

**BEFORE THE HONBLE NATIONAL GREEN TRIBUNAL
SPECIAL BENCH
ORIGINAL APPLICATION NO. 71 OF 2020 (WZ)**

Sarang Yadwadkar & Ors.

...Applicants

Versus

Gokhale Landmarks LLP & Ors.

...Respondents

Written Submission on behalf of R-2 Pune Municipal Corporation

1. That according to the Development Plan (DP) for the city of Pune approved in 2017, the land of the project in question is reserved for Parking Reservation. An area measuring 4455.33 square meter of the project land is reserved for Parking Reservation. As per DCPR - 2017 Clause No. 21.5.3 the developer can develop the reservation under Accommodation Reservation Principle. As per this clause accordingly, the R-1 Gokhale Landmarks LLP presented a proposal where he proposed to develop the said land by constructing parking space and additional commercial space. According to the sanctioned plans, an area of 8913.87 sq. meter comprising a 3-storey parking space was to be developed and it was to be handed over to the PMC. Additionally, the R-1 was going to provide a lift and develop 5 floors of commercial use & 3 floors parking for the commercial use. Out of the total area of the project in question, as per the sanctioned plan CC/1589/19, dated 15/10/2019, the R-1 will use 6435.00 sq. meter of built up for commercial use & in addition to this parking at stilt & 3 floors for parking space for his own benefit.
2. As per rule 6.2.4, sub-rule j) of the DCPR 2017 for Pune Municipal Corporation, it is binding on the project proponent to reveal the existence of wells, tanks, drains, pipe lines, etc when obtaining building permission

from the PMC. The relevant section of DCPR 2017 is reproduced below for ready reference:

Site Plan - The site plan shall be submitted with an application for building permission drawn to a scale of 1:500 or more as may be decided by the Municipal Commissioner. This plan shall be based on the measurement plan duly authenticated by the appropriate officer of the Department of Land Records. This plan shall have the following details:-

a)

b)

c)

d)

e)

f)

g)

h)

i)

j) *Any existing physical features, such as wells, tanks, drains, pipe lines, high tension line, railway line, trees, etc.;*

Thus, as per the Development Control Rules of PMC, it is the responsibility of the project proponent to reveal the existence of any drainage lines or sewer lines passing through his project site to the PMC. Hereto marked as '**Annexure A**' is the copy of extract of DCR, 2017.

3. DCPR 2017 for Pune Municipal Corporation was updated and superseded by Unified Development Control and Promotion Regulations-2020 (UDCPR- 2020). Under Rule 2.2.6, sub-rule xii), it is binding upon the

project proponent to reveal the existence of wells, tanks, drains, pipe lines, etc when obtaining building permission from the PMC. The relevant portion of the UDCPR is reproduced below for ready reference:

Site Plan The site plan shall be submitted with an application for building permission drawn to a scale of 1:500 or more as may be decided by the Authority. This plan shall be based on the measurement plan duly authenticated by the appropriate officer of the Department of Land Records. This plan shall have the following details:-

i)

ii)

iii)

iv)

v)

vi)

vii)

viii)

ix)

x)

xi)

xii) *Any existing physical features, such as wells, tanks, drains, pipe lines, high tension line, railway line, trees, etc.*

Thus, it is the responsibility of the project proponent to reveal the existence of any drainage lines or sewer lines passing through his project site to the PMC under UDCPR-2020. Hereto marked as 'Annexure B' is the copy of extract of UDCPR, 2020.

4. That every project proponent is required to fill out a form titled 'Application For Development Under Section 44/58/69 of Maharashtra Town Planning Act 1966 and to Erect a Building Under Section 253,254 of B.P.M.C. Act 1949' giving details of the development project. In the said form, the promoter is required to reveal the distance from the sewer under Column No. 33 Distance from sewer. The project proponent has left the said column blank. It is an undisputed fact that sewer line chambers were clearly visible above the ground at the project site. Thus, the project proponent, Gokhale Landmarks LLP has suppressed the existence of sewer line passing through his property which should have been revealed in the above mentioned form. Hereto marked as '**Annexure C**' is the copy of application filed by the Respondent No. 1 wherein R-1 has suppressed the information regarding sewer line.
5. It is the responsibility of R-1 and his architect to disclose the fact that sewage line is passing through their plot. R-1 is trying to prejudice the Tribunal by stating various responsibilities of the R-2. However, it is an admitted fact that sewage line was broken only due to the excavation work done by the Respondent No. 1.
6. That R-1 is making a representation that they have borne the burden of repairing the damaged sewer line on both occasions. That PMC is responsible for repairing and maintaining the sewer lines damaged in the natural course of wear and tear. In this case, damage to the sewer line was done by R-1 within their own property which was due to the excavation work done by the R-1. Second incident (2020) could have been avoided if the repair work during the first incident (2019) was properly executed by the R-1.

7. R-1 and his architect was fully aware about the fact that a nallah is passing adjacent to the property of R-1 on the southern side. Therefore, shifting of sewage line is not at all possible. R-1 is just trying to create a paper trail to shift the onus on R-2 PMC.
8. The sewage line passing through the property of R-1 was laid down 35-45 years ago. Therefore, it is difficult to trace the record but R-1 is fully aware about the fact that the sewage line is passing through his plot since the very beginning. Two big chambers of the sewage line are located above the ground level which are clearly visible. Therefore, the stand taken by the R-1 that he was not aware about the sewage line passing through his plot is false and misleading.
9. In the present case, the sewage line got ruptured due to the excavation work done by R-1. After various correspondences and site inspection by the officers of PMC, the repair work of the sewage line was done by R-1. As R-1 failed in executing the work of repairing the sewage line properly, second incident took place in 2020. In spite of the blanket ban on development activities due to nation-wide lockdown, PMC granted special permission and allowed R-1 to repair the damaged sewage line. However, R-1 delayed in executing the work of repairing the damaged sewage line.
10. It is the sole responsibility of the private owner of the property to repair the sewage line in case of damage due to their execution of construction work. Thus, in the present case, R-1 is the polluter. That according to Section 20 of the National Green Tribunal Act, 2010, the Hon'ble Tribunal is required to apply the principles of sustainable development, the precautionary principle and the polluter-pays principle when passing

any judgement or order. Section 20 of the NGT Act is reproduced below for ready reference:

Section 20. Tribunal to apply certain principles.

The Tribunal shall, while passing any order or decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle.

11. Thus, in the present application, the polluter is Respondent no.1 who is solely responsible for the pollution must bear the cost of the pollution caused by them. In case R-2 PMC is held liable for the pollution caused by R-1, it will set a wrong precedent as Developers/Promoters will take undue advantage and will not take proper care of any existing physical features, such as wells, tanks, drains, pipe lines, high tension line, railway line, trees, etc. situated/passing through their property as the PMC will be held responsible for any damage done by the developer/promoter.
12. In view of the facts stated above, R-1 Gokhale Landmarks LLP is solely responsible for damaging the sewage line due to their construction activities going on at the site. R-1 is only trying to shift the onus on the PMC R-2 by referring various RTI responses and correspondence done by R-1. In fact, as per Development Control Rules of Pune City, it is the duty of R-1 to disclose the fact that sewage line is passing through their property. However, R-1 suppressed this material information.

Pune

Date: 01/10/2021


Advocate for R-2 PMC

Annexure A

DCPR-2017 FOR PUNE MUNICIPAL CORPORATION

- f) A certified copy of approved sub-division / amalgamation / layout of land from the concerned authority.
- g) In the case of land leased by the Government or local authorities, no objection certificate of Government or such authorities shall be obtained if there is deviation from lease conditions and shall be attached to the application for development permission in respect of such land.

6.2.3 Key Plan or Location Plan - A key plan drawn to a scale of not less than 1:10,000 shall be submitted as a part of building plan / development proposal along with the application for a building permit and commencement certificate; showing the boundary and location of the site with respect to neighbourhood landmarks or with respect to the area within the radius of 200 m. from the site, whichever is more.

6.2.4 Site Plan - The site plan shall be submitted with an application for building permission drawn to a scale of 1:500 or more as may be decided by the Municipal Commissioner. This plan shall be based on the measurement plan duly authenticated by the appropriate officer of the Department of Land Records. This plan shall have the following details:-

- a) The boundaries of the site and of any contiguous land belonging to the neighbouring owners;
 - b) The position of the site in relation to neighbouring streets ;
 - c) The name of the street, if any, from which the building is proposed to derive access;
 - d) All existing buildings contained in the site with their names (where the buildings are given names) and their property numbers;
 - e) The position of the building and of other buildings, if any, which the applicant intends to erect, upon his contiguous land referred to in (a) above in relation to:
 - (i) The boundaries of the site and, in a case where the site has been partitioned, the boundaries of the portions owned by others;
 - (ii) All adjacent streets, buildings (with number of storeys and height) and premises within a distance of 12 m. of the work site and of the contiguous land (if any) referred to in (a)
 - f) The means of access from the street to the building and to all other buildings (if any) which the applicant intends to erect upon.
 - g) The space to be left around the building to secure free circulation of air, admission of light and access;
 - h) The width of the street (if any) in front and the street (if any) at the side of or near the building, including the proposed roads;
 - i) The direction of the north line relative to the plan of the building;
 - j) Any existing physical features, such as wells, tanks, drains, pipe lines, high tension line, railway line, trees, etc.;
 - k) The ground area of the whole property and the break-up of the built-up area on each floor;
- A plan indicating parking spaces as required and provided under these regulations;
- m) Overhead electric supply lines, if any, including space for electrical transformer / sub-station according to these regulations or as per the requirements of the electric



Annexure B

UDCPR-2020

viii) Contour plan of site, wherever necessary.

(b) Amalgamation Plan

Where two or more plots/ holdings of same or different owners are to be amalgamated, an amalgamation plan showing such amalgamation drawn to a scale of not less than 1:500 shall accompany the application. Instead of submitting a separate plan, such amalgamation may be allowed to be shown on building / layout-plan itself.

★ 2.2.6

Site Plan

The site plan shall be submitted with an application for building permission drawn to a scale of 1:500 or more as may be decided by the Authority. This plan shall be based on the measurement plan duly authenticated by the appropriate officer of the Department of Land Records. This plan shall have the following details:-

- i) Boundaries of the site and of any contiguous land belonging to the neighbouring owners;
- ii) Position of the site in relation to neighbouring streets;
- iii) Name of the street, if any, from which the building is proposed to derive access;
- iv) All existing buildings contained in the site with their names (where the buildings are given names) and their property numbers;
- v) Position of the building and of other buildings, if any, which the applicant intends to erect, upon his contiguous land referred to in (i) above;
- vi) Boundaries of the site and, in a case where the site has been partitioned, boundaries of the portions owned by others;
- vii) All adjacent streets, buildings (with number of storey and height) and premises within a distance of 12 m. of the work site and of the contiguous land (if any) referred to in (i). If there is no street within a distance of 12 m. of the site, the nearest existing street with its name;
- viii) Means of access from the street to the building and to all other buildings (if any) which the applicant intends to erect upon;
- ix) Space to be left around the building to secure free circulation of air, admission of light and access;
- x) The width of the street (if any) in front and the street (if any) at the side or near of the building, including proposed roads;
- xi) The direction of north line relative to the plan of the building;
- xii) Any existing physical features, such as wells, tanks, drains, pipe lines, high tension line, railway line, trees, etc.;
- xiii) Overhead electric supply lines, if any, including space for electrical transformer / substation according to these Regulations or as per the requirements of the electric distribution company;
- xiv) Any water course existing on site or adjacent to site;
- xv) Existing alignments of water supply and drainage lines;
- xvi) Such other particulars as may be prescribed by the Authority.

2.2.7 Building plan

The plans of the buildings and elevation and section to be sent with the application

Pune Municipal Corporation

Form Giving Particulars of Development

(Part of Appendix A - Item 6)

00496

1. (a) (i) Full name of Applicant ...

M/s. Gokhale Landmark LLP Its Partner Vishal Gokhale.

(ii) Address of applicant ...

(b) Name and address of licensed Architect/ Engineer employed

(c) No. and date of issue of License

AR. SIDDARTH HARISCHANDRAKAR CA/2004/34707 FOR "A DESIGN STUDIO"



2. Is the plot affected by and reservation or road lines. If yes, are these correctly and clearly marked on the block plane.

Yes

3. (a) What is the total area of the plot according to the document.

4490. Sqm

(b) Does it tally with the Revenue / CTS Record.

Yes

(c) What is the actual area available on site measured by licensed Architect / Engineer / Structural Engineer.

44

(d) If there any deduction in the Original area of the plot on account of road lines or reservation. Please state the total area of such deductions.

(e) If so, what is the net area.

(NOTE : To Indicate details on the Site / Building plan as in proforma I)

4. Are plans as required under Rull No. I 6.2 enclosed.

Yes

(2)

- 5. (a) Is the plot part of a City Triangulation Survey Number, Revenue Survey Number or Hissa Number of a Survey Number or a Final plot Number of a Town Planning Scheme or a part of an approved layout.
- (b) Please state Sanction Number and date of Sub-Division / Layout.

Yes

the permission shall be based on the area whichever is minimum.

- 6. (a) In what zone does the plot fall
- (b) What is the permissible F. A. R. of the zone.
- (c) What is the Number of Tenements per hectare permissible in the zone.
- 7. (a) Is the use of every room in the proposed work marked on the plans.
- (b) Is it in accordance with the rules
- (c) Does the use of the building, fall in the category of special type of buildings like cinema halls, theatres, assembly halls stadia, buildings for religious purposes, hospital buildings, educational buildings, markets and exhibition halls etc. as per rule No. N-1.4, N-2.2.

Parking

1.1

Yes

— 11 —

M. A.

- 8. If the work is in connection with an industry :
 - (a) Please briefly describe the main and accessory process.
 - (b) Please state the maximum number of workmen and the total horse power likely to be employed per shift in the factory.

11

(3)

(c) What industrial classification does it fall under, giving reference to relevant Rule No.

(d) Is the proposal for relocation of an existing industry and if so giving the name and address of the existing industry.

(e) deleted.

(f) Will the building be at least 9m. away From the boundary of a residential or Commercial zone.

(g) Is the proposal for a service industrial estate on a plot reserved for service industries.

(h) Nature and quantum of industrial waste / effluents and methods of disposal.

9. (a) What is the average (i) prescribed and (ii) existing width of the street.

If the plot abuts two or more streets the above information in respect of all streets should be given.

(b) What is the height of the building. (i) above the centre of the street. (ii) above the average ground level of the plot.

(c) Does it comply with rule No. 15.5

10. (a) If there are existing structures on the Plot :

(i) are they correctly marked and numbered on the site plan.

(ii) are those proposed to be demolished... immediately coloured yellow.

(iii) What is the plinth area and total floor area of all existing structures to be retained... Please append Statement I giving details.

(iv) What is the number of existing tenements in structures to be retained.

Dotted lines for answers with handwritten 'N.A.' in several places.

(4)

(b) What is the plinth area and total floor area of the proposed work. Please append statement 2 giving details.

As per Dwg

(c) What is the number of tenements proposed..

11

NOTE : To Indicate details on the Building plan as in proforma I.

11. (a) Please state the plinth area and total floor area, existing and proposed (total of items No. 10 (a) (iii) and 10 (c).

11

(b) Please state the overall F. A. R. (item 11 (a) divided by item 3 (e).

(c) Does the work consume the full F. A. R. of the plot, as given in item 6 (b).

11

(d) Is the building proposed with setback on upper floors.

(e) What is the total number of tenements (Item 10 (a) plus item 10 (c).

11

NOTE : To Indicate details on the Building plan as in proforma I.

12. (a) What is the width of the front open space. If the building abuts two or more streets does the front open space comply with Rule No. 15.1.2.

As per Dwg

(b) Please state which of the following Rules is applicable for the front open space N-2.2 1 to N-2.2. 8 and does the front open space comply with that rule.

11

13. Deleted.

14. (a) What is :

(i) the width of side open space (s)

(ii) the width of rear open space (s)

(iii) the distance between building

(b) Deleted.

11

(5)

(c) Are there two or more wings to the building and if so are the open spaces separate or distinct for each wing as required under Rule No. 15.1.6

.....
.....
.....

15. Deleted.

16. (a) What are the dimensions of the inner or outer chowk.

.....

(b) (i) Is any room dependent for its light and ventilation on the chowk. If so, are the dimensions such as are required for each wing of the building.

AS per DWG

(ii) If not is the area equal to square of minimum width for the height as per Rule No. 15.2.

.....
.....
.....
.....

17. If the height of the building is greater than 16 mm above the average ground level, is provisions or lift (s) made.

— | | —

(a) If so, give details of Lift.

.....
.....

Type	Passenger Capacity	No. of Lifts	Types of Doors
Passenger	5+1	4	Automatic

(b) Details of the Fire

.....

18. (a) Does the building fall under the purview of Rule No. 6.2.6.1

.....

(b) If so, do the proposed fire protection requirements confirm to Appendix P.

.....

(c) If not give reasons for non-conformity,

.....

- (a)
- (b)
- (c)
- (d)

(6)

- 19. (a) (i) What are the requirements for parking spaces under the Rules.
- (ii) How many are proposed.
- (iii) How many lock-up garages are proposed.
- (b) (i) Are loading-unloading spaces necessary under Rule No. 16.5
- (ii) If so, what is the requirement.
- (iii) How many are proposed.

As per Dwg

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NOTE : To Indicate details on Building plan as in proforma I .

- 20. (a) (i) What are the maximum width of balconies.
- (ii) Will they reduce the required open spaces to less than the provisions or Rules.
- (iii) Do they serve as a passage to any part of the building.
- (iv) What is thier total area.
- (b) What is the maximum width of weather frames, Sunshades (Chajja) aunbreakers, cronice, eavers or other projection.
- (c) (i) are any proches proposed.
- (ii) Are they compliance with Rule No. 15.4.1.

— | —

— | —

— | —

- 21. (a) What is the width of the means of access.
- (b) What is the clear heights
- (c) Will it be paved, drained and kept free of encroachment.

— | —

— | —

22. Is recreational or amenity open space provided as required under Rules No. 13.3.1 and 13.3.2

—

—

(7)

23. (a) Are any accessory building proposed, if so, for what purpose

(b) What are their heights

(c) Are they 7.5 m. away from the street or front boundary and if located within the open spaces, 1.5 m. from other boundary

(d) Is their area calculated in F. A. R.

As per Dwg

24. (a) What is the proposed height of the compound wall. Is it at a junction.

(b) Is it in compliance with Rule 17.17.

25. (a) (i) Deleted.

(ii) Is the proposal in the airport zone

(iii) Is a 'No objection Certificate' for height and character of smoke from chimneys obtained from Chief Inspector of Boilers and smoke Nuisance.

N.A

26. Does the proposal fall in any of the restricted zone.

27. (a) Does any natural water source pass through the land under development.

(b) Is the necessary setback provided as per Rule No. 11.1.

28. Please explain in detail in what respect the proposal does not comply with the development Control Rules and the reasons therefore attaching a separate sheet if necessary.

N.A

29. (a) Is the plinth level proposed to be above the level of the surrounding ground level.

(b) Deleted.

(c) Deleted.

30. The materials to be used in construction with specification :

Roofs R.C.C

Floors R.C.C

Walls Bricks / R.C.C

Columns R.C.C

(8)

31. The Number of water closets, urinals, Kitchens, ... As per Draw
baths to be provided.

	Water closets	Baths	Urinals	Kitchen
Existing
Proposed

32. The source of water to be used in the construction ... Borewell

33. Distance from the sewer. ...

34. How much Municipal land will be used for stacking building material. ...

I hereby declare that I am the owner-lessee / mortgagee in possession / M/s. Gokhale Landmark LLP through Vishal Gokhale.
of the plot on which the work is proposed and that the statements made in this form are true and correct to the best of my knowledge.

Vishal Gokhale
Signature of the Applicant.

Date :
Address :

Form of certification to be signed by the Licensed Architect / Engineer / Structural Engineer employed by the Applicant.

I (Name Ar. Siddharth Hemishchandra Kar.

have been employed by the applicant as his Licensed Architect / Engineer / Structural Engineer. I have examined the boundaries and the area* of the plot and I do hereby certify that I have personally verified and checked all the statements made by the applicant who is the owner / lessee / mortgagee in possession of the plot as in the above from and the attached statements 1 and 2 found them to be correct.

Siddharth Kar
Signature of Licensed Architect / Engineer / Structural Engineer.

Date :
Address :

NOTE : To indicate I building plan as in form II.