

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

PUBLIC INTEREST LITIGATION (L) NO. 8655 OF 2023

Zoru Darayus Bathena } Petitioner
versus
Tree Authority, MCGM, Mumbai }
& Anr. } Respondents

Mr. Venkatesh Dhond, Senior Advocate with Mr. Tushad Kakalia, Ms. Vinodini Srinivasan, Mr. Manoj Shirsat and Mr. Zaman Ali i/b. Ms. Pushpa Thapa for the petitioner.

Dr. Milind Sathe, Senior Advocate with Mr. Joel Carlos and Ms. Oorja Dhond i/b. S. K. Sonawane for respondent no. 1.

Mr. Ashutosh Kumbhakoni, Senior Advocate i/b. Mr. Akshay Shinde for respondent no. 2.

Mr. Sanjay Rathod, Deputy Superintendent of Gardens, BMC present.

CORAM: S. V. GANGAPURWALA, Act.CJ.&
SANDEEP V. MARNE, J.

DATE: MARCH 31, 2023

P.C.:

1. The present petition is filed against the order of the Tree Authority dated 15th March 2023, thereby permitting the Mumbai Metro Rail Corporation Limited (MMRCL) to cut 177 trees.

2. We have heard Mr. Dhond, learned senior advocate for the petitioner, Mr. Sathe, learned senior advocate for respondent no.1 and Mr. Kumbhakoni, lerned senior advocate for respondent no. 2.

3. From the submissions of the learned senior advocates, it appears that pursuant to the permission granted by the Apex Court under its judgment and order dated 29th November 2022 in Interim Application No. 169860 of 2022 in Suo Moto Writ (Civil) No. 2 of 2019, the respondent no. 2 approached respondent no. 1 seeking permission to fell the trees for its metro project at Aarey Colony. The trees are to be felled for clearance of the shunting neck area.

4. The contention of the petitioners is that the MMRCL had filed an application before the Apex Court seeking permission to fell 84 trees. The Apex Court, in its judgment dated 29th November 2022, permitted the MMRCL to move the Tree Authority for felling of 84 trees.

5. It is the contention of respondent no. 2 that the said application was of the year 2019. By November 2022, there has been growth of many shrubs into wild trees and as such, the application is filed again on 2nd January 2023 seeking permission to fell 177 trees.

6. Respondent no. 1, after issuing public notice inviting objections, allowed the application of respondent no. 2 permitting to fell 177 trees.

7. The order is assailed by the petitioner on the ground that in view of the judgment of the Apex Court, the respondent no. 1 could not have entertained the application to fell more than 84 trees. It is also the case of the petitioners that the public notice issued was seeking objections to grant permission to fell dead/dangerous trees.

8. It is the contention of the learned senior advocate for the petitioner that for dead/dangerous trees, objection cannot be raised in view of the provisions of the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975. The public

notice was for inviting objections to grant permission to fell dead/dangerous trees and not wild trees.

9. According to the learned senior advocate for respondent no. 1, though the title in the public notice inviting objections was about the dead/dangerous trees; however, in the narration part, nature of trees was clearly mentioned and even the petitioner, on reading the notice, was of the view that the said notice was not for dead/dangerous trees.

10. According to the learned senior advocate for respondent no. 2, the order of the Apex Court is being misread by the petitioner. The purpose of granting permission to fell the trees is required to be considered. The Apex Court was of the opinion that unless the shunting neck area is clean shaved, the metro project cannot be implemented. It is in view of that the order was passed by the Apex Court granting permission to file application for felling of the trees. The larger purpose will have to be considered.

11. There is no doubt that the metro project involves public interest and public purpose. There cannot be any debate in the proposition that the balance has to be struck between sustainable development and ecology.

12. It is also submitted by the parties that the respondent no. 2 has already filed a compilation of documents with the Apex Court and the matter is now kept on 11th April 2023. The Apex Court is seized of the matter. We may reproduce paras 22 and 23 of the judgment delivered by the Apex Court dated 29th November 2023 in Interim Application No. 169860 of 2022 in *Sou Moto Writ (Civil) No. 2 of 2019*. The same read thus: -

“22. Moreover, it must also be noted that a substantial number of trees pertaining to the area which falls within the segment of the car shed and the ramp have already been felled. Consequently, this Court was apprised on 7 October 2019 and 5 August 2022 that no further trees were required to be felled. As already noted earlier, 2,144 trees

were felled in executing the work pertaining to car depot, while, 212 trees were felled in connection with the work of the ramp. What is now sought is permission to apply to the Tree Authority for the felling of 84 trees pertaining to the ramp. It needs no emphasis that without a ramp the work which has already been completed would be of no consequence and would be wholly ineffective. Hence, having due regard to the above circumstances, we have arrived at the conclusion that MMRCL should be permitted to pursue its application before the Tree Authority for the permission to fell 84 trees for the purpose of the ramp. We clarify that the Tree Authority would be at liberty to take an independent decision on the application and determine what conditions, if any, should be imposed if it decides to grant its permission.

23. The order of this Court, which has the effect of directing the preservation of *status quo* on the felling of trees, shall accordingly stand modified to the above extent thereby permitting the MMRCL to move the Tree Authority on its application for felling of 84 trees. The state government would be at liberty to proceed further.”

13. In para 23, the Apex Court has clearly observed that “*the order of this Court, which has the effect of directing the preservation of status quo on the felling of trees, shall accordingly stand modified to the above extent thereby permitting the MMRCL to move the Tree Authority on its application for felling of 84 trees*”.

14. It is not a matter of debate that the Hon’ble Apex Court has granted permission to the MMRCL to move the Tree Authority, to the extent of 84 trees. However, the impugned permission is for 177 trees. The same is beyond the liberty granted by the Apex Court under the judgment dated 29th November 2022. In light of that, it will not be possible for this Court to accept the contention of respondents that the respondent no. 1 could permit the respondent no. 2 to fell trees beyond 84. The Apex Court is already seized of the matter and as submitted by the learned senior advocate for respondent no. 2, the matter is now before the

Apex Court on 11th April 2023. The respondent no. 2 has filed compilation of the documents, inter alia, including the impugned order before the Apex Court.

15. In light of above, propriety would require that the respondent no. 2 shall not fell the trees pursuant to the impugned order until it seeks clarification/order from the Hon'ble Apex Court.

16. The learned senior advocate for the petitioner submits that other issues are also involved.

17. Place the matter on 27th April 2023.

SALUNKE
J V
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by SALUNKE J V
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(SANDEEP V. MARNE, J.)

(ACTING CHIEF JUSTICE)