



Mithi River, lack of clarity about the origin of the Mithi River and the depiction of the Mithi River as a Nala as opposed to a river in the Development Plan of Mumbai. The Counsel appearing on my behalf also raised the issue of the blatant non-compliance of various guidelines and Regulations by the Respondents while issuing permissions to carry out development and construction along the banks of the Mithi River in respect of which this Hon'ble Court asked several pertinent questions, however, the same were deliberately left unanswered by the concerned Respondents.

3. I say that I am making this Additional Affidavit for the limited purpose of bringing on record certain new documents, viz, Development Plan of Mumbai City pertaining to the areas through which the Mithi River flows. These documents are extremely pertinent and material to the determination of the aforesaid PIL Writ Petition as it shows the blatant disregard that the Respondents, especially, Respondent Nos. 1 to 4 and 10 have showed to the existence and status of the Mithi River while passing building proposals on and around the banks of the Mithi River. The said river has been conveniently deleted/omitted from the Development Plans of Mumbai City (hereinafter referred to as the said D.P.) at some places, while at other place it has been termed as Nala or drain. I say that a copy of the said D.P. could not be obtained earlier and hence was not annexed to the aforesaid Petition. I crave leave of this Hon'ble Court that I may

be allowed to refer to and rely upon the same in the interest of justice and equity.

4. I say that the said D.P. was passed by the Respondent No. 2 in 1991 and officially published in 1993. However, it is very difficult to obtain a copy of and analyse/scrutinise the same, as Mumbai being the megapolis, the said D.P. is not available in one single sheet but a series of sheets which form the entire plan. The sheets of the said D.P. which delineate the region through which the Mithi River flows are sheet Nos. E/8, E/12, E/15, E/18, E/21 and E/24, wherein 'E' stands for eastern suburbs and W/40, W/43, W/46, W/49, W/51, W/52 and W/53 and E/21 wherein 'W' stands for western suburbs. However, in aforementioned sheets of the said D.P., Mithi River is either missing or is wrongly depicted as a "Nala" inspite of the fact that the map of Mumbai clearly shows that the Mithi River flows through the areas delineated in the said sheets. Thus, the aforementioned sheets of the said D.P. shows how the Respondent Nos. 1 to 4 and 10 have blatantly bypassed the existence and status of the Mithi River and by permitting construction on/around the banks of the Mithi River and justifying the same by conveniently deleting the Mithi River from the said D.P. or wrongly depicting the same as a "Nala".

5. I say that I have acquired the aforementioned sheets of the said D.P. pertaining to the areas through which the Mithi River flows on 15<sup>th</sup> September 2005. I say that a bare perusal of

the aforementioned sheets of the said the D.P. bears a testimony to the rampant and extraneous considerations that have determined the course of the Mithi River and reduced it to a "Nala" as mentioned in sheet Nos. E/12, E/15 and W/43 of the said D.P. I will now set out the omissions committed by the aforesaid Respondents in each of the sheets in ascending order parawise: -

a) **Sheet No. E/8**

I say that Sheet No. E/8 of the said D.P. demarcates the areas of Film City (Goregaon), Aarey Milk Colony and the nearby area of the Vihar Lake. These areas are under the jurisdiction of the T Ward of the Respondent No. 3. However, inspite of having the knowledge that the Mithi River flows through these areas, Respondent No. 3 has passed building proposals and construction has already commenced pursuant to the aforesaid building proposals along the banks of the Mithi River. Hereto annexed and marked as **Exhibit "A"** is the copy of the said sheet No. E/8.

b) **Sheet No. E/12:**

I say that sheet No. E/12 of the said D.P. demarcates the Vihar Lake and the nearby adjoining areas. These areas are under the jurisdiction of S and T Ward of the Respondent No. 3. It is pertinent to note that the Mithi River originates from this area.

The janmasthan, i.e. the origin of the Mithi River which is near the Vihar Dam was constructed in the year 1856, which is (marked as 'A'). However, even though the said Dam is shown on the sheet no. E/12, the Mithi River is not shown as originating from it. But for more than one (1) kilometer from its origin at the Vihar Lake, the Mithi River is not shown in the sheet no. 12 of the said D.P. i.e., the Government records which determine whether building plans should be passed for commencing of construction. Further, after a distance of about two (2) kilometers from its origin, i.e. beyond the boundary of T. Ward the sheet No. E/12 of the said D.P. shows the beginning of a small Nala which is nothing but the Mithi River itself. This Nala passes through the Aarey Colony, Powai Park, Hydraulic Engineer's office, Junction of Larsen & Toubro. Hereto annexed and marked as **Exhibit "B"** is the copy of the said sheet no. E/12 of the said D.P.

c) **Sheet No. E/15:**

I say that the sheet no. E/15 of the said D.P. demarcates the areas of Powai Lake, Powai Park and Larsen & Toubro. These areas fall under the jurisdiction of S and L ward of the Respondent No. 3. I say that the Powai overflow, which is a part of the Mithi River, is shown as a "Nala". In fact the "Nala"

flowing through the Sheet No. E/12 of the said D.P. continues to run in the sheet no. E/15 of the said D.P. I say that the total length of this so-called "Nala", which is in fact the Mithi River, is about 3 kms. I say that ignorance/omission of the fact that the so-called "Nala" is in fact the Mithi River, which has enabled several residential, commercial and industrial encroachers to carry out illegal constructions by obtaining permission from Respondent Nos. 1 to 4, and the Respondent No. 3. Hereto annexed and marked as **Exhibit "C"** is the copy of the said sheet no. E/15 of the said D.P.

d) **Sheet No. E/18:**

I say that the sheet No. E/18 of the said D.P. demarcates the areas of Mohili Village, Saki Naka and Marol. These areas come under the jurisdiction of the N and L Wards of the Respondent No. 3. I say that the flow of the Mithi River has been shown in a dubious manner in this sheet No. E/18 of the said D.P. Here the Mithi River is shown as the boundary of the N and L Wards from the beginning till the end of this sheet. The depiction of the Mithi River is so vague and ambiguous that only a person who has an idea of the fact that the Mithi River exists in the said areas would be able to locate it on the said sheet No. E/18 of the said D.P. The Respondent Nos. 1 to 4

and 10, especially, the Respondent No. 2 ought to have taken due care and diligence while passing and publishing the said D.P. to ensure that there should not be any vagueness and ambiguity about the existence of the Mithi River and that it should stand out clearly to enable the officers of the Respondent No. 3 who pass the building plans to ensure that they permit no construction on and along the banks of the Mithi River. Hereto annexed and marked as **Exhibit "D"** is the copy of the said sheet no. E/18 of the said D.P.

e) **Sheet No. E/21:**

I say that the sheet No. E/21 delineates the regions from Mohili Village to Wadia Estate. The said regions come under the jurisdiction of the N and L ward of the Respondent No. 3. I say that beyond the boundary of Respondent No. 9 near Wadia Estate, the sheet No. E/21 of the said D.P. for the first time depicts the Mithi River as a river in the said D.P. Thus, the Mithi River is officially recognized in the said D.P. only after sheet No. E/21 of the said D.P. In spite of the same, the Respondent Nos. 1 to 4 (the course of the river) allowed the Respondent No. 9 to illegally divert the course of the river not once but thrice to the extent of almost ninety degrees without getting the requisite permission for the same from

the Respondent No. 11. Hereto annexed and marked as **Exhibit "E"** is the copy of the said sheet no. E/21 of the said D.P. I crave leave to refer to and rely upon photographs showing these illegal diversion when produced.

f) **Sheet No. E/24:**

I say that the sheet No. E/24 demarcates the areas of Kurla Village, and Bandra-Kurla Complex. The said areas fall under the jurisdiction of the L and H Wards of the Respondent No. 3. I say that the said sheet No. E/24 depicts the Mithi River as a boundary of the L-East and H-East Wards. The flow of water starts near the Centralized cemeteries of Bandra-Kurla Complex near Bandra-Sion junction. However, the depiction of the Mithi River in sheet No. E/24 is as vague, ambiguous and dubious as in sheet No. E/18. The Respondent No.2 failed to give a clear and obvious depiction of the Mithi River. Hereto annexed and marked as **Exhibit "F"** is the copy of the said sheet No. E/24 of the said D.P.

g) **Sheet No. W/40 ;**

I say that the sheet No. W/40 demarcates the area of Aarey Colony. The said areas fall under the jurisdiction of the P (South) and K (East) Wards of the Respondent No. 3. I say that the said sheet No. E/40 depicts the origin of the Mithi River in the

Western Suburbs. It refers to the origin of the Mithi River. Hereto annexed and marked as **Exhibit "G"** is the copy of the said sheet No. W/40 of the said D.P.

h) **Sheet No. W/43:**

I say that the sheet No. W/43 demarcates the areas of Telecom Centre, Saki Naka and others all of which are to the south of the area delineated by the aforementioned sheet No. W/40 of the said D.P. The said areas fall under the jurisdiction of the K (East) Ward of the Respondent No. 3. I say that initially the aforementioned sheet No. E/43 of the said D.P. depicts the Mithi River as a river which flows for about 1.5 kms. Subsequently the aforementioned sheet No. W/43 depicts the Mithi River as transforming itself into a "Nala". Thus, part of the aforementioned sheet no. W/43 depicts a part of the Mithi River as a nala near Saki Naka thereby officially allowing construction of residential/ industrial/ commercial units, some of whom carry out illegal operations, on or around the banks of the Mithi River and further pollution of the Mithi River by them. Hereto annexed and marked as **Exhibit "H"** is the copy of the aforementioned sheet No. W/43 of the said D.P.

i) **Sheet No. W/46:**

I say that the sheet No. W/46 demarcates the areas of Dhobi Ghat, Sahar Airport and others all of which

are to the south of the area delineated by the aforementioned sheet No. W/43 of the said D.P. The said areas fall under the jurisdiction of the K (East) Ward of the Respondent No. 3. I say that the aforementioned sheet No. W/46 depicts the entire part of the Mithi River which flows through the areas delineated by it. I say that the aforementioned sheet No. W/46 gives a correct picture of a part of the Mithi River.

j) **Sheet No. W/49:**

I say that the sheet No. W/49 demarcates the areas of Airport, Kalpana Talkies (Kurla) and others all of which are to the south of the area delineated by the aforementioned sheet No. W/46 of the said D.P. The said areas fall under the jurisdiction of the H (East) and K (East) Wards of the Respondent No. 3. I say that the aforementioned sheet No. W/49 depicts the Mithi River in a dubious manner. The outline of the Mithi River is not clearly defined. So also the bridge built across the Mithi River on the C.S.T. Road, Kurla is very unclear making it difficult to clearly identify the Mithi River. Thus, the aforementioned sheet No. W/49 of the said D.P. depicts the Mithi River in a highly vague and ambiguous manner. The copies of the aforementioned Sheet Nos. W/46 and W/49 of

the said D.P. are hereto annexed and marked as **Exhibits "I and J"** respectively.

k) **Sheet No. W/51:**

I say that the sheet No. W/51 demarcates the areas of C.S.T. Road, M.M.R.D.A and others all of which are to the south of the area delineated by the aforementioned sheet No. W/49 of the said D.P. The said areas fall under the jurisdiction of the H (East) Ward of the Respondent No. 3. I say that the said sheet No. W/51 depicts the Mithi River as a proposed channel and not as river which it is. I say that such a depiction of the Mithi River by the Respondent No. 2 creates confusion about the existence of Mithi River in the aforementioned sheet No. W/51 and that the Respondent No. 1 will undertake a project to construct a channel at the proposed site. Thus, the existence and status of the Mithi River and the so-called proposed channel at the said site not shown properly in the aforementioned sheet No. W/51. Hereto annexed and marked as **Exhibit "K"** is the copy of the aforementioned sheet No. W/51 of the said D.P.

I crave leave to refer to and rely upon the other sheets of the said D.P. which pertain to the areas through which the Mithi River flows.

6. I say that the aforesaid paragraphs clearly show that the Respondents recognize only about 10 kms of the total 15 kms of the Mithi River, i.e. from the Airport wall at Kalpana talkies/Kalina junction to the Mahim creek, i.e. mouth of the river. The remaining length of about 3 or 5 kms. , i.e., from its origin from the Vihar lake overflow till the Airport wall at Kalpana talkies/Kalina junction, is officially ignored by the Respondents as being a part of the river in that they have either deleted it from the said D.P. or have treated it as a "Nala". Hereto annexed and marked as **Exhibits "L, L-1 & L-2"** are the copies of the photographs which prove the same.

7. I say that it has recently come to my knowledge that pursuant to the order dated 19<sup>th</sup> February, 1998 passed by the Hon'ble Bombay High Court, in the Writ Petition No. 263 of 1997, the Respondent Nos. 1 and 6 were supposed to implement the Court Order and the C.W.P.R.S. report of 1978 and other such report about the Mithi River. However, over 7 years have passed but it seems that, the said Respondents have not taken all necessary steps for the implementation of the said order;

8. Therefore, I humbly submit that this Hon'ble Court be pleased to direct the concerned Respondents to forthwith depict and insert the name of the Mithi River in the said D.P. at places where it has been wrongly deleted/omitted, including at its Janmasthan (origin), and to rightly depict it as a river at places where it is wrongly shown as a "Nala". I further say that this

Hon'ble Court be pleased to direct the concerned Respondents to survey the Mithi River throughout its length to make a list of all the structures, both legal as well as illegal, which have been constructed on and along its bank blatantly ignoring its existence and status and report the same to this Hon'ble Court at the next hearing of this PIL Writ Petition. I also say that this Hon'ble Court be pleased to direct the concerned Respondents to issue show cause notice to the illegal structures along the bank of the Mithi River and take appropriate action against the same. I also say that this Hon'ble Court be pleased to direct the concerned Respondents to give a detailed report about the so-called legal structures adjoining the banks of the Mithi River and their plan of action while dealing with the same.

Solemnly affirmed at Mumbai ]

this day of September, 2005. ] Before me,

For Dhruve Liladhar and Co.,

Partner  
Advocate for the Petitioner.

IN THE HIGH COURT OF JUDICATURE  
AT BOMBAY  
ORDINARY ORIGINAL CIVIL  
JURISDICTION  
PIL WRIT PETITION NO. 2116 OF 2005

Kirit Somaiya                      ... Petitioner

Versus

State of Maharashtra  
& Ors.,                              ...Respondents

**ADDITIONAL AFFIDAVIT OF**  
**MR. KIRIT SOMAIYA**

DATED THIS    DAY OF    SEPTEMBER, 2005

M/S. DHRUVE LILADHAR & CO.,  
ADVOCATES FOR THE PETITIONER,  
13/A/B, ISMAIL BLDG., 3RD FLOOR,  
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