



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO.98 OF 2023

Rohit Manohar Joshi and ors. : Petitioners.

Versus

Tree Authority

Thane Municipal Corporation

Through the Tree Officer and ors. : Respondents.

Ms. Ronita Bhattacharya Bector i/by Pramod Jedhe for the Petitioners.

Mr. N . R. Bubna for Respondent No.2.

Mr. P. P. Kakade, GP a/w Mrs. R. A. Salunkhe, AGP for Respondent Nos. 3, 4 and 5.

CORAM : NITIN JAMDAR, ACTING CJ. &
ARIF S. DOCTOR, J.

DATED : 12 JULY 2023.

P.C. :

Heard learned counsel for the parties.

2. Two issues are raised in this Public Interest Litigation. First is to formulate a disaster management plan with specific provisions for compensation and employment offered on compassionate ground for the kin/victims of incidents involving injury/death caused by the collapse of trees in Thane District, and second is as regards the process of de-concretising the roots/bases of trees in Thane District.

3. The Petition had come up for hearing on 7 June 2023. The learned counsel for the Thane Municipal Corporation had taken time to take instructions in respect of de-concretisation of the roots/bases of trees.

4. The learned counsel for the Thane Municipal Corporation has placed before us the Minutes of the Meeting held by the Assistant Commissioner, Thane Municipal Corporation wherein it is stated that as per the survey carried out by the Thane Municipal Corporation, around 7396 trees are still required to be de-concretised. The learned counsel states that the process of de-concretisation is going on and it would require some time. He, on instructions, states that it would require around 45 days time to de-concretise the roots/bases of the trees.

5. The learned counsel for the Petitioners has tendered compilation of photographs and submits that the figure of 7396 trees may not be correct and it would be much more.

6. The Maharashtra Municipal Act 1949 under Chapter VI provides duties and powers of the Municipal Authorities and Officers. Section 63 of the Maharashtra Municipal Act, 1949 specifies the matters to be provided for by the Corporation. Section 63(1)(b) thereof refers to urban forestry, protection of the environment and promotion of ecological aspects.

7. The Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975 stipulates the provisions for the preservation of trees in urban

areas. Section 3 thereof provides for establishment and procedure of tree authority. Section 3(5) provides that if the Tree Authority is not constituted for some reason, the Municipal Commissioner of the Corporation will act as a Tree Authority. We are informed that currently the Municipal Commissioner is looking after the work of Tree Authority.

8. Chapter IV of the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975 ("the Act of 1975) places certain duties on the Tree Authority. Section 7(a) of the said Act stipulates that it would be the duty of the Tree Authority to protect and preserve all trees in all lands within the jurisdiction of the authority. Section 7(b) of the said Act also specifies the duty of the Tree Authority to carry out a census of the existing trees in all lands within its jurisdiction. Section 7(h) contemplates that the Tree Authority also enjoins the duty of maintaining such number of trees as it considers necessary, according to the prescribed standards along the roads, in public parks and gardens etc. and to undertake the scheme within the object of this Act. The de-concretisation of roots/bases of the trees would then fall within the mandate of the Tree Authority as contemplated under Section 7 of the Act of 1975.

9. The Commissioner of Thane Municipal Corporation being aware of these duties under the Maharashtra Municipal Corporation Act as well as the Act of 1975, constituted a committee on 5 October 2017 and the Committee had given the opinion after conducting physical inspection of the office documents and the places of uprooted trees. One of the suggestions given by the committee, which is translated into the directions by the Municipal Commissioner, even private properties, offices, co-operative housing societies

should ensure that each tree should provide 3 x 3 feet space around which should be de-concretised and should be filled with soil. The Commissioner has stated that the Department of Public Works would carry out the exercise of de-concretisation of trees on TMC roads, offices, buildings etc. Prior to these directions, also directions have been issued by the Commissioner on 5 February 2016 in respect of the de-concretisation in the areas of Thane Municipal Corporation.

10. Further more we have noted the order passed by the National Green Tribunal on 28 July 2015 which though passed on the application filed against the Municipal Corporation of Greater Mumbai, indicates that it had wider amplitude.

11. Thus, in spite of two directions issued by the Municipal Commissioner on 15 February 2016 and 31 March 2018, the statutory mandate under the Act of 1949 and Act 1975, still the work of de-concretisation is not complete in Thane City. Though the learned counsel for the Thane Municipal Corporation states that there are large number of trees in the Thane City. It may be that 7396 number of trees appears to be small, in proportion to total number, still it is a large number.

12. Since the learned counsel for the Thane Municipal Corporation states that the work of de-concretisation would be commenced immediately and would be completed within 45 days, we intend to monitor the same.

13. The Commissioner of Thane Municipal Corporation will call for the report from the ward officers with particulars of work of de-concretisation carried out in his ward. The responsibility of providing correct information in the report is hereby placed on the said ward officers. It is open to the Municipal Commissioner to take action in case of dereliction of the duties by the ward officers.

14. The Commissioner of Thane Municipal Corporation after collating the information from the ward officers will submit the progress report by way of Affidavit.

15. The Thane Municipal Corporation will set up the help-line/e-mail address whereby the residents can inform the Municipal Corporation as regards the trees which require de-concretisation and the Municipal Corporation would give adequate publicity for the same. Needless to state that the work of de-concretisation will be carried out in careful manner, with an ultimate object of preservation of the trees.

16. Though this Public Interest Litigation is restricted to Thane Municipal Corporation, we note that the order passed by the National Green Tribunal in the year 2015 pertained to the Municipal Corporation of Greater Mumbai. The Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975 is also applicable to the Municipal Corporation of Greater Mumbai and similar duties are cast upon the Municipal Corporation of Greater Mumbai under the Municipal Corporation of Greater Mumbai Act, 1888.

17. We grant liberty to the Petitioners to amend this Public Interest Litigation to join the Municipal Corporation of Greater Mumbai as a party Respondent and give particulars regarding the issue of de-concretisation of trees in the city of Greater Mumbai. Amendment to be carried out within two weeks from today. Liberty is granted to the Petitioners to serve the added Respondent.

18. Place the Petition on 1 August 2023 to enable the Commissioner of Thane Municipal Corporation and the added Respondents to inform the Court about the status of the implementation of the order of the National Green Tribunal and to submit the progress report.

(ARIF S. DOCTOR, J.)

(ACTING CHIEF JUSTICE)