

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

PUBLIC INTEREST LITIGATION NO.210 OF 2023

Parisar Sanrakshan Sanwardhan
Sanstha & Ors.

..... Petitioners

Vs.

The Pune Municipal Corporation & Ors.

..... Respondents

Ms. Ronita Bhattacharya for the Petitioners
Shri Abhijit P. Kulkarni a/w. Shri Krushna Jaybhay, Shri Gaurav Shahane and Ms. Sweta shah for Respondent No.1 – PMC
Shri P. P. Kakade, Government Pleader with Shri O. A. Chandurkar, Additiional Government Pleader and Mrs. G. R. Raghuwanshi, AGP for Respondent No.5 – State
Shri Rohit Sakhadeo for Respondent No.4 – PMRDA
Ms. Nisha Chavan, Chief Law Officer
Shri Aniruddha Pawaskar, Chief Engineer (Road)
Shri Amar Shinde, Superintending Engineer
Shri Yogesh Kulkarni, Superintending Engineer, Engineering Div.2 - PMRDA

**CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

DATE : APRIL 17, 2024

P.C.

1. In deference to our order dated 21st December 2023, learned Counsel representing the Pune Municipal Corporation files an affidavit which contains the report of the Expert Committee appointed by the Court. The affidavit is taken on record. Learned Counsel for the Petitioners files an affidavit-in-rejoinder which is also taken on record.

2. The Court, having regard to the issue raised in the petition which is of seminal importance, had appointed a Committee comprising of not only the experts from Central Road Research Institute (a CSIR Institute), New Delhi, Indian Institute of Technology (IIT), Mumbai, National Environmental Engineering Research Institute (NEERI), Nagpur but also the Municipal administrators of the Pune Municipal Corporation. We have perused the report submitted by the experts. Contributors to the said report are Dr. S. Velmurugan, Chief Scientist and Head, Traffic Engineering and Safety (TES), Division, CSIR (CRRI), New Delhi, Dr. Shalini Dhyani, Principal Scientist, Environmental Impact Assessment, Audit & Planning, CSIR – (NEERI), Nagpur, Prof. (Dr). Himanshu Burte, CUSE, IIT Bombay, Mumbai and Prof. (Dr.) Shyam R. Asolekar, ESED, IIT Bombay, Mumbai.

3. The experts held deliberations involving all stake-holders including the Petitioners and prepared the report as per the mandate of the Court contained in its order dated 21st December 2023. The Committee considered the issue of widening of Ganesh Khind Road stretch. While describing the perspective in which such study has been conducted, the Expert Committee observed `that the matter was considered as a *fait accompli* for

the reason that such study was conducted at a fairly advanced stage of the Project'. The report also makes observations regarding the apathy shown by the authorities of Pune Municipal Corporation (PMC) / Pune Metropolitan Regional Development Authority (PMRDA) towards their commitment to developing and implementing a comprehensive strategy for "sustainable transport facility". The report further observes that the issues relating to the Ganesh Khind Road traffic is being addressed by the PMC/PMRDA apparently through "supply management strategies" by widening of roads, providing fly-overs and underpasses etc. Though the Expert Committee was inclined, instead, to favour "demand management strategies". The aforesaid observations made by the Expert Committee in its report, in our considered opinion, act as an eye opener for the authorities of the PMC/PMRDA for all future projects which should aim at sustainable development.

4. The Expert Committee, though considered the alternate design of right of way and also considered the issue relating to the road widening vis-a-vis tree cutting, however, the Committee did not find the suggestions made for alternate design as tenable. At this juncture itself, we may observe that the reason for not agreeing with realignment of the road to save the trees,

which can be culled out from the report submitted by the experts, is that the study in this regard was conducted at a very very late stage and hence it has to be accepted as a *fait accompli*.

5. After considering the matter in detail with the inputs from the PMC as also from the Petitioners, the Committee has made its recommendations in clause 4 of the report which is extracted hereunder:

“4.0 Recommendations

The Experts in this Committee deliberated extensively on the different challenges, considerations presented by the petitioner (Parisar group) as well as PMC/PMRDA, related to the said ongoing project. In the context of this project, the question of tree cutting came up in the first place because widening of the said Road was considered as a key to providing relief from traffic congestion. The Expert members felt that the project of Ganeshkhind Road widening can be understood as being part of an unsustainable transport infrastructure strategy that focuses on supplying more road space without addressing the need to reduce demand for the same through affordable public transport, like bus.

As discussed above, the Committee has been presented the issue of widening of a stretch of Ganeshkhind Road (PIL No. 210/2024) as a fait accompli in the form of a fairly advanced stage of the impugned project. As a result, the Technical Experts serving the Committee have accepted to study the matter thoroughly in the shortest possible time and furnish their recommendations to the Convenor of the Committee without any prejudice to the other stages of this project or other transportation infrastructure upgradation projects in Pune or elsewhere in the future.

The Technical Experts in the Committee constituted by the Honorable Bombay High Court have examined the issues highlighted by the Honorable High Court and also the arguments put forth by the petitioners and PMC/PMRDA.

In the light of the advanced stage of the said road widening and metro rail project, and keeping in view its urgency, the following are the specific recommendations of the Experts serving the Committee:

- a) After considering the detailed presentation on the alternative plan for minimizing tree cutting from the Parisar Group, in the context of the advanced stage of the project implementation, the authors of this Report see no possibility of practically implementing those ideas at this point of time.*
- b) Out of 403 trees, until today, the fate of 318 trees is sealed already (before this Committee was constituted). In the current Phase, the fate of 71 trees is to be decided. As per the proposal of PMC/PMRDA, 19 trees need to be cut now during Phase-2 and 52 trees have to be transplanted.*
- c) In the present circumstances, without any prejudice to the other stages of this project or other projects in Pune or elsewhere in the future, the Experts in this Committee recommend transplantation of 71 trees instead of cutting of 19 trees and transplantation of 52 trees as per the proposal of PMC/PMRDA. As part of the above, PMC will also carry out compensatory afforestation by planting a minimum of 5,000 trees in the vicinity of the Project Corridor. If and when the transplanted trees do successfully survive, those trees will be in excess of the agreed compensatory afforestation target.*
- d) The committee is of the considered opinion that the compensatory afforestation proposed by the PMC in the context of the widening of the said Road is the bare minimum as per the regulations/guidelines in force at present. In the context of the alarming deterioration of urban ecosystems in India, an aggressive approach by PMC will be appreciated by the Committee.*

- e) *It is the considered opinion of the Technical Expert Members in the Committee that the survival rate of the newly planted trees, in response to compensatory afforestation, shall be upward of 95% and it should be guaranteed by the PMC that the survival will be ascertained for ten consecutive years. The statistical facts about the said compensatory afforestation shall be established and communicated to the Hon. Bombay High Court as well as published on the PMC Webpage every quarter by the PMC. In the situations where some trees do not hold roots, fresh trees shall be planted in replacement and the survival (upward of 95%) of the replaced trees shall also be tracked for ten consecutive years after planting them.*
- f) *PMC should also guarantee that the trees planted for compensation shall not be cut or transplanted for any another developmental activity in the near future.*
- g) *The PMC shall give their commitment in writing through an 'Affidavit' and categorically implement the recommendations listed in clause c), d) and e). If any affidavit with the above conditions, expressed in clauses c), d) and e), is already in force, an additional affidavit is not required.*
- h) *The PMC shall prepare a detailed plan for implementation of tree plantation on footpaths of the Ganeshkhind Road and get it approved from a biodiversity and ecology expert in Pune University or Botanical Survey of India, Pune Circle office, or any other suitable expert. The Expert could specify the species of trees to be planted on footpaths on both sides of the Road. Such plantation shall be done at the edge of the footpath so as to minimize obstruction to the pedestrians on the entire corridor at every 10 m interval. This can ensure long-term benefits in the form of shaded area to the users of footpaths as well as boulevard of trees or greenery on both sides of the project corridor matching with the urban areas following the best international practices."*

6. The affidavit filed today on behalf of the PMC states that as per the opinion of the experts, the PMC undertakes to comply

with all the recommendations. Paragraph 4 of the said affidavit is extracted hereinbelow:

"4. I say that, as per the recommendations in the said report, the Pune Municipal Corporation undertakes to comply with all the recommendations of the Expert Committee with respect to present Ganeshkhind project. More specifically so as to deal with clauses c), d) & e) of the said report the Corporation is bound to follow the said recommendations as the corporation is committed to provide a sustainable development to its citizens."

7. Though in paragraph 4 of the affidavit as extracted above, it has been stated that the PMC shall comply with the recommendations of the Expert Committee report, more specifically to deal with clauses (c), (d) and (e) of the said report, however, we direct that the entire recommendations contained in clause 4 of the report as extracted hereinabove, shall be complied with by the PMC and other authorities concerned while executing the project in question in its entirety.

8. One of the recommendations made by the Expert Committee in its report relates to fresh plantation to be undertaken by the PMC and for ensuring survival of such plants. An effective mechanism for the said purpose has also been recommended which, it is directed, shall be strictly followed by the PMC.

9. Ms. Ronita Bhattacharya, learned Counsel representing the Petitioners has stated that the project in question has fallen upon the residents of the Pune City to be accepted as *fait accompli*, the reasons for which are amply clear and to prevent any such situation in future, certain directions in respect of effective implementation of Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975 (hereinafter referred to as the **Act of 1975**), may also be issued.

10. The scheme of the said Act of 1975 has already been discussed in detail in an earlier judgment dated 20th September 2023 rendered by a coordinate bench of this Court in **PIL No.93 of 2009 (Deepak Balkrishna Vahikar and Anr. Vs. The State of Maharashtra & Ors.)**, wherein various directions have been issued to ensure effective implementation of the said Act of 1975. However, during the course of several hearings of this petition, we have noticed certain lacunae/deficiencies in discharge of duties by the authorities which call upon us to issue the following directions:

- (a) Because of incomplete GIS based mapping of trees, the trees have been found to be cut mistakenly or wrongly and as such, we direct that in terms of section 7(b) of the Act of 1975, the authority concerned shall carry out the

census of the trees once in every five years with GIS based mapping.

(b) We also direct that census data to be published on the website shall be made available in public domain which can be accessed by members of general public.

(c) Section 7(e) of the Act of 1975 casts a duty on the Tree Authority for transplanting of trees necessitated by construction of new roads or widening of roads and for safeguarding the life of the trees. It has been brought to our notice that no records of transplantation are being maintained from the year 2022. Accordingly, we direct that the Tree Authority shall not only appropriately discharge its duties as mandated under Section 7(e) of the Act of 1975 but shall also keep a record of such transplantation and conduct regular monitoring to ensure that the trees planted survive as well.

(d) The Committee of experts constituted by this Court while making its recommendations, has observed that the retention of maximum number of trees is essential on one hand and minimization of obstruction to traffic is also important on the other. Thus, we also direct that in case of compensatory afforestation of trees, it shall be ensured by the Tree Authority and other authorities of the Municipal Corporations and all other agencies, that the fresh trees planted as compensatory afforestation survive. For the said purpose, it shall be obligatory on the part of the Tree Authority/Corporation and all other responsible officers and

agencies to conduct regular monitoring of the growth of such freshly transplanted trees. In this regard we may refer to the provisions contained in Section 8(5)(a) of the Act of 1975, which gives certain directions for plantation of trees. The said mandate contained in Section 8(5)(a) of the Act of 1975 shall, thus, be strictly followed.

(e) The time period as provided in Section 8(5)(a) of the Act of 1975 or any other reasonable minimum time period shall be observed while effecting afforestation of trees.

(f) We have been informed that the information uploaded on the website of the Pune Municipal Corporation does not include the details of applications moved for cutting of the trees along with alternate design if a substantial number of trees are proposed to be cut, details of affected trees including their geo-tag location in terms of the judgment of this Court in the case of **Deepak Vahikar (supra)**, recommendation of the Expert Committee, minutes of the meeting where public hearing takes place, report of the Tree Officer submitted to the Tree Authority, extract of the permission granted including the site of compensatory plantation and subsequent reports on the survival of the trees upto 7 years in terms of the requirement of Section 8(5)(a) of the Tree Act of 1975.

We, thus, direct the Pune Municipal Corporation and all other authorities to upload all the aforesaid information on their website.

(g) In our earlier order dated 21st December 2023, we had already noticed that the guidelines issued by the Indian Road Congress are to be statutorily followed while constructing or widening a road, in terms of the provisions of Section 198(A) of the Central Motor Vehicles Act, 1988 and Rule 166 of the Central Motor Vehicles Rules 1999. Thus, we direct that while constructing or widening a road, the guidelines framed by the Indian Road Congress shall also be taken into account/consideration.

(h) Section 41 of the Rights of Persons with Disabilities Act, 2016 mandates that suitable measures shall be taken to provide access to all modes of transport for the persons with disabilities and also to provide accessible roads to address the issue of mobility necessary for persons with disabilities. Accordingly, we direct that while constructing/widening a road or a footpath, the rights enshrined under Section 41 of the Rights of the Persons with Disabilities Act, 2016 for providing necessary mobility to persons with disabilities, shall also be protected/ensured.

11. We may remind the officials of the PMC/PMRDA and other agencies involved in the planning of the subject project that had they been cautious and followed the statutory provisions, the situation in which the residents of Pune city have fallen to face their *fait accompli*, would not have arisen at all. We, thus, expect that the report submitted by the Expert Committee will act as a guide and beacon for them and in all future planning

relating to such projects, the authorities shall be more vigilant and shall ensure all statutory compliances in terms of the applicable law.

12. Before parting, we express our deep sense of appreciation for the members of the Expert Committee who took-up the task entrusted to them by the Court and completed the same with all expertise at their command, for our assistance.

13. We also put on record our appreciation for Ms.Ronita Bhattacharya, learned Counsel representing Petitioners for the able assistance provided to the Court in this matter.

14. The PIL petition stands disposed of in the aforesaid terms.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)

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signed by
PRAVIN
DASHARATH
PANDIT
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