

**BEFORE THE HONORABLE NATIONAL GREEN TRIBUNAL, 1**

**WESTERN ZONE BENCH, PUNE.**

**DISTRICT: PUNE**

**ORIGINAL APPLICATION No: 10/2022**

**In the matter of**

Dr. Adinath Bhujaballi Kuchanur..... Original Applicant

Versus

The Union of India & Ors.....Respondents

**WRITTEN NOTES OF SUBMISSION FOR ADMISSION**

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The Original Applicant above-named most respectfully and humbly submits his written notes for admission of the Original Application No: 10/2022 (WZB) for the sympathetic and kind consideration of this Hon'ble Tribunal as under:

1. It is submitted that the Applicant being the environmentalist and the resident of Pune, Maharashtra State and the citizen of India and having appetite towards the protection and improvement of environment and ecology, has the Fundamental Duty under Article 51A (g) of the Indian Constitution. That the Hon'ble Supreme Court of India in the case of "*Sachidanand Pandey versus State of West Bengal AIR 1987 SC 1109*" stated that the Court is bound to bear in mind the Article 48A and 51A (g) of the Constitution of India whenever a case related to Environmental problem is brought to the Court. Further, Article 48A states that the "*State shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country*" and Article 51A (g) imposes a duty upon "*every citizen of India to protect and improve the natural environment and confers right to come before the Court for appropriate relief*"
2. It is submitted that the Times of India dated 31-07-2021 had reported that the Respondent No: 6 (PP) had "*launched*" the Project called "*The Central Park*" at CTS No: 4510, 451/1 and 4513 and the Applicant has received on 29-12-2021 the

information under the Right To Information Act, 2005 from the Office of the Respondent No: 3 regarding the Consent to Establish not obtained by the Respondent No: 6 (PP) (*Annex-F, P: 60 & 61, Annex-H, P: 75*). Hence, the Original Application No: 10/2022 is filed “*well within the limitation period*” of 6 (Six) months u/s 14 and 5 (Five) years u/s 15 of the NGT Act, 2010.

3. It is submitted that the information received on 29-12-2021 under RTI Act, 2005 is maintainable in the Court of Law. Because, RTI Act, 2005 been accepted as a Fundamental Right of citizens under Article 19 (1) (a) of the Indian Constitution which reads as “*All citizens shall have the right to freedom of speech and expression*” The Hon’ble Supreme Court of India in the case of People's Union For Civil versus Union of India (Civil Appeal No: 4294 of 1998) held that

*“Right of information is a facet of 'speech and expression' as contained in Article 19 (1) (a) of the Constitution of India. Right of information, thus, indisputably is a fundamental right”*

4. Further, this Hon’ble Tribunal in the case of Amit Maru versus MoEF [in M.A. No.65/2014 in Application No.13/2014 (WZ)] observed that:

*“11. Now, the term 'environment' has to be interpreted liberally. The environmental dispute cannot be cribbed, cabined or put in the small compass of 'personal disputes' or 'property disputes' or "disputed rights between two groups" or "individual rights". The damage caused to environment has to be looked from holistic angle. Any person may raise environmental dispute irrespective of his being personally affected due to the act of wrong Page 10 (J) M.A. No.65/2014 in Application No.13/2014 (WZ) doer/polluter or violator of environmental Law/Norms. The only barrier is that such a person shall not file the Application with malafide intention. Secondly, he shall not be totally alien. In other words, if it is demonstrated that the Applicant is a person interested in protection of environment, or at least restitution of environment, then prima facie, he has locus standi to maintain the Application”.*

Thus, the Applicant has “*locus standi*” to file the Original Application No: 10/2022 under Article 51A (g) of the Indian Constitution owing to protect and improve the environment and ecology.

5. “*The Central Park*” is the Residential and Commercial Project undertaken by Respondent No: 6- M/s. R. Retail Ventures Pvt Ltd situated at CTS No: 4510, 451/1 and 4513, Village: Chinchwad, Taluka: Haveli, District: Pune within the limit and jurisdiction of PCMC on total land admeasuring of 95,516.12 m<sup>2</sup> with

total BUA 491315.37 comprising of Eleven Residential Buildings, One Mall Office Hotel Building and One Club House and One Swimming Pool as per the Environmental Clearance dated 30-04-2021 (*Annex- E, P: 51, 52, 53*). However, PP has not obtained the Consent to Establish from the Respondent No: 3 and further PP has not deliberately complied with terms and conditions of Environment Clearances dated 30-04-2021 and also PP has not complied with the conditions imposed by SEAC and SEIAA (*Annex- E, P: 55 to 58*).

6. It is submitted that PP had submitted to the Respondent No: 5 by solemnly admitting that the total land area is 1,07,422 m<sup>2</sup> at CTS No: 4510 and 4513 for MAHARERA Registration No: P52100025260. However, PP had given the false and frivolous information to the Respondent No: 2 for obtaining the Prior Environmental Clearance dated 30-04-2021 by solemnly admitting that the total land area is 95,516.12 m<sup>2</sup> at CTS No: 4510, 451/1 and 4513 instead of total land area: 1,07,422 m<sup>2</sup> at CTS No: 4510 and 4513 and further CTS No: 4510/1 was also falsely added in the Prior Environmental Clearance dated 30-04-2021. The true and false information is presented as under.

S1 No	Document Name	Date	CTS No	Area in Sq. M	Information
1	Form "B" Rule 3 (6)	05-03-2020	4510 and 4513	1,07,422	True
2	Environmental Clearance.	30-04-2021	4510, 4510/1 and 4513	95,516.12	False
3	RTI Information No: 211229-FTS-0183.	29-12-2021	4510, 4510/1 and 4513	N A	False
No records found			CTS No: 4510/1	11,905.88	True

Therefore, PP had submitted with a malafide motive the false and frivolous information to the Respondent No: 2 while obtaining the Prior Environmental Clearance dated 30-04-2021 (*Annex- B, E and H, P: 40, 51 and 75*).

7. That the Affidavit cum Declaration and Application and for obtaining the prior environmental clearance dated 30-04-2021 show that there is "*No Litigation*" or "*No Court Cases Pending*" against the said Larger Land or Project Land at CTS No: 4510, 4510/1 and 4513 in which the project is proposed to be set up. However,

a Writ Petition (Civil Litigation) No: 2789 is pending in the Hon'ble Bombay High Court & the MAHARERA website: [www.mahaonline.gov.in](http://www.mahaonline.gov.in). dated on 08-11-2021.

S I No	Document Name	Date	Court Cases	Information
1	Bombay High Court website	11-02-2020	WP/2789/2020 Pending	True
2	MAHARERA Website	08-11-2021	WP/2789/2020 Pending	True
3	Affidavit cum Declaration	05-03-2020	No Litigation pending	False
4	Application made for obtaining Environmental Clearance	08-01-2021	No Court Cases pending	False

Therefore, it is clear from the above information that PP had submitted with a malafide motive the false and frivolous information to the Respondents No: 2 and 5 for obtaining the Prior Environmental Clearance dated 30-04-2021 and getting the said project MAHARERA Registration No: P52100025260 respectively (*Annex- B, C, D and G, P: 40, 42, 49 and 71*).

8. The details of “*Court Cases*” pending against the Larger Land or Property at CTS No: 4510, 4510/1 and 4513 were not mentioned with a malafide motive by the Respondent No: 2 and 6 (PP) on the Prior Environmental Clearance dated 30-04-2021 and the Times of India dated 31-07-2021. (*Annex- E and F, P: 51 to 61*).
9. The Respondent No: 4 had not granted the Commencement Certificate and Building Layout Plan for total BUA: 19,745.90 m<sup>2</sup> (*Restricted as per CC*) as mentioned in the Environmental Clearance dt 30-04-2021 (*Annex- E, P: 55*).
10. PP had “*launched*” the said project by advertising in the Times of India on 31-07-2021 quoting the details of the said project. However, the Respondent No: 3 had not granted the consent to establish the said project.

S I No	Document Name	Date	Consent to Establish	Information
1	Project Launched as advertised in the Times of India.	31-07-2021	Not mentioned	True
2	RTI Information No: 211229-FTS-0183.	29-12-2021	Not granted	True

			so far.	
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It is obvious that PP has illegally been constructing the project without obtaining the Consent to Establish the said project (*Annex- F and H, P: 60, 61 and 75*).

11. The Respondent No: 5 had put the information on the MAHARERA official website [www.mahaonline.gov.in](http://www.mahaonline.gov.in) regarding the status of construction work completed at the said project as on 08-11-2021 as under.

S L No	Building name	Nature of work	Work completion status	Consent to Establish	Information
1	B1, B2, C1, C2, C3,	Excavation work	100%	Not obtained	True
2	C1	X number of Basement(s) and Plinth work	90%	Not obtained	True
3	C2	X number of Basement(s) and Plinth	40%	Not obtained	True
4	C3	X number of Basement(s) and Plinth	50%	Not obtained	True

Hence, PP has already started the illegal construction work of five buildings without obtaining the consent to establish (*Annex- G and H, P: 66 to 70 and 75*).

12. The Prior Environmental Clearance dated 30-04-2021 is granted for FSI area: 2848.97 m<sup>2</sup> and Non-FSI area: 16896.93 m<sup>2</sup> and Total BUA: 19745.90 m<sup>2</sup> (*Restricted as per CC*). However, the following issues are not substantiated by Total BUA: 19745.90 m<sup>2</sup> (*Restricted as per CC*). Because, the following Buildings, Club House and Mall Office Hotel Building cannot be configured in just Total BUA: 19745.90 m<sup>2</sup> (*Restricted as per CC*).

**i. False and frivolous Location and Plot Area (m<sup>2</sup>) and Cost of Project**

S I No	Description	Information
1	Location of project	CTS No: 4510, 4510/1 & 4513
2	Total Plot Area (m <sup>2</sup> )	95,516.12
3	Deduction (m <sup>2</sup> )	35,823.64
4	Net Plot Area (m <sup>2</sup> )	59,692.48
5	Proposed FSI Area (m <sup>2</sup> )	1,99,369.53
6	Proposed Non-FSI Area (m <sup>2</sup> )	2,91,945.84

7	TBUA (m <sup>2</sup> ) approved	4,91,315.37	<b>False</b>
8	Ground Coverage (m <sup>2</sup> ) %	Not mentioned	<b>False</b>
9	Total Project Cost (Rs)	924,00,00,000	<b>False</b>

Further, the total project cost is not calculated by the Respondent as observed by the Hon'ble Supreme Court in the case of M/s. Goel Ganga Developers India Pvt Ltd versus Union of India through the Secretary Ministry of Environment and Forests & Ors (*Annex- E, P: 51*).

## ii. False & frivolous configuration of buildings & their heights (m)

S I No	Building Name	Configuration	Height (m)	Information
1	A1	2B+P+21	63.90	<b>False</b>
2	A2	2B+P+21	63.90	<b>False</b>
3	A3	2B+P+21	63.90	<b>False</b>
4	A4	2B+P+21	63.90	<b>False</b>
5	B1	2B+P+21	63.90	<b>False</b>
6	B2	2B+P+21	63.90	<b>False</b>
7	B3	2B+P+21	63.90	<b>False</b>
8	B4	2B+P+21	63.90	<b>False</b>
9	C1	2B+P+21	63.90	<b>False</b>
10	C2	2B+P+21	63.90	<b>False</b>
11	C3	2B+P+21	63.90	<b>False</b>
12	Club House	G+1	8.10	<b>False</b>
13	Mall Office Hotel Building	3B+LG+UG+13	69.30	<b>False</b>
14	Total Tenements	No. of Tenants = 1245 Residential No. of Offices = 9, No. of Lease Tenants for Mall: Retail = 171, No. of Anchor = 18, Theatre = 2175 seats, Food Stall = 27, Restaurants = 19, FEC = 2 Amphitheatre = 1, No. of Hotel Rooms = 126,		<b>False Because, the Respondent No: 4 has not sanctioned the Layout Plan to configure these total Tenements</b>

Therefore, it is submitted that the Respondent No: 4 has not granted the Building Layout Plan for Total BUA: 19745.90 m<sup>2</sup> (*Restricted as per CC*) for the configuration of 11 Buildings, Mall Office Hotel Building, Club House and Swimming Pool (*Annex- E, P: 52*).

Further, PP has seriously violated the guidelines of Central Pollution Control Board and the provisions of the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975 while illegally constructing the five buildings namely B1, B2, C1, C2 and C3. Many of the 100-year-old trees were chopped

off without the prior permission of Tree Authority. Further, no public hearing was organised before the 100-year-old tree were chopped off. Further, the false and frivolous information of Green Belt Development is mentioned in the Prior Environmental Clearance dated 30-04-2021 shown as under:

**iii. Serious violations of Guidelines of Central Pollution Control Board and the provisions of the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975**

S I No	Description		Serious Violation of the Guidelines of Central Pollution Control Board and Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975.
1	Total RG Area (m <sup>2</sup> )	10427.38	
2	Existing trees on Plot	540	
3	No. of tree to be planted	760	
4	No. of tree to be cut	138	
5	No. of trees to be retained	363	
6	No. of trees to be transplanted	39	

PP has not deliberately complied with the standard environmental clearance conditions mentioned in the Office Memorandum issued by MoEF & CC. Vide F. No: 22-34/2018-IA.III dated 04-01-2019. Further, PP has not earmarked the required funds towards the Corporate Environment Responsibility as notified in the Office Memorandum No: F. No: 22-65/2017-IA.III dated 01-05-2018 as under.

**iv. Serious Violation of Office Memorandum No: F. No: 22-65/2017-IA.III dated 01-05-2018.**

S L No	Capital Investment/Additional Capital Investment (Rs)	Green Field Project-% of Capital Investment	Brown Field Project- % of Additional Capital Investment
I	II	III	IV
1	≤ 100 Crores	2.0%	1.0%
2	>100 Crores to ≤ 500 Crores	1.5%	0.75%
3	>500 Crores to ≤ 1000 Crores	1.0%	0.50%
4	>1000 Crores to ≤ 10000 Crores	0.50%	0.25%
5	>10000 Crores	0.25%	0.125%

Hence, PP who has illegally been constructing the project must have earmarked the certain amount of funds of Rs 9.24 Crore (i.e., 1.0% of Rs 924 Crore) towards

CER in addition to the cost of the new construction project in pursuant to the above Office Memorandum dt 01-05-2018. However, PP has utterly failed to abide by the Office Memorandum (*Annex- E, P: 55*).

13. The Office of the Respondent No: 3 has admitted that there were no documentary evidences with MPCB Sub-Regional Office, Pune to prove that the land area is 95,516.12 Sq. M. at CTS No: 4510, 4510/1 and 4513 in respect of the said project. Hence, it is evident that PP has submitted the false information about the land area: 95,516.12 Sq. M. at CTS No: 4510, 4510/1 and 4513 in respect of the said project (*Annex- H, P: 75*).
14. PP has not published at least in two local newspapers widely circulated in the region around the project regarding the prior environmental clearance and consent to establish: It is mandatory for a PP in the larger public interest to publish in at least two local newspapers widely circulated in the region around the project, one of which shall be in the Marathi language of the local concerned within seven days of issue of permissions that the project has been accorded environmental clearance and consent to establish granted to the project at CTS No: 4510, 4510/ and 4513(*Annex- E, P: 57*).
15. The said project under serious violations falls under the Screening Category 8 (b) B1 and the report was prepared by the Environmental Consultant: M/s. VK:e environmental, having Accreditation Certificate No: NABET/EIA/1619/IA0014 was valid till 23<sup>rd</sup> February, 2019. However, the Environmental Consultant was not eligible to act so (*Annex- A, D and E, P: 38, 49 and 51*).
16. This Hon'ble National Green Tribunal in O/A No: 34/2020 WZ in the matter of Tanaji B. Gambhire vs. Chief Secretary, Government of Maharashtra and Ors. Vide Order dated 24-05-2021 had directed that “....*a proper SoP be laid down for grant of EC in such cases so as to address the gaps in binding law and practice being currently followed. The MoEF may also consider circulating such SoP to all SEIAAs in the country*”

17. In compliance to the said Order dated 24-05-2021 passed in O.A No: 34/2020, the Respondent No: 1 (MoEF) had issued the Office Memorandum No: F. No: 22-21/2020-IA.III dated 07-07-2021 regarding the Standard Operating Procedure (SoP) which among others considers '*Violation*' and '*Non-compliance*' from the following perspectives:

- i. "*Violation*" means cases where projects have either started the construction work or installation or excavation, whichever is earlier, on site or have expanded the production capacity and/or project area beyond the limit specified in the Environmental Clearance (Prior-EC) without obtaining Prior-EC or change of scope without prior approval from the Ministry.
- ii. "*Non-compliance*" means non-compliance of terms and conditions prescribed by the Regulatory Authority in the Prior Environmental Clearance accorded to the project.

18. It is submitted that the exemplary and deterrent environmental compensation cost shall be imposed on PP for restoration and restitution of the gravely and irreparably damaged and degraded environment and ecology and for not following the "*Precautionary Principle of Sustainable Development*" mandated by Article 48A and 51A (g) of the Indian Constitution and the illegal construction shall be demolished or handed over to the government for public welfare without providing any benefits to PP.

19. Hence, this Hon'ble Tribunal be pleased to implement the "*principle of sustainable development*", the "*precautionary principle*" and the "*polluter pays principle*" in the present matter u/s 20 of the NGT Act, 2010. That the imposition of exemplary and deterrent '*environmental compensation cost*' is just and necessary to pass "*a clear message that environmental compliance is supreme and the party which is non-complying the environmental standards shall be burdened with the huge amount of the Environmental Compensation Cost*". Because of the following reasons:

- i. PP has illegally been constructing the said project without obtaining the consent to establish (*General EC Condition No: II, P: 58*),
- ii. PP has not preserved the top soil (*EC General Condition-Construction Phase No: XI, P: 56*),

- iii. PP has seriously violated the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975 (*EC General Condition-Construction Phase No: XIV, P: 56*),
- iv. More than 200 trees were cut down due to this illegal excavation prior to Consent to Establish,
- v. PP has not done any transplantation of 39 trees (*Annex- E, P: 53*),
- vi. PP is extracting ground water from bore wells for construction purposes without obtaining permission from Ground Water Authority and PP has not conducted any ground water test. *EC General Condition-Construction Phase No: XI, P: 56*),
- vii. PP has not filed any six-monthly report and half yearly compliance report (*EC General EC Condition No: IV, P: 58*),
- viii. PP has not published the Environment clearance in the local newspapers,
- ix. PP has adopted most careless and reckless attitude towards environment protection and improvement,
- x. PP has gravely damaged the environment to the tune of Rs. 500 Crores,
- xi. PP has not provided any road winding area to PCMC and is enjoying his own benefits which are nothing but cheating the public at large,
- xii. These above defaults or acts are gravely and irreparably damaging the environment and ecology and giving counter blast to the sustainable development,
- xiii. PCMC has utterly failed to stop illegal construction activities at site deliberately and PCMC officers have neglected to perform their duties for protection of environment and ecology and acted against the law the Article 48A and 51A (g) of the Indian Constitution,
- xiv. PP is using ground water from bore well at project site without appropriate clearances,
- xv. Environment clearances is nothing but ex-post facto,
- xvi. Illegal enjoyment of road winding area and claim of FSI with motive of cheating,
- xvii. PP has illegally been constructing five buildings: B1, B2, C1, C2 and C3,
- xviii. Thus, it is mandatory to stop the project construction work permanently till the compliance/rectification of the above illegal acts and removal of the defects from the construction,

20. Therefore, it is submitted that it is beyond doubt that PP in nexus with the other Respondents has seriously violated the Environment Impact Assessment Notification, 2006, the Environment (Protection) Act, 1986 and Other Environmental Laws and section 25 of the Water (Prevention & Control of Pollution) Act, 1974, section 21 of the Air (Prevention & Control of Pollution) Act, 1981, Rule 5 of the Hazardous and Other Wastes (Management & Transboundary Movement) Rules, 2016 and thereby PP has been causing in nexus with the other Respondents the grave and irreparable damage to the “*Environment and Ecology*” by releasing the hazardous environmental pollutants in the form of waste water, solid waste, effluent characteristics, hazardous

waste and chemicals, stacks emission, fuel and energy, dust, noise, health hazardous, dry and wet waste, soil conservation, garbage, etc.

Therefore, the Original Application No: 10/2022 may kindly be admitted and Notices may kindly be issued to the Respondents No: 1 to 6.

  
Sudhirchandra Patil  
Advocate for Applicant

**Photos of Illegal Construction Activities at CTS No: 4510, 4510/1 and 4513**







