IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 139 OF 2013

IN

PUBLIC INTEREST LITIGATION PETITION NO.33 OF 2011

Flank Road Citizen's Forum & 6 Ors. …Applicants In the matter of :

Telang Road Residents Association & Ors …Petitioners

 Versus

State of Maharashtra and Others …Respondents

**AFFIDAVIT ON BEHALF OF THE APPLICANT IN SUPPORT**

**OF THE NOTICE OF MOTION**

We, (1) Gaurang Vora, Indian Inhabitant and the Trustee and authorized representative of Applicant No. 1, (2) Maruti Krishna Jadhav, Indian Inhabitant, Applicant No. 2, (3) Piyush Pravin Gada, Indian Inhabitant, Applicant No. 3, (4) Krishna Kumar, Indian Inhabitant, Applicant No. 4, (5) Manoj Arora, Indian Inhabitant, Applicant No. 5, (6) Llyomesh Lalubhai Takwani, Indian Inhabitant, Applicant No. 6 and, (7) Mohan Singh K Khadka, Indian Inhabitant, Applicant No. 7 having our addressed mentioned in the cause-title of the above Notice of Motion anddo hereby solemnly affirm and state as follows:

1. We are aware of the facts of the case and are 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 Indian. Applicant Nos. 2 to 7 are the members of the Applicant No. 1 and residents of Flank Road, Sion-Matuga (East) Mumbai.

3. The Applicants, by way of this Notice of Motion, are constrained to approach this Hon’ble Court praying for a recall of the Order dated 1st March 2012 (“**the said Order**”)passed by this Hon’ble Court in the above Public Interest LitigationNo.33 of 2011(“**the said PIL**”) and aggrieved by the decision of Respondent Nos.2 and 3 to shift the Motor Loader Chowky or the Solid Waste Management Chowkysituated at Telang Road to a plot belonging to Hydraulic Engineer’s Department of Respondent No.2 situated at Flank Road behind the Telephone Exchange Mumbai. As more particularly stated herein,surrounded by densely populated residential area, a large commercial market and FOB entrance to Kings Circle Station.The proposed shifting of the Motor Loader Chowky or the Solid Waste Management Chowky would cause enormous nuisance, pollution and health hazard to the residents of the locality, people visiting the nearby market and Shanmukhananda Auditorium.

 **BACKGROUND**

4. The Applicantsare aggrieved by the decision allegedly taken by Respondent Nos.2 and 3 and communicated to this Hon’ble Court pursuant to which the Order dated 1st March, 2012 came to be passed in the above Public Interest Litigation *inter alia* on the following reasons:

a. The area now designated for the proposed Motor Loader Chowky or Solid Waste Management Chowky by Respondent Nos.2 and 3 being situated amidst the residential buildings and Police Quarters. Solid Waste Management Chowky would cause enormous nuisance, pollution and health hazard to the residents of the locality,

b. The aforesaid designated area is surrounded by Gandhi Cloth Market, Sir Kikabhai Premchand Trust Hospital and Shanmukhananda Auditorium and that being so is not suitable for Solid Waste Management Chowky,

c. The designated area is presently being used as a car parking area and no other sufficient space is available for parking. There is continuous flow of traffic on the roads around the said designated area. This area is off the main road which is the Eastern Express Highway and there is continuous flow of traffic on these roads. The designated area is between 2 narrow lines on which car parking is prohibited.

d. The decision to shift Motor Loader Chowky or Solid Waste Management Chowky to the said designated area has been taken without taking into consideration various factors stated herein and without granting the residents and occupants of the locality any personal hearing.

Hereto annexed and marked **Exhibits “A” and “B”** are copies of the Google images of the subject area and rough sketch of the area respectively.

5. In the circumstances aforesaid, the Applicants, though not a party to the above Public Interest Litigation Petition No.33 of 2011, are seeking intervention in the same matter of this Hon’ble Court by way of this Notice of Motion as the decision allegedly taken by Respondent Nos.2 and 3 and communicated to this Hon’ble Court has merged with the Order dated 1st March, 2012 passed by this Hon’ble Court in the above Petition. The above Petition being a Public Interest Litigation, interest of all the persons who are affected or may be affected be taken into consideration. The Applicants are, therefore, approaching this Hon’ble Court byway of this Notice of Motion to recall or modify the said Order dated 1st March, 2012. The said Order only records the decision taken by Respondent Nos.2 and 3 to shift the Motor Loader Chowky or Solid Waste Management Chowky to an open plot at Flank Road (behind Telephone Exchange).

 **The Proposed Shifting Of The Motor Loader Chowky to Flank Road**

6. In or around December 2012, the Applicant noticed various activities by the Respondents on the open plot of land at Flank Road (behind Telephone Exchange). The Applicants noticed that the Respondents had installed 2 containers on the said open plot. On making enquires with the Respondents, the Applicants were informed that the the Solid Garbage Management Chowky situated at Telang Road is being shifted to the said open plot. Further enquires made by the Applicant revealed the following facts:

1. Aggrieved by the nuisance caused by the Solid Garbage Management Chowky situated at Telang Road and the illegal parking of numerous garbage trucks on Telang Road and Bhaudaji Road, Petitioners approached this Hon’ble Court by filing PIL No.33 of 2011*inter alia* praying that the Respondents would ensure that no garbage truck is parked either on Telang Road or Bhaudaji Road or any of the neighbouring Roads.The Petitioners also sought a Writ of Mandamus against Respondent Nos.1 to 6 directing Respondent Nos.1 to 6 to shift the operationMotor Loader Chowky or Solid Garbage Management Chowky from F/North Ward office to Motor Loader Chowky situated at R.A. Kidwai Marg, Wadala. The Applicants crave leave to refer to and rely upon the papers and the proceedings of PIL No.33 of 2011.
2. This Hon’ble Court has,in its Order dated 7th December 2011 passed in the said PIL N.33 of 2011, observed as follows :-

*“2… Our attention is invited to a letter dated 14 September 2009 by which the Assistant Municipal Commissioner F/North ward had sought No Objection Certificate from the Police authority for locating Solid Garbage Management Department’s chowky on R.A. Kidwai Marg and for shifting Solid Garbage Management chowky and by letter 2 November 2011 the Senior Police Inspector of Matunga Traffic Branch has also conveyed the NOC of the Police Department.”*

*“4. Having regard to the fact that at present the Solid Waste Management Chowky is in a residential area and lot of inconvenience is being caused to the residents in that area on account of large number of garbage trucks transferring garbage from small trucks to compactor trucks and hundreds of labourers are required to go to the Solid Waste Management chowky, it would be in the fitness of the things that higher authorities of the Municipal Corporation should take up the issue and consider providing necessary facilities like urinal, toilet, bathroom and changing room for all labourers near the chowky of the Corporation situated on R.A. Kidwai road or in the nearby area.”*

In view of the aforesaid this Hon’ble Court directed the higher authorities of Respondent No.2 to look into the matter and make an attempt to redress the Petitioners’ grievances as expeditiously as possible. Hereto annexed and marked **Exhibit “C”** is a copy of the Order dated 7th December 2011 passed by this Hon’ble Court in PIL No.33 of 2011.

1. It is pertinent to note that whilst an NOC had been given by Respondent No. 6 to shift the location of the Motor Loader Chowky or Solid Waste Management Chowky to R. A. Kidwai Marg, it appears that there has been no NOC obtained from Respondent No. 6 to shift the Motor Loader Chowky or Solid Waste Management Chowky to Flank Road behind the telephone exchange.
2. Pursuant to the directions given by this Hon’ble Court bythe Order dated 7th December 2011, Respondent Nos.2 to 4 identified a plot of land at Flank Road behind the telephone exchange near the Shanmukhananda Auditorium belonging to Hydraulic Engineer’s Department of Respondent No.2. It appears that the total area of the plot is 1175 sq.mtrs out of which 470 sq.mtrs would be utilised for Motor Loader Chowky or Solid Waste Management Chowky. Respondent No.4 by his Affidavit dated 29th February 2012 (hereinafter “**said Affidavit**”) intimated the aforesaid facts to this Hon’ble Court. In the said Affidavit it has also been stated that Respondent No.4 by its Order dated 27th February 2012 has approved the proposal to shift the Motor Loader Chowky or Solid Waste Management Chowky from Telang Road to Flank Road near Shanmukhananda Auditorium. The Applicant craves leave to refer to the said Affidavit dated 29th February 2012.
3. This Hon’ble Court taking cognizance of the said Affidavit came to the finding that the grievances of the Petitioners did not survive and disposed of the said PIL by an Order dated 1st March 2012. In the Order dated 1st March 2012, the statement made by Respondent No. 4in the said Affidavit has been recorded and the PIL was accordingly disposed of. Although in the said Affidavit, Respondent No.4 stated that the area of 705 sq.mtrs shall be kept for pay and park scheme, this Hon’ble Court recorded the statement of Respondent No. 4that area of 705 sq.mtrs will be allowed to be used for pay and park only when the vehicles of MCGM are not parked on the plot. Hereto annexed and marked **Exhibit “D”** is a copy of the said Order dated 1st March 2012.

7. The Applicant submits that in view of the said Affidavit and Order dated 1st March 2012, the Motor Loader Chowky or Solid Waste Management Chowky would be shifted to Flank Road. The decision of Respondent Nos.2 to 6 to shift the Motor Loader Chowky or Solid Waste Management Chowky to Flank Road shall cause nuisance and health hazards to the residents of the surrounding area and therefore the same should not be situated in a residential area. In fact, this Hon’ble Court in its Order dated 7th December 2011 had made categorical observation that Motor Loader Chowky or Solid Waste Management Chowky in the residential area causes a lot of inconvenience to the nearby residents. It was therefore incumbent upon Respondent Nos.2 to 4 to shift the Motor Loader Chowky or Solid Waste Management Chowky to a non-residential area. However, instead of considering shifting the Motor Loader Chowky or Solid Waste Management Chowky to R. A. Kidwai Road, Wadala as prayed for in PIL No. 33 of 2011, Respondent Nos.2 to 4 are shifting the Motor Loader Chowky or Solid Waste Management Chowky from one residential area to another residential-cum-commercial area. The residents of the area have opposed and in fact a representation was made the residents on which more than 1,000 residents have put their signature.

8. The Applicants have made several representations to Respondent No. 3 and 4 and time to time requested them not to act upon their decision to shift the Motor Loader Chowky or Solid Waste Management Chowky to Flak Road area. However, the Applicants till date not received any response form Respondent Nos. 3 and 4 in the matter. We crave leave to refer to and rely upon the representations made by the Applicants, the residents of the neighboring areas, various social organizations active in the area, sitting Member of Parliament and Member of Legislative Assembly to Respondent Nos. 1 to 4 in that regard when produced. The Officer in Charge of Traffic Police, Matunga Division, by its letter dated 1st May 2012 has taken objection for shifting of Motor Loader Chowky or Solid Waste Management Chowky. Hereto annexed and marked **Exhibit “E” and “E-1”** are copies of the said letter dated 1st May 2012 addressed by Traffic Department, Matunga Divison and its office translation respectively.

8. The Applicants are gravely aggrieved by the decision of Respondent Nos.2 to 4 to shift the Motor Loader Chowky or Solid Waste Management Chowky to Flank Road.As stated hereinabove, the decision to shift the Motor Loader Chowky or Solid Waste Management Chowky to a plot of landto Flank Road is erroneous, arbitrary, illegal, irrational and causes grave prejudice to the Applicant. Respondent Nos.1 to 6 failed and neglected to consider following aspects before taking the aforesaid decision:

1. The plot of land identified for shifting the Motor Loader Chowky or Solid Waste Management Chowky is situated in a highly populated residential-cum-commercial area.
2. The plot of land identified for shifting the Motor Loader Chowky or Solid Waste Management Chowky is above one of main water lines of the city and adjacent to hydraulic engineers office. The said line supplies water to entire south Mumbai. The location of Motor Loader Chowky or Solid Waste Management Chowky on the main water supplying line may result in health hazard to millions of peoples as water supplying line are prone to burst and leakage. Motor Loader Chowky or Solid Waste Management Chowky should not be permitted above the water lines.
3. It is pertinent to note that initially Respondent No. 6 had declined to issue the No Objection Certificate (NOC) on the ground of the Motor Loader Chowky or Solid Waste Management Chowky would cause traffic congestion. However, subsequently Respondent No. 6 without furnishing the reasons changed its stand and granted NOC. Although, the Motor Loader Chowky would entail heavy vehicular traffic, no traffic plan has been prepared by Respondent No. 6.

d) While transferring garbage from smaller trucks to larger trucks at Motor Loader Chowky or Solid Waste Management Chowky, there is large spillage of garbage as also the garbage emits foul stench there. The Applicant apprehends that apart from causing nuisance and unpleasantness, transfer of garbage in such a densely populated area could result in the spreading of diseases to the residents of that area and the people visiting the nearby market, Shanmukhananda Auditorium etc.

e) The plot of land identified for the Motor Loader Chowky or Solid Waste Management Chowky is admeasuring 470 sq.mtrs which is insufficient and inadequate for the purposes of the Motor Loader Chowky or Solid Waste Management Chowky. A large number of trucks and small vehicles are required to be parked at Motor Loader Chowky or Solid Waste Management Chowky. Apart from vehicles, almost 350 labourers work at Motor Loader Chowky or Solid Waste Management Chowky. Motor Loader Chowky or Solid Waste Management Chowky requires other amenities and facilities such as urinals, bathrooms etc. Respondent Nos.2 to 4 have proposed 470 sq.mtrs for the purposes of Motor Loader Chowky or Solid Waste Management Chowky and the rest of the plot would be utilised for the purpose of parking vehicles belonging to Respondent No.2. As the area of the plot is inadequate, garbage trucks and other smaller vehicles would be parked outside the plot in the nearby areas causing congestion and traffic in the area.

f) The area identified for shifting the Motor Loader Chowky or Solid Waste Management Chowky is a highly congested area due to thickly populated area, one of the largest market places in Mumbai and the presence of Shanmukhananda Auditorium. It is an admitted position that large number of trucks and smaller vehicles would gather at the Motor Loader or Solid Waste Management Chowky leading to further congestion.

g) The plot of land identified for shifting the Motor Loader or Solid Waste Management Chowky is currently designated as pay and park facility. Such pay and park facility is essential and critical for people visiting Shanmukhananda Auditorium and the nearby market. The construction and use of the plot of land for Motor Loader or Solid Waste Management Chowky would deprive the essential parking facility due to which many patrons may desist from visiting Shanmukhananda Auditorium.

9. The Applicants submit that the decision of Respondent Nos.2 to 4 to shift the Motor Loader or Solid Waste Management Chowky to Falnk Road is violative of right to clean and pollution free environment for the residents of the said area and the visitors of Shanmukhananda Auditorium. Motor loader or Solid Waste Management Chowky is prone to emissions of foul stench and other harmful gases. The decision of Respondent Nos.2 to 4 amounts to violation of the rights of citizen under Article 21 of the Constitution of India.

10. The Applicants submit that the proposed action of Respondent Nos.2 to 4 of shifting the Motor Loader or Solid Waste Management Chowky to Flank Road near Shanmukhananda Auditorium is arbitrary, unfair, unreasonable, irrational and consequently violative of Article 14 of the Constitution of India.

11. The Applicants most respectfully submit that in view of the seriousness of the matter and the gravity of situation and potential impact on the Applicant as well as the residents and shop ownersin the area, it is just fair and necessary to recall the Order dated 1st March 2012 passed by this Hon’ble Court. It is further just fair and necessary that this Hon’ble Court directs Respondent Nos.1 to 6 not to shift the Motor Loader or Solid Waste Management Chowky to Flank Road.

12. The Applicants therefore submit that pending the hearing and final disposal of the present Notice of Motion, this Hon’ble Court be pleased to:

i) stay operation, implementation and execution of the Order dated 1stMarch 2012 passed by this Hon’ble Court; and

ii) stay operation, implementation and execution of the decision of Respondent No. 2 dated 27th February 2012 to shift the motor loader chowky situated at Telang Road to a plot belonging to Hydraulic Engineer’s Department of Respondent No.2 situated at Flank Road behind the Telephone Exchange near Shanmukhananda Auditorium, Mumbai.

13. The Applicants are raising the questions of public importance and is seeking to protect the dignity, sanctity and serenity of the area. The reliefs claimed by the Applicants are in larger Public Interest.

14. The Applicant learnt about the Order dated 1st March 2012 and the decision of the Respondents dated 27th February 2012 to shift the Motor Loader Chowky situated at Telang Road to a plot belonging to Hydraulic Engineer’s Department of Respondent No.2 situated at Flank Road behind the Telephone Exchange near Shanmukhananda Auditorium in December 2012. The Applicant has approached this Hon’ble Court with utmost promptness and urgency. The Applicants have made several representations to Respondent Nos. 1 to 4 to change their decision but did not receive any response from them.The Applicant submits that the said decision taken by Respondent Nos.2 to 4 and the Order passed by this Hon’ble Court on 1st March, 2012 on the basis of the said decision has gravely affected and prejudiced the Applicant and the residents and shop owners of the area where the Motor Loader Chowky is proposed to be shifted. The Applicant submits that unless the aforesaid reliefs are granted, grave and irreparable harm, injury and prejudice would be caused to the Applicant and the other residents of nearby areas. The Applicant submits that in view of the various facts and circumstances stated hereinabove, the balance of convenience is also in favour of the Applicant for grant of reliefs in its favour, as prayed.

15. As the decision of Respondent Nos.2 to 4 to shift the Motor Loader Chowky Or Solid Waste Management Chowky is taken in view of the directions given by this Hon’ble Court in its Order dated 7th December 2011 and the PIL No.33 of 2011 has been disposed of in terms of the statement made by Respondent No.4, the Applicant does not have any other efficacious remedy other than approaching this Hon’ble Court by way of this Notice of Motion in the said Petition.

16. We say that for the aforesaid reasons, we respectfully submit that this Hon’ble Court be pleased to recall and set aside the Order dated 1st March 2012 and order and direct Respondent Nos. 2 and 3 to revoke and withdraw their decision dated 27th February 2012 to shift the Motor Loader Chowky situated at Telang Road to a plot belonging to Hydraulic Engineer’s Department of Respondent No.2 situated at Flank Road behind the Telephone Exchange Flank Road.

17. We say that grave and irreparable harm, injury and loss will be caused to the Applicants if the reliefs as prayed in the above Notice of Motion are not granted to the Applicants. We say that, on the other hand, no prejudice will be caused to the Petitioners if the reliefs as prayed for hereinabove are granted.

18. In the aforesaid circumstances, we pray that the above Notice of Motion be made absolute with costs.

Solemnly affirmed at Mumbai ]

(1) Gaurang R Vora, ]

(2) Maruti Krishna Jadhav, ]

(3) Piyush Pravin Gada, ]

(4) Krishna Kumar, ]

(5) Manoj Arora, ]

(6) Llyomesh Lalubhai Takwani, ]

(7) Mohan Singh K Khadka, ]

this \_\_\_\_day of February, 2013 ]

 Before me,

High Court

O.O.C.J.

Notice of Motion No. 139 of 2013

In

PIL Petition No.33 of 2011

Flank Road Residents Association & Ors.

 ..Applicants

In the matter of between:

Telang Road Residents Association

& Ors. ..Petitioners

Versus

State of Maharashtra &Ors. .. Respondents

**AFFIDAVIT OFTHE APPLICANT IN SUPPORT OF THE NOTICE OF MOTION**

Dated this day of February, 2013

KALPESH JOSHI

Advocate for the Applicants

Mahavir Chambers, 3rd floor,

Banaji Lane, Fort,

Mumbai – 400 001