

Arun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 11380 OF 2015
WITH
INTERIM APPLICATION NO. 2669 OF 2023
IN
WRIT PETITION NO. 11380 OF 2015
WITH
CIVIL APPLICATION NO. 13 OF 2023
IN
WRIT PETITION NO. 11380 OF 2015
WITH
INTERIM APPLICATION NO. 3265 OF 2019
IN
WRIT PETITION NO. 11380 OF 2015

AI KAPADI & ORS

... PETITIONERS

~ VERSUS ~

**CITY AND INDUSTRIAL
DEVELOPMENT CORPORATION OF
MAHARASHTRA LTD & ORS**

... RESPONDENTS

ARUN
RAMCHANDRA
SANKPAL

Digitally signed
by ARUN
RAMCHANDRA
SANKPAL
Date: 2024.01.29
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WITH
WRIT PETITION NO. 631 OF 2023

AI KAPADI & ORS

... PETITIONERS

~ VERSUS ~

**CITY AND INDUSTRIAL
DEVELOPMENT CORPORATION OF
MAHARASHTRA LTD & ORS**

... RESPONDENTS

WITH
WRIT PETITION NO. 12714 OF 2015
WITH
CIVIL APPLICATION NO. 935 OF 2016
IN
WRIT PETITION NO. 12714 OF 2015

**RAINBOW FLAT AND SHOP OWNERS
ASSOCIATION & ORS**

... PETITIONERS

~ VERSUS ~

**STATE OF MAHARASHTRA,
THROUGH THE PRINCIPAL
SECRETARY & ORS**

... RESPONDENTS

APPEARANCES

FOR THE PETITIONER IN WP/12714/2015 AND FOR THE RESPONDENT WP/11380/2015 & WP/631/2023	Mr Rajesh Datar , <i>with Pralhad Paranjape, Gaurav Gawande, Druti Datar & Rutuja Bapat, i/b Manish Kelkar.</i>
FOR THE PETITIONER IN WP/631/2023	Mr SU Kamdar , Senior Advocate, with Mr Chetan Kapadia , Senior Advocate, <i>with Jagdish G Aradwad (Reddy).</i>
FOR RESPONDENT- NMMC.	Mr Tejesh Dande.
FOR RESPONDENT- CIDCO IN ALL MATTERS	Mr GS Hegde , Senior Advocate, <i>i/b PM Bhansali.</i>
FOR RESPONDENT- STATE IN ALL MATTERS	Mrs MP Thakur , AGP.
FOR RESPONDENT NO. 4 IN WP/11380/2015 7 FOR THE APPLICANT IN IA/2669/2023 IN WP/11380/2015	Mr Sandeep S Thakur.
PRESENT IN COURT	Mr Somnath Kekan , ADTP and Mr Umesh Patil , Deputy Engineer, <i>NMMC.</i>

**CORAM : G.S.Patel &
Kamal Khata, JJ.**

DATED : 14th December 2023

PC:- (Per GS Patel J):-

1. On 12th December 2023 we passed the following order:

“1. After several rounds of hearings and filing of Affidavits it seems to us that the entire controversy in this matter can be resolved if we direct a site inspection and have the results of that site inspection before us.

2. In Writ Petition No 631 of 2023 there are 18 Petitioners. They purchased tenements in a building called F-4 on Plot No 6 in Vashi, Navi Mumbai. The City and Industrial Development Corporation of Maharashtra (“CIDCO”) is the lessor/owner of the plot in question. The 4th Respondent is the Rainbow Flat & Shop Owners Association Condominium and is said to be an association of several such buildings.

3. The entirety of the plot is not formally sub-divided. This necessarily means that there are common open area spaces and that the aggregate plot area is pro-rata apportioned between the various buildings.

4. Building No F-4 on Plot No 6 was said to be in a dilapidated condition. Redevelopment permission was sought and was granted and a building of ground plus 16 floors has today come up.

5. The owners of tenements in the old building are not yet in occupation *inter alia* on account of these litigations that are pending since 2015/2019.

6. The Association maintains through Mr Bapat, Learned Senior Advocate, that the redeveloped building F-4 has consumed or transgressed upon what Mr Bapat calls “common areas”, i.e., the construction by the Petitioners extends beyond the proportionate area of that building. In particular, he maintains on the strength of a report from CIDCO at pages 200 and 201 that there is an impermissible

lateral projection at the second floor level and that an elevated portion of the car parking podium has projected outwards.

7. Stated in these generalities, the submissions are of very little assistance and will not travel the necessary distance to an effective disposal of the matter. Above all, we are mindful that we should not be even inadvertently drawn into what are essentially disputed questions of fact no matter how long these Petitions have been pending before us.

8. In a matter of building construction, indeed, there should be very little scope for dispute about what actually exists on site. Whether what is built on site is or is not permissible and within the limits of current governing planning regulations and rules may be a separate controversy. There is no point in muddling the first with the second.

9. It is not in dispute that the land use is mixed, that is to say, both residential and commercial.

10. The aggregate plot area is 12536.27 sq mts. We are not addressing ourselves to questions of built up area because, at least presently, that is not our concern. There are six buildings in all numbered F-2 to F-7. The proportionate plot area of building F-4 as per a revised Commencement Certificate (“CC”) of 17th November 2015 was 1269.848 sq mts. The building footprint area was stated to be 1082.20 sq mts.

11. This necessarily means, on a simple arithmetical calculus, that the Petitioners would have an area of 187.648 sq mts (1269.848 sq mts minus 1082.20 sq mts) in addition to the 1082.20 sq mts footprint for their development, but this must necessarily take into account the requirements for marginal and side open spaces as mandated by planning law and regulations

12. Mr Kamdar, Learned Senior Advocate, maintains that the entire construction is within the pro-rated area of 1269.848 sq mts after allowing for the municipal marginal open spaces, etc.

13. Mr Bapat's submission is to the contrary. He maintains that even CIDCO in its assessment at pages 200 and 201 (and which is of November 2022) noted that the required margins were not maintained and further that there were projections of commercial premises beyond the notional plot boundary, but these were on the second floor. There are other observations (without sufficient particulars) that the notional plot boundaries exceeded the CC.

14. This kind of a document is an unsafe and unreliable basis for any judgment of this court. Further, nothing at all is achieved by one side making assertions as to area consumption and the other side simply denying it. This presents the writ court with an utterly intractable situation. Are we supposed to decipher from these papers before us what has *actually* been done on site? That is an impossible task even for a civil court unless and until it takes evidence. In our writ jurisdiction, we will be able to do nothing except prolong these matters, already prolonged for much too long, unless there is some certainty about what exists on site.

15. Obviously, Mr Kamdar's clients have, or at least their architects have, what are called "as built drawings". These would have been required in any case for a CC and later for an Occupancy Certificate ("OC").

16. Mr Dande represents the Navi Mumbai Municipal Corporation ("NMMC"). His officers are present in court.

17. Mr Kamdar states that copies of the as built drawings authenticated by the Petitioners' architects will be forwarded to the office of the Assistant Director of Town

Planning (“ADTP”), NMMC by 2.00 pm tomorrow, 13th December 2023.

18. We direct the officers from the office of the ADTP and other necessary officers of the NMMC to immediately inspect the site of this construction for building F-4. They must assess:

- (a) Whether any part of the building F-4 redevelopment is beyond 1269.848 sq mts;
- (b) Whether in the construction of Building F-4 the necessary marginal open spaces have been maintained at the ground level, and, if not, the extent of the shortfall;
- (c) Correspondingly, whether at the ground floor level there is an expansion of the construction beyond 1269.848 sq mts; and
- (d) For completeness, whether there are any projections at any higher floors that project beyond 1269.848 sq mts of the notional plot boundary.

19. We do expect as much accuracy as possible in these measurements given the short time frames. Above all, the officers of the NMMC must report whether the required marginal open spaces have been maintained or not maintained. We will assess the remaining issues on the next date.

20. List these matters for orders on 14th December 2023 at 2.30 pm.

21. We permit the representatives of the Petitioners and also the association to remain present on site at the time when the NMMC officers make their visit. If any person on either side in any manner obstructs the officers of the NMMC, we will not hesitate to immediately take action in contempt against the individuals involved.

2. We today have the report of the site inspection.

3. The reason to make a final order today is *inter alia* evident from the dates of the filing of these Petitions. They have been pending in this court for eight years without resolution. Interim Applications of 2023 do not assist. In those eight long years, the Petitioners in Writ Petition No 631 of 2023, i.e., the 18 occupants have been unable to occupy their rebuilt homes.

4. The entire controversy is on the basis that the construction that they have put up is unauthorized, illegal, and, importantly for our purposes encroaches or impermissibly occupies an area greater than that to which Building F-4 would be entitled, i.e., part of the common area of the condominium. Most regrettably, in the Rainbow Flat & Shop Owners Association (“**Rainbow Association**”) Writ Petition what is most noticeable is a complete lack of sufficient particulars regarding the most fundamental aspect of the matter.

5. As we noted in our order of 12th December 2023, and in paragraph 14 in particular, we were being asked to speculate about actual figures of footprints, plot area, constructed space and so on. That is not the remit of a writ court.

6. Our directions on 12th December 2023 were because and only because we did not want this entire story to start all over again in a civil court. We had regard to the fact that these Petitions have remained pending since 2015 and the compilation of orders up to now itself is at least more than an inch thick.

7. As our previous order shows, we narrowed the controversy. In doing so, we took precisely the document that the Rainbow Association to which Mr Bapat invited our attention, viz., a document of the City and Industrial Development Corporation of Maharashtra (“**CIDCO**”), one of the statutory authorities, represented before us by Mr Hegde. That document is at page 200 of Writ Petition No 631 of 2023. In our order, we set out exactly the figures of the total plot area, the calculated notional boundaries of Building F-4, the footprint of Building F-4 and then issued directions to the Navi Mumbai Municipal Corporation (“**NMMC**”) through its highest officers and set out the four questions that had to be answered.

8. Before we proceed to the results of that site inspection, we note that there are Affidavits of the NMMC at the highest levels on record to show that what is constructed is today permissible within the frame of the current extant building regulation and permissible Floor Space Index (“**FSI**”). Nobody has controverted this.

9. Mr Dande on behalf of the NMMC now gives us two documents. The first is a report of 13th December 2023. The report is of two pages. Annexed to it is a table showing the required and on site marginal open space for Building F-4. The three page document tendered by Mr Dande is taken on record and marked “**NMMC-1**” for identification with today’s date. The report notes that representatives of the F-4 Building occupants and the Rainbow Association were present. The four questions are answered as follows:

Sr. No.	ISSUES TO BE INSPECTED BY THENMMC VIDE ORDER DT. 12.12.2023 OF HON'BLE BOMBAY HIGH COURT	OBSERVATIONS MADEBY THE ADTP (NMMC) during site visit at 3:00 PM on dt. 13.12.2023
(a)	Whether any part of the building F-4 redevelopment is beyond 1269.848 sq.mtrs.	As per the notional plot boundary shown in as built drawings submitted by architect part area of Otlā measuring around 34.7 mtr. X 2.673 mtr = 92.649 Sq.mtr. is beyond the area of 1269.848 sq.mtrs.
(b)	Whether in the construction of Building F-4 the necessary marginal open spaces have been maintained at the ground level, and, if not, the extent of the shortfall.	Yes, necessary marginal open spaces at ground level have been maintained as per the sanctioned plans. Table showing required marginal open space as per erstwhile regulations and existing available marginal open spaces on site are attached here with.
(c)	Correspondingly, whether at the ground floor level there is an expansion of the construction beyond 1269.848 sq.mts.	Yes as mentioned in point no 1 above part area of Otlā measuring around 34.7 mtr. X 2.673 mtr = 92.649 Sq.mtr. Is beyond the area of 1269.848 sq. mtrs.
(d)	For completeness, whether there are any	As per the notional plot boundary shown

Sr. No.	ISSUES TO BE INSPECTED BY THENMMC VIDE ORDER DT. 12.12.2023 OF HON'BLE BOMBAY HIGH COURT	OBSERVATIONS MADEBY THE ADTP (NMMC) during site visit at 3:00 PM on dt. 13.12.2023
	projections at any higher floors that project beyond 1269.848 Sq. mtrs. of the notional plot boundary.	in as built drawings submitted by the architect it is observed that there are no projections beyond the dimensions forming area of 1269.848 Sq. mtrs.

10. To avoid all ambiguity a scan of this document NMMC-1 is appended to this order.

11. Now the report shows two things: (1) at the ground floor level the otlā or elevated portion above ground has been extended by Building F-4 to occupy an area of 92.649 sq mts, i.e., 34.7 mts in length and 2.673 mts in depth. To leave no ambiguity about this, Mr Dande tenders a photograph of the frontage. On this, his officers have in court marked in red the distances and shown the alignment that is required to be removed to bring the otlā into compliance. The scan of the photograph is taken on record and marked as “NMMC-2”. It is part of the annexures to this order.

12. The otlā is elevated. We asked Mr Dande whether in maintaining the distance it was the elevated portion that would meet the outermost boundary or whether the lowest level of the second step would have to meet that boundary. He clarified on instructions

that it was the top level of the opla that had to meet the boundary. There are then two steps down to the road or ground level. We accept this.

13. On the previous occasion, we were variously told also that Building F-4 had at the podium parking level and at some other levels projected outwards so that the outward projections at the upper level were beyond the notional plot boundary, thus rendering the space beneath it unusable and not as a common area.

14. It is for this reason that we framed question (d) in paragraph 18 of our 12th December 2023 order. We noted the submissions specifically in paragraph 13 of that order. This was repeated before us at least four times.

15. The present report of the NMMC shows this to be entirely untrue. The report is signed by one Somnath Kekan, the ADTP. He is personally present in court. He was present on site when the inspection was taken.

16. We wholly deprecate the attempt by Mr Datar on behalf of the Rainbow Association to now question this report. The very suggestion seems to us to be an argument of desperation. After all, we began on 12th December 2023 by taking the figures from the CIDCO report and which we were invited to do by Mr Bapat on behalf of the Rainbow Association itself. We then took that to the next logical step by acting on the submissions that were made before us and, instead of demanding further Affidavits ordered a site

inspection to ascertain the correct factual position on ground. This was done. It is now yet being argued that all of this is either inconsequential or somehow incorrect and the writ court must yet engage in some ferreting of some abstract numbers that even the Rainbow Association's Petition cannot possibly justify or maintain.

17. To be perfectly clear, the Association's Writ Petition does not tell us specifically or deal with the notional plot boundary as we find them in the CIDCO report. It does not deal with the footprint of the actually reconstructed/redeveloped Building F-4. It does not even attempt to show how there is the slightest transgression. It only says that there is something wrong and something amiss and therefore permission should not be granted. On this basis, in Writ Petition No 12714 of 2015 the following reliefs are sought:

“a) Rule be issued and record and proceedings be called for;

b) That this Hon'ble Court be pleased to issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India, calling for all the records and materials in respect of the Impugned Notification dated 4/2/2015 (**Exhibit “M”** hereto) and related thereto, issued by the Respondent No.1 and after going through the legality and propriety thereof, quashing and setting aside the same as being illegal and without authority of law;

c) That this Hon'ble Court be pleased to issue a writ of certiorari or any appropriate writ, order or direction in the like nature of Article 226 of the Constitution of India:

i) Calling for the records and proceedings from the Respondent No.3 and after going through the

same be please to quash and set aside the order dated 29/10/2015 being Exhibit “K” to the Petition.

ii) To quash and set aside the order dated 30/10/2015 passed by the Commissioner Navi Mumbai Municipal Corporation being Exhibit “L” to the Petition.

d) That this Hon’ble Court be pleased to issue a writ of Mandamus or any appropriate writ, order or direction in the like nature of Article 226 of the Constitution of India:

i. To direct the Respondent No.3 to cancel the Commencement Certificate dated 8/9/2010 granted to the Respondent Nos.4 to 23 and to cancel the amended Commencement Certificate dated 17/11/2015 granted to the Respondent Nos.4 to 23 being Exhibit “C” and Exhibit “N”.

ii. To direct the Respondent No.2 to take immediate and necessary action against the Respondent Nos.4 to 23;

iii. To direct the Respondent Nos.2 and 3 to demolish the unauthorized construction carried out by the Respondent Nos.4 to 23;

18. Having regard to what has transpired now in court, not one of these reliefs can be granted in view of the Affidavits that are now before us and particularly in view of the reports and the photograph that have been tendered to us pursuant to our own direction.

19. Finally, we have today an affirmed undertaking by the Petitioner No 1 on behalf of all the Petitioners in Writ Petition No 631 of 2023 saying that the portion that has been found by the NMMC to be in excess will be demolished within one week from

today. We accept that statement as an undertaking to the court. A copy of this undertaking, though affirmed, is to be filed in the Registry as an annexure to an Affidavit. In the meantime, a copy of the two-page undertaking is also annexed to this order.

20. Mr Datar on behalf of the Rainbow Association expresses two concerns. The first, as we understand it, is that this order should not be seen as a permission or as a license to other societies to occupy, use or encroach upon common areas of the condominium/Association because the lease is in favour of the Association. That submission, though correctly placed, is of little assistance because saying something like this in the abstract can yield no meaningful order. It is for the Association to ensure that no constituent building or member occupies or uses a common area. The concept of notional plot boundaries and what each of the six buildings may or may not use comes from a CIDCO report relied on before us by the Rainbow Association itself. There is no turning back on that now. But nothing we have said in this order in regard to Mr Kapadi or the other Petitioners in Building F-4 can possibly be seen as a permission to anyone to exclusively use common areas.

21. We also do not know what is to be made about the apprehension expressed in regard to further redevelopment of other buildings. It seems to us extremely strange that the Association claims some rights independent of its constituent buildings. It cannot. It exists for and only because of the constituent buildings. It has no separate or severable rights in regard to any open areas. Common areas mean commons areas shared by the buildings and

has nothing to do with the condominium as a separate legal entity except in ensuring enjoyment in common of all common areas. That is all there is to it.

22. In light of this, Writ Petition No 12714 of 2015 is dismissed.

23. Writ Petition No 11380 of 2015 filed by the occupant of Building F-4 is infructuous in view of the filing of the subsequent Writ Petition No 631 of 2023.

24. In Writ Petition No 631 of 2023, there are the following reliefs:

“(a) This Hon’ble Court be pleased to issue a Writ of Certiorari or any other Writ or order in the nature of Writ of Certiorari or any other Writ or order calling upon the records, papers and proceedings in relation to the application for regularisation filed by the Petitioners and the order dated 17th March, 2022 passed by Respondent No.2;

(b) This Hon’ble Court be pleased to issue a Writ of Mandamus or any other Writ or order in the nature of Writ of Mandamus or any other Writ or order directing Respondent No. 2 to pass an appropriate order regularising the construction carried out by the Petitioners;

(c) Without prejudice to the above, this Hon’ble Court be pleased to direct Respondent No. 1 to state on oath its response/issue clarification or otherwise appropriately reply to the condition required by Respondent No. 2 to be met for regularisation of Petitioners’ construction *viz.* determining the share of the residents of building F-4 on the subject plot i.e. determining Petitioners’ share out of

the leased plot and thereafter, this Hon'ble Court be pleased to direct Respondent No. 2 to decide the regularisation application of the Petitioners on the basis of such response of Respondent No. 1;

25. In this case, it is sufficient to make an order in terms of prayer clause (b). We clarify that this means that the NMMC will proceed to issue all necessary permissions and sanctions including Occupancy Certificates (“OC”) for redeveloped Building F-4. It is not to insist upon a separate “lease” or title document in regard to Building F-4, its footprint or its notional boundaries because obviously there can be no such thing. As Mr Datar has never failed to remind us, it is the Association that is the lessee of the entire unsubdivided plot.

26. Therefore, any orders by the authorities demanding a copy of the lease deed, in view of this litigation, are quashed and set aside.

27. Building F-4 does not yet have a water supply connection. Mr Kamdar states that the necessary application for a water connection will be made within three weeks from today. It is to be processed as expeditiously as possible and in accordance with law and subject to payment of all necessary charges and fees and, in any event, within three weeks of the application being made.

28. In parallel, and subject to the water connection being granted (for we have held that occupancy requires a municipal water connection) it is open to the Petitioners, AI Kapadi and others to submit an application for an OC.

29. Mr Kamdar confirms that a fire NOC is obtained. If necessary, this may require to be re-validated or a copy may be submitted to the NMMC.

30. In parting we deal with Interim Application No 2669 of 2023. This is filed by an outsider who was joined as a party to this Writ Petition, in our view wrongly. This is not a Public Interest Litigation. He has admittedly no interest in the larger plot or in the individual plot. He may have gained orders in other Public Interest Litigations, but we believe it is an extraordinarily dangerous precedent to allow outsiders to intervene in privately held property matters that do not concern them in this fashion. We are saying nothing about the Applicants *bona fides* or credentials but we are extremely uneasy about the kind of precedent this sets. This branch of the law has received at least one order from the Supreme Court in *Ramesh Hirachand Kundanmal v Municipal Corporation of Greater Bombay & Ors*.¹ Merely because a party believes that he has something of value to add or contribute is no reason to insist upon his joinder or to allow his participation in proceedings that do not concern him directly. To put it differently, had these been suits before a civil court, there was not the slightest possibility of this Applicant being able to be impleaded. If it could not be done in a suit, we do not see why it should be permitted in a Writ Petition that is not a PIL. The Application is rejected.

31. Mr Kamdar's other submission which we have not thought it necessary to deal with is on the question of equities because he

1 (1992) 2 SCC 524.

argues that there are at least five NOC's from the Rainbow Association as also a demand from the Association that the occupants of Building F-4 form their own society. The submission was that it is not open to the Association now to question the formation of a society or to question the notional separation boundaries of Building F-4.

32. In light of what we have held, it is not necessary to enter into this aspect of the matter.

33. The Petitions are disposed in these terms. No costs.

34. All other Interlocutory Applications stand disposed of.

(Kamal Khata, J)

(G. S. Patel, J)



नवी मुंबई महानगरपालिका

Navi Mumbai Municipal Corporation

कार्यालय : न.मु.ग.पा मुख्य इमारत, मुख्य क्र. १, किल्ले
गावठाण जवळ, पामबीच जंक्शन, से-१५ए, सी.बी.डी.,
बेलापुर, नवी मुंबई - ४००६१४.
दुरध्वनी : ०२२-२७६५४०७०/७१ फॅक्स : ०२२-२७५४७०७०

Office : NMMC Head Office, Plot No. 1, Near Kille
Gaathan, Palmbeach Junction, C.B.D., Belapur,
Navi Mumbai-4006014.
Tel : 022-27587070/71
Fax : 022-27577070

No../NMMC/TPO/ADTP/20236/2023

Date: 13.12.2023

To,
Tejesh Dande,
Advocate.

**REF: In The High Court of Judicature At Bombay
Civil Appellate Jurisdiction
Writ Petition No. 631 of 2023
With
Writ Petition No.11380 of 2015**

A.I Kapadi & Ors

.... Petitioners

Vs.

City & Industrial Development
Corporation of Maharashtra & Ors

....Respondents

As per the Hon. Court order dt. 12/12/2023 Hon. High court has directed this office of the ADTP NMMC to inspect the site for building F4 & asses on four points as specifically mentioned in para no.18 of Hon. High Courts order. As mentioned in para no.17 of the order petitioner architect have submitted as built drawings to this office on 13/12/2023. AS per the directions of Hon. Court NMMC officers has inspected the site on dated 13/12/2023 in presence of the representatives of Akash CHS and Rainbow Flats and shops owners association.

Abided by the Hon. High Courts order and with the available time frame following observations are made during the site inspections as desired by the Hon. Court.

Sr. No.	ISSUES TO BE INSPECTED BY THE NMMC Vide ORDER DT. 12.12.2023 OF HON'BLE BOMBAY HIGH COURT	OBSERVATIONS MADE BY THE ADTP (NMMC) during site visit at 3:00 PM on dt. 13.12.2023
(a)	Whether any part of the building F-4 redevelopment is beyond 1269.848 sq. mtrs.	As per the notional plot boundary shown in as built drawings submitted by architect part area of Olla measuring around 34.7 Mtr. × 2.673 mtr = 92.649 Sq.mtr. is beyond the area of 1269.848 sq. mtrs.
(b)	Whether in the construction of Building F-4 the necessary marginal open spaces have been maintained at the ground level,	Yes, necessary marginal open spaces at ground level have been maintained as per the sanctioned plans. Table showing required marginal open space as per carstwhile

	and, if not, the extent of the shortfall.	regulations and existing available marginal open space on site are attached here with .
(c)	Correspondingly, whether at the ground floor level there is an expansion of the construction beyond 1269.848 sq.mts.	Yes as mentioned in point no 1 above part area of Ota measuring around 34.7 Mtr. $\times$ 2.673 mtr = 92.649 Sq.mtr. is beyond the area of 1269.848 sq. mtrs.
(d)	For completeness, whether there are any projections at any higher floors that project beyond 1269.848 Sq.mtrs. of the notional plot boundary.	As per the notional plot boundary shown in as built drawings submitted by the architect it is observed that there are no projections beyond the dimensions forming area of 1269.848 Sq.mtrs.

Thus, during the site inspection it has been observed that, the required necessary marginal open space are being maintained on Ground level except on south side where Ota measuring around 34.7 Mtr. $\times$ 2.673 mtr = 92.649 Sq.mtr. of 0.8 mtr. Height has been constructed in marginal open space

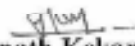
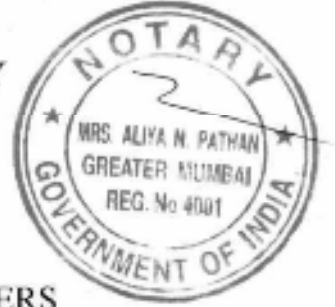

(Somnath Kekan)
Assistant Director of Town Planning
Navi Mumbai Municipal Corporation

Table Showing required and on site available Marginal open Space for F4 building as per earstwhile bye-laws.

Sr No	Bldg/ Fl	Front Margin (South) (F-2 Type Bldg)		Rear Margin (North) (F-5 Type Bldg)		Side 1 Margin (West) Road side		side 2 Margin (East) (F-2 Type Bldg)	
		Req.	Available on Site	Req.	Available on Site	Req.	Available on Site	Req.	Available on Site
1	Ground Floor	6.00	15.00	6.00	15.25	6.00	7.46	6.00	11.930
2	1st Floor	6.00	15.00	6.00	15.25	6.00	7.46	6.00	11.930
3	2nd Floor	6.00	15.00	6.00	27.215	6.00	7.46	6.00	11.930
4	3rd Floor	6.00	15.00	6.00	27.215	6.00	7.46	6.00	11.930
5	4th Floor	6.00	15.00	6.00	27.215	6.00	7.46	6.00	11.930
6	5th Floor	6.00	15.00	6.00	27.215	6.00	7.46	6.00	11.930
7	6th Floor	7.00	15.00	7.00	27.215	6.00	7.46	6.00	11.930
8	7th Floor	8.00	15.00	8.00	27.215	6.00	7.46	6.00	11.930
9	8th Floor	10.00	15.00	10.00	27.215	6.00	7.46	6.00	11.930
10	9th Floor	10.00	15.00	10.00	27.215	6.00	7.46	6.00	11.930
11	10th Floor	11.00	15.00	11.00	27.215	6.00	7.46	6.00	11.930
12	11th Floor	12.00	15.00	12.00	27.215	6.00	7.46	6.00	11.930
13	12th Floor	12.00	15.00	12.00	27.215	6.00	7.46	6.00	11.930
14	13th Floor	13.00	15.00	13.00	27.215	6.00	7.46	6.00	11.930
15	14th Floor	13.00	15.00	13.00	27.215	6.00	7.46	6.00	11.930
16	15th Floor	14.00	15.00	14.00	27.215	6.00	7.46	6.00	11.930
17	16th Floor	15.00	15.00	15.00	27.215	6.00	7.46	6.00	11.930



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 631 OF 2023



A. I. Kapadi & Ors.

.. PETITIONERS.

V/s.

CIDCO & Ors.

.. RESPONDENTS

UNDERTAKING ON BEHALF OF THE PETITIONERS
ABOVENAMED

I, A.I. Kapadi, being Petitioner No. 1 abovenamed, residing at JN-4/3/13, Sector – 09, Vashi, Navi Mumbai, Dist: Thane – 400 703 do hereby solemnly state on oath and undertake before this Hon'ble Court as follows:

1. The entire construction carried out by the Petitioners in respect of their building being Building No. F-4 is within 1,269.848 sq. mtrs.
2. Pursuant to the order dated 12th December 2023 passed by this Hon'ble Court and the directions contained therein, the Navi Mumbai Municipal Corporation has carried out the inspection of the site of construction of the redeveloped Building No. F-4.

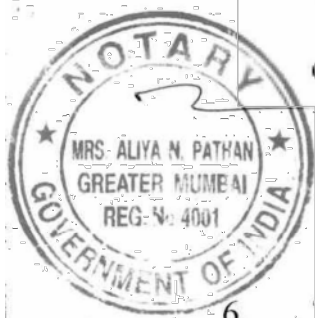
3. Upon taking the measurements, the officers of the Navi Mumbai Municipal Corporation who carried out the inspection, in the presence

of the parties concerned, orally remarked that the marginal spaces had been duly maintained on three sides and that there were no projections beyond the area of 1269.848 sq. m. notional plot boundary.

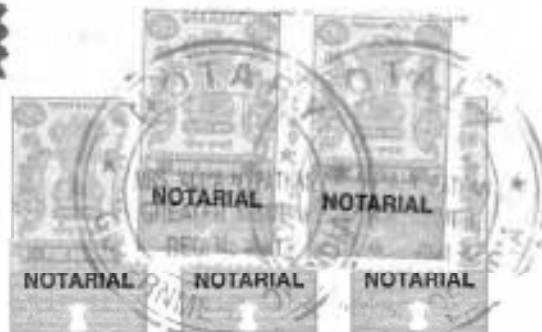
4. The officers also remarked that it appeared that on the south side of the notional plot boundary, the necessary open space was not maintained as a result of the construction of the 'otla' admeasuring about 92.649 sq. m. As per the officers of the Navi Mumbai Municipal Corporation, the said 'otla' was beyond the area of 1,269.848 sq. m.

5. In this regard, I, on behalf of the Petitioners abovenamed and on my own behalf, undertake before this Hon'ble Court that the said 'otla' will be demolished within a period of one week so that the necessary open spaces is being maintained and the construction is within 1,269.848 sq. m.

6. The said undertaking is binding on the Petitioners abovenamed.



NOTARY REGISTER Sr. No. 45062
DATED: 14/12/2023



A. I. Kapadi
(Petitioner No. 1)

BEFORE ME

A.N. Pathan 14/12/2023
MRS. ALIYA N. PATHAN
NOTARY
GREATER MUMBAI
GOVT. OF INDIA