s) Ms. Pushkara Bhonsle, Adv.
Mr. Aman Varma, AOR

For Respondent(s) Mr. Vikramjit Banerjee, ASG
Mr. D.L. Chidananda, Adv.
Mr. Rajan Kr. Chourasia, Adv.
Mr. Sudhanshu Prakash, Adv.
Ms. Suhasini Sen, Adv.
Mr. Nachiketa Joshi, Adv.
Mr. Gurmeet Singh Makker, AOR

Mr. Shashibhushan P. Adgaonkar, Adv.
Mr. Rahul Chitnis, Adv.
Mr. Sachin Patil, AOR
Mr. Aaditya A. Pande, Adv.
Mr. Geo Joseph, Adv.
Ms. Shwetal Shepal, Adv.

Mr. Mukesh Verma, Adv.
Mr. Yash Pal Dhingra, AOR

Mr. Vijay Kumar, Adv.
Ms. Aparna Jha, AOR

Mr. Mehul M. Gupta, Adv.

1953

2

Mr. R. P. Gupta, AOR

Mr. Ajit Pravin Wagh, AOR

Mr. Nitin Lonkar, Adv.

Mrs. Sonali Suryawanshi, Adv.

Mr. Shankey Agrawal, AOR

UPON hearing the counsel the Court made the following
O R D E R

At the request made on behalf of the learned counsel appearing
on behalf of the petitioner, the matter is adjourned for the day.

List on a non-miscellaneous day after two weeks.

(MANISH ISSRANI)
COURT MASTER (SH)

(MATHEW ABRAHAM)
COURT MASTER (NSH)

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G SI.A.No.163170/2022 In Civil Appeal No(s).1258/2018

GANGA SKIES COMPLEX COOPERATIVE HOUSING SOCIETY LTD Appellant(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(IA No.14921/2018-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and and IA No.14922/2018-EXEMPTION FROM FILING O.T.)

Date : 18-05-2023 This I.A. was mentioned today.

CORAM :

HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE J.K. MAHESHWARI

For Appellant(s) Mr. Aman Varma, AOR

For Respondent(s) Mr. Gurmeet Singh Makker, AOR

Mr. Sachin Patil, AOR

For R.Nos.4 & 5 Mr. Mukesh Verma, Adv.(Mentioned by)
Mr. Pawan Kumar Shukla, Adv.
Mr. Pankaj Kumar Singh, Adv.
Mr. Yash Pal Dhingra, Adv.

Ms. Aparna Jha, AOR

Mr. R. P. Gupta, AOR

Mr. Ajit Pravin Wagh, AOR

Mr. Pulkit Agarwal, AOR

UPON hearing the counsel the Court made the following
O R D E R

Upon being mentioned by Mr. Mukesh Verma, learned counsel for respondent Nos.4 and 5, we deem it appropriate to direct the Registry to list the I.A. on 14.08.2023.

Digitally signed by
satish kumar yadav
Date: 2023.05.18
17:01:59 IST
Reason: 

(SATISH KUMAR YADAV)
DEPUTY REGISTRAR(PREETHI T.C.)
COURT MASTER (NSH)

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No. 1258/2018

GANGA SKIES COMPLEX COOPERATIVE HOUSING SOCIETY LTD Appellant(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(Only I.A. No. 163170 of 2022 is listed)
(IA No. 163170/2022 - INTERVENTION APPLICATION)

Date : 14-08-2023 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J.K. MAHESHWARI
HON'BLE MR. JUSTICE K.V. VISWANATHAN

For Appellant(s)

Mr. Aman Varma, AOR

For Respondent(s)

Mr. Vikramjit Banerjee, A.S.G.
Mr. Gurmeet Singh Makker, AOR
Mr. D L Chidanand, Adv.
Mr. Rajan Kumar Chourasia, Adv.
Ms. Sudhanshu Prakash, Adv.
Mr. Nachiketa Joshi, Adv.

Mr. Shrirang B. Varma, Adv.
Mr. Siddharth Dharmadhikari, Adv.
Mr. Aaditya Aniruddha Pande, AOR
Mr. Bharat Bagla, Adv.
Mr. Sourav Singh, Adv.
Mr. Aditya Krishna, Adv.

Mr. Mukesh Verma, Adv.
Mr. Pankaj Kumar Singh, Adv.
Mr. Vikas Nautiyal, Adv.
Mr. Ashish Kumar Pandey, Adv.
Mr. Yash Pal Dhingra, AOR

Ms. Aparna Jha, AOR
Mr. R. P. Gupta, AOR

Mr. Ajit Pravin Wagh, AOR

Mr. Nitin Lonkar, Adv.

1957

Ms. Sonali Suryavanshi, Adv.
Ms. Pradnya Bheke, Adv.
Mr. Pulkit Agarwal, AOR

UPON hearing the counsel the Court made the following
O R D E R

The matter be listed before a Bench of which one of us
(K. V. Viswanathan, J.) is not a member.

(NIDHI AHUJA)
AR-cum-PS

(VIRENDER SINGH)
BRANCH OFFICER

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 1258/2018

GANGA SKIES COMPLEX COOPERATIVE HOUSING SOCIETY LTD Appellant(s)

VERSUS

UNION OF INDIA & ORS.

Respondent(s)

(Only I.A. No. 163170 of 2022 is listed
IA No. 163170/2022 - INTERVENTION APPLICATION)

Date : 05-09-2023 This matter was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ABHAY S. OKA
HON'BLE MR. JUSTICE PANKAJ MITHAL

For Appellant(s)

Mr. Vinay Navare, Sr. Adv.
Mr. Aman Varma, AOR

For Respondent(s)

Mr. Gurmeet Singh Makker, AOR
Mr. Rajan Kumar Chourasia, Adv.
Ms. Sudhanshu Prakash, Adv.
Mr. Nachiketa Joshi, Adv.

Mr. Shrirang B. Varma, Adv.
Mr. Aaditya Aniruddha Pande, AOR
Mr. Bharat Bagla, Adv.
Mr. Sourav Singh, Adv.
Mr. Aditya Krishna, Adv.

Mr. Mukesh Verma, Adv.
Mr. Pankaj Kumar Singh, Adv.
Mr. Yash Pal Dhingra, AOR

Mr. Uday P Warunjikar, Adv.
Mr. Makarand D. Adkar, Adv.
Mr. Shantanu M. Adkar, Adv.
Ms. Rekha Rani, Adv.
Ms. Aparna Jha, AOR

Mr. R. P. Gupta, AOR

Mr. Ajit Pravin Wagh, AOR
Ms. Astha Prasad, Adv.
Ms. Prachi Thakur, Adv.

Mr. Saket Mone, Adv.
Mr. Kush Chaturvedi, AOR
Mr. Syed Faraz Alam, Adv.
Mr. Devansh Shah, Adv.
Mr. Shrey Shah, Adv.
Mr. Atharva Gaur, Adv.
Mr. Aayushmaan Aggarwal, Adv.

Mr. Pulkit Agarwal, AOR

UPON hearing the counsel the Court made the following
O R D E R

IA No. 163170/2022 for intervention to be heard
along with the Civil Appeal.

(ANITA MALHOTRA)
AR-CUM-PS

(AVGV RAMU)
COURT MASTER

Item No. 03

(Court No. 1)

**BEFORE THE NATIONAL GREEN TRIBUNAL
SPECIAL BENCH**

(By Video Conferencing)

Original Application 164/2016 (WZ)
M.A.No.21/2017 (WZ)

Mr Tanaji Balasaheb Gambhire.

Applicant

Versus

The Secretary, Environment Department, Govt.
of Maharashtra & Ors.

Respondent(s)

Date of hearing: 10.05.2022

**CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE SUDHIR AGARWAL, JUDICIAL MEMBER
HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE PROF. A. SENTHIL VEL, EXPERT MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Applicant: Mr. Nitin Lonkar Advocate

Respondent: Mr.Aniruddha Kulkarni, Advocate for MPCB
Mr.Raghunath Mahabal Advocate for R.1 & 2
Mr.Abhishek Salin Advocate for R.11
Mr. Sangram Singh Bhonsle Advocate for R.12

ORDER

1. Grievance in this application is against violation of norms by the housing project set up by R-11- M/s Shree Ganesh Promoters at Pune. One of the contentions raised on behalf of the applicant is that the project is in blue line of the Mula River and has been set up without requisite EC, though, built up area is more than 20,000 sq.m, attracting requirement of EC.

2. The application was filed on 06.10.2016 and was admitted on 01.11.2016. Notice was issued to the project proponent (PP) as well as SEIAA Maharashtra and Pune Municipal Corporation.

3. As shown by various orders, particularly, order dated 28.02.2017, this matter was heard along with O.A No. 163/2016 with regard to another project. The PP raised preliminary objections which were directed to be considered first vide order dated 23.03.2017. Order dated 08.01.2018 was passed by the Tribunal dealing with the preliminary objection in O.A No. 163/2016 with regard to limitation. The Tribunal overruled the preliminary objection against which the PP has filed Civil Appeal No. 1258/2018 in which, stay of further proceedings have been granted by the Hon'ble Supreme Court on 16.02.2018.

4. Learned counsel for the PP submitted that since the preliminary issue of limitation in the present case is identical to the preliminary issue of limitation which is now pending before the Hon'ble Supreme Court in the above matter, it will be appropriate that the present matter is taken up after disposal of the above matter by the Hon'ble Supreme Court. The Counsel for the applicant opposed the submission. However, since the same issue is pending before Hon'ble Supreme Court in connected matter, it will be appropriate to await decision in the said matter.

In view of above, list after decision of the matter pending before the Hon'ble Supreme Court.

Either party will be at liberty to mention the matter for hearing in the light of above.

Adarsh Kumar Goel, CP

Sudhir Agarwal, JM

Dinesh Kumar Singh, JM

Prof. A. Senthil Vel, EM

Dr. Vijay Kulkarni, EM

May 10, 2022
Original Application 164/2016 (WZ)
M.A.No.21/2017 (WZ)
AB

THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 4782/2023

ADEV VENTURES PVT LTD

Appellant(s)

VERSUS

TANAJI BALASAHEB GAMBHIRE & ORS.

Respondent(s)

O R D E R

The preliminary objections raised by the appellant are bound to be considered by the Tribunal while the Tribunal finally hears the original application. In fact, that is the order passed by the Tribunal in 2018. Hence, subject to what is observed above, no case of interference is made out. The appeal is dismissed.

.....J.
[ABHAY S. OKA]

.....J.
[SANJAY KAROL]

ITEM NO.19

COURT NO.11

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 4782/2023

ADEV VENTURES PVT LTD

Appellant(s)

VERSUS

TANAJI BALASAHEB GAMBHIRE & ORS.

Respondent(s)

(IA No.147539/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.147536/2023-STAY APPLICATION and IA No.147537/2023-PERMISSION TO FILE ADDITIONAL DOCUMENTS/ FACTS/ ANNEXURES)

Date : 07-08-2023 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ABHAY S. OKA

HON'BLE MR. JUSTICE SANJAY KAROL

For Appellant(s) Mr. Vinay Navare, Sr. Adv.
Mr. Saket Mone, Adv.
Ms. Anshula Vijay Kumar Grover, AOR
Ms. Nitika Grover, Adv.
Mr. Abhishek Saliyan, Adv.

For Respondent(s) Mr. Mukesh Verma, Adv.
Mr. Pawan Kumar Shukla, Adv.
Mr. Pankaj Kumar Singh, Adv.
Mr. Yash Pal Dhingra, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order.

Pending applications, if any, also stand disposed of.

(INDU MARWAH)
COURT MASTER (SH)

(AVGV RAMU)
COURT MASTERSo (NSH)

(signed order is placed on the file)

Allowing the appeal, the Court

A

HELD: 1. Order VII Rule 11 (d) of the Code of Civil Procedure, 1908 speaks suit as appears from the statement in the plaint to be barred by any law. Disputed questions cannot be decided at the time of considering an application filed under Order VII Rule 11 CPC. Order VII Rule 11 (d) applies in those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute, shows that the suit is barred by any law in force. [1037-D]

B

2. There cannot be any compartmentalization, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into the pleading has to be construed as it stands without addition or subtraction of the words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities. [1039-D, E, F]

C

D

E

Saleem Bhai v. State of Maharashtra, [2003] 1 SCC 557, *ITC Ltd. v. Debts Recovery Appellate Tribunal*, [1998] 2 SCC 70, *Arivandandam v. T.V. Satyapal*, [1977] 4 SCC 467 and *Raptakos Brett & Co. Ltd. v. Ganesh Property*, [1988] 7 SCC 184, relied on.

F

3. The real object of Order VII Rule 11 of the Code is to keep out of courts irresponsible law suits. Therefore, Order X of the Code is a tool in the hands of the courts by resorting to which and by searching examination of the party in case the court is *prima facie* of the view that the suit is an abuse of this process of the court in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order VII Rule 11 of the Code can be exercised. [1039-G, H]

G

4. There is a distinction between 'material facts' and 'particulars'. The words 'material facts' show that the facts necessary to formulate a

H

A complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement or plaint becomes bad. [1040-B, C]

Bruce v. Odhams Press Ltd., (1936) 1 KB 697, referred to.

B 5. Rule 11 of Order VII lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement.

C Instead, the word 'shall' is used clearly implying thereby that it casts a duty on the court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without intervention of the defendant. In any event, rejection of the plaint under Rule 11 does not preclude the plaintiffs from presenting a fresh plaint in terms of Rule 13. [1040-D, E]

D *Sopan Sukhdeo Sable v. Assistant Charity Commissioner*, [2004] 3 SCC 137, relied on.

E 6. Therefore, the High Court was not right in holding that Order VII Rule 11 CPC was applicable to the facts of the case. Diverse claims were made and the High Court was wrong in proceeding with the assumption that only the non-execution of the lease deed was the basic issue. Even if it is accepted that the other claims were relatable to it they have independent existence. It is not a case where the suit from the statement in the plaint can be said to be barred by any law. The statement in the plaint without

F addition or subtraction must show that it is barred by any law to attract the application of Order VII Rule 11. This is not so in the present case. [1040-G-H; 1041-A]

G 7. The period of limitation is founded on public policy, its aim being to secure the quiet of the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. Bar of limitation does not obstruct the execution. It bars the remedy. The idea is that every legal remedy must be kept alive for legislatively fixed period of time. [1036-E, G]

H *France B. Martins v. Mafalda Maria*, [1996] 6 SCC 627, *V. Subba Rao v. Secretary to Govt. Panchayat Raj and Rural Development, Govt. of A.P.*,

[1996] 7 SCC 626 and *N. Balakrishnan v. M. Krishna Murthy*, [1998] 7 SCC 123, referred to. A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3460 of 2000.

From the Judgment and Order dated 31.3.2000 of the Calcutta High Court in A.P.O.T. No. 157 of 2000. B

U.U. Lalit, Rana Mukherjee, Abhijit Sen Gupta, Siddharth Gautam and Goodwill Indeevar for the Appellant.

S.B. Upadhyay, Vikran Yadav and Praveen Swarup for the Respondent. C

The Judgment of the Court was delivered by

ARIJIT PASAYAT, J. : Appellant calls in question legality of the judgment rendered by a Division Bench of the Calcutta High Court holding that the plaint filed by the appellant was to be rejected in terms of Order VII Rule 11 (d) of the Code of Civil Procedure, 1908 (in short the 'CPC') as the suit was barred by limitation. The order passed by learned Single Judge holding that said provision was not applicable to the facts of the case was set aside. D
E

Factuál position in a nutshell is as follows:

Appellant and respondent entered into an agreement on 19th January, 1983 whereby the appellant agreed to build and develop the property owned by the respondent—Association. A detailed agreement was accordingly executed on 19th January, 1983 which, *inter alia*, provided for regulating relationship between the parties. Para 13 of the agreement stipulated that after construction of the entire building and issuance of final completion certificate by two Chartered Engineers the appellant shall by a notice to the respondent-Association call upon it to execute a registered lease deed in its favour or in favour of its nominee whereby a lease of the 2nd floor, 3rd floor, 4th floor, 5th floor and the roof (collectively described as the demised premises) was to be granted. Several stipulations were provided *in detail*. It is *not in dispute* that the building was completed in the year 1984. Appellant claimed to have written a letter dated 4.11.1984 calling upon the respondent to execute the F
G
H

A lease deed in its favour. Admittedly no lease deed has been executed. The suit was filed in July, 1990, *inter alia*, with the following prayers:

B “(a) Declaration that the plaintiff alone is entitled to let out the ground floor, 2nd, 3rd, 4th, 5th floor and the roof of the said premises shortly referred to have as the ‘Builders Block’ and realize all rents, issues and profits therefrom without any interference by the defendant.

C (b) Perpetual injunction restraining the defendant from executing any lease or other documents in favour of persons in occupation of any portion of the builders block referred to in prayers (a) or in relation to any part or portion of the said block in consideration of any sum or from realizing any rent issues or profit therefrom incumbent or otherwise deal with and exercise any control or dominance over the same;

D (c) Decree for Rs.18,84,500 (Rupees Eighteen lacs eighty four thousand five hundred) only as pleaded in paragraphs 18 and 25 of the plaint.

E (d) Alternatively, an account of what is due and payable to the plaintiff by the defendant in respect of all dealings and transactions by the defendant with the person or persons in occupation of the builders block of the said premises and a decree for such sum as may be found due and payable after taking such account;

F (e) All further proper accounts enquiries and directions;

G (f) Decree for specific performance of the Development Agreement dated 19th January, 1983 be granted against the defendant in terms of Clause 16 of the said Agreement requiring the defendant to execute Deed of Lease for a period of 51 years on terms and conditions contained in the said Clause;

H (g) Mandatory injunction directing the defendant to execute and register a Deed of Lease, in favour of the plaintiff and/or its nominee or nominees in terms of Clause 18 of the Development Agreement dated 19th January, 1983 in respect of the Builders Block, being the 2nd, 3rd, 4th, 5th floor and roof as referred to above;

(h) In the event of the defendant failing to execute, register and deliver Deed of Lease, the Registrar, Original Side of this Hon'ble Court be directed to settle execute and register necessary Deed of Lease in respect of the Builders Block as referred to above for and on behalf of the defendant. A

(i) Decree for Rs.80 lacs as damages as mentioned in paragraph 12 above in addition to a decree for specific performance; B

(j) Alternatively, an enquiry, into loss and damage suffered by the plaintiff and a decree for such sum as may be found due and payable upon such enquiry; C

(k) In the event decree for specific performance as prayed for cannot be granted, a decree for damages in terms of specific performance be granted against the defendant at such rate or rates and on such basis as this Hon'ble Court may deem fit and proper; D

(l) Costs;

(m) Further or other reliefs."

An application was filed by the respondent under Order VII Rule 11 of CPC praying for rejection of the plaint on the ground that the suit as is apparent from the statement contained in the plaint itself was barred by limitation in the sense that the suit was filed beyond the period prescribed in the Indian Limitation Act, 1963 (in short 'Limitation Act'). E

Learned Single Judge dismissed the application holding that the expression "barred by any law" as occurring in the provision did not include the operation of the Limitation Act. The Division Bench was of the view that the claims made in the plaint revolve round the nucleus i.e. focal point of the execution of lease deed which was to be done sometimes in 1985 and as the suit was filed in 1999, it was clearly barred by limitation. F

Learned counsel for the appellant submitted that the approach of the Division Bench is clearly erroneous. The High Court proceeded on the basis as if the only claim related to execution of the lease deed. In fact, there were several other reliefs like claim for damages, unauthorized collection of amounts in respect of the building which admittedly were to be in possession G H

A of the present appellant with full liberty to let out the premises. Clause 12 of the agreement clearly stipulated that the appellant had the authority to let out the building without any objection and without requiring consent from the respondent-Association. The Receiver appointed by the Court on the interlocutory application filed by the applicant clearly noted that the defendant
 B i.e. the respondent-Association had executed lease deeds on 3.4.1988, 16.7.1988 and 19.4.1999. Prayer in the plaint was to pass a decree of Rs.18,84,500 which was the amount collected by the respondent. The suit was by no stretch of imagination filed beyond the period of limitation. By its conduct the respondent had acknowledged the claim of the plaintiff-appellant and the period of limitation in any event would run from the date of acknowledgement.

C
Per contra, learned counsel for the respondent submitted that though various claims were made, as rightly observed by the High Court, focal point was non-execution of lease deed. All the other claims had their matrix thereon and, therefore, the Division Bench of the High Court was right in deciding
 D in favour of the present respondent. It was submitted that the collections made by the respondent were for the period beyond 51 years from the date of agreement in 1983 and not for any period prior to that. There was no question of the period of limitation getting extended, even if there is an acknowledgment beyond the prescribed period of limitation.

E The period of limitation is founded on public policy, its aim being to secure the quiet of the community, to suppress fraud and perjury, to quicken diligence and to prevent oppression. The statute i.e. Limitation Act is founded on the most salutary principle of general and public policy and incorporates a principle of great benefit to the community. It has, with great propriety, been
 F termed a statute of repose, peace and justice. The statute discourages litigation by burying in one common receptacle all the accumulations of past times which are unexplained and have not from lapse of time become inexplicable. It has been said by John Voet, with singular felicity, that controversies are limited to a fixed period of time, lest they should be immortal while men are mortal. (Also See *France B. Martins v. Mafalda Maria*, [1996] 6 SCC 627.

G Bar of limitation does not obstruct the execution. It bars the remedy. (See *V. Subba Rao and Ors. v. Secretary to Govt. Panchayat Raj and Rural Development, Govt. of A.P. and Ors.*, [1996] 7 SCC 626.

H Rules of limitation are not meant to destroy the rights of parties. They

are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So, a life-span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the *maxim interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). The idea is that every legal remedy must be kept alive for legislatively fixed period of time. (See *N. Balakrishanan v. M. Krishna Murthy*, [1998] 7 SCC 123).

Clause (d) of Order VII Rule 7 speaks of suit, as appears from the statement in the plaint to be barred by any law. Disputed questions cannot be decided at the time of considering an application filed under Order VII Rule 11 CPC. Clause (d) of Rule 11 of Order VII applies in those cases only where the statement made by the plaintiff in the plaint, without any doubt or dispute shows that the suit is barred by any law in force.

Order VII Rule 11 of the Code reads as follows:

Order VII Rule 11: *Rejection of plaint*. The plaint shall be rejected in the following cases :-

- (a) where it does not disclose a cause of action;
- (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the court, fails to do so;
- (c) where the relief claims is properly valued but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;
- (d) where the suit appears from the statement in the plaint to be

A barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9.

B

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature for correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff.”

C

In the present case the respondent has relied upon clause (d) of Rule 11.

D

Before dealing with the factual scenario, the spectrum of Order VII Rule 11 in the legal ambit needs to be noted.

E

In *Saleem Bhai and Ors. v. State of Maharashtra and Ors.*, [2003] 1 SCC 557 it was held with reference to Order VII Rule 11 of the Code that the relevant facts which need to be looked into for deciding an application thereunder are the averments in the plaint. The trial Court can exercise the power at any stage of the suit - before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (d) of Order VII Rule 11 of the Code, the averments in the plaint are the germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage.

F

G

In *I.T.C. Ltd. v. Debts Recovery Appellate Tribunal and Ors.*, [1998] 2 SCC 70 it was held that the basic question to be decided while dealing with an application filed under Order VII Rule 11 of the Code is whether a real cause of action has been set out in the plaint or something purely illusory has been stated with a view to get out of Order VII Rule 11 of the Code.

H

The trial Court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of

not disclosing a clear right to sue, it should exercise the power under Order VII Rule 11 of the Code taking care to see that the ground mentioned therein is fulfilled. If clever drafting has created the illusion of a cause of action, it has to be nipped in the bud at the first hearing by examining the party searchingly under Order X of the Code. (See *T. Arivandandam v. T.V. Satyapal and Anr.* [1977] 4 SCC 467). A
B

It is trite law that not any particular plea has to be considered, and the whole plaint has to be read. As was observed by this Court in *Roop Lal Sathi v. Nachhattar Singh Gill*, [1982] 3 SCC 487, only a part of the plaint cannot be rejected and if no cause of action is disclosed, the plaint as a whole must be rejected. C

In *Raptakos Brett & Co. Ltd. v. Ganesh Property*, [1998] 7 SCC 184 it was observed that the averments in the plaint as a whole have to be seen to find out whether clause (d) of Rule 11 of Order VII was applicable. D

There cannot be any compartmentalization, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction of words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair-splitting technicalities. E
F

Keeping in view the aforesaid principles the reliefs sought for in the suit as quoted supra have to be considered. The real object of Order VII Rule 11 of the Code is to keep out of courts irresponsible law suits. Therefore, the Order X of the Code is a tool in the hands of the Courts by resorting to which and by searching examination of the party in case the Court is *prima facie* of the view that the suit is an abuse of the process of the court in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order VII Rule 11 of the Code can be exercised. G
H

A Order VI Rule 2(1) of the Code states the basic and cardinal rule of pleadings and declares that the pleading has to state material facts and not the evidence. It mandates that every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.

B There is distinction between 'material facts' and 'particulars'. The words 'material facts' show that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement or plaint becomes bad. C the distinction which has been made between 'material facts' and 'particulars' was brought by Scott, L.J. in *Bruce v. Odhams Press Ltd.*, (1936) 1 KB 697.

D Rule 11 of Order VII lays down an independent remedy made available to the defendant to challenge the maintainability of the suit itself, irrespective of his right to contest the same on merits. The law ostensibly does not contemplate at any stage when the objections can be raised, and also does not say in express terms about the filing of a written statement. Instead, the word 'shall' is used clearly implying thereby that it casts a duty on the Court to perform its obligations in rejecting the plaint when the same is hit by any of the infirmities provided in the four clauses of Rule 11, even without E intervention of the defendant. In any event, rejection of the plaint under Rule 11 does not preclude the plaintiffs from presenting a fresh plaint in terms of Rule 13.

F The above position was highlighted in *Sopan Sukhdeo Sable and Ors. v. Assistant Charity Commissioner and Ors.*, [2004] 3 SCC 137.

G When the averments in the plaint are considered in the background of the principles set out in *Sopan Sukhdeo's* case (supra), the inevitable conclusion is that the Division Bench was not right in holding that Order VII Rule 11 CPC was applicable to the facts of the case. Diverse claims were made and the Division Bench was wrong in proceeding with the assumption that only the non-execution of lease deed was the basic issue. Even if it is accepted that the other claims were relatable to it they have independent existence. Whether the collection of amounts by the respondent was for a period beyond 51 years need evidence to be adduced. It is not a case where the suit from H statement in the plaint can be said to be barred by law. The statement in the

POPAT AND KOTECHA PROPERTY v. S.B.I. STAFF ASSON. [PASAYAT, J.] 1041

plaint without addition or subtraction must show that is barred by any law to attract application of Order VII Rule 11. This is not so in the present case. A

We do not intend to go into various claims in detail as disputed questions in relation to the issue of limitation are involved.

The appeal is accordingly allowed with no order as to costs. We make it clear that we have not expressed any opinion on the merits of the case which shall be gone into in accordance with law by the Trial Court. B

V.S.S.

Appeal allowed.

[2022] 4 S.C.R. 46

A

SATHYANATH & ANR.

v.

SAROJAMANI

(Civil Appeal No. 3680 of 2022)

B

MAY 06, 2022

[HEMANT GUPTA AND V. RAMASUBRAMANIAN, JJ.]

Code of Civil Procedure, 1908 : Or. XIV r 2 – Court to pronounce judgment on all issues – Suit for declaration by the appellant against the respondent – Application by the respondent seeking framing of issues u/Or. XIV r 2(2), to treat those as preliminary issues – Dismissed by trial court – In revision petition, the High Court issued direction to trial court to frame preliminary issue as to whether the suit is barred by res judicata – Sustainability of – Held: Not sustainable – If the issue is a mixed issue of law and fact, or issue of law depends upon the decision of fact, such issue cannot be tried as a preliminary issue – Preliminary issues can be those where no evidence is required and on the basis of reading of the plaint or the applicable law, if the jurisdiction of the Court or the bar to the suit is made out, the Court may decide such issues with the sole objective for the expeditious decision – Order of the High Court to direct the trial court to frame preliminary issue on the issue of res judicata is not desirable to ensure speedy disposal of the lis between parties – Or. XIV r.2 had salutary object in mind that mandates the Court to pronounce judgments on all issues subject to the provisions of sub-Rule (2) – However, in case where the issues of both law and fact arise in the same suit and the Court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that suit first, if it relates to jurisdiction of the Court or a bar to the suit created by any law for the time being in force – It is only in those circumstances that the findings on other issues can be deferred – Res judicata is a mixed question of law and fact depending upon the pleadings of the parties, the parties to the suit etc. – It is not a plea in law alone or which bars the jurisdiction of the Court or is a statutory bar under clause (b) of sub-Rule (2) – Thus, the order of the High Court remanding the matter to the trial court to frame preliminary issues runs counter to the mandate of Or. XIV r 2, and is set aside.

H

Allowing the appeal, the Court

A

HELD: 1.1 The provisions of Order XIV Rule 2 CPC are part of the procedural law, but the fact remains that such procedural law had been enacted to ensure expeditious disposal of the lis and in the event of setting aside of findings on preliminary issue, the possibility of remand can be avoided, as was the language prior to the unamended Order XIV Rule 2. If the issue is a mixed issue of law and fact, or issue of law depends upon the decision of fact, such issue cannot be tried as a preliminary issue. In other words, preliminary issues can be those where no evidence is required and on the basis of reading of the complaint or the applicable law, if the jurisdiction of the Court or the bar to the suit is made out, the Court may decide such issues with the sole objective for the expeditious decision. Thus, if the Court lacks jurisdiction or there is a statutory bar, such issue is required to be decided in the first instance so that the process of civil court is not abused by the litigants, who may approach the civil court to delay the proceedings on false pretext. [Para 20][61-G-H; 62-A-B]

B

C

D

1.2 The order of the High Court to direct the trial court to frame preliminary issue on the issue of res judicata is not desirable to ensure speedy disposal of the lis between parties. Order XIV Rule 2 of the Code had salutary object in mind that mandates the Court to pronounce judgments on all issues subject to the provisions of sub-Rule (2). However, in case where the issues of both law and fact arise in the same suit and the court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that suit first, if it relates to jurisdiction of the Court or a bar to the suit created by any law for the time being in force. It is only in those circumstances that the findings on other issues can be deferred. It is not disputed that res judicata is a mixed question of law and fact depending upon the pleadings of the parties, the parties to the suit etc. It is not a plea in law alone or which bars the jurisdiction of the Court or is a statutory bar under clause (b) of sub-Rule (2). [Para 31][66-E-G]

E

F

G

1.3 The objective of the provisions of Order XLI Rules 24 and 25 is that if evidence is recorded by the trial court on all the

H

A issues, it would facilitate the first appellate court to decide the questions of fact even by reformulating the issues. It is only when the first appellate court finds that there is no evidence led by the parties, the first appellate court can call upon the parties to lead evidence on such additional issues, either before the appellate court or before the trial court. All such provisions of law and the amendments are to ensure one objective i.e., early finality to the lis between the parties. [Para 32][66-G-H; 67-A]

B
C 1.4 Keeping in view the object of substitution of sub-Rule (2) to avoid the possibility of remanding back the matter after the decision on the preliminary issues, it is mandated for the trial court under Order XIV Rule 2 and Order XX Rule 5, and for the first appellate court in terms of Order XLI Rules 24 and 25 to record findings on all the issues. [Para 33][67-B]

D 1.5 The order of the High Court remanding the matter to the trial court to frame preliminary issues runs counter to the mandate of Order XIV Rule 2 of the Code and thus, not sustainable in law. The trial court would record findings on all the issues so that the first appellate court has the advantage of the findings so recorded and to oblivate the possibility of remand if the suit is decided only on the preliminary issue. The order passed by the High Court is set aside. [Paras 34 and 35][67-C-D]

E
F
G *Jamia Masjid v. K.V. Rudrappa (Since Dead) by LRs. & Ors.* 2021 SCC OnLine SC 792; *Ramesh B. Desai and Ors. v. Bipin Vadilal Mehta and Ors.* (2006) 5 SCC 638 : [2006] 3 Suppl. SCR 414; *Major S. S. Khanna v. Brig. F. J. Dillon* AIR 1964 SC 497 : [1964] SCR 409; *Sunni Central Waqf Board and Ors. v. Gopal Singh Vishrad and Ors.* AIR 1991 ALL 894; *Prithvi Raj Jhingta & Anr. v. Gopal Singh & Anr.* AIR 2007 HP 11; *Hardwari Lal v. Pohkar Mal and Ors.* AIR 1978 P&H 230; *Dhirendranath Chandra v. Apurba Krishna Chandra and Ors.* AIR 1979 Pat 34; *Usha Sales Ltd. v. Malcolm Gomes and Ors.* AIR 1984 Bom 60; *Smt. Aruna Kumari v. Ajay Kumar* AIR 1991 J&K 1; *Sardar Amarjit Singh Kalra (Dead) by Lrs. v. Pramod Gupta (Smt) (Dead) by*

H

SATHYANATH & ANR. v. SAROJAMANI

49

Lrs. & Anr. (2003) 3 SCC 272 : [2002] 5 Suppl. SCR 350; *Kailash v. Nanhku & Ors. (2005) 4 SCC 480* : [2005] 3 SCR 289; *Sugandhi v. P. Rajkumar (2020) 10 SCC 706*; *A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam & Ors. (2012) 6 SCC 430* : [2012] 4 SCR 74; *Abdul Rahman v. Prasony Bai & Anr. (2003) 1 SCC 488* : [2002] 4 Suppl. SCR 260; *Srihari Hanumandas Totala v. Hemant Vithal Kamat & Ors. (2021) 9 SCC 99* – referred to.

A

B

Case Law Reference

C

[1964] SCR 409	referred to	Para 6
AIR 1991 ALL 894	referred to	Para 9
AIR 2007 HP 11	referred to	Para 10
AIR 1978 P&H 230	referred to	Para 11
AIR 1979 Pat 34	referred to	Para 12
AIR 1984 Bom 60	referred to	Para 13
AIR 1991 J&K 1	referred to	Para 14
[2006] 3 Suppl. SCR 414	referred to	Para 15
[2002] 5 Suppl. SCR 350	referred to	Para 17
[2005] 3 SCR 289	referred to	Para 18
(2020) 10 SCC 706	referred to	Para 19
[2012] 4 SCR 74	referred to	Para 21
[2002] 4 Suppl. SCR 260	referred to	Para 23
(2021) 9 SCC 99	referred to	Para 23

D

E

F

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3680 of 2022.

G

From the Judgment and Order dated 03.09.2021 of the High Court of Judicature at Madras in C.R.P. (PD) No. 680 of 2021.

S. Nagamuthu, Sr. Adv., M. P. Parthiban, A. S. Vairawan, R. Sudhakaran, Vikash Kumar, Advs. for the Appellants.

H

A Siddharth Naidu, V. Balachandran for M/s Ksn & Co., Advs. for the Respondent.

The Judgment of the Court was delivered by

HEMANT GUPTA, J.

B 1. The challenge in the present appeal is to an order dated 3.9.2021 whereby in the revision petition filed by the defendant under Article 227 of the Constitution of India, the trial court was directed to frame preliminary issue as to whether the suit is barred by res judicata.

C 2. The plaintiffs-appellants filed O.S. No. 95 of 2016 against the respondent, their paternal aunt. The appellants claimed a declaration for declaring the appellants as absolute owners of the suit property, judgment and decree in O.S. No. 65 of 2003 as null and void, and, for permanent injunction restraining the defendant and their agents in disturbing the peaceful possession and enjoyment of the suit property by the appellants in any manner. Initially, the defendant filed an application under Order D VII Rule 11 of the Code of Civil Procedure, 1908¹ for rejection of the plaint but the same was dismissed by the trial court on 20.6.2017. It is thereafter, the defendant filed an application to frame issues under Order XIV Rule 2(2) of the Code to treat the following as the preliminary issues:

E “1. Whether the suit is not hit by resjudicata and estoppel as claimed by the defendant in the written statement in Para- 10 & 11.

2. Whether the suit is not hit by resjudicata and estoppel as claimed by the defendant in the written statement in Para-12.

F 3. Whether the suit is not barred by limitation as contented by the defendant in the written statement in Para-13.

4. Whether the Plaintiffs have deliberately and wantonly abused the process of the court, as contented by the defendant in the written statement in Para-15 and 16.

G 5. Whether the suit is not valued properly and court fee paid is deficient as claimed by the defendant in Para 18 of the Written statement.”

3. The learned trial court dismissed the application of the defendant on 3.10.2019. Such order of the learned trial court was challenged in

H ¹For short, the ‘Code’

SATHYANATH & ANR. v. SAROJAMANI
[HEMANT GUPTA, J.]

51

revision petition under Article 227 of the Constitution of India wherein the High Court ordered the framing of issue of res judicata as preliminary issue. A

4. Learned counsel for the appellants relied upon provisions of Order XIV Rule 2 of the Code to contend such Order XIV Rule 2 has been substituted by Central Act No. 104 of 1976, whereby the Court is mandated to pronounce judgment on all issues, even though the suit can be disposed of on a preliminary issue. It was argued that such amendment was necessitated to avoid delay in the disposal of the proceedings inasmuch as if only a preliminary issue is decided, the further appeal and revision would be preferred only against the preliminary issue and after the preliminary issue is decided in favour of the plaintiffs, the evidence has to be led on the remaining issues. Therefore, to ensure expeditious disposal of the proceedings and to avoid possibility of remand by the appellate or revisional jurisdiction, it was made mandatory for the Court to record reasons on all the issues. Such finding would oblivate the possibility of remand at appellate or revisional stage, even if the finding on preliminary or other issues are to be reversed. B C D

5. Order XIV Rule 2 before amendment by the Act No. 104 of 1976 reads thus:

“R. 2. Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined.” E

6. The said provision came up for consideration before this Court in a judgment reported as *Major S. S. Khanna v. Brig. F. J. Dillon*². It was held that under Order XIV Rule 2 of the Code where issues both of law and of fact arise in the same suit and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and postpone the settlement of the issues of fact until other issues of law have been determined. It was held as under: F G

“18. Under Order 14 Rule 2 Code of Civil Procedure, where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of

²AIR 1964 SC 497

H

A on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined. The jurisdiction to try issues of law apart from the issues of fact may be exercised only where in the opinion of the Court the whole suit may be disposed of on the issues of law alone, but the Code confers

B no jurisdiction upon the Court to try a suit on mixed issues of law and fact as preliminary issues. Normally all the issues in a suit should be tried by the Court: not to do so, especially when the decision on issues even of law depend upon the decision of issues of fact, would result in a lopsided trial of the suit.”

C 7. The Order XIV Rule 2 after the substitution of Rule 2 by the Act No. 104 of 1976, effective from 1.4.1977, reads thus:

“2. Court to pronounce judgment on all issues.—(1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

D

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to—

E

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.”

F

8. Some other provisions of the Code, which are relevant to decide the issues raised in the preset appeal are as follows:

G “ORDER XX
JUDGMENT AND DECREE

“5. Court to state its decision on each issue. – In suits in which issues have been framed, the Court shall state its finding or decision, with the reasons therefor, upon each separate issue, unless the

H

SATHYANATH & ANR. v. SAROJAMANI
[HEMANT GUPTA, J.]

53

finding upon any one or more of the issue is sufficient for the A
decision of the suit.

ORDER XLI

APPEALS FROM ORIGINAL DECREES

24. Where evidence on record sufficient, Appellate Court may B
determine case finally. - Where the evidence, upon the record is
sufficient to enable the Appellate Court to pronounce judgment,
the Appellate Court may, after resettling the issues, if necessary,
finally determine the suit, notwithstanding that the judgment of
the Court from whose decree the appeal is preferred has proceeded C
wholly upon some ground other than that on which the Appellate
Court proceeds.

25. Where Appellate Court may frame issues and refer them for
trial to Court whose decree appealed from. - Where the Court
from whose decree the appeal is preferred has omitted to frame D
or try any issue, or to determine any question of fact, which appears
to the Appellate Court essential to the right decision of the suit
upon the merits, the Appellate Court may, if necessary, frame
issues, and refer the same for trial to the Court from whose decree
the appeal is preferred, and in such case shall direct such Court to
take the additional evidence required; E

and such Court shall proceed to try such issues, and shall return
the evidence to the Appellate Court together with its findings
thereon and the reasons therefor [within such time as may be
fixed by the Appellate Court or extended by it from time to time.”

9. The amended provision of Order XIV came up for consideration F
before the Full Bench of Allahabad High Court in a judgment reported
as *Sunni Central Waqf Board and Ors. v. Gopal Singh Vishrad and
Ors.*³ It was held that material changes had been brought about by
substituting Order XIV Rule 2 of the Code. The word ‘shall’ in the
unamended provision has been replaced by the word ‘may’ in the G
substituted provision, therefore, it is now discretionary for the Court to
decide the issue of law as a preliminary issue, or to decide it along with
the other issues. It was further held that even all issues of law cannot be
decided as preliminary issues and only those issues of law falling within

³ AIR 1991 ALL 89

H

SATHYANATH & ANR. v. SAROJAMANI
[HEMANT GUPTA, J.]

55

preliminary issues deserved to be reversed, the case per force had to be remanded to the trial Court for trial on other issues. This resulted in delay in the disposal of the cases. To eliminate this delay and to ensure the expeditious disposal of the suits, both at the stage of the trial as well as at the appeal stage, the legislature decided to provide for a mechanism whereby, subject to the exception created under sub-rule (2), all issues, both of law and fact were required to be decided together and the suit had to be disposed of as a whole, of course based upon the findings of the trial Court on all the issues, both of law and fact.

9. Based upon the aforesaid reasons therefor, and in the light of legislative background of Rule 2 and the legislative intent as well as mandate based upon such background, as well as on its plain reading, we have no doubt in our minds that except in situations perceived or warranted under sub-rule (2) where a Court in fact frames only issues of law in the first instance and postpones settlement of other issues, under sub-rule (1), clearly and explicitly in situations where the Court has framed all issues together, both of law as well as facts and has also tried all these issues together, it is not open to the Court in such a situation to adopt the principle of severability and proceed to decide issues of law first, without taking up simultaneously other issues for decision. This course of action is not available to a Court because sub-rule (1) does not permit the Court to adopt any such principle of severability and to dispose of a suit only on preliminary issues, or what can be termed as issues of law. Sub-rule (1) clearly mandates that in a situation contemplated under it, where all the issues have been framed together and have also been taken up for adjudication during the course of the trial, these must be decided together and the judgment in the suit as a whole must be pronounced by the Court covering all the issues framed in the suit.”

11. A Single Bench of Punjab and Haryana High Court in a judgment reported as *Hardwari Lal v. Pohkar Mal and Ors.*⁵ compared the provision of Order XIV Rule 2 prior to and after the amendment and held as under:

“5. A comparative reading of the said provision as it existed earlier to the amendment and the one after amendment would clearly

⁵AIR 1978 P&H 230

A indicate that the consideration of an issue and its disposal as preliminary issue has now been made permissible only in limited cases. In the unamended Code, the categorisation was only between issues of law and of fact and it was mandatory for the Court to try the issues of law in the first instance and to postpone the settlement of the issues of fact until after the issues of law had been determined. On the other hand, in the amended provision there is a mandate to the Court that notwithstanding that a case may be disposed of on a preliminary issue, the Court has to pronounce judgment on all the issues. The only exception to this is contained in sub-rule (2). This sub-rule relaxes the mandate to a limited extent by conferring a discretion upon the Court that if it is of opinion that the case or any part thereof may be disposed of “on an issue of law only,” it may try that issue first. The exercise of this discretion is further limited to the contingency that the issue to be so tried must relate to the jurisdiction of the Court or a bar to the suit created by a law in force.”

D 12. A Single Bench of Patna High Court in a judgment reported as *Dhirendranath Chandra v. Apurba Krishna Chandra and Ors.*⁶ held that even if the case may be disposed of on a preliminary issue, the Court is bound to pronounce judgment on all the issues, subject to the provision in sub-rule (2) according to which if the case or any part thereof may be disposed of on issue of law only and if that issue relates to jurisdiction of the Court or a bar to the suit created by law for the time being in force, the Court may try such issue first. The High Court held as under:

F “6. A plain reading of R. 2 will show that ordinarily even if the case may be disposed of on a preliminary issue, the Court is bound to pronounce judgement on all issues. This ordinary rule is subject to only one exception which has been provided in sub-rule (2) according to which if the case or any part thereof may be disposed of on issue of law only and if that issue of law relates to the jurisdiction of the Court or a bar to the suit created by any law for the time being in force the court may try such issue first. It is, therefore, clear that a departure from the ordinary rule provided in sub-rule (1) of R. 2 can be made by the Court only in the circumstances mentioned in sub-rule (2) and even in these

H ⁶ AIR 1979 Pat 34

SATHYANATH & ANR. v. SAROJAMANI
[HEMANT GUPTA, J.]

57

circumstances the Court has only a discretion that it may try an issue of law relating to the points mentioned in clauses (a) and (b) of sub-rule (2) as a preliminary issue before framing other issues. There is, however, nothing in sub-rule (2) which in my opinion makes it obligatory for the Court to try such an issue first in all cases. If, therefore, the Court is of opinion that in any particular case it will be more expedient to try all the issues together and therefore, if it refuses to try and decide any issue of law even on the points referred to in cls. (a) and (b) of sub-rule (2) as a preliminary issue before taking up other issues.

A

B

xxxx”

C

13. A Single Bench of Bombay High Court in a judgment reported as *Usha Sales Ltd. v. Malcolm Gomes and Ors.*⁷ held that after the amendment, a duty is cast upon the Court that it must proceed to hear all the issues and pronounce the judgment on the same, except that the Court may try an issue relating to the jurisdiction of the Court or to the legal bar to the suit as a preliminary issue. It was held to be more in the nature of discretion rather than a duty. It was held as under:

D

“11. From the above it is easily seen that there is an obligation cast upon the Court that even though a case may be disposed of on a preliminary issue the Courts shall subject to the provision of sub-rule (2) pronounce judgment on all issues. In other words, the obligation to decide a question of law as a preliminary issue if that decision disposes of the case or part of the case is no longer, there. Similarly, the discretion to decide any other issue as a preliminary issue has been taken away totally from the Court. On the other hand, a duty is cast upon the Court that it must proceed to hear all the issues and pronounce judgment on the same.

E

F

12. There is, however, a small exception carved out to the above provision. The Court may try an issue relating to the jurisdiction of the Court or to the legal bar to the suit as a preliminary issue but this is more in the nature of a discretion rather than a duty and the Court is not bound to try any issue despite the provision contained in sub-r. (2) of R. 2 of O. 14 of the Code. The words “it may try” are clearly indicative of the fact that discretion is given

G

⁷ AIR 1984 Bom 60

H

A to the Court and no duty is cast upon the Court to decide any issue as a preliminary issue.”

14. A Single Bench of Jammu and Kashmir High Court in a judgment reported as *Smt. Aruna Kumari v. Ajay Kumar*⁸ held as under:

B “4.Admittedly both the parties have to lead evidence regarding both the issues. In case issue No. 2 is allowed to be treated as preliminary the parties will certainly lead evidence in the case and instead of disposing of the case expeditiously it will prolong the matter and frustrate the very basis of law contained in Order XIV, Rule 2, Civil Procedure Code. The evidence to be led by both the parties will almost cover both the issues and it cannot, therefore, be said that by allowing issue No. 2 to be treated as preliminary the trial of the case would be expedited. When we review the whole law on the point it becomes clear that where issue of jurisdiction is a mixed question of law and fact requiring evidence to be recorded by both the sides same cannot be treated as a preliminary issue.”

D 15. The matter has also been examined by this Court in a judgment reported as *Ramesh B. Desai and Ors. v. Bipin Vadilal Mehta and Ors.*⁹ wherein it was held as under:

E “13. Sub-rule (2) of Order 14 Rule 2 CPC lays down that where issues both of law and of fact arise in the same suit, and the court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to (a) the jurisdiction of the court, or (b) a bar to the suit created by any law for the time being in force. The provisions of this Rule came up for consideration before this Court in Major S.S. Khanna v. Brig. F.J. Dillon [(1964) 4 SCR 409 : AIR 1964 SC 497] and it was held as under: (SCR p. 421)

“xxx xxx”

G Though there has been a slight amendment in the language of Order 14 Rule 2 CPC by the amending Act, 1976 but the principle enunciated in the above quoted decision still holds good and there

⁸ AIR 1991 J&K 1

H ⁹ (2006) 5 SCC 638

SATHYANATH & ANR. v. SAROJAMANI
[HEMANT GUPTA, J.]

59

can be no departure from the principle that the Code confers no jurisdiction upon the court to try a suit on mixed issues of law and fact as a preliminary issue and where the decision on issue of law depends upon decision of fact, it cannot be tried as a preliminary issue.”

A

16. This Court in *Ramesh B. Desai* held that the principles enunciated in *Major S. S. Khanna* still hold good and the Code confers no jurisdiction upon the Court to try a suit on mixed issues of law and fact as a preliminary issue and where the decision on issue depends upon the question of fact, it cannot be tried as a preliminary issue. The said finding arises from the provision of Order XIV Rule 2 clause (a) and (b). After the amendment, discretion has been given to the Court by the expression ‘may’ used in sub-rule (2) to try the issue relating to the jurisdiction of the Court i.e. territorial and pecuniary jurisdiction, or a bar to the suit created by any law for the time being in force i.e., the bar to file a suit before the Civil Court such as under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and numerous other laws particularly relating to land reforms. Hence, if Order XIV Rule 2 is read along with Order XII Rule 5, the Court is expected to decide all the issues together unless the bar of jurisdiction of the Court or bar to the suit in terms of sub-rule (2) clause (a) and (b) arises. The intention to substitute Rule 2 is the speedy disposal of the *lis* on a question which oust either the jurisdiction of the Court or bars the plaintiff to sue before the Civil Court.

B

C

D

E

17. We may state that the First Schedule appended to the Code contains the procedure to be applied in respect of the matters coming for adjudication before the Civil Court. Such procedure is handmaid of justice as laid down by the Constitution Bench judgment of this Court reported as *Sardar Amarjit Singh Kalra (Dead) by Lrs. v. Pramod Gupta (Smt) (Dead) by Lrs. & Anr.*¹⁰ wherein it was observed as under:

F

“26. Laws of procedure are meant to regulate effectively, assist and aid the object of doing substantial and real justice and not to foreclose even an adjudication on merits of substantial rights of citizen under personal, property and other laws. Procedure has always been viewed as the handmaid of justice and not meant to

G

¹⁰ (2003) 3 SCC 272

H

A hamper the cause of justice or sanctify miscarriage of justice.....”

18. A three Judge Bench in a subsequent judgment reported as *Kailash v. Nanhku & Ors.*¹¹ held that all rules of procedure are handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent but the object of prescribing procedure is to advance the cause of justice. The Court held as under:

C “28. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice. The observations made by Krishna Iyer, J. in *Sushil Kumar Sen v. State of Bihar* [(1975) 1 SCC 774] are pertinent: (SCC p. 777, paras 5-6)

E “The mortality of justice at the hands of law troubles a judge’s conscience and points an angry interrogation at the law reformer.

F The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act *ex debito justitiae* where the tragic sequel otherwise would be wholly inequitable. ... Justice is the goal of jurisprudence — processual, as much as substantive.”

G 29. In *State of Punjab v. Shamlal Murari* [(1976) 1 SCC 719 : 1976 SCC (L&S) 118] the Court approved in no unmistakable terms the approach of moderating into wholesome directions what is regarded as mandatory on the principle that: (SCC p. 720)

H ¹¹ (2005) 4 SCC 480

SATHYANATH & ANR. v. SAROJAMANI
[HEMANT GUPTA, J.]

61

“Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice.”

A

In Ghanshyam Dass v. Dominion of India [(1984) 3 SCC 46] the Court reiterated the need for interpreting a part of the adjective law dealing with procedure alone in such a manner as to subserve and advance the cause of justice rather than to defeat it as all the laws of procedure are based on this principle.”

B

19. This Court in *Sugandhi v. P. Rajkumar*¹² held that if the procedural violation does not seriously cause prejudice to the adversary party, Courts must lean towards doing substantial justice rather than relying upon procedural and technical violations. It is not to be forgotten that litigation is nothing but a journey towards truth which is the foundation of justice and the Court is required to take appropriate steps to thrash out the underlying truth in every dispute. It was held as under:

C

“9. It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every dispute. Therefore, the court should take a lenient view when an application is made for production of the documents under sub-rule (3).”

D

E

F

20. The provisions of Order XIV Rule 2 are part of the procedural law, but the fact remains that such procedural law had been enacted to ensure expeditious disposal of the *lis* and in the event of setting aside of findings on preliminary issue, the possibility of remand can be avoided, as was the language prior to the unamended Order XIV Rule 2. If the issue is a mixed issue of law and fact, or issue of law depends upon the decision of fact, such issue cannot be tried as a preliminary issue. In other words, preliminary issues can be those where no evidence is

G

¹² (2020) 10 SCC 706

H

A required and on the basis of reading of the plaint or the applicable law, if the jurisdiction of the Court or the bar to the suit is made out, the Court may decide such issues with the sole objective for the expeditious decision. Thus, if the Court lacks jurisdiction or there is a statutory bar, such issue is required to be decided in the first instance so that the process of civil court is not abused by the litigants, who may approach

B the civil court to delay the proceedings on false pretext.

21. In fact, in a judgment reported as *A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam & Ors.*¹³, this Court held as under:

C “39. Our courts are usually short of time because of huge pendency of cases and at times the courts arrive at an erroneous conclusion because of false pleas, claims, defences and irrelevant facts. A litigant could deviate from the facts which are liable for all the conclusions. In the journey of discovering the truth, at times, this

D Court, at a later stage, but once discovered, it is the duty of the court to take appropriate remedial and preventive steps so that no one should derive benefits or advantages by abusing the process of law. The court must effectively discourage fraudulent and dishonest litigants.”

E 22. The different judgments of the High Court referred to above are in consonance with the principles laid down by this Court in *Ramesh B. Desai* that not all issues of law can be decided as preliminary issues. Only those issues of law can be decided as preliminary issues which fell within the ambit of clause (a) relating to the “jurisdiction of the Court” and (b) which deal with the “bar to the suit created by any law for the time being in force.” The reason to substitute Rule 2 is to avoid piecemeal

F trial, protracted litigation and possibility of remand of the case, where the appellate court differs with the decision of the trial court on the preliminary issues upon which the trial court had decided.

G 23. On the other hand, learned counsel for the respondent relies upon the judgments of this Court reported as *Abdul Rahman v. Prasony Bai & Anr.*¹⁴, *Srihari Hanumandas Totala v. Hemant Vithal Kamat & Ors.*¹⁵ and *Jamia Masjid v. K.V. Rudrappa (Since Dead) by LRs.*

¹³ (2012) 6 SCC 430

¹⁴ (2003) 1 SCC 488

H ¹⁵ (2021) 9 SCC 99

SATHYANATH & ANR. v. SAROJAMANI
[HEMANT GUPTA, J.]

63

*& Ors.*¹⁶ to contend that on a question of res judicata, the preliminary issue needs to be framed. A

24. In *Abdul Rahman*, this Court was examining a suit filed by the appellant in the year 1999 to declare that the defendant is not the daughter of Mangal Singh and that the appellant is in adverse possession even during the life time of Mangal Singh. An additional issue was framed regarding the jurisdiction of the civil suit to try the said suit. The High Court in proceedings passed an order on 29.11.2001 dismissing the suit on the preliminary issue whether the dispute to the present civil suit has already been decided and adjudicated by the Court and is barred by the principles of res judicata. An intra court appeal was filed which was dismissed on 4.12.2001 and thereafter, the matter travelled to this Court. In these circumstances, this Court held as under: B C

“21. For the purpose of disposal of the suit on the admitted facts, particularly when the suit can be disposed of on preliminary issues, no particular procedure was required to be followed by the High Court. In terms of Order 14 Rule 1 of the Code of Civil Procedure, a civil court can dispose of a suit on preliminary issues. It is neither in doubt nor in dispute that the issues of res judicata and/or constructive res judicata as also the maintainability of the suit can be adjudicated upon as preliminary issues. Such issues, in fact, when facts are admitted, ordinarily should be decided as preliminary issues.” D E

25. A perusal of the above judgment of this Court shows that it was an admitted fact that issue of res judicata and of constructive res judicata can be adjudicated as preliminary issue. Since it was an admitted fact, it cannot be said that principle of law has been enunciated that a plea of res judicata can be decided as a preliminary issue. F

26. In *Srihari Hanumandas Totala*, the property was mortgaged in favour of Karnataka State Finance Corporation¹⁷. The Corporation auctioned the property as the loan was not repaid. The legal heirs of the borrower filed a suit in OS No. 138 of 2008 challenging the sale deed dated 8.8.2006 executed by the Corporation and partition of the suit property. A separate OS No. 103 of 2007 was filed by the purchaser from the Corporation. Such suit of the purchaser was decreed on G

¹⁶ 2021 SCC OnLine SC 792

¹⁷ For short, the ‘Corporation’

H

A 26.2.2009. The decree in the said suit was affirmed by the High Court on 11.8.2007. The purchaser from the Corporation filed an application under Order VII Rule 11 for rejection of the plaint of OS No. 138 of 2008. Such application was dismissed by the learned trial court. The order was affirmed in revision by the High Court holding that the ground of res judicata could not be decided merely by looking averments in the
 B plaint. It is the said order which became subject matter of challenge before this Court. This Court found that the plea of res judicata requires consideration of the pleadings, issues and decision in the previous suit and such a plea would be beyond the scope of Order VII Rule 11. However, in the operative paragraph, it was observed that the trial court
 C shall consider whether a preliminary issue should be framed under Order XIV, and if so, to decide it within a period of three months of raising the preliminary issue. The operative part of the order reads thus:

D “28. For the above reasons, we hold that the plaint was not liable to be rejected under Order 7 Rule 11(d) and affirm the findings of the trial court and the High Court. We clarify however, that we have expressed no opinion on whether the subsequent suit is barred by the principles of res judicata. We grant liberty to the appellant, who claims as an assignee of the bona fide purchaser of the suit property in an auction conducted by KSFC, to raise an issue of the maintainability of the suit before the Additional Civil Judge, Belgaum in OS No. 138 of 2008. The Additional Civil Judge, Belgaum shall consider whether a preliminary issue should be framed under Order 14, and if so, decide it within a period of 3 months of raising the preliminary issue. In any event, the suit shall be finally adjudicated upon within the outer limit of 31-3-2022.”
 E

F 27. This Court was thus examining the scope of Order VII Rule 11 of the Code, whereas such is not the issue in the present appeal. In fact, the defendant has filed an application for framing of preliminary issues. The direction of the High Court is on such application. Therefore, such application needs to be considered in the light of the provisions of
 G Order XIV Rule 2 of the Code.

H 28. In *Jamia Masjid*, the judgment and decree in a second appeal holding that the suit is barred by the principle of res judicata was the subject matter of challenge before this Court. The learned trial court decided Issue Nos. 5 and 6 related to res judicata and limitation as preliminary issue. It was held that suit was not barred by limitation but

SATHYANATH & ANR. v. SAROJAMANI
[HEMANT GUPTA, J.]

65

barred by *res judicata*. In appeal, such finding was affirmed. However, in second appeal, the matter was remanded to the trial court for disposal of the suit in accordance with law holding that the suit is not barred by *res judicata*. In appeal against such judgment and decree, appeal was remanded to the High Court. The High Court after remand held that the judgment in a representative suit under Section 92 of the Code binds the parties to the suit and would thus operate as *res judicata*.

29. In appeal before this Court, it was considered whether *res judicata* raises a mixed question of law and facts. The Court held as under:

“26. The court while undertaking an analysis of the applicability of the plea of *res judicata* determines first, if the requirements of section 11 CPC are fulfilled; and if this is answered in the affirmative, it will have to be determined if there has been any material alteration in law or facts since the first suit was decreed as a result of which the principle of *res judicata* would be inapplicable. We are unable to accept the submission of the appellants that *res judicata* can never be decided as a preliminary issue. In certain cases, particularly when a mixed question of law or fact is raised, the issue should await a full-fledged trial after evidence is adduced. In the present case, a determination of the components of *res judicata* turns on the pleadings and judgments in the earlier suits which have been brought on the record. The issue has been argued on that basis before the Trial court and the first appellate court; followed by two rounds of proceedings before the High Court (the second following upon an order of remand by this court on the ground that all parties were not heard). All the documentary material necessary to decide the issue is before the court and arguments have been addressed by the contesting sides fully on that basis.

xx

xx

xx

62. In view of the discussion above, we summarise our findings below:

(i) Issues that arise in a subsequent suit may either be questions of fact or of law or mixed questions of law and fact. An alteration in the circumstances after the decision in the first suit, will require a trial for the determination of the plea of *res judicata* if there

A arises a new fact which has to be proved. However, the plea of *res judicata* may in an appropriate case be determined as a preliminary issue when neither a disputed question of fact nor a mixed question of law or fact has to be adjudicated for resolving it;”

B 30. A perusal of the said judgment would show that only issue Nos. 5 and 6 were decided relating to *res judicata* and limitation as preliminary issues by judgment dated 3.2.2006. This Court set aside the finding on the preliminary issue by judgment dated 23.9.2021 i.e., almost more than 15 years later when the matter was remanded back to the trial court. The absence of the decision on all issues have necessitated the matter to be remanded back, defeating the object of expeditious disposal of *lis* between the parties. The conclusion in Para 62(i) is that the plea of *res judicata* in appropriate cases may be determined as preliminary issue when it is neither a disputed question of fact nor a mixed question of law and fact. Such finding is what this Court held in
 C
 D ***Ramesh B. Desai***.

E 31. We find that the order of the High Court to direct the learned trial court to frame preliminary issue on the issue of *res judicata* is not desirable to ensure speedy disposal of the *lis* between parties. Order XIV Rule 2 of the Code had salutary object in mind that mandates the Court to pronounce judgments on all issues subject to the provisions of sub-Rule (2). However, in case where the issues of both law and fact arise in the same suit and the Court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that suit first, if it relates to jurisdiction of the Court or a bar to the suit created by any law for the time being in force. It is only in those
 F circumstances that the findings on other issues can be deferred. It is not disputed that *res judicata* is a mixed question of law and fact depending upon the pleadings of the parties, the parties to the suit etc. It is not a plea in law alone or which bars the jurisdiction of the Court or is a statutory bar under clause (b) of sub-Rule (2).

G 32. The objective of the provisions of Order XLI Rules 24 and 25 is that if evidence is recorded by the learned Trial Court on all the issues, it would facilitate the first Appellate Court to decide the questions of fact even by reformulating the issues. It is only when the first Appellate Court finds that there is no evidence led by the parties, the first Appellate
 H Court can call upon the parties to lead evidence on such additional issues,

SATHYANATH & ANR. v. SAROJAMANI
[HEMANT GUPTA, J.]

67

either before the Appellate Court or before the Trial Court. All such provisions of law and the amendments are to ensure one objective i.e., early finality to the *lis* between the parties. A

33. Keeping in view the object of substitution of sub-Rule (2) to avoid the possibility of remanding back the matter after the decision on the preliminary issues, it is mandated for the trial court under Order XIV Rule 2 and Order XX Rule 5, and for the first appellate court in terms of Order XLI Rules 24 and 25 to record findings on all the issues. B

34. Therefore, the order of the High Court remanding the matter to the learned trial court to frame preliminary issues runs counter to the mandate of Order XIV Rule 2 of the Code and thus, not sustainable in law. The learned trial court shall record findings on all the issues so that the first appellate court has the advantage of the findings so recorded and to oblivate the possibility of remand if the suit is decided only on the preliminary issue. C

35. Consequently, the appeal is allowed. The order passed by the High Court is hereby set aside. D

Nidhi Jain
(Assisted by : Tamana, LCRA)

Appeal allowed.

Item No.4

(Pune Bench)

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

(By Video Conferencing)

**I.A. NO.68 2023 (WZ)
IN
ORIGINAL APPLICATION NO.65 OF 2019 (WZ)**

Mr. Ajay Jayvantrao Bhosale Applicant

Versus

Union of India through Secretary & Ors.Respondents

Date of Hearing : 24.04.2023

**CORAM: HON'BLE MR. JUSTICE DINESH KUMAR SINGH, JUDICIAL MEMBER
HON'BLE DR. VIJAY KULKARNI, EXPERT MEMBER**

Applicant : Mr. Tanaji Gambhire, Advocate

Respondents : Mr. Rahul Garg, Advocate for R-1, R-8 and R-9
Ms. Manasi Joshi, Advocate for R-6 and R-7
Mr. Aniruddha Kulkarni, Standing Advocate for R-4
Mr. R.B. Mahabal, Advocate for R-11

ORDER

1. By this application, the applicant has prayed to recall the order dated 09.11.2022 passed by us in the present Original Application No.65/2023 whereby we had observed in paragraph No.11 of the said order that it would be appropriate for us to deal with limitation issue first as has been pressed by the learned counsel for the Project Proponent.

2. In this application (I.A.), it is submitted by the learned counsel for the applicant that the limitation is a mixed question of law and fact. Therefore, it has to be decided at final stage as it is required to go through the entire record and evidence in the matter. It is further submitted that this is an admitted case of violation by the Project Proponent – respondent No.11, which has caused substantial damage to the environment and ecology. The preliminary issues can be those where

no evidence is required and on the basis of pleadings or the applicable law, if the jurisdiction of the court or the bar to the suit is made out, the court may decide such issues with the sole objective for the expeditious decision. Such is not the case in the present matter. The facts surrounding the limitation are disputed.

3. Against the above plea of the applicant, learned counsel for respondent No.11 – Project Proponent has filed written submissions (Pages 1260 to 1264 of the paper-book) wherein it is submitted that this Tribunal has recently passed an order dated 01.12.2022 in Original Application No.63/2019 (Ajay Bhosale Vs. Union of India), which was not available when the earlier submissions were made on 24.10.2021 and 09.08.2022. The facts of the said matter are absolutely similar to the facts of the present case. Both matters are initiated by the same applicant. Both projects are that of construction under EIA Notification, 2006 under Category 8(a). The above order dated 01.12.2022 has dealt with the submissions of the applicant at point No.14 on the basis of Judgment dated 07.05.2015 in the case of **“Forward Foundation vs. State of Karnataka” in Original Application No.222/2014**, reported in **2015 SCC OnLine NGT 5**. In the present case, the plans (new) were approved on 21.09.2005. The buildings A, B, D and E had been completed and Completion Certificate had been issued on 22.10.2007. The buildings were completed (except “C” building) in the year 2009. The present application has been filed on 18.09.2019, almost 10 years later while limitation under Section 14 of the National Green Tribunal Act, 2010 is of six months and under Section 15, it is of five years. It is further submitted that application of respondent No.11 – Project Proponent is pending before the SEAC-3 and SEIAA for consideration under Violation Category under Standard Operating Procedure (SOP)

dated 07.07.2021. In the circumstances, the preliminary issue should be decided first, this matter being time barred.

4. We have heard the arguments of the learned counsel for the parties and we are of the view that it cannot be denied that limitation in the present case is a mixed question of law and fact and it would require that the entire pleadings are heard as all the parties have filed their respective reply-affidavits. Therefore, it would be appropriate to hear the matter in its entirety. The earlier observation made by us in the impugned order dated 09.11.2022 that “it would be appropriate to hear the matter on limitation issue first” is set aside and we allow this application (I.A.No.68/2023) and direct that the parties may argue this matter (O.A. No.65/2019) finally on the next date as learned counsel for respondent No.11 – Project Proponent submits that he has not come prepared for final arguments today.

5. I.A. No.68/2023 (WZ) is disposed of.

6. Put up the matter (O.A. No.65/2019) for final arguments on 28.07.2023.

Dinesh Kumar Singh, JM

Dr. Vijay Kulkarni, EM

April 24, 2023
I.A. No.68/2023 (WZ)
npj



2023INSC804

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION****CIVIL APPEAL No. 5707 OF 2023
(@ SPECIAL LEAVE PETITION (CIVIL) NO.18727 OF 2023)****UNION TERRITORY OF LADAKH & ORS.****... APPELLANTS****VERSUS****JAMMU AND KASHMIR NATIONAL CONFERENCE & ANR. ... RESPONDENTS****A1: Union Territory of Ladakh through its Chief Secretary****A2: Chief Election Officer, UT of Ladakh****A3: District Election Officer (Kargil)****A4: Administrative Secretary, Election Department, UT
of Ladakh****R1: Jammu and Kashmir National Conference, through its
General Secretary****R2: Election Commission of India****J U D G M E N T****AHSANUDDIN AMANULLAH, J.**

Signature Not Verified
Digitally signed by
SONIA BHADANI
Date: 2023.09.06
14:36:40 IST
Reason:

Heard learned counsel for the parties.**2. Leave granted.**

3. The present appeal is directed against the Judgment and Order dated 14.08.2023 (hereinafter referred to as the "Impugned Judgment") rendered by a learned Division Bench of the High Court of Jammu & Kashmir and Ladakh at Srinagar (hereinafter referred to as the "High Court") dismissing Letters Patent Appeal No.151 of 2023 filed by the Appellants and upholding the interim order of a learned Single Judge dated 09.08.2023 in Writ Petition (Civil) No.1933 of 2023.

BRIEF FACTS:

4. The controversy involved in this *lis* is the non-allocation of the Plough symbol to the writ petitioner, the Jammu and Kashmir National Conference/Respondent No.1 herein (hereinafter referred to as "R1") for its candidates to contest the then-upcoming General Elections of the Ladakh Autonomous Hill Development Council, Kargil (hereinafter referred to as the "LAHDC"). In view of the urgency in the matter, the learned Single Judge passed an interim order on

09.08.2023, the operative portion whereof at Paragraph 11 reads as under:

"11. Keeping in view that the upcoming General Election of Ladakh Autonomous Hill Development Council (LAHDC) stands announced, the petitioner-party is directed to approach the office of the respondents 1 to 3 & 5, for notifying the reserved symbol (plough) already allotted to it and respondents 1 to 3 & 5 shall notify the symbol allotted to petitioner-party in terms of Paragraphs 10 and 10(A) of Election Symbols (Reservation and Allotment) Order, 1968, and allow the candidates set up by the petitioner-party to contest on the reserved election symbol (plough) already allotted to the party."

5. Aggrieved, the Appellants moved the learned Division Bench of the High Court by preferring an appeal, which after hearing was dismissed *vide* Impugned Judgment on 14.08.2023.

SUBMISSION BY THE APPELLANTS:

6. Mr. K. M. Nataraj, learned Additional Solicitor General (hereinafter referred to as the "ASG") for the Appellants submitted that the learned Single Judge and the learned Division Bench of the High Court have issued directions contrary to law. It was submitted

that both orders have been passed on an erroneous assumption that the provisions of Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as the "1968 Order"), would be applicable in elections to the LAHDC. Learned ASG canvassed that this is not the correct legal position as the LAHDC election is being conducted by the Election Authority of the Union Territory of Ladakh constituted under Rule 5 of The Ladakh Autonomous Hill Development Councils (Election) Rules, 1995 (hereinafter referred to as the "1995 Rules"). It was contended that the Election Commission of India (hereinafter referred to as the "ECI") is empowered to hold elections to the Parliamentary and State Assembly constituencies and for the present LAHDC elections, the ECI does not exercise any authority. Thus, the learned ASG submitted that any reference to the provisions of the 1968 Order is misplaced.

7. Learned ASG, further, contended that Paragraphs No. 9, 10 and 10(A) of the 1968 Order speak of restrictions on the allotment of symbols reserved for

State Parties in States where such parties are not recognized; concession to candidates set up by a State Party at elections in other States or Union Territories, and; concession to candidates set up by an un-recognized party which was earlier recognized as a National or State Party, respectively. Thus, it was his categorical stand that such concession can be only for the purposes of Parliamentary and State Assembly elections, and not for the election in question.

8. Learned ASG submitted that the reference by the ECI in its communication dated 18.07.2023 to R1, that it can avail the concession under Paragraph 10 of the 1968 Order can neither confer any right on R1, nor compel the Election Authority of the Union Territory of Ladakh to allow the prayer of R1, as made in the Writ Petition before the High Court. With regard to the opinion of the Law Department of the Appellant No.1, as quoted in the communication of the District Election Officer (District Magistrate), Kargil in his communication dated 12.07.2023 to the Chief Electoral Officer, Union Territory of Ladakh, the same at best

was only advisory but not binding as it is for the Election Authority of the Union Territory of Ladakh to independently consider such request.

9. He submitted that none of the candidates, who have filled up and submitted their nomination forms, have either sought the Plough symbol or indicated in the relevant column that they were candidates of R1 and on this score alone, at this stage, R1 was not entitled to any indulgence by this Court.

10. He summed up his arguments by stating that, as of now¹, the process of elections had already been set in motion. Learned ASG pointed out that filing of the nomination forms had begun from 16.08.2023 and reached the penultimate stage since the last date of withdrawal of nominations (26.08.2023) had already elapsed. It was stated that now only polling remained to be held on 10.09.2023 and in this view of the matter, this Court may set aside the Impugned Order.

¹ This Court's order dated 01.09.2023 is quoted for ready reference:
*'Application for impleadment is rejected.
Heard learned counsel for the parties.
Judgment reserved.
List the matter for pronouncement on 06.09.2023.'*

SUBMISSIONS BY RESPONDENT NO.1:

11. Learned counsel for R1 submitted that the orders of the learned Single Judge dated 09.08.2023 and the learned Division Bench dated 14.08.2023 are self-speaking and have dealt in detail with the contentions of the Appellants and the same have been negated on cogent legal and factual grounds. It was submitted that there should not have been, in the first place, any issue with the Appellants in granting the Plough symbol for the reason that R1 is the incumbent ruling party in the LAHDC, and was entitled to the Plough symbol, since the same was neither part of the list of free symbols nor allotted to any other National or State Party, so recognized, either by the ECI or by the Election Authority for the Union Territory of Ladakh. It was submitted that a completely partisan and arbitrary approach had been adopted by the Appellants in denying their preferred symbol (Plough) for oblique reasons to deny a level-playing field between candidates. It was further submitted that the Plough symbol was well-known

to the electorate since decades as being exclusively associated with R1, the denial of the same is clearly intended to cause unjustified prejudice. It was stated that undue advantage would accrue to the remaining candidates/parties contesting the LAHDC elections.

12. He urged the Court to take note of the fact that despite the learned Single Judge having passed directions well before the commencement of even the filing of nominations, upheld by the learned Division Bench, which again, was before the starting of the nomination process, and despite there being a contempt case pending before the learned Single Judge, which was adjourned on prayer made by the Appellants, citing the pendency of the present appeal, the Appellants had not complied with the orders of the High Court. In this backdrop, submitted learned counsel, to take a stand before this Court that now due to efflux of time, no relief can be granted to R1, was clear dishonest conduct. It was submitted that this Court would not let a just cause be defeated only because of delay occasioned by the other side and the Appellants cannot

take the advantage of such delay caused by them to the detriment of R1's *bonafide*, legitimate and genuine claim.

13. Learned counsel submitted that allotment of symbols by the Appellants to the National Parties and free symbols shown in the Notification for the present elections clearly shows that the same are in conformity with the 1968 Order. Thus, he submitted, the Appellants are precluded from blowing hot and cold that they cannot and should not be permitted to selectively, as per their whims and fancies, decide as to which provisions under the 1968 Order would be applicable and which provisions would not. It was submitted that a harmonious reading of Paragraphs 9, 10, 10(A) as also 12 of the 1968 Order would indicate beyond doubt that in the absence of anything to the contrary, the Appellants were required to be guided by the 1968 Order *in toto*, which was also the indication in the letter written by the ECI to R1 and the same view was taken by the Law Department in its Legal Opinion to the Appellants.

ANALYSIS, REASONING AND CONCLUSION:

14. The relevant Paragraphs of the 1968 Order, attention to which was drawn by the learned ASG and the learned counsel for R1, are set out below:

"9. Restriction on the allotment of Symbols reserved for State parties in States where such parties are not recognised.— A symbol reserved for a State party in any State—

(a) shall not be included in the list of free symbols for any other State or Union territory, and

(b) shall not be reserved for any other party which subsequently becomes eligible, on fulfilment of the conditions specified in paragraph 6, for recognition as a State party in any other State:

Provided that nothing contained in clause (b) shall apply in relation to a political party, for which the Commission has, immediately before the commencement of the Election Symbols (Reservation and Allotment) (Amendment) Order, 1997, already reserved the same symbol which it has also reserved for some other State party or parties in any other State or States.

10. Concessions to candidates set up by a State party at elections in other States or Union territories.— If a political party, which is recognised as a State party in some State or States, sets up a candidate at an election in a constituency in any other State in which it is not a recognised State party, then such candidate may, to the exclusion of all other candidates in the constituency, be

allotted the symbol reserved for that party in the State or States in which it is a recognised State Party, notwithstanding that such symbol is not specified in the list of free symbols for such other State or Union territory, on the fulfilment of each of the following conditions, namely:—

(a) that an application is made to the Commission by the said party for exclusive allotment of that symbol to the candidate set up by it, not later than the third day after the publication in the Official Gazette of the notification calling the election;

(b) that the said candidate has made a declaration in his nomination paper that he has been set up by that party at the election and that the party has also fulfilled the requirements of clauses (b), (c), (d) and (e) of paragraph 13 read with paragraph 13A in respect of such candidate; and

(c) that in the opinion of the Commission there is no reasonable ground for refusing the application for such allotment: Provided that nothing contained in this paragraph shall apply to a candidate set up by a State party at an election in any constituency in a State in which that party is not a State Party and where the same symbol is already reserved for some other State Party in that State.

10A. Concession to candidates set up by an unrecognized party which was earlier recognized as a National or State party.— If a political party, which is unrecognized at present but was a recognized National or State party in any State or Union territory not earlier than six years from the date of notification of the election, sets up a candidate at an election in a constituency in any State or Union territory, whether such

party was earlier recognized in that State or Union territory or not, then such candidate may, to the exclusion of all other candidates in the constituency, be allotted the symbol reserved earlier for that party when it was a recognized National or State party, notwithstanding that such symbol is not specified in the list of free symbols for such State or Union territory, on the fulfillment of each of the following conditions, namely:--

(a) that an application is made to the Commission by the said party for the exclusive allotment of that symbol to the candidate set up by it, not later than the third day after the publication in the Official Gazette of the notification calling the election;

(b) that the said candidate has made a declaration in his nomination paper that he has been set up by that party at the election and that the party has also fulfilled the requirements of clauses (b), (c), (d) and (e) of paragraph 13 read with paragraph 13A in respect of such candidate; and

(c) that in the opinion of the Commission there is no reasonable ground for refusing the application for such allotment:

Provided that nothing contained in this paragraph shall apply to a candidate set up by the said party at an election in any constituency in a State or Union territory where the same symbol is already reserved for some other National or State party in that State or Union Territory.

xxx

12. Choice of symbols by other candidates and allotment thereof.-(1) Any candidate at

an election in a constituency in any State or Union territory, other than—

(a) a candidate set up by a National Party; or

(b) a candidate set up by a political party which is a State Party in that State; or

(c) a candidate referred to in paragraph 10 or paragraph 10A;

shall choose, and shall be allotted, in accordance with the provisions hereafter set out in this paragraph, one of the symbols specified as free symbols for that State or Union territory by notification under paragraph 17.

(2) Where any free symbol has been chosen by only one candidate at such election, the returning officer shall allot that symbol to that candidate and to no one else.

(3) Where the same free symbol has been chosen by several candidates at such election, then—

(a) if of those several candidates, only one is a candidate set up by an unrecognised political party and all the rest are independent candidates, the returning officer shall allot that free symbol to the candidate set up by the unrecognised political party, and to no one else; and, if, those several candidates, two or more are set up by different unrecognised political parties and the rest are independent candidates, the returning officer shall decide by lot to which of the two or more candidates set up by the different unrecognised political parties that free symbol shall be allotted, and allot that free symbol to the candidate on whom the lot falls, and to no one else:

Provided that where of the two or more such candidates set up by such different

unrecognized political parties, only one is, or was, immediately before such election, a sitting member of the House of the People, or, as the case may be, of the Legislative Assembly (irrespective of the fact as to whether he was allotted that free symbol or any other symbol at the previous election when he was chosen as such member), the returning officer shall allot that free symbol to that candidate, and to no one else;

(b) if, of those several candidates, no one is set up by any unrecognised political party and all the independent candidates, but one of the independent candidates is, or was, immediately before such election a sitting member of the House of the People, or, as the case may be, of the legislative Assembly, and was allotted that free symbol at the previous election when he was chosen as such member, the Returning Officer shall allot that free symbol to that candidate, and to no one else; and

(c) if, of those several candidates, being all independent candidates, no one is, or was, a sitting member as aforesaid, the returning officer shall decide by lot to which of those independent candidates that free symbol shall be allotted, and allot that free symbol to the candidates on whom the lot falls, and to no one else."

15. Sections 12 and 13 of the Ladakh Autonomous Hill Development Councils Act, 1997² (hereinafter referred to as the "1997 Act") read as under:

"12. Disputes regarding elections. - (1) No election shall be called in question except by an election petition presented in such

² This repealed The Ladakh Autonomous Hill Development Councils Act, 1995 (President's Act No.1 of 1995).

manner as may be prescribed and before such authority as may be appointed by Government, from time to time, by notification in the Government Gazette:

Provided that no person below the rank of a District Judge shall be appointed for the purpose of this section.

(2) No election shall be called in question except on any one or more of the following grounds, namely: -

(a) that on the date of his election the returned candidate was not qualified or was disqualified, to be chosen to fill the seat in the Council;

(b) that a corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of the returned candidate or his election agent.

Explanation: - For the purposes of this section "corrupt practice" shall mean any of the corrupt practices specified in section 132 of the Jammu and Kashmir Representation of the People Act, 1957;

(c) that any nomination has been improperly rejected;

(d) that the result of the election in so far as it concerns the returned candidate has been materially affected-

(i) by any improper acceptance of any nomination; or

(ii) by any corrupt practice committed in the interest of the returned candidate by an agent other than his election agent; or

(iii) by the improper reception, refusal or rejection of any vote; or

(iv) by the reception of any vote which is void; or

(v) by any non-compliance with provisions of this Act or of any rules or orders made thereunder.

(3) At the conclusion of the trial of an election petition the authority appointed under sub-section (1) shall make an order-

(a) dismissing the election petition; or

(b) declaring the election of all or any of the returned candidates to be void; or

(c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidates to have been duly elected.

(4) If a petitioner in addition to calling in question the election of a returned candidate makes a declaration that he himself or any other candidate has been duly elected and the authority under sub-section (1) is of opinion that-

(a) in fact the petitioner or such other candidate has received the majority of valid votes; or

(b) but for the votes obtained by the returned candidate by corrupt practice the petitioner or such other candidate would have obtained the majority of the valid votes,

the authority as aforesaid shall, after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have been duly elected.

13. Procedure for election disputes. - The procedure provided in the Code of Civil Procedure, Samvat 1977 in regard to suits shall be followed by the authority appointed under section 12 as far as it can be made

applicable in the trial and disposal of an election petition under this Act."

16. It requires no reiteration that the powers of this Court and the High Courts vested under the Constitution cannot be abridged, excluded or taken away, being part of the Basic Structure of our Constitution. Reference need only be made to decisions in ***His Holiness Kesavananda Bharati Sripadagalvaru v State of Kerala***, (1973) 4 SCC 225; ***Indira Nehru Gandhi v Raj Narain***, 1975 Supp SCC 1; ***Minerva Mills Ltd. v Union of India***, (1980) 3 SCC 625; ***L Chandra Kumar v Union of India***, (1997) 3 SCC 261 and more recently, to ***Kalpana Mehta v Union of India***, (2018) 7 SCC 1 and ***Rojer Mathew v South Indian Bank Limited***, (2020) 6 SCC 1, all of which were rendered by a Bench of 5 or more learned Judges. Section 12 of the 1997 Act need not detain us. Insofar as Section 13 of the 1997 Act is concerned, it is by now too well-settled that the availability of alternative efficacious remedy is no bar to the exercise of high prerogative writ jurisdiction, in the light of various decisions, including but not limited to, ***State of Uttar Pradesh v Mohammad Nooh***, 1958 SCR

595; Madhya Pradesh State Agro Industries Development Corporation Ltd. v Jahan Khan, (2007) 10 SCC 88; Maharashtra Chess Association v Union of India, (2020) 13 SCC 285. Even on the anvil of **Radha Krishan Industries v State of Himachal Pradesh, (2021) 6 SCC 771**, Section 13 of the 1997 Act does not, and cannot, impede a Constitutional Court from proceeding further. We do not wish to multiply established authorities on the point but would add the very recent **Godrej Sara Lee Ltd. v Excise and Taxation Officer-cum-Assessing Authority, 2023 SCC OnLine SC 95** to the list enumerated above.

17. At the threshold, it is noted that the ECI deals with the conduct of elections to the Parliament, the State Legislative Assemblies and the State Legislative Councils. The Union Territory of Ladakh does not currently have a Legislative Assembly. The last election to the Parliamentary constituency was held in the year 2019. That said, first things first. The Legal Opinion by the Law Department remains internal advice, and advice alone, and as such, the learned ASG was

correct in contending that the same would not create/confer any right in favour of R1. In ***Mahadeo v Sovan Devi***, 2022 SCC OnLine SC 1118 (where one of us, Vikram Nath, J. was part of the *coram*), the Court, after considering various case-laws, held that "*It is well settled that inter-departmental communications are in the process of consideration for appropriate decision and cannot be relied upon as a basis to claim any right. ...*"

18. In ***Kalpana Mehta*** (*supra*), Hon. Dipak Misra, C.J.I., with whom 4 learned Judges concurred, stated:

"40. While focussing on the exercise of the power of judicial review, it has to be borne in mind that the source of authority is the Constitution of India. The Court has the adjudicating authority to scrutinise the limits of the power and transgression of such limits. The nature and scope of judicial review has been succinctly stated in Union of India v. Raghbir Singh [Union of India v. Raghbir Singh, (1989) 2 SCC 754] by R.S. Pathak, C.J. thus : (SCC p. 766, para 7)

"7. ... The range of judicial review recognised in the superior judiciary of India is perhaps the widest and the most extensive known to the world of law. ... With this impressive expanse of judicial power, it is only right that the superior courts in India should be conscious of the enormous responsibility which rest on them. This is

especially true of the Supreme Court, for as the highest Court in the entire judicial system the law declared by it is, by Article 141 of the Constitution, binding on all courts within the territory of India."

And again: (SCC p. 767, para 11)

"11. Legal compulsions cannot be limited by existing legal propositions, because there will always be, beyond the frontiers of the existing law, new areas inviting judicial scrutiny and judicial choice-making which could well affect the validity of existing legal dogma. The search for solutions responsive to a changed social era involves a search not only among competing propositions of law, or competing versions of a legal proposition, or the modalities of an indeterminacy such as "fairness" or "reasonableness", but also among propositions from outside the ruling law, corresponding to the empirical knowledge or accepted values of present time and place, relevant to the dispensing of justice within the new parameters."

The aforesaid two passages lay immense responsibility on the Court pertaining to the exercise of the power keeping in view the accepted values of the present. An organic instrument requires the Court to draw strength from the spirit of the Constitution. The propelling element of the Constitution commands the realisation of the values. The aspiring dynamism of the interpretative process also expects the same.

41. This Court has the constitutional power and the authority to interpret the constitutional provisions as well as the statutory provisions. The conferment of the power of judicial review has a great sanctity as the constitutional court has the power to

declare any law as unconstitutional if there is lack of competence of the legislature keeping in view the field of legislation as provided in the Constitution or if a provision contravenes or runs counter to any of the fundamental rights or any constitutional provision or if a provision is manifestly arbitrary.

42. When we speak about judicial review, it is also necessary to be alive to the concept of judicial restraint. The duty of judicial review which the Constitution has bestowed upon the judiciary is not unfettered; it comes within the conception of judicial restraint. The principle of judicial restraint requires that Judges ought to decide cases while being within their defined limits of power. Judges are expected to interpret any law or any provision of the Constitution as per the limits laid down by the Constitution.

43. In S.C. Chandra v. State of Jharkhand [S.C. Chandra v. State of Jharkhand, (2007) 8 SCC 279 : (2007) 2 SCC (L&S) 897], it has been ruled that the judiciary should exercise restraint and ordinarily should not encroach into the legislative domain. In this regard, a reference to a three-Judge Bench decision in Suresh Seth v. Indore Municipal Corpn. [Suresh Seth v. Indore Municipal Corpn., (2005) 13 SCC 287] is quite instructive. In the said case, a prayer was made before this Court to issue directions for appropriate amendment in the M.P. Municipal Corporation Act, 1956. Repelling the submission, the Court held that it is purely a matter of policy which is for the elected representatives of the people to decide and no directions can be issued by the Court in this regard. The Court further observed that this Court cannot issue directions to the

legislature to make any particular kind of enactment. In this context, the Court held that under our constitutional scheme, Parliament and Legislative Assemblies exercise sovereign power to enact law and no outside power or authority can issue a direction to enact a particular kind of legislation. While so holding, the Court referred to the decision in *Supreme Court Employees' Welfare Assn. v. Union of India* [*Supreme Court Employees' Welfare Assn. v. Union of India*, (1989) 4 SCC 187 : 1989 SCC (L&S) 569] wherein it was held that no court can direct a legislature to enact a particular law and similarly when an executive authority exercises a legislative power by way of a subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which it has been empowered to do under the delegated authority.

44. Recently, in *Census Commr. v. R. Krishnamurthy* [*Census Commr. v. R. Krishnamurthy*, (2015) 2 SCC 796 : (2015) 1 SCC (L&S) 589], the Court, after referring to *Premium Granites v. State of T.N.* [*Premium Granites v. State of T.N.*, (1994) 2 SCC 691], *M.P. Oil Extraction v. State of M.P.* [*M.P. Oil Extraction v. State of M.P.*, (1997) 7 SCC 592], *State of M.P. v. Narmada Bachao Andolan* [*State of M.P. v. Narmada Bachao Andolan*, (2011) 7 SCC 639 : (2011) 3 SCC (Civ) 875] and *State of Punjab v. Ram Lubhaya Bagga* [*State of Punjab v. Ram Lubhaya Bagga*, (1998) 4 SCC 117 : 1998 SCC (L&S) 1021], held : (*R. Krishnamurthy case* [*Census Commr. v. R. Krishnamurthy*, (2015) 2 SCC 796 : (2015) 1 SCC (L&S) 589], SCC p. 809, para 33)

"33. From the aforesaid pronouncement of law, it is clear as noontday that it is not within the domain of the courts to embark upon an enquiry as to whether a particular public policy is wise and acceptable or whether a better policy could be evolved. The court can only interfere if the policy framed is absolutely capricious or not informed by reasons or totally arbitrary and founded ipse dixit offending the basic requirement of Article 14 of the Constitution. In certain matters, as often said, there can be opinions and opinions but the court is not expected to sit as an appellate authority on an opinion."

45. At this juncture, we think it apt to clearly state that the judicial restraint cannot and should not be such that it amounts to judicial abdication and judicial passivism. The Judiciary cannot abdicate the solemn duty which the Constitution has placed on its shoulders i.e. to protect the fundamental rights of the citizens guaranteed under Part III of the Constitution. The constitutional courts cannot sit in oblivion when fundamental rights of individuals are at stake. Our Constitution has conceived the constitutional courts to act as defenders against illegal intrusion of the fundamental rights of individuals. The Constitution, under its aegis, has armed the constitutional courts with wide powers which the courts should exercise, without an iota of hesitation or apprehension, when the fundamental rights of individuals are in jeopardy. Elucidating on the said aspect, this Court in Virendra Singh v. State of U.P. [Virendra Singh v. State of U.P., AIR 1954 SC 447] has observed : (AIR p. 454, para 34)

"34. ... We have upon us the whole armour of the Constitution and walk from henceforth in its enlightened ways, wearing the breastplate

of its protecting provisions and flashing the flaming sword of its inspiration."

46. While interpreting fundamental rights, the constitutional courts should remember that whenever an occasion arises, the courts have to adopt a liberal approach with the object to infuse lively spirit and vigour so that the fundamental rights do not suffer. When we say so, it may not be understood that while interpreting fundamental rights, the constitutional courts should altogether depart from the doctrine of precedents but it is the obligation of the constitutional courts to act as sentinel on the qui vive to ardently guard the fundamental rights of individuals bestowed upon by the Constitution. The duty of this Court, in this context, has been aptly described in *K.S. Srinivasan v. Union of India* [*K.S. Srinivasan v. Union of India*, AIR 1958 SC 419] wherein it was stated : (AIR p. 433, para 50)

"50. ... All I can see is a man who has been wronged and I can see a plain way out. I would take it."

47. Such an approach applies with more zeal in case of Article 32 of the Constitution which has been described by Dr B.R. Ambedkar as "the very soul of the Constitution – the very heart of it – the most important Article". Article 32 enjoys special status and, therefore, it is incumbent upon this Court, in matters under Article 32, to adopt a progressive attitude. This would be in consonance with the duty of this Court under the Constitution, that is, to secure the inalienable fundamental rights of individuals."

(emphasis supplied)

19. The observations afore-referred are in perfect sync with what is expected of Constitutional Courts. They are not restricted only to Articles 32 or 226 of the Constitution but lay down a talisman of sorts.

20. The learned ASG also submitted that the Appellants were entitled to take an independent decision. This goes against their stand before the learned Division Bench. If we were to agree with this, the obvious import, then, would be that the Appellants were required to take a decision independently. As noted in Paragraphs 5 and 11 of the Impugned Judgment, the Appellants contended that the ECI was the competent authority to allot symbols and not the Election Authority. What then was the reason for the Appellants to shift stands? When read in conjunction with the finding at Paragraph 13 of the Impugned Judgment the Appellants' acts leave no shred of doubt in our minds, that circumstances forcing this Court to intercede have arisen. Let us for a moment, however, consider that the Appellants, as now sought to be projected, were entitled to arrive at an independent decision. Yet,

such decision could not be whimsical, arbitrary or capricious. It would necessarily have to be: (a) in accordance with lawful discretion; (b) reasonable, and; (c) equitable and just. The Court would indicate that a genuine request, in the attendant facts, could not have been turned down only on the ground that there was no provision for the same, when such request could be acceded to (i) without any violation of law, and; (ii) is within the jurisdictional domain and capacity of the authority concerned, and; (iii) does not prejudice any other stakeholder, and; (iv) does not militate against public interest.

21. The High Court, being a Constitutional Court, is not, by any stretch of imagination, precluded from issuing a direction of the nature issued by it in the instant case, under Article 226 of the Constitution of India, more so when such direction does not violate any statutory provision. In ***High Court of Tripura v Tirtha Sarathi Mukherjee***, (2019) 16 SCC 663, this Court had answered, in the affirmative, as to the power of the High Courts under Article 226 to direct for actions, in

a rare and exceptional situation, which do not find mention in the provisions concerned. Noticing and relying upon **High Court of Tripura** (supra), in **Aish Mohammad v State of Haryana, 2023 SCC OnLine SC 736**, we held:

"24. Moreover, the learned Civil Judge (Junior Division) found no ground to interfere with the adverse remarks yet granted liberty to the appellant to move for expunction thereof. The learned Civil Court erred in assuming that it had the power to do so, in the absence of any such provision in the Punjab Police Rules, 1934. There may be cases where a High Court under Articles 226 or 227 of the Constitution of India or this Court in exercise of its constitutional powers may specifically direct for fresh consideration of a representation, even in the absence of specific provisions. In High Court of Tripura v. Tirtha Sarathi Mukherjee, (2019) 16 SCC 663, the question that arose was whether, in the absence of a statutory provision, a writ petitioner could seek re-evaluation of examination answer scripts? Answering, this Court held:

"20. The question however arises whether even if there is no legal right to demand re-valuation as of right could there arise circumstances which leave the Court in any doubt at all. A grave injustice may be occasioned to a writ applicant in certain circumstances. The case may arise where even though there is no provision for re-valuation it turns out that despite giving the correct answer no marks are awarded. No doubt

this must be confined to a case where there is no dispute about the correctness of the answer. Further, if there is any doubt, the doubt should be resolved in favour of the examining body rather than in favour of the candidate. **The wide power under Article 226 may continue to be available even though there is no provision for re-valuation in a situation where a candidate despite having giving correct answer and about which there cannot be even the slightest manner of doubt, he is treated as having given the wrong answer and consequently the candidate is found disentitled to any marks.**

21. **Should the second circumstance be demonstrated to be present before the writ court, can the writ court become helpless despite the vast reservoir of power which it possesses? It is one thing to say that the absence of provision for re-valuation will not enable the candidate to claim the right of evaluation as a matter of right and another to say that in no circumstances whatsoever where there is no provision for re-valuation will the writ court exercise its undoubted constitutional powers? We reiterate that the situation can only be rare and exceptional.**

(emphasis supplied)"

(emphasis supplied by us via bolding)

22. Elections to any office/body are required to be free, fair and transparent. Elections lie at the core of democracy. The authority entrusted by law to

hold/conduct such elections is to be completely independent of any extraneous influence/consideration. It is surprising that the Union Territory of Ladakh not only denied R1 the Plough symbol, but even upon timely intervention by the learned Single Judge, has left no stone unturned not only to resist but also frustrate a cause simply by efflux of time.

23. A detailed dive into the sequence of events is apposite. R1 was before the concerned authorities, by way of representation, well in time, and much before even the Notification dated 02/05.08.2023 was published, by impugning the Notification dated 26.07.2023 which denied it the Plough symbol. R1 had moved the ECI, which opined, by way of communication dated 18.07.2023 that the ECI does not allocate any symbol for local body elections as the same falls within the domain of the State Election Commission concerned. The ECI stated that as there is no Legislative Assembly in the Union Territory of Ladakh and the 1968 Order does not provide for recognition to parties in a Union Territory without a Legislative

Assembly, R1 could not be recognised in the Union Territory of Ladakh. However, it was further noted that as R1 is a recognized State Party in the Union Territory of Jammu and Kashmir with its reserved symbol being the Plough, it could avail concession under Paragraph 10³ of the 1968 Order.

24. On 15.05.2023, the ECI updated its Notification dated 23.09.2021 specifying the names of recognised National and State Parties and the list of free symbols where R1 was again recognised as a State Party, though for the Union Territory of Jammu and Kashmir only. On 31.05.2023, R1 made a representation to the Appellant No.2 seeking recognition as a State Party and for the allotment of the Plough symbol to it for all elections in the Union Territory of Ladakh. Appellant No.2 forwarded the said representation to Appellant No.3 for comments. On 07.06.2023, Appellant No.3 advised Appellant No.2 to approach the ECI. On 08.06.2023, R1 sought recognition as a State Party in the Union Territory of Ladakh and allotment of the Plough symbol.

³ Already extracted *supra*.

25. On 07.07.2023, R1 represented to Appellant No.2 seeking recognition as a State Party in the Union Territory of Ladakh with the Plough symbol. Appellant No.2 forwarded the said representation to Appellant No.3 on 11.07.2023 and sought comments thereon. On 12.07.2023, Appellant No.3 wrote to Appellant No.2, incorporating the opinion of the Law Department, which was in favour of R1. Appellant No.3 indicated that R1 can be recognised and provided reserved symbol for LAHDC elections by the Administration of Union Territory of Ladakh under the relevant rules.

26. No action was taken and no order was passed pursuant to Appellant No.3's communication dated 12.07.2023 to Appellant No.2. Then, the Election Department of the Union Territory of Ladakh issued a Notification on 26.07.2023 notifying the list of reserved and free symbols, in terms of the ECI's Notification dated 15.05.2023. R1 approached the High Court on 29.07.2023 challenging the notification dated 26.07.2023 and seeking a mandamus to notify the Plough

symbol as its reserved symbol for elections to LAHDC. The Writ Petition being pending, on 05.08.2023, the Election Department of the Union Territory of Ladakh notified the schedule of elections to constitute the 5th LAHDC, Kargil. In such background, an interim order came to be passed by the learned Single Judge and affirmed by the learned Division Bench.

27. This Court notes, with concern, that the Appellants, while sitting on the representation of R1, went ahead and notified the elections on 02/05.08.2023. We are unable to appreciate such conduct. This recalcitrance to decide in time speaks volumes. Instances like these raise serious questions.

28. Having considered the matter *in extenso*, the Court does not find any merit in the present appeal. The request for allotment of the Plough symbol by R1 was *bonafide*, legitimate and just, for the plain reason that in the erstwhile State of Jammu and Kashmir (which included the present Union Territory of Ladakh), it was a recognized State Party having been allotted the

Plough symbol. Upon bifurcation of the erstwhile State of Jammu and Kashmir and the creation of two new Union Territories, namely the Union Territory of Jammu and Kashmir and the Union Territory of Ladakh, though the ECI had not notified R1 as a State Party for the Union Territory of Ladakh, it cannot be *simpliciter* that R1 was not entitled for the allotment of plough symbol to it, in the factual background. What is also clear is that the Appellants are attempting to approbate and reprobate, which this Court will not countenance.

29. In the present case, there is no conflict with any other stakeholder for the reason that the Plough symbol is neither a symbol exclusively allotted to any National or State Party nor one of the symbols shown in the list of free symbols. Thus, there was and is no impediment in such symbol being granted to R1. This is also fortified in the factual setting of the Plough symbol being the reserved symbol for R1 in the erstwhile State of Jammu and Kashmir and even for the Union Territory of Jammu and Kashmir, as it now exists, where the same symbol stands allotted to it.

30. The contention of the learned ASG for the Appellants that the Plough symbol cannot be allotted, neither has been supported by any reason nor any legal impediment to such grant has been shown. In the absence of anything contrary in any rule framed for conduct of the elections in question, relating to allotment of symbols, the provisions of the 1968 Order can safely be relied upon, at the very least, as a guideline to exercise of executive power of like nature. Thus, a harmonious reading of Paragraphs 9, 10, 10(A) and 12 would clearly indicate that under the terms of the 1968 Order, the request of R1 is not bereft of justification. At the cost of repetition, the Court would indicate that nothing substantive has been shown to this Court to indicate that allotment of the Plough symbol would in any way be an infraction or go against the public interest.

31. Another major issue canvassed by the learned ASG on behalf of the Appellants, to the effect that no relief be granted to R1 due to the election process

having reached the penultimate stage, unfortunately, has also to be noted to be rejected. Having chosen, with eyes open, to not comply with successive orders of the learned Single Judge and the learned Division Bench, both of which were passed well in time, such as not to stall/delay the notified election schedule, the Appellants cannot be permitted to plead that interference by us at this late juncture should not be forthcoming.

32. The Court would categorically emphasize that no litigant should have even an iota of doubt or an impression (rather, a misimpression) that just because of systemic delay or the matter not being taken up by the Courts resulting in efflux of time the cause would be defeated, and the Court would be rendered helpless to ensure justice to the party concerned. It would not be out of place to mention that this Court can even turn the clock back, if the situation warrants such dire measures. The powers of this Court, if need be, to even restore *status quo ante* are not in the realm of any doubt. The relief(s) granted in the lead opinion by

Hon. Khehar, J. (as the learned Chief Justice then was), concurred with by the other 4 learned Judges, in ***Nabam Rebia and Bamang Felix v Deputy Speaker, Arunachal Pradesh Legislative Assembly, (2016) 8 SCC 1*** is enough on this aspect. We know full well that a 5-Judge Bench in ***Subhash Desai v Principal Secretary, Governor of Maharashtra, 2023 SCC OnLine SC 607*** has referred ***Nabam Rebia*** (*supra*) to a Larger Bench. However, the questions referred to the Larger Bench do not detract from the power to bring back *status quo ante*. That apart, it is settled that mere reference to a larger Bench does not unsettle declared law. In ***Harbhajan Singh v State of Punjab, (2009) 13 SCC 608***, a 2-Judge Bench said:

"15. Even if what is contended by the learned counsel is correct, it is not for us to go into the said question at this stage; herein cross-examination of the witnesses had taken place. The Court had taken into consideration the materials available to it for the purpose of arriving at a satisfaction that a case for exercise of jurisdiction under Section 319 of the Code was made out. Only because the correctness of a portion of the judgment in Mohd. Shafi [(2007) 14 SCC 544 : (2009) 1 SCC (Cri) 889 : (2007) 4 SCR 1023 : (2007) 5 Scale 611] has been doubted by another Bench, the same would not mean

that we should wait for the decision of the larger Bench, particularly when the same instead of assisting the appellants runs counter to their contention."

(emphasis supplied)

33. In **Ashok Sadarangani v Union of India, (2012) 11 SCC 321**, another 2-Judge Bench indicated:

"29. As was indicated in Harbhajan Singh case [Harbhajan Singh v. State of Punjab, (2009) 13 SCC 608: (2010) 1 SCC (Cri) 1135], the pendency of a reference to a larger Bench, does not mean that all other proceedings involving the same issue would remain stayed till a decision was rendered in the reference. The reference made in Gian Singh case [(2010) 15 SCC 118] need not, therefore, detain us. Till such time as the decisions cited at the Bar are not modified or altered in any way, they continue to hold the field."

(emphasis supplied)

34. On the other hand, when it was thought proper that other Benches of this Court, the High Courts and the Courts/Tribunals below stay their hands, the same was indicated in as many words, as was the case in **State of Haryana v G D Goenka Tourism Corporation Limited, (2018) 3 SCC 585⁴**:

⁴The reference was eventually answered in **Indore Development Authority v Manoharlal, (2020) 8 SCC 129**.

"9. Taking all this into consideration, we are of the opinion that it would be appropriate if in the interim and pending a final decision on making a reference (if at all) to a larger Bench, the High Courts be requested not to deal with any cases relating to the interpretation of or concerning Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The Secretary General will urgently communicate this order to the Registrar General of every High Court so that our request is complied with.

10. Insofar as the cases pending in this Court are concerned, we request the Benches concerned dealing with similar matters to defer the hearing until a decision is rendered one way or the other on the issue whether the matter should be referred to a larger Bench or not. Apart from anything else, deferring the consideration would avoid inconvenience to the litigating parties, whether it is the State or individuals."

(emphasis supplied)

35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate

Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in ***National Insurance Company Limited v Pranay Sethi, (2017) 16 SCC 680***⁵. The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it.

36. We are conscious that, by way of certain pronouncements, some of which are alluded to in this judgment, the Court extended principles relating to elections to Parliament, State Assemblies and

⁵ See Paragraphs 27 and 28 in the report on this point.

Municipalities to other arenas as well. Indicatively, the interpretation of judgments is always to be made with due regard to the facts and circumstances of the peculiar case concerned⁶. We have looked at Articles 243-0, 243ZG and 329 of the Constitution, and conclude that no bar hit the High Court, even on principle. Apart from the judgments expressly considered and dealt with, hereinbefore and hereinafter, we have perused, out of our own volition, the decisions, *inter alia*, of varying Bench-strength of this Court in ***N P Ponnuswami v Returning Officer, Namakkal Constituency, 1952 SCR 218***⁷; ***Durga Shankar Mehta v Thakur Raghuraj Singh, (1955) 1 SCR 267***; ***Hari Vishnu Kamath v Syed Ahmad Ishaque, (1955) 1 SCR 1104***; ***Narayan Bhaskar Khare (Dr) v Election Commission of India, 1957 SCR 1081***; ***Mohinder Singh Gill v Chief Election Commissioner, (1978) 1 SCC 405***; ***Lakshmi Charan Sen v A K M Hassan Uzzaman, (1985) 4 SCC 689***; ***Indrajit Barua v Election Commission of India, (1985) 4 SCC 722***; ***Election Commission of India v Shivaji, (1988) 1 SCC 277***; ***Digvijay Mote v Union of***

⁶ ***Sanjay Dubey v State of Madhya Pradesh, 2023 INSC 519 @ Paragraph 18.***

⁷ Where the Court held that “*The discussion in this passage makes it clear that the word “election” can be and has been appropriately used with reference to the entire process which consists of several stages and embraces many steps, some of which may have an important bearing on the result of the process.*”, with respect to Article 329(b) of the Constitution.

India, (1993) 4 SCC 175⁸; *Boddula Krishnaiah v State Election Commissioner, Andhra Pradesh*, (1996) 3 SCC 416; *Anugrah Narain Singh v State of Uttar Pradesh*, (1996) 6 SCC 303; *Election Commission of India v Ashok Kumar*, (2000) 8 SCC 216; *Kishansing Tomar v Municipal Corporation, Ahmedabad*, (2006) 8 SCC 352; *West Bengal State Election Commission v Communist Party of India (Marxist)*, (2018) 18 SCC 141; *Dravida Munnetra Kazhagam v State of Tamil Nadu*, (2020) 6 SCC 548; *Laxmibai v Collector*, (2020) 12 SCC 186, and last but not the least, *State of Goa v Fouziya Imtiaz Shaikh*, (2021) 8 SCC 401⁹. On scrutiny, in combination with the timelines and facts of the matter herein, we are sure that the High Court did not falter.

37. We would indicate that the restraint, self-imposed, by the Courts as a general principle, laid out in some detail in some of the decisions *supra*, in election matters to the extent that once a notification is issued and the election process starts, the Constitutional Courts, under normal circumstances are loath to

⁸ Where, apropos Article 324 powers of the ECI, this Court held “*However, it has to be stated this power is not unbridled. Judicial review will still be permissible, over the statutory body exercising its functions affecting public law rights.*”

⁹ Where the learned 3-Judge Bench has considered a catena of the precedents relevant to the issue(s) before it.

interfere, is not a contentious issue. But where issues crop up, indicating unjust executive action or an attempt to disturb a level-playing field between candidates and/or political parties with no justifiable or intelligible basis, the Constitutional Courts are required, nay they are duty-bound, to step in. The reason that the Courts have usually maintained a hands-off approach is with the sole salutary objective of ensuring that the elections, which are a manifestation of the will of the people, are taken to their logical conclusion, without delay or dilution thereof. In the context of providing appropriate succour to the aggrieved litigant at the appropriate time¹⁰, the learned Single Judge acted rightly. In all fairness, we must note that the learned ASG, during the course of arguments, did not contest the power *per se* of the High Court to issue the directions it did, except that the same amounted to denying the Appellants their discretion. As stated hereinbefore, we are satisfied that in view of the 1968 Order, the Appellants' discretion was not unbridled, and rather, it was guided by the 1968 Order.

¹⁰ *B S Hari Commandant v Union of India*, 2023 SCC OnLine SC 413 @ Paragraph 50.

38. The reasoning of the learned Single Judge, further expounded by the learned Division Bench, leaves no doubt that the relief sought by R1 was required to be granted and, accordingly, the same was granted by the High Court. The stark factor which stares us in the face is that well before and well in time, by way of the writ petition, R1 had approached the Court of first instance (the learned Single Judge), for the reliefs, which have been found due to them ultimately, and upheld by the Appellate Court (the learned Division Bench). It is the Appellants, who by virtue of sheer non-compliance of the High Court's orders, be it noted, without any stay, can alone be labelled responsible for the present imbroglio. These stark facts cannot be broadly equated with other hypothetical scenarios, wherein the facts may warrant a completely hands-off approach.

39. This case constrains the Court to take note of the broader aspect of the lurking danger of authorities concerned using their powers relating to elections

arbitrarily and thereafter, being complacent, rather over-confident, that the Courts would not interfere. The misconceived notion being that in the ultimate eventuate, after elections are over, when such decisions/actions are challenged, by sheer passage of time, irreversible consequences would have occurred, and no substantive relief could be fashioned is just that - misconceived. However, conduct by authorities as exhibited herein may seriously compel the Court to have a comprehensive re-think, as to whether the self-imposed restrictions may need a more liberal interpretation, to ensure that justice is not only done but also seen to be done, and done in time to nip in the bud any attempted misadventure. We refrain from further comment on the Appellants, noting the pendency of the contempt proceeding.

40. As made clear by us in the foregoing paragraphs, the situation emanating herein is, in a manner of speaking, unprecedented. With a sense of anguish, it would not be wrong to say that the instant judgment has been invited upon themselves by the Appellants. The

orders of the High Court, in our considered opinion, were in aid of the electoral process, and no fault can be found therewith.

41. The learned ASG's submission that nobody representing R1 had filed his/her nomination form, by the last date notified, is inapposite, inasmuch as in the position existing, no candidate/representative affiliated with R1 could have filled up the form as the Plough symbol was neither a reserved symbol nor a free symbol, and thus, could not have been opted for by any candidate when filing the nomination form. The serious consequence was that R1's identity as a political party was eclipsed, right before the election to the LAHDC, where it was the incumbent party in power.

42. This Court has previously bestowed consideration on the importance of the symbol in an electoral system, especially one allotted to a political party. Taking note of the 3-Judge Bench decision in ***Shri Sadiq Ali v Election Commission of India, New Delhi, (1972) 4 SCC 664***, another Bench of 3 learned Judges in ***All Party***

Hill Leaders' Conference, Shillong v Captain W A Sangma, (1977) 4 SCC 161 put it thus:

"29. For the purpose of holding elections, allotment of symbol will find a prime place in a country where illiteracy is still very high. It has been found from experience that symbol as a device for casting votes in favour of a candidate of one's choice has proved an invaluable aid. Apart from this, just as people develop a sense of honour, glory and patriotic pride for a flag of one's country, similarly great fervour and emotions are generated for a symbol representing a political party. This is particularly so in a parliamentary democracy which is conducted on party lines. People after a time identify themselves with the symbol and the flag. These are great unifying insignia which cannot all of a sudden, be effaced.¹¹"

(emphasis supplied)

43. Placing reliance on **Shri Sadiq Ali** (supra), a 2-Judge Bench summed up as under, in **Edapaddi K Palaniswami v TTV Dhinakaran, (2019) 18 SCC 219**:

"39. We say so because the efficacy of having a common symbol for a political group has been underscored in Sadiq Ali v. Election Commission of India [Sadiq Ali v. Election Commission of India, (1972) 4 SCC 664] . In para 21 of the said judgment, this Court observed thus : (SCC pp. 674-75)

"21. ... It is well known that overwhelming majority of the electorate are illiterate. It was realised that in view of the handicap of

¹¹ Maintained as appearing in the SCC version available on SCC OnLine; should be read as 'effaced'.

illiteracy, it might not be possible for the illiterate voters to cast their votes in favour of the candidate of their choice unless there was some pictorial representation on the ballot paper itself whereby such voters might identify the candidate of their choice. Symbols were accordingly brought into use. Symbols or emblems are not a peculiar feature of the election law of India. ... The object is to ensure that the process of election is as genuine and fair as possible and that no elector should suffer from any handicap in casting his vote in favour of a candidate of his choice. Although the purpose which accounts for the origin of symbols was of a limited character, the symbol of each political party with the passage of time acquired a great value because the bulk of the electorate associated the political party at the time of elections with its symbol. ..."

(emphasis supplied)

And again in paras 40 and 41 it is observed thus : (Sadiq Ali case [Sadiq Ali v. Election Commission of India, (1972) 4 SCC 664] , p. 682)

"40. ... It would, therefore, follow that Commission has been clothed with plenary powers by the abovementioned Rules in the matter of allotment of symbols. ... If the Commission is not to be disabled from exercising effectively the plenary powers vested in it in the matter of allotment of symbols and for issuing directions in connection therewith, it is plainly essential that the Commission should have the power to settle a dispute in case claim for the allotment of the symbol of a political party is made by two rival claimants. ... Para 15 is intended to effectuate and subserve the main purposes and objects of the Symbols Order.

The paragraph is designed to ensure that because of a dispute having arisen in a political party between two or more groups, the entire scheme of the Symbols Order relating to the allotment of a symbol reserved for the political party is not set at naught. ... The Commission is an authority created by the Constitution and according to Article 324, the superintendence, direction and control of the electoral rolls for and the conduct of elections to Parliament and to the Legislature of every State and of elections to the office of President and Vice-President shall be vested in the Commission. The fact that the power of resolving a dispute between two rival groups for allotment of symbol of a political party has been vested in such a high authority would raise a presumption, though rebuttable, and provide a guarantee, though not absolute but to a considerable extent, that the power would not be misused but would be exercised in a fair and reasonable manner.

41. ... Article 324 as mentioned above provides that superintendence, direction and control of elections shall be vested in Election Commission. ..."

(emphasis supplied)

40. This decision in Sadiq Ali [Sadiq Ali v. Election Commission of India, (1972) 4 SCC 664] has been followed in Kanhiya Lal Omar v. R.K. Trivedi [Kanhiya Lal Omar v. R.K. Trivedi, (1985) 4 SCC 628] and in para 10 thereof, the Court observed thus : (SCC pp. 635-36)

"10. It is true that till recently the Constitution did not expressly refer to the existence of political parties. But their existence is implicit in the nature of democratic form of Government which our country has adopted. The use of a symbol, be

it a donkey or an elephant, does give rise to a unifying effect amongst the people with a common political and economic programme and ultimately helps in the establishment of a Westminster type of democracy which we have adopted with a Cabinet responsible to the elected representatives of the people who constitute the Lower House. The political parties have to be there if the present system of Government should succeed and the chasm dividing the political parties should be so profound that a change of administration would in fact be a revolution disguised under a constitutional procedure. It is no doubt a paradox that while the country as a whole yields to no other in its corporate sense of unity and continuity, the working parts of its political system are so organised on party basis – in other words, “on systematised differences and unresolved conflicts”. That is the essence of our system and it facilitates the setting up of a Government by the majority. Although till recently the Constitution had not expressly referred to the existence of political parties, by the amendments made to it by the Constitution (Fifty-second Amendment) Act, 1985 there is now a clear recognition of the political parties by the Constitution. The Tenth Schedule to the Constitution which is added by the above Amending Act acknowledges the existence of political parties and sets out the circumstances when a member of Parliament or of the State Legislature would be deemed to have defected from his political party and would thereby be disqualified for being a member of the House concerned. Hence it is difficult to say that the reference to recognition, registration, etc. of political parties by the Symbols Order is unauthorised and against the political system adopted by our country.”

(emphasis supplied)"
(emphasis supplied by us *via* bolding)

44. For reasons aforesaid, the entire election process, initiated pursuant to Notification dated 02.08.2023 issued by the Administration of Union Territory of Ladakh, Election Department, UT Secretariat, Ladakh, under S.O.53 published *vide* No.Secy/Election/2023/290-301 dated 05.08.2023 stands set aside. A fresh Notification shall be issued within seven days from today for elections to constitute the 5th Ladakh Autonomous Hill Development Council, Kargil. R1 is declared entitled to the exclusive allotment of the Plough symbol for candidates proposed to be put up by it.

45. Accordingly, this appeal stands dismissed with costs of Rs.1,00,000/- (Rupees One Lakh) to be deposited in the Supreme Court Advocates on Record Welfare Fund. The same be done within two weeks, and receipt evincing proof thereof be filed with the Registry of this Court within a week thereafter. IAs

170883/2023, 170885/2023 and 174512/2023 be treated as formally allowed.

46. Two further consequences flow:

(a) Writ Petition (Civil) No.1933 of 2023 pending at the High Court at Srinagar is also disposed of in the above terms.

(b) CCP(S) No.340 of 2023, statedly listed next on 08.09.2023 before the learned Single Judge, survives. The same be proceeded with expeditiously, in accordance with law, considering the present judgment.

.....J.
[VIKRAM NATH]

.....J.
[AHSANUDDIN AMANULLAH]

NEW DELHI
06th SEPTEMBER, 2023