IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION (L)NO.139 OF 2013

IN

PUBLIC INTEREST LITIGATION PETITION NO.33 OF 2011

In the matter of Articles 14, 21, 48A, 51A and 226 of the Constitution of India;

AND

In the matter of the Bombay Municipal Corporation Act, 1888;

AND

In the matter of the Bombay Police Act, 1951;

AND

In the matter of the illegal parking of garbage trucks on Telang Road and Bhaudaji Road;

AND

In the matter of the unauthorized construction and structures in the Corporation’s F/North Ward Office.

Flank Road Citizen’s Forum & Ors … Applicants

IN THE MATTER OF BETWEEN

Telang Road Residents Association & Ors … Petitioners

Versus

State of Maharashtra & Ors. … Respondents

**ADDITIONAL AFFIDAVIT ON BEHALF OF THE APPLICANT IN SUPPORT OF THE NOTICE OF MOTION**

I, GaurangVora, Indian Inhabitant and the Trustee and authorized representative of Applicant No.1, and further on behalf of (2) Maruti Krishna Jadhav, Indian Inhabitant, Applicant No.2, (3) PiyushPravinGada, Indian Inhabitant, Applicant No.3, (4) Krishna Kumar, Indian Inhabitant, Applicant No.4, (5) ManojArora, Indian Inhabitant, Applicant No.5, (6) LlyomeshLalubhaiTakwani, Indian Inhabitant, Applicant No.6 and (7) Mohan Singh K Khadka, Indian Inhabitant, Applicant No.7 having address as mentioned in the cause-title of the above Notice of Motion do herby solemnly affirm and state as under:

1. I say that I am aware of the facts of the case and able to depose to the same. We are filing this affidavit in support of the Notice of Motion.
2. Applicant No.1 is an unregistered association of public spirited Citizens of India. Applicant Nos. 2 to 7 are the members of the Applicant No.1 and residents of Flank Road, Sion-Matunga (East) Mumbai.
3. The Applicants have taken out the Instance Notice of Motion approaching this Hon’ble Court praying for a recall of the Order dated 1st March 2012 (“**the said Order**”) passed by the Hon’ble Court in the above Public Interest Litigation No.33 of 2011 (“**the said PIL**”) and aggrieved by the decision of the Respondent No.2 and 3 to shift the Motor Loader Chowky or the Solid Waste Management Chowky situated at Telang Road to a plot belonging to Hydraulic Engineer’s Department or Respondent No.2 situated at Flank Road, behind the Telephone Exchange Mumbai.
4. The said Notice of Motion taken out by the Applicants was listed on 8th March 2013 for hearing when the Hon’ble Court was pleased to hear the Applicants and consider the grievance of the Applicants. The Applicants had pleaded before the Hon’ble Court that shifting of the Garbage Chowky on the Flank Road as directed in the said Order, would cause hardships to the residents in the area where the Garbage Chowky was directed to be shifted. The Applicants therefore suggested that the Garbage Chowky can be shifted to Gate No.4, R.A. Kidwai Road, at Wadala which would be more appropriate and beneficial to public at large. Thereafter vide an order dated 8th March 2013, the Hon’ble Court was pleased to direct the Officers of the Municipal Corporation i.e. Respondent No.2 to inspect the site proposed and suggested by the Applicants and submit their report before next dated of hearing.
5. The Applicants submit that thereafter on or about 1st July, 2013 one Mr. Mahendra G. Ojha,member of the Applicant No.1 had applied vide an application under Right to Information Act, 2005 asking for copies of communications between BMC Legal Department, BMC F/North Ward and Municipal Commissioner at CST Headquarters with regards to shifting of Garbage Chowky from Telang Road to R.A. Kidwai Road.
6. The said Mr. Mahendra G. Ojha, received reply on the said application under RTI on 15th July, 2013 calling for payment of charges required to be paid in order to obtain copies of Communications between the BMC Legal Department, BMC F/North Ward and Municipal Commissioner at CST Headquarters with regards to shifting of Garbage Chowky from Telang Road to R.A. Kidwai Road. Hereto annexed and marked as **Exhibit ‘A’** is the copy of the said Reply.
7. The Applicants submit that thereafter, appropriate charges as instructed were paid and copies of Communications between the BMC Legal Department, BMC F/North Ward and Municipal Commissioner at CST Headquarters with regards to shifting of Garbage Chowky from Telang Road to R.A. Kidwai Road were obtained.
8. The Applicants submit that, a letter dated 21st March 2013 was provided under the RTI Application which is addressed by Assistant Commissioner, F/North Ward to Law Officer wherein it was specified that pursuant to Order dated 8th March, 2013 passed by the Hon’ble Court in the above Notice of Motion, the Assistant Commissioner along with Assistant Commissioner Maintenance and Assistant Commissioner (S.W.M) had visited the proposed and recommended site at R.A. Kidwai Road.The said letter strongly recommended transfer of Garbage Chowkiesfrom Flank Road to R.A. KidwaiMarg detailing various specifications as regards to its efficiency and accessibility. The said letter however sought clarification and remarks from the Law Officeras regards violation of Order dated 25th June, 2008 passed by the Hon’ble Courtin Suo Moto PIL No.86 of 2006 with regards to encroachment if the said proposal of transfer was to be approved in its finality. Hereto annexed and marked as **Exhibit ‘B’** is the copy of the said letter dated 21st March 2013 addressed by Assistant Commissioner, F/North Ward to Law Officer.
9. The Applicants submit that as suggested by the Applicants to the Hon’ble Court on 8th March 2013, a letter dated 16th April, 2013 addressed by Assistant Law Officer to Assistant Commissioner F/North Ward, in reply to the letter dated 21st March 2013, strongly recommended that the proposal for transfer of Garbage Chowkies from Flank Road to R.A. Kidwaimarg can be considered since the shifting of Motor Loader Chowky of S.W.M department does not amount to any permanent activity on daily basis and hence it was clarified that the said installation also did not violate the order dated 25th June 2008 passed by the Hon’ble Court in PIL No.86 of 2006 with regards to encroachment on D’Mello Road and Ahmed Kidwai Road. Hereto annexed and marked as **Exhibit ‘C’** is the copy of the said letter dated 16th April 2013 addressed by Assistant Law Officer to Assistant CommissionerF/North Ward. The aforesaid letter was also obtained under the RTI application after payment of appropriate charges.
10. The Assistant Commissioner therefore immediately thereafter vide a letter dated 17th April 2013 addressed to Deputy Municipal Commissioner (Zone-II), Assistant Municipal Commissioner (City) and Municipal Commissioner briefed the recommendation as well as clarification received from the Law officer and sought sanction of the Proposal to transfer the Garbage Chowkie from Flank Road to R.A. KidwaiMarg as beneficial to public at large. Hereto annexed and marked as **Exibit ‘D’** is the copy of the said letter dated 17th April 2013 addressed by Assistant Commissioner, F/North Wardto Deputy Municipal Commissioner (Zone-II), Assistant Municipal Commissioner (City) and Municipal Commissioner.
11. The Applicants submit that since it is almost approved by all the concerned departments of the Respondent No.2 and under strong recommendations for sanction of the proposal, it is therefore in larger public interest that the said order dated 1st March, 2012 be recalled in the interest of justice.
12. In view of the above, the Applicants most respectfully submit that in view of the seriousness of the matter and the gravity of situation and potential impact on the Applicants as well as the residents and shop owners in the area, it is just fair and necessary to recall the said Order dated 1st March, 2012 passed by the Hon’ble Court in the said PIL or either modify the same in view of the recommendations by the Officers of Respondent No.2 and Law Officers of Respondent No.2.
13. The Applicants are raising the questions of public importance and are seeking to protect the dignity, sanctity and serenity of the area. The Reliefs claimed by the Applicants are in larger public interest.
14. The Applicants submit that grave and irreparable harm, injury and loss will be caused to the Applicants if the reliefs as prayed for are not granted to the Applicants. However, on the other hand, no prejudice will be caused to the Petitioners if the reliefs as prayed for hereinabove are granted.
15. It is therefore humbly prayed that the Hon’ble Court be pleased to allow the above Notice of Motion being lodging No.139 of 2013by modifying the said Order dated 1st March 2012 passed in Public Interest Litigation Petition No.33 of 2013 in accordance with the submissions of the Applicants.

Solemnly affirmed at Mumbai )

This \_\_\_ day of August, 2013 )

Before Me.

KALPESH JOSHI

Advocate for the Applicants

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PIL PETITION NO.33 OF 2011

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ADDITIONAL AFFIDAVIT IN SUPPORT OF NOTICE OF MOTION

Dated this day ofAugust, 2013

**KALPESH JOSHI**

Advocate for the Applicants

Mahavir Chambers, 3rd floor,

Banaji Lane, Fort,

Mumbai -400 001