

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION No. OF 2019

...Petitioner

Tree Authority, Mumbai & others

...Respondents

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Mumbai

Advocate for Petitioner

Dated 03.09.2019

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SYNOPSIS

CHALLENGE

This Petition has been filed to challenge the Impugned Resolution dated 29.08.2019, passed by the Respondent No.1 Tree Authority, approving the removal of 2646 trees at Aarey, situated at Andheri E, Mumbai, in breach of the Judgment of this Hon'ble Court, dated 19.07.2019 in PIL(L) No. 60 of 2019. The Respondent No. 1 Tree Authority has been set up to protect and preserve the trees of Mumbai and not to illegally sanction their destruction. This Petition has been filed to protect the tree cover in Mumbai from such illegal destruction.

LIST OF DATES

S. No	Date	Event	Exhibit / Page No
1.	30.06.2019	Public Notice issued by Respondent No. 1 Tree Authority seeking suggestions and objections from the public in respect of removal of 2702 trees at Aarey (2238 cut & 364 transplant)	
2.	08.07.2019	The Petitioner filed his written objections. Over one lakh objections were filed by members of the public.	Ex-B
3.	08.07.2019	The Tree Officer heard the objections of the Petitioner and approx 500 other citizens who attended the public hearing	

4.	19.07.2019	This Hon'ble Court passed Judgement in PIL(L) No. 60 of 2019 filed by this Petitioner against the Respondent No. 1 Tree Authority & Ors.	Ex-A
5.	29.08.2019	The Respondent No. 1 Tree Authority held a meeting to discuss the removal of 2646 trees at Aarey (2185 cut & 461 transplant)	
6.	29.08.2019	The Respondent No. 1 Tree Authority passed the Impugned Resolution approving the removal of 2646 trees at Aarey, in breach of said Order dated 19.07.2019 in PIL(L) No. 60 of 2019	Ex-C
7.	03.09.2019	Hence this Petition	

Relevant Statutes:

The Constitution of India, 1950

Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975 and Rules, 2009.

Case Laws:

Shall be submitted at the time of arguments.

Mumbai, Dated:

Advocate for Petitioner

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

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In the matter of Article 21, Article
48-A, Article 51-A [g] and Article
226 of the Constitution of India,
1950;

And

In the matter of Maharashtra
(Urban Areas) Protection and
Preservation of Trees Act, 1975;

And

In the matter of Maharashtra
(Urban Areas) Protection and
Preservation of Trees Rules 2009;

And

In the matter of Resolution dated
29.08.2019 passed by Respondent
No. 1 Tree Authority approving the
removal of 2646 trees at Aarey
(*"Impugned Resolution"*)

)

)

)

) ...Petitioner

Versus

1. **Tree Authority, Mumbai**)
MCGM, Mahapalika Marg, Mumbai-01)
2. **Mumbai Metro Rail Corporation Ltd**)
Plot R-13, E Block, BKC, Mumbai-51)
3. **State of Maharashtra**)
Through office of the Government Pleader)
Bombay High Court,Mumbai 400001) ...Respondents

TO

THE HONOURABLE CHIEF JUSTICE

AND THE HONOURABLE PUINSE JUDGES OF

THE HONOURABLE HIGH COURT AT BOMBAY

HUMBLE PETITION OF THE
PETITIONER ABOVENAMED

MOST RESPECTFULLY SHEWETH:

1. The Petitioner is a citizen of India and is concerned about the tree cover in the city of Mumbai and elsewhere. The Petitioner had challenged the constitution and functioning of the Tree Authority by way of PIL No. 46 of 2015 and PIL(L) No. 60 of 2019.
2. The Respondent No.1 herein is the Tree Authority of Mumbai constituted under the provisions of the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975 [hereinafter referred to as the “Trees Act”].
3. Respondent No. 2 is the Mumbai Metro Rail Corporation Ltd who had submitted the impugned tree removal proposal to Respondent No. 1 for approval.

4. Respondent no. 3 is the State of Maharashtra which has enacted the Trees Act.

5. As the Respondent No. 1 Tree Authority was not complying with the provisions of the Trees Act & Rules, with respect to its constitution/nomination of experts, the Petitioner had challenged the same before this Hon'ble Court. By Order dated 24.10.2018 in Notice of Motion No. 384 of 2018 in PIL No.46 of 2015, this Hon'ble Court was pleased to restrain the Respondent No. 1 Tree Authority from taking any decisions on tree removal applications received u/s 8(2) of the Trees Act. The Respondent No. 1 Tree Authority was permitted to apply for modification/vacating the said Order upon appointing the appropriate number of experts u/s 3(3) of the Trees Act. The Petitioner craves leave to refer to and rely upon the said Order dated 24.10.2018 when produced.

6. Pursuant to the said Order dated 24.10.2018, the Respondent No. 1 filed NM No. 181 of 2019 in PIL No. 46 of 2015 seeking permission of this Hon'ble Court to resume functioning, as they had appointed/nominated experts. As there was an issue as to the number of expert members required, by Order dated 18.06.2019, this Hon'ble Court permitted the Petitioner to file a substantive Petition to decide the issue. The Petitioner craves leave to refer to and rely upon the said Order dated 18.06.2019 when produced.

7. The Respondent No. 1 challenged the said Order dated 24.10.2018 & 18.06.2019 before the Hon'ble Supreme Court. By Order dated 04.07.2019 the Hon'be Supreme Court declined to interfere and directed Respondent No. 1 to approach this Hon'ble Court. The Petitioner craves leave to refer to and rely upon the said Supreme Court Order dated 18.06.2019 when produced.

8. The Petitioner filed PIL(L) No. 60 of 2019 to decide the issue as to the number of experts nominated on the Tree Authority qua the number of Corporators.

9. By Judgement dated 19.07.2019 in PIL(L) No. 60 of 2019, this Hon'ble Court was pleased to declare that five nominated experts was a proper constitution of Respondent No.1's Tree Authority. Hereto annexed and marked as **EXHIBIT-A** is a copy of the said Judgement dated 19.07.2019 in PIL(L) No. 60 of 2019.

10. This Petition has been filed due to a brazen breach by Respondent No. 1 in complying with the said Judgement dated 19.7.2019, in particular with Para No. 26 therein, viz:

26. The very fact that the legislature has found it necessary to include expert members inheres that their expert opinion must be valued and should become an essential facet of decision making. As per Section 8 of the Trees Act, the Tree Authority deals with objections received under the public notice given by the Tree Officer and a decision is taken after giving a hearing to the person who has objected. That hearing is given when an objection is raised would indicate that a decision has to be in must contain the reason why the objection is being overruled. Section 14 of the Trees Act also provides for an appeal from an order passed under Section 9 or 10 by the Tree Officer to the Tree Authority. For this appeal, hearing is statutorily provided, and the decision is made final. Thus this decision has to be reasoned. This being the scheme of Sections 8 and 14 of the Trees Act and the purpose for which expert members are included, it is necessary that the expert members give their inputs in writing. The scientific input cannot be in the form of an oral suggestion. The Tree Authority must discuss the input of the expert members for taking an informed decision as envisaged under Section 3 read with Sections 8 and 14 of the Trees Act. Considering the function of the Tree Authority and the object of the Trees Act, if the Tree Authority is to differ from the expert's input, it must record reasons. If the scientific input is not even referred to in the decision making, then the purpose for which the expert members are included would be

rendered meaningless.

(Emphasis added)

**FACTS LEADING TO PRESENT CHALLENGE TO
IMPUGNED RESOLUTION ARE AS UNDER:**

11. By a Public Notice dated 30.06.2019, the Respondent No. 1 called for suggestions and objections from members of the public on a proposal by Respondent No. 2 seeking to remove 2702 trees at Aarey, in Andheri E, Mumbai (2238 trees proposed to be cut & 464 trees proposed to be transplanted).

12. The Petitioner filed his detailed objections with Respondent No. 1, vide letter dated 08.07.2019 raising 14 points. A copy of Petitioner's objection letter dated 08.07.2019 is annexed hereto as **EXHIBIT-B**. It will not be out of place to record that over one Lakh citizens filed their objections to the said proposal.

13. On 08.07.2019, the Tree Officer of Respondent No.1 Authority conducted a public hearing, where the Petitioner and approx 500 other citizens attended and once again raised their objections.

14. On 29.08.2019, the Respondent No. 1 Tree Authority held a meeting to decide the said proposal. The said proposal tabled before Respondent No. 1 is of 986 pages. The said proposal tabled was for removal of 2646 trees at Aarey (2185 cut & 461 transplant), which is a reduction of 56 trees from the original proposal. The Petitioner craves leave to refer to and rely upon the said proposal tabled, when produced.

15. At the said meeting, a Resolution was passed permitting the said proposal for removal of 2646 trees at Aarey. The said proposal was passed by a majority of 8 to 6, with 3 nominated experts allegedly supporting the proposal, with 2 members walking out and with 2 members absent. Hereto annexed and marked as

EXHIBIT-C is a copy of the Minutes of Meeting dated 29.08.2019, containing the Impugned Resolution, with translation.

16. As is evident from the said Minutes, the orders of this Hon'ble Court in Judgement dated 19.07.2019 in PIL(L) No. 60 of 2019 have simply not been complied with, viz:

- i) There is no mention of nor reasons recorded as to why the objections raised by the Petitioner and other citizens have been overruled;
- ii) There was no discussion regarding the input by the experts;
- iii) There is no discussion as to why the members disagreed with the opinion of the expert members;
- iv) The scientific input of the expert members have simply not been considered, thus rendering the meeting meaningless.

17. The written input of the experts had been tabled before the meeting, at Page Nos 961 & 962 of the proposal.

18. Three experts, Dr Deepak Apte, Dr Sashirekha Sureshkumar and Dr Chandrakant Salunkhe, vide their common letter dated 13.08.2019 had recorded that; they did not have adequate time to examine all tree details; that their observations are by no means final recommendations; that Terminalia bellerica/Beheda trees need to retained as they are unique/heritage trees; that Adensonia digitata trees should be transplanted instead of being cut; that all trees along the adjoining road, not falling in construction area, should be retained; that indigenous trees should be retained or transplanted; that any trees above 50 feet height should be retained; that there were so many discrepancies in the tree inventory data of the site from 2012, 2014 & 2017 to the extent of 1652, 2298 & 3691 respectively; that there is a lot of confusion in the common name/scientific name of the trees. Hereto annexed and marked as **EXHIBIT-D** is a copy of written input dated 13.08.2019 from three experts.

19. One expert, Mr. Subhash K.Patne, vide his letter dated 17.08.2019 recorded that cutting 2238 (61%) of green cover is too high and that out of trees to be cut 623 Subabul trees can be transplanted. Hereto annexed and marked as **EXHIBIT-E** is a copy of written input dated 17.08.2019 from one expert.

20. It is relevant to state that no written input from the fifth expert, Mr.Manohar Sawant, was tabled along with the impugned proposal.

21. It is clear that the inputs submitted by the expert/nominated members were neither discussed nor deliberated at the impugned meeting.

22. It will not be out of place to record that the impugned resolution was allegedly passed with a majority of 8 to 6, where one Corporator member, Kaptan Malik, who had opposed the proposal in writing, allegedly voted in favour of the proposal; and one expert member, Dr Sashirekha Suresh Kumar, who allegedly voted for the proposal, has come on record to say that she never recommended the felling of trees at Aarey nor does she endorse such a decision. She has also recorded that no due process has been followed for the assessment of the site and that the recommendations made by her and her colleagues had not been considered when passing the impugned Resolution. Hereto annexed and marked as **EXHIBIT-F** is a copy of written protest letter dated 13.08.2019 of Corporator Kaptan Malik, with translation. Hereto annexed and marked as **EXHIBIT-G** is a copy of statement dated 31.08.2019 issued by expert member Dr Sashirekha Suresh Kumar.

23. It will also not be out of place to state that the present proposal has been floated from time to time right from year 2014 and withdrawn/postponed due to stiff opposition. On the present occasion the proposal has been passed by fraudulent methods.

24. **GROUND**S

- A) The Impugned Resolution has failed to contain reasons as to why the Petitioner's objections were overruled;
- B) The Impugned Resolution was passed without receiving written inputs from all experts;
- C) The Impugned Resolution was passed without discussing the inputs given by the experts;
- D) The Impugned Resolution failed to record reasons as to why it differed with the expert's inputs;
- E) The Impugned Resolution failed to refer to the scientific inputs rendering these inputs meaningless.
- F) The Impugned Resolution was passed in breach of the orders of this Hon'ble Court in Judgement dated 19.07.2019 in PIL(L) No. 60 of 2019.
- G) The Impugned Resolution was passed in haste due to the impending assembly elections and the model code of conduct likely to come into effect.
- H) The Impugned Resolution suffers from non-application of mind.

25. The Petitioner has filed this petition on the limited ground of breach of order of this Hon'ble Court in Judgement dated 19.07.2019 in PIL(L) No. 60 of 2019. The Petitioner is at present challenging the impugned resolution on the ground that the decision making process was flawed and suffered from non-application of mind and was in violation of this Honourable Court's Judgment and order dated 19.07.2017 in PIL [L] No. 60 of 2019. The Petitioner has not gone into the merits of his objections to the impugned proposal and craves leave of this Honourable Court to file a substantial petition on merits, should the need arise in future.

26. Till date the Respondent No. 1 has not issued any tree felling permission to Respondent No. 2, pursuant to the impugned

resolution (copy of such permission letter is required to be uploaded on MCGM website, where no such permission appears). Therefore, no reliefs are being sought against Respondent No.2 in the present Petition at present.

27. The issues raised in this Petition have a substantial impact on the environment. If the reliefs as prayed for are not granted, there will be widespread environmental damage to Mumbai city, which cannot be compensated in terms of money.

28. The Petitioner has not filed any suit, application, petition or proceeding in any court in India for similar reliefs.

29. The Petitioner has affixed the requisite court fees of Rs. _____/- to this petition.

30. The impugned Resolution has been passed in Mumbai. The entire cause of action has arisen within the ordinary original civil jurisdiction of this Honourable Court hence this Honourable Court has jurisdiction to receive, try and determine the present petition.

31. The Petitioner is not guilty of delay or laches in preferring this petition.

32. The Petitioner does not have any equally efficacious alternative remedy other than the present petition and the reliefs prayed for in the present petition, if granted, would suffice to meet the ends of justice.

33. The Petitioner will rely upon documents, a list whereof is annexed hereto.

The Petitioner therefore prays:

- (a) that this Honourable Court be pleased to issue an appropriate writ, order or direction under Article 226 of the Constitution of India and call for the papers and proceedings relating to the Impugned Resolution dated 29.08.2019, as recorded in

- (b) that Pending the hearing and final disposal of this petition, this Honourable Court may be pleased to stay the Impugned Resolution dated 29.08.2019;
- (c) that Pending the hearing and final disposal of this petition, this Honourable Court may be pleased to restrain the Respondent No. 1 from issuing a tree removal permission letter to Respondent No. 2, pursuant to the Impugned Resolution dated 29.08.2019;
- (d) For costs;
- (e) For such other and further reliefs as this Honourable Court may deem fit in the nature and circumstances of the case.

Date:

Petitioner

VERIFICATION

Mumbai, do hereby state on solemn affirmation that the contents of paragraphs 1 to 22 are true and correct to the best of my knowledge and the contents of paragraphs 23 to 32 are based on legal advice which I believe the same to be correct.

Solemnly affirmed at Mumbai]
]

Before me

Identified by me

Advocate for Petitioner.

I am not a member of the Advocates' Welfare Fund Association. Hence, Rs.2/- Stamp is not affixed.

Advocate for Petitioner

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION No. OF 2019

)
)
)
) ...Petitioner

Versus

- | | | |
|---|---|----------------|
| 1. Tree Authority, Mumbai |) | |
| MCGM, Mahapalika Marg, Mumbai-01 |) | |
| 2. Mumbai Metro Rail Corporation Ltd |) | |
| Plot R-13, E Block, BKC, Mumbai-51 |) | |
| 3. State of Maharashtra |) | |
| Through office of the Government Pleader |) | |
| Bombay High Court, Mumbai 400001 |) | ...Respondents |

To,
The Prothonotary & Senior Master,
Registrar (O.S.),
High Court Mumbai, Original Side

Sir,

I, the Petitioner above named do hereby
appoint Ms Pushpa Thapa, Advocate High Court, Bombay to act, appear
and plead for me in the above matter.

IN WITNESS WHEREOF we have set and subscribed my hand to
this writing at Bombay.

Witness:

Accepted

Petitioner

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION No. OF 2019

.. Petitioner

V/s.

Tree Authority, Mumbai & Ors.

.. Respondents

VAKALATNAMA

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION No. OF 2019

...Petitioner

Versus

Tree Authority, Mumbai & Ors.

...Respondents

MEMORANDUM OF REGISTERED ADDRESS
OF THE PETITIONER

Advocate for the Petitioner

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

WRIT PETITION No. OF 2019

...Petitioner

Tree Authority, Mumbai & Ors.

...Respondents

**LIST OF DOCUMENTS ON WHICH THE PETITIONER
SHALL RELY**

1. All the documents exhibited, referred to and relied upon in the
Petition.

Advocate for the Petitioner

Advocate for Petitioner

Tree Authority, Mumbai & Ors.

...Respondents

MOST RESPECTFULLY SHEWETH:

1. That the Petitioner has filed the Writ Petition for its reliefs as prayed for in the Petition. I repeat and confirm all that has been stated in the petition is true and prays that the reliefs prayed for in the petition be granted.
2. That the present Petitioner, has no personal interest, gain, private motive or oblique reason in filing the present Petition.
3. That the Petitioner undertakes to pay costs as ordered by this Hon'ble Court if ultimately held that the Petition is frivolous or has been filed for extraneous consideration or that it lack bonafides.
4. That the Petitioner, undertakes to disclose the source of his information leading to the filing of the present Petition if and when called upon by the Hon'ble Court to do so.
5. This Petition has been filed seeking compliance with orders passed by this Hon'ble Court in PIL(L) No. 60 of 2019 filed by this Petitioner against the Respondent No. 1 for the ultimate aim of protecting & preserving the tree cover in Mumbai.

I say that accordingly this affidavit is filed.

Solemnly affirmed at Mumbai)
this)

Identified by me,

Deponent

Advocate for the Petitioner

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION No. OF 2019

V/s

Tree Authority, Mumbai & Ors
....Respondents

PETITION