

Ashwini

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 4396 OF 2022**

Sharada Gyan Peeth & Ors ...Petitioners
Versus
Central Ordnance Depot & Ors ...Respondents

Dr Birendra Saraf, Senior Advocate, with Namrata Vinod, Vishesh Malviya, Mohit Khanna & Pranav Narsaria, i/b Rashmikant & Partners, for the Petitioners.
Mr Rui Rodrigues, with DP Singh, i/b Puja Palicha Deo, for the Respondents.

**CORAM G.S. Patel &
 Sharmila U. Deshmukh, JJ.**
DATED: 25th November 2022

ASHWINI
HULGOJI
GAJAKOSH

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ASHWINI HULGOJI
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PC:-

1. Rule. Respondents waive service. By consent, Rule made returnable forthwith and the Petition is taken up for hearing and final disposal.

2. The 1st Petitioner is a public charitable trust that runs an educational institution called the Sharada Gyan Peeth International School. This is an unaided private minority institution. The school is in Malad. Apparently, it is surrounded by slums and many of the

students at the school come from these slums, from financial weaker backgrounds. The 2nd Petitioner is an individual with a partner who is both a trustee of the 1st Petitioner trust and is also a partner of Kamala Brothers, a partnership firm that owns a larger plot of land bearing CTS No. 141A, 141B, 141C and 141D of a total of 8612.40 sq mtrs at Datta Mandir Road, Malad (East), Mumbai 400 097. The trust school is on Plot No.141B with a playground on Plot No. 141C. The school building is a ground and four floor structure with two wings A and B. The 1st Respondent is the Central Ordnance Depot (“**COD**”). It runs a depot for storage and supply of major and minor equipment, spare parts and other items required by the Defence Services. The 1st Respondent’s depot shares a common boundary with Plot Nos. 141A and 141B.

3. The short question is about a proposal by the Petitioners to realign, reconstruct or re-erect a boundary wall between their land and the COD land such that the boundary wall coincides with the plot boundaries of the Petitioners’ land. There is, as we shall immediately see, a discrepancy between the existing boundary wall and the plot boundary. This is best seen from the attachment to Exhibit “E” at page 44. This is a plan drawn by the City Survey Officer at the instance of the Petitioners. The area in question is to the north. The solid line across the top is the plot boundary. The dashed line (in dark red in the colour scan which is annexed to this order) is the existing boundary wall. Plot Nos. 141A and 141B are clearly shown and marked on this plan.

4. This survey was not a joint survey. Consequently, the Petitioners asked for a joint survey and such a survey was carried as is apparent from Exhibit “L” at page 63. There is a statement in Marathi countersigned by the SDI, Defence Office Malad and one Captain PC Thakur of the COD, Malad. A translation is at page 64. It notes that the maintenance surveyor of the City Survey Office came to on site on 23rd December 2020 and completed a survey of the property. The boundaries were shown. The statement is undoubtedly signed because at Exhibit “L” is a photocopy that shows the signatures. At page 65, Exhibit “M”, and a scan of which we also annex to this order, is the survey result of this joint survey. It exactly corresponds to the previous survey that we noted at page 44.

5. Now this happened in December 2020. The COD seems to have done nothing thereafter to assail the joint survey. No remedies have been pursued under any applicable law. In anticipation of a possible defence, we noted that the argument of Covid cannot be used because the joint survey itself was done in December 2020 in the peak of the pandemic and the lockdown. Since then, the Petitioner has written several letters from 9th July 2021 to September 2021 seeking that it be permitted to construct a boundary wall along the plot boundary to correctly separate the Petitioners’ property from that of the COD. The Petitioners have agreed to maintain the requisite distance from the plot boundary and its construction. We accept this statement as an undertaking to the Court.

6. We note Mr Rodrigues's argument that the adjoining property that is Survey No. 8 has not been surveyed. We do not see why this is necessary. Every survey of a plot and the marking of plot boundaries does not require that every adjacent plot be fully surveyed for its separate plot boundaries. If this argument is to be accepted, no plot will ever be surveyed, because each plot will have an adjacent plot.

7. In these circumstances, we do not see how the Petitioners' request to construct the boundary wall along the alignment or realignment of the plot boundary can be refused.

8. The reliefs sought are:

“(a) that this Hon'ble Court be pleased to exercise its powers under Article 226 of the Constitution and issue a writ of mandamus or a writ in the nature of mandamus and/or any other appropriate writ, order, and/or direction ordering and directing the Respondents to grant permission for re-aligning and re-construction of the existing common boundary wall shared by Plot bearing CTS No. 141A and 141B of Village- Malad (East) with the plot of land of Respondent No. 1, as per the boundary demarcations in the maps prepared by the City Survey Officer, Malad, pursuant to the survey carried out on 5th February 2018 and 23rd December 2020, at the cost and expense of the Petitioners;

(b) in the alternative, it be directed that the plans of the Petitions submitted for further construction on the existing structure in Plot No.141B be considered by applying the 10-meter distance as provided in the notification dated 21st October 2016 as applicable from the boundary of Plot of the COD Establishment to the structure as per the maps

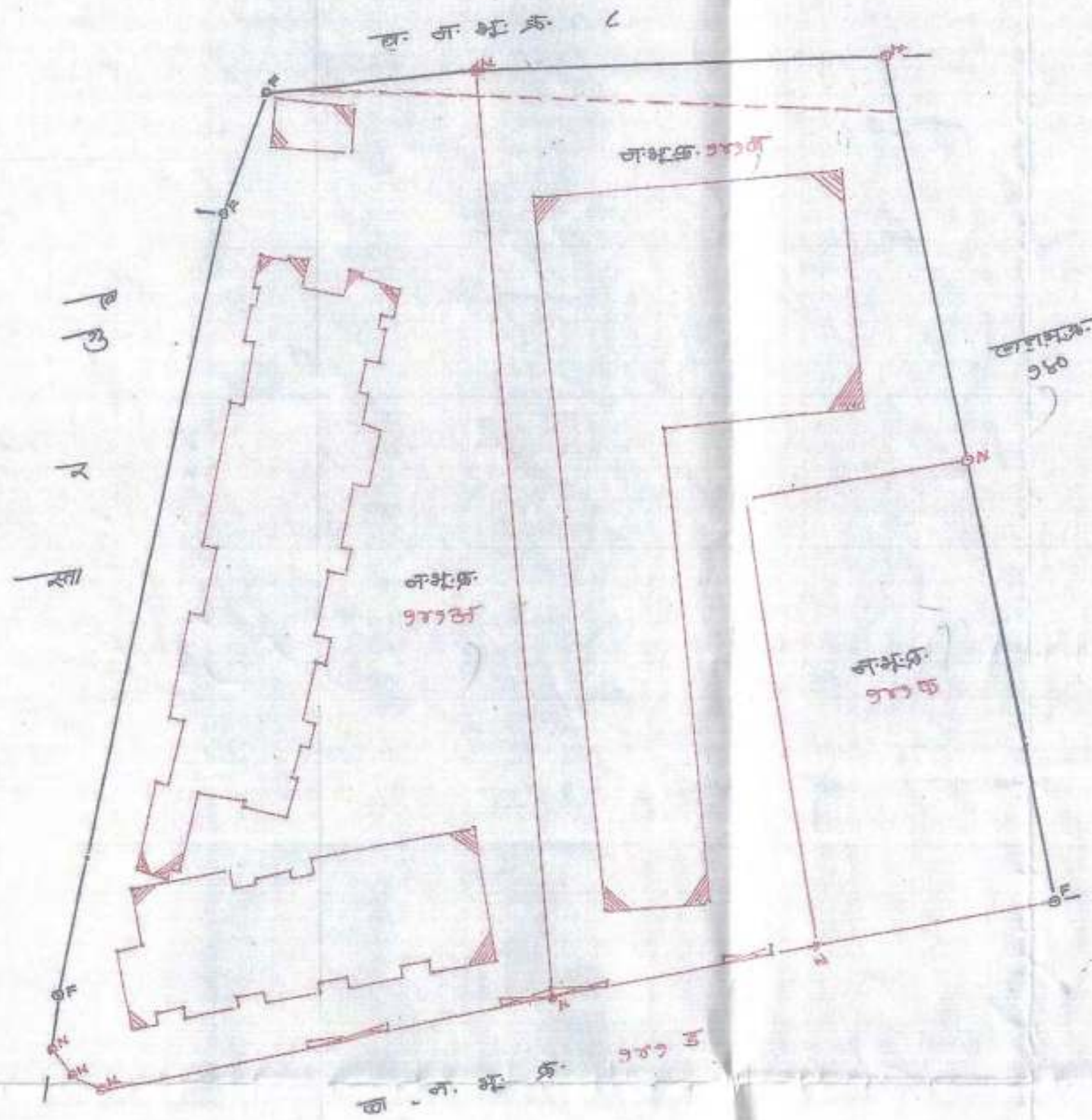
prepared by City Survey Officer Malad (Exhibits E and M hereto).”

9. We do not think that prayer clause (a) would be appropriate and we make Rule absolute instead in terms of prayer clause (b) set out above.
10. We clarify that prayer clause (b) applies to any plans that may be submitted hereafter by the Petitioner.
11. All concerned will act on an authenticated copy of this order.
12. In the facts and circumstances of the case there will be no order as to costs.
13. The Petition is disposed of in these terms.

(Sharmila U. Deshmukh, J)

(G. S. Patel, J)

मेजणीचे कारण - श्री. अजय चारदा प्रसाद यांनी यांच्या अजिंकन मोजे- माळाड (पूर्व)
ता. बोरिवली, जिल्हा-मुंबई उपनगर येथील न.भ.क्र. १४१अ, १४१ब, १४१क,
या मालकीची लहकाम मोजणी करून तयार केलेल्या नकाशा.



"अ" मोजणी नकाशा करून
तयार केले.

सही १-२२२
शिप्यतेदार
न.भ. अ. माळाड

अभिज्ञान समिती

सही १-२२२
नगर भूमापन अधिकारी
माळाड

श्री. अजय चारदा प्रसाद यांनी यांच्या अजिंकन मोजे- माळाड (पूर्व)
ता. बोरिवली, जिल्हा-मुंबई उपनगर येथील न.भ.क्र. १४१अ, १४१ब, १४१क,
या मालकीची लहकाम मोजणी करून तयार केलेल्या नकाशा.

नगर भूमापन - माळाड (पूर्व)
तालुका - बोरिवली
जिल्हा - उपनगर

अंतिम लहकाम मोजे- नं. ४१८/२०१८
दिनांक - २०-०९-२०१८

- समजुतीच्या दिवा -

- या प्रमाणे मूळ नगर भूमापन क्रमांकाची लह असे.
- OF या प्रमाणे कायम-रुणा असत.
- या प्रमाणे पोस्टमालाची लह असे.
- OH या प्रमाणे अजिंकन यांना लहकाम रुणा दाखविण्या
- या प्रमाणे जोशेवर नविन लहकाम असे.

N

प्रमाण: १:५००

मेजणीकरण - सही १-२२२
परिच्छेद भूमापक क्र. ४
नगर भूमापन अधिकारी
माळाड
मेजणी तारीख - ०५-०२-२०१८

१. मोजणी करताना मोजणीकरणाच्या नकाशावरून मोजणी करणे आवश्यक आहे.
२. मोजणी करताना मोजणीकरणाच्या नकाशावरून मोजणी करणे आवश्यक आहे.
३. मोजणी करताना मोजणीकरणाच्या नकाशावरून मोजणी करणे आवश्यक आहे.

अर्थ क्रमांक १०८८ एकूण नोंदी/एकूण न.भ. ३
अर्थ राखण तारीख ५/०१/२०१८ मालकी नं. १५०१-
अर्थ तयार तारीख ५/०१/२०१८
अर्थ विक्री तारीख १०/०१/२०१८ मालकी नं. १०१-
अर्थ नगर भूमापन अधिकारी
अर्थ नगर भूमापन अधिकारी

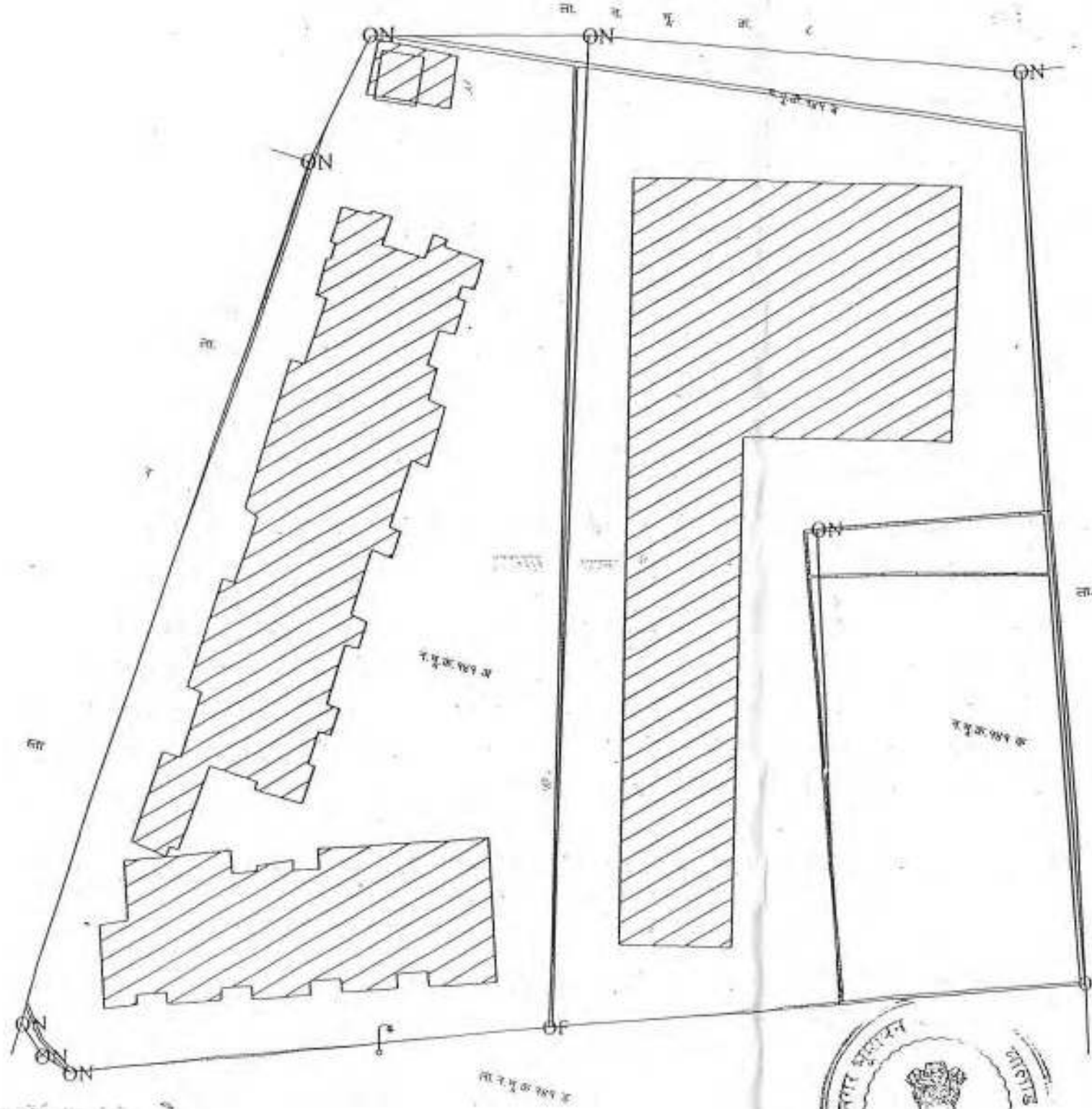


सत्य प्रतिलिपी

नगर भूमापन अधिकारी
माळाड

EXHIBIT - M

मोजणीचे कारण - अर्जदार श्री.अजय शारदाप्रसाद शर्मा यांचा दिनांक १४/०२/२०२० चे मोजणी अर्जाबद्दल नगर भूमापन मालाड (पुर्व) , ता.कोरीवली जि.मुंबई उपनगर येथील न.भू.क.१४१/अ,१४१/ब,१४१/क व पिकवलीची हदकायम मोजणी कापी ई.टी.एस मशीनचे सहाय्याने मोजणी करून तयार केलेला मोजणी नकाशा.



नगर भूमापन - मालाड (पुर्व)
तालुका - कोरीवली
जिल्हा - मुंबई उपनगर

अतितातडी हदकायम मो.र.नं- ८०६/२०२०
दि.१०/१२/२०२०

समजुतीच्या टिपा

- याप्रमाणे न.भू.क.ची अभिलेखा नुसार हद आहे.
- OF याप्रमाणे जागेवर कायम खुणा असत.
- याप्रमाणे जागेवर पित आहे.
- ▨ याप्रमाणे जागेवर नविन बांधकाम असे.
- ON या प्रमाणे अर्जदार यांना हद्दीच्या नविन खुणा दाखविल्या.



प्रमाण १:५००

मोजणी दिनांक - २३/१२/२०२०

मोजणी करणार -
श्री.बी.बी.खंडागळे
प.भू.क.८

अर्जदाराचे ७८३
अर्ज दाखल करीव ५११/२०२१
अर्ज तयार करीव ११/२०२१
अर्ज पिकवली करीव ११/२०२१
अर्ज तयार करणार
अर्ज तपासणी करणार

प्रमुख लिपिक
नगर भूमापन अधिकारी
मालाड



सत्य प्रतिलिपी
नगर भूमापन अधिकारी



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