

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

PUBLIC INTEREST LITIGATION (L) NO. 136 OF 2014

Arun George	... Petitioner
v/s	
The Municipal Corporation of Gr. Mumbai and others	... Respondents

Mr Sandesh R. Shukla i/b Mr Abhay Nevagi and Associates for Petitioner.
Ms T.H. Puranik for Respondent No.1 – BMC.
Ms Kiran Bhagalia for Respondent – MMRDA.
Mr Milind More, AGP for Respondent No.4 – State.
Mr D.P. Singh for Respondent No.5 – Union of India.

WITH
PUBLIC INTEREST LITIGATION (L) NO.138 OF 2014

Vanshakti, a Public Trust and others	... Petitioners
v/s	
The Chairman, MMRDA and others	... Respondents

Ms Gayatri Singh with Mr Zaman Ali for Petitioners.
Ms Kiran Bhagalia for Respondent – MMRDA.
Ms T.H. Puranik for Respondent – BMC.
Ms Geeta R. Shastri, AGP for Respondent – State.
Mr D.P. Singh for Respondent – Union of India.

**CORAM: MOHIT S. SHAH, C. J. &
B.P.COLABAWALLA, J.**

DATE : 8 JANUARY 2015

P.C.:

1. In this Public Interest Litigations, the Petitioners have prayed for a direction to the Respondent No.1 – Municipal Corporation of Gr. Mumbai, Respondent No.2 – MMRDA and Respondent No.3 – Mumbai Metro Railway Corporation Ltd. not to remove and / or transplant 2298 trees in Aarey Colony for Metro III Project and to carry out a detailed Environment Impact Assessment of the said Metro III Project before undertaking any development / construction activity.

2. As regards prayer (c), the Petitioners have prayed for a direction to the Respondents – Municipal Corporations and Councils across the State of Maharashtra to comply with the directions issued by this Court in its judgment dated 20 September 2013 passed in PIL No.93 of 2009. In PIL No.93 of 2009, we permitted the Petitioners to institute a separate PIL and hence we do not propose to deal with the said prayer.

3. In PIL (L) No.138 of 2014, the Petitioner No.1, a non-Government Organization, has challenged the proposal of MMRDA for widening the Aarey Colony Road and also the proposal for construction of car shed for Metro III Project which involves cutting of trees. The Petitioners have also prayed for a direction to ensure that the Tree

Authority is appointed consisting of environmental members and learned members of the society.

4. On 4 December 2014, the matters were adjourned to 17 December 2014 to enable the MMRDA and the Municipal Corporation to file their affidavit in reply. In the affidavit in reply filed on behalf of the Municipal Corporation, it is stated that as per section 3 of the Maharashtra (Urban Areas) Tree Preservation and Protection Act 1975, a Tree Authority for the years 2012 to 2017 has been constituted and nominees are appointed as members of the Tree Authority. The names of the Municipal Councilors nominated members are given in the affidavit. It is further stated in the affidavit in reply that as per provision under section 8(3)(a) of the Tree Act effective grievance redressal mechanism has been set up at the office of the Superintendent of Garden. A reference is also made to the progress made in the tree census work within the jurisdiction of MCGM by adopting modern technology like GPS (Global Positioning System).

Paragraphs 3 and 4 of the said affidavit are relevant, they read as under :-

“3. I state that the project will reduce traffic congestion (456,771 less vehicle trips) and will reduce road traffic along the corridor – 35 %. This will result in reduced fuel consumption of 243390 per day. It will also reduce air pollution (PM-133.5, Nox – 594.2, HC – 1328.8, CO – 4327.4, CO₂ – 6800.2 tons/year). It will also reduce noise pollution. The project itself is thus tremendously beneficial to improve the travel conditions of Mumbai commuters in a safe

and effective manner and reduce environmental pollution and alleviate insufferable traffic conditions having an overall impact of better life. I state that the transplantation and cutting of trees for car depot of Metro Line 3 is found to be unavoidable in an exhaustive feasibility study.

4. AT the further outset, I state that the petition is based on a wrong premise that Environmental Impact Assessment for Metro Railway Line-3 is mandatory. I state that the EIA Notification 2006 with its amendments does not include metro railway as a project for which Environmental clearance is necessary. Even though it is not mandatory to obtain Environmental clearance for metro Railway Projects, however as per guidelines of JICA, Environmental Impact Assessment (EIA) and Social Impact assessment (SIA) were carried out by RITES. The petition based mainly on this ground, therefore, deserves to be rejected.”

5. In the affidavit in reply filed on behalf of the MMRDA, it is stated that since Mumbai Metropolitan Region is one of the fast growing metropolitan regions in India, public transport systems are overcrowded and the road network is congested, to decongest the existing public transport systems and increase mobility across the region, MMRDA through MMRC has commissioned the service of Rail India Technology and Engineering Services (RITES) to prepare DPR and environmental / social impact assessment study for corridor of Colaba-Bandra-SEEPZ covering total length of 33.508 kms. for Metro III Project. It is necessary to provide the car shed in the Aarey Milk Colony and to accommodate the same, the MMRDA has to cut 254 trees from out of 75 acres of land. The

proposal was submitted to the Tree Authority on 10 November 2014 with details and drawings. Notices were published in various newspapers on 15 November 2014 inviting objections and suggestions, to be placed before the Tree Authority to decide whether the permission can be granted or not.

6. It is stated in the affidavit that the MCGM will not cut a single tree in Aarey Milk Colony without obtaining necessary legal clearance for the same. It is also stated that the rate of survival of transplanted trees with modern technology is high and therefore, hardly few trees are required to be cut.

7. Having gone through the aforesaid affidavits in reply on behalf of the Municipal Corporation as well as on behalf of the MMRDA, it is clear that so far no order is passed by the Tree Authority. Therefore, both these Public Interest Litigations are pre-mature. Public Interest Litigations are accordingly dismissed on the ground that they are pre-mature.

CHIEF JUSTICE

B.P. COLABAWALLA,J.