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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELATE JURISDICTION
PUBLIC INTEREST LITIGATION NO.156 OF 2006

Nagrik Chetna Manch	...Petitioner
vs.	
State of Maharashtra	
and another	...Respondents

Ms Kiran Bhagalia i/b Ms Kirti Kokil for the
Petitioner
Mr.V.S.Gokhale, AGP for the respondent No.1
Mr.A.A.Kumbhakoni, Senior Advocate a/w Abhijit
Kulkarni and Manoj Badgujar for the respondent No.2
Mr.S.B.Deshmukh for the applicant in CA No.55 of
2014.

CORAM : A.S.OKA, & V.L.ACHLIYA, JJ.
DATE ON WHICH SUBMISSIONS ARE HEARD:OCTOBER 8, 2015
DATE ON WHICH JUDGMENT IS PRONOUNCED:15TH JANUARY 2016

JUDGMENT: (PER A.S.OKA,J.)

THE FACTS OF THE CASE

1 The petitioner which is a public charitable trust has filed the present PIL for challenging the decision of the Pune Municipal Corporation to construct a road through hills which have been successfully afforested by the Social Forestation Department of the State Government. A resolution was passed by the General Body of the second respondent-Pune Municipal Corporation being Resolution No.532 (for short "the impugned

resolution") on 27th February 1996 for construction of a 60 feet wide road (for short "the proposed road") through the hills/hills slope from Paud Phata Road upto the gate of Balbharti building complex. It is pointed out in the petition that in the draft revised Development Plan for the city of Pune which was published in the year 1982, the proposed road was shown. However, while sanctioning the draft Development Plan, in exercise of the power under section 31 of the Maharashtra Regional and Town Planning Act, 1966 (for short 'the MRTP Act'), the State Government did not grant approval to the said proposed road shown in the draft revised Development Plan.

2 It is pointed out that the hills through which the proposed road will pass are lush green having a large number of trees. The hills are regularly visited by hundreds of people for walk in every morning and evening. It is pointed out that the visitors regularly visit and contribute towards afforestation the forest on the hills. Reliance is placed on the proposal submitted by Dr. Uday Kulkarni in which adverse effects of the proposed road have been pointed out. The contention in the petition is that without carrying out the basic investigation and survey, the Municipal Corporation has thoughtlessly proposed to construct the said road. It is pointed out that for the construction of the road in terms of the impugned resolution, more

than 1000 grown up trees will have to be cut. It is pointed out that the Municipal Corporation has already cut more than 100 trees including the sandal wood trees. It is contended that the area may not have been declared as a forest but it continues to be a forest which needs to be preserved. It is pointed out that during the last few years, there has been a steady deterioration of environment in the city of Pune. It is contended that creating such a forest is useful for carbon trapping. It is urged that the power under section 205 of the Maharashtra Municipal Corporations Act, 1949 (for short the 'MMC Act') cannot be used to defeat the provisions of the section 31 of the MRTP Act. It is pointed out that once the proposed road is constructed through the hills, it will be impossible for the Municipal Corporation to control the encroachments by hawkers, garden restaurants and unauthorised constructions on the side of the road. It is pointed out that various reptiles and animals like deers are found in the area and even large number of birds are found. It is pointed out that without carrying out any survey, the decision has been hastily taken. There is a reply filed by Shri Madhav Latkar, the Development Engineer (Road) of the Pune Municipal Corporation on 7th April 2008. In the said reply, it is pointed out that a Committee of Experts has been constituted by the Commissioner of the Pune Municipal Corporation which includes Major General Shri S.C.N. Jathar

(Retired) the Chairman of the Nagrik Chetna Manch which is the petitioner herein. The Additional City Engineer (Roads) of the said Municipal Corporation was appointed as its Member Secretary. The terms of reference of the Committee of Experts have been annexed to the said affidavit. Interim report of the Committee was annexed to the said affidavit which records that the Environment Impact Assessment report of the project of construction of the proposed road does not exist. Therefore, a recommendation was made to appoint an institution recognised by the Government of India such as National Environment Engineering Research Institute (for short 'NEERI') to carry out Environment Impact Assessment (EIA). It was also recommended that the Municipal Corporation should employ qualified expert consultant having an expertise in the traffic and transportation as well as finance. It was recommended that the Pune Municipal Corporation should permit the consultant to present its methodology to the Committee of Experts before finalising it. It was resolved that the members of the Committee of Experts will continue to interact with the Consultants. There is an additional affidavit filed by the petitioner on 15th April 2013 bringing on record the fact that the Member Secretary who was an Engineer of the Pune Municipal Corporation has not convened a meeting of the Committee of Experts after 28th February 2013. It is pointed out that the Committee rejected the report

of Shrishti Eco- Research Institute (SERI) which was appointed as an Expert Agency by the Municipal Corporation.

3 There is another affidavit in reply filed earlier on 7th February 2007 by Shri Madhav Latkar, the Development Engineer (Road Department), Pune Municipal Corporation pointing out the necessity of construction of the proposed road. It is pointed out that in a suit filed by another organization, the Civil Court declined to grant temporary injunction by a detailed order dated 21st July 2006. A finding has been recorded by the Civil Court that no forest exists on the land through which the proposed road will pass. Reliance is placed on the correspondence made by the Forest Department which shows that the land covered by the proposed road has not been declared as a forest.

SUBMISSIONS OF THE PETITIONER

4 The learned counsel for the petitioner invited our attention to the photographs annexed to the petition as well as the latest photographs tendered across the bar. She pointed out that it is an admitted position that the entire stretch of the said hills has been afforested which can be seen even from the letter dated 25th January 2007 addressed by the Deputy Conservator of Forests, Pune Forest Division, Pune to the Commissioner of the

Pune Municipal Corporation. She pointed out that the said letter records that though the District Committee may not have included the said area in the forest, in the Green Pune Project, large plantations were made thereon between the year 1994 to 1996 and a man made forest has been created. She pointed out that the Experts' Committee appointed by the Commissioner of the Pune Municipal Corporation rejected the recommendations of SERI for the reasons which are recorded in the report. She pointed out that a meeting of the Committee was not convened by the Member Secretary or the Pune Municipal Corporation for making final recommendations. She invited our attention to the decision of the Apex Court in the case of T.N.Godavarman Thirumulkpad vs Union Of India¹. She relied upon another decision of the Apex Court in the case of Shabi Construction Company vs. City Industrial Corporation of Maharashtra Limited and another². She pointed out that in the draft revised Development Plan of the city of Pune published in the year 1982, a road was proposed through the said hills but while approving and sanctioning the draft Development Plan, the State Government in exercise of powers under sub-section (2) of section 31 of the MRTP Act, rejected the said proposal in the draft Development Plan. She submitted that within few years of the said rejection by the State Government, instead of moving

1 (1997) 2 SCC 267

2 (1995) 4 SCC 301

a proposal for the modification of the sanctioned Development Plan, by a back door method, the Municipal Corporation cannot bypass the provisions of the MRTTP Act and construct a road which was proposed in the draft revised Development Plan which was not sanctioned.

THE SUBMISSIONS OF THE MUNICIPAL CORPORATION

5 The learned senior counsel for the Pune Municipal Corporation urged that even without their being any reservation in the Development Plan under the MRTTP Act, the Municipal Corporation can always exercise the powers under section 205 of the MMC Act, 1949. He pointed out that the reasons have been recorded in the impugned Resolution No. 532 passed by the General Body of the Pune Municipal Corporation. It records that from the year 1982, there has been a large scale development in the vicinity of the Paud Road which has resulted in the increase of population density as well as increase in the number of vehicles on the road. He pointed out that the said resolution itself records that as the road starting from Paud Phata Road has become very congested, to reduce the congestion on the road, after a survey was carried out by the Road and Traffic Planning Department of the Municipal Corporation, the proposed road has been designed. He pointed out that it will ease the pressure of heavy traffic on the existing road which is one of

the major roads in the city. He pointed out that the distance will be reduced by 0.70 kilometer. He invited our attention to the findings recorded by the Civil Court in the detailed Judgment and Order dated 21st July 2006 in R.C.S No.541 of 2006 by which an application for temporary injunction was rejected. He pointed out the prima facie finding recorded that no part of the land from which the proposed road will be passing is a forest. He also pointed out the correspondence between the Forest Department and the Municipal Commissioner which unequivocally records that the land affected by the proposed road is not a forest. He relied upon the photographs annexed to the first affidavit of the Municipal Corporation showing the congestion on the existing road as well as the report submitted by the Maharashtra State Road Development Corporation Limited. He submitted that several measures will be taken by the Pune Municipal Corporation to ensure that minimum number of trees are cut for the construction of the proposed road and the compensatory afforestation is made. He pointed out that the steps can be taken to ensure that there are no encroachments on the said road and there are no constructions made by the side of the road. It is pointed out that the study made by the Maharashtra State Road Development Corporation Limited shows that the existing road was designed to have capacity of 2000 vehicles whereas the same is being used by more than 4000 vehicles. He would, therefore, urge

that no interference can be made by the Writ Court with the impugned decision as the same is taken by the Pune Municipal Corporation in larger public interests especially when the Pune Municipal Corporation is bound to ensure that the afforestation of the hills is not disturbed as far as possible.

CONSIDERATION OF SUBMISSIONS

6 We have carefully considered the submissions. As far as the location of the proposed road is concerned, there is no dispute. In the paragraph 2 of the writ petition, there are specific averments that the said hills on which the proposed road is to be constructed were taken up for afforestation by the State Government and the afforestation has been successfully carried out on these hills by the Social Afforestation Department. In the paragraph wise reply dated 7th February 2007 filed by Shri Madhav Latkar, the correctness of the said averments has not been denied. What is pleaded is the benefit which may accrue to the citizens by the construction of the proposed road. Secondly, it is pleaded that in the revenue records, the land in question on which the proposed road is to be constructed is not recorded as a forest. It is admitted that for the construction of the proposed road, some plants and trees will have to be removed but an assurance is given that the Corporation will replant the trees. In paragraph 6 of the petition, the petitioners have

stated that the entire hills are lush green and a large number of citizens frequently visit the hills for morning and evening walk. It is stated that in fact the citizens have planted saplings and nurtured them by manually carrying of water from the foot of the hills. Even the said contention is not specifically denied in the said reply. Moreover, in the said affidavit, the Corporation has relied upon the letter dated 25th January 2007 (Exhibit B to the reply) addressed by the Deputy Conservator of Forests, Pune Division, Pune to the Municipal Commissioner. Paragraph 1 of the said letter specifically records that the area covered by the proposed Paud Phata Road to Balbharti was covered by the Green Pune Project which was implemented from the year 1994 to 1996 and a large number of trees such as Glirisdia, Subabhul etc have been planted thereon. It is stated that it is a man made forest and therefore, it is not included in the designated forest by the District Committee. Thus, it is an admitted position that the man made forest will be adversely affected by the construction of the proposed road as number of trees will be felled or cut for the purpose of its construction. The photographs on record which are annexed at Exhibit-K to the petition which are not disputed show that it is a very thick man made forest. Even the photographs tendered across the bar at the time of final hearing which were taken on 4th October 2015 show that the entire area which will be affected by

the proposed road is a lush green area which is covered by a large number of trees and plants. Apart from requirement of felling trees, as it happens in all major cities, constructions will come up on both the sides of the road which will destroy the forest.

7 It is true that the forest on the said hills may not be strictly a forest within the meaning of the Forest Conservation Act, 1980. Nevertheless, the admitted position is that it is a man made forest and the work of afforestation was done by the Government itself under the Green Pune Project.

8 In the case of ***Nature Lovers Movement v. State of Kerala***³, the Apex Court in paragraph 2 has observed thus:

“2. The Indian society has, for many centuries, been aware and conscious of the necessity of protecting environment and ecology. Sages and saints of India lived in forests. Their preachings contained in vedas, upanishads, smritis, etc. are ample evidence of the society's respect for plants, trees, earth, sky, air, water and every form of life. The main motto of social life is to live in harmony with nature. It was regarded as a sacred duty of everyone to protect them. In those days, people worshiped trees, rivers

3 (2009) 5 SCC 373

and sea which were treated as belonging to all living creatures. The children were educated by elders of the society about the necessity of keeping the environment clean and protecting earth, rivers, sea, forests, trees, flora, fauna and every species of life."

The Apex Court in its several decisions has expanded the scope of Article 21 of the Constitution of India. The Apex Court has held that every citizen has a right to live in a pollution free environment. It cannot be disputed that the green cover over the city of Pune has been considerably depleted during the last few years.

It will be necessary to make a reference to the directive principles of the State Policy incorporated in the part IV of the Constitution of India. Article 48A which reads thus:

"48-A. Protection and improvement of environment and safeguarding of forests and wild life.—The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country."

9 It is well settled that though the Court of law cannot enforce the directive principles of the State

Policy, nevertheless, they are fundamental in governance. Apart from Article 48A of Chapter IV, the fundamental duties have been incorporated in the form of Article 51A which read thus:

"51-A. Fundamental duties.—It shall be the duty of every citizen of India—

- (a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- (b) to cherish and follow the noble ideals which inspired our national struggle for freedom;
- (c) to uphold and protect the sovereignty, unity and integrity of India;
- (d) to defend the country and render national service when called upon to do so;
- (e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
- (f) to value and preserve the rich heritage of our composite culture;
- (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;....."**

(emphasis added)

The Apex Court dealt with Articles 48A and 51A in the case of ***Assn. for Environment Protection v. State of Kerala***⁴. In the first three paragraphs, the Apex Court has observed thus:

4 (2013) 7 SCC 226

"G.S. SINGHVI, J.— Leave granted. Since time immemorial, people across the world have always made efforts to preserve and protect the natural resources like air, water, plants, flora and fauna. Ancient scriptures of different countries are full of stories of man's zeal to protect the environment and ecology. **Our sages and saints always preached and also taught the people to worship earth, sky, rivers, sea, plants, trees and every form of life. Majority of people still consider it as their sacred duty to protect the plants, trees, rivers, wells, etc. because it is believed that they belong to all living creatures.**

2. The ancient Roman Empire developed a legal theory known as the "doctrine of the public trust". It was founded on the premise that certain common properties such as air, sea, water and forests are of immense importance to the people in general and they must be held by the Government as a trustee for the free and unimpeded use by the general public and it would be wholly unjustified to make them a subject of private ownership. **The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for**

private ownership or commercial exploitation to satisfy the greed of a few.

3. Although the Constitution of India, which was enforced on 26-1-1950 did not contain any express provision for protection of environment and ecology, the people continued to treat it as their social duty to respect the nature, natural resources and protect environment and ecology. After 26 years, Article 48-A was inserted in Part IV of the Constitution and the State was burdened with the responsibility of making an endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country. By the same amendment, fundamental duties of the citizens were enumerated in the form of Article 51-A (Part IV-A). These include the duty to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures [Article 51-A(g)].

(emphasis added)

10 One of the fundamental duties of the citizens is to protect and improve the natural environment including the forests, lakes, rivers, wildlife and to have compassion for living creatures. Therefore, the endeavour of every citizen should be to protect

the environment and in particular the forests. The word 'Forest' under Article 48A and clause (g) of Article 51A cannot be restricted to a forest within the meaning of Indian Forest Act, 1927 or the Forest Conservation Act, 1980. Such a narrow meaning will defeat the very object of both the provisions. The forest within the meaning of the said Articles must include a man made forest. Therefore, the endeavour of the Municipal Corporation should be to save and protect the man made forest.

11 Section 63 of the MMC Act lays down the mandatory duties of the Municipal Corporation. Section 63 provides that it shall be incumbent on the Corporation to make reasonable and adequate provisions by any means or measures for each of the matter specified in the said section. Clause 1(b) of section 63 reads thus:

"63. It shall be incumbent on the Corporation to make reasonable and adequate provision, by any means or measures which it is lawfully competent to it to use or to take, for each of the following matters, namely –

(1) erection of substantial boundary marks of such description and in such positions as shall be approved by the 1[State] Government defining the limits or any alteration in the limits of the City ;

[(1a) planning for social and economic development ;

(1b) **urban forestry, protection of the environment and promotion of ecological aspects ;]**"

(emphasis added)

Thus, it is the mandatory duty of the Municipal Corporation to make adequate provision by any means or measures to preserve the urban forestry, to protect the environment and to promote ecological aspects. Thus, the mandatory duty of a Municipal Corporation is to make adequate provision for urban forestry. Clause (1b) will include a duty to maintain the forests which already exist in the urban area within its jurisdiction and to protect it. If we examine the decision making process adopted by the Pune Municipal Corporation, we find that in the impugned Resolution No.532, the fact that the man made forest will be adversely affected by the proposed road is not even considered. The Resolution gives reasons which according to the Pune Municipal Corporation are relevant in support of the proposal for construction of the proposed road. It also records that in the draft Development Plan, the road was proposed which was not sanctioned. The Resolution is a detailed Resolution which gives detailed reasons. It incorporates the alleged benefits which will accrue to the citizens by the construction of the proposed road. The Resolution

refers to the recommendations of the Municipal Commissioner. Though two affidavits are filed by the Pune Municipal Corporation, the recommendations are not produced. It is not the case made out in the affidavits that the fact that the man made forest created by the State Government under the Green Pune Project will be destroyed by the construction of the proposed road was brought to the notice of the General Body of the Corporation before the impugned resolution was passed. There is no conscious application of mind by the Pune Municipal Corporation to the drastic adverse effect of the construction of the proposed road on the environment and in particular on the existing man made forest. We find that even the mandatory duty under clause 1b of sub-section (1) of the section 63 of the MMC Act is not brought to the notice of the General Body before passing the impugned resolution. Thus, the decision making process has been vitiated by non consideration of the relevant factors. Apart from the non consideration of the mandatory duty under the MMC Act, the Corporation seems to be ignorant of the provisions of Article 48A and Clause (g) of Article 51A. The Constitutional mandate has not been considered by the Corporation.

12 There is one more important reason as to why we cannot permit the construction of the proposed road on the basis of the impugned resolution. The

second affidavit dated 7th April 2008 filed by Shri Madhav Latkar on behalf of the Pune Municipal Corporation records that the Municipal Commissioner constituted a Committee of Experts. Interim report of the said Committee has been annexed to the said affidavit. The terms of reference of the Committee of Experts as per the order dated 24th October 2007 passed by the Municipal Commissioner are reproduced in the said interim report which read thus :

"TERMS OF REFERENCE

2The Terms of Reference (ToR) for the Expert Committee as per the order dated 24th August 2007 from the Municipal Commissioner are as follows:

- a. To analyse all existing reports for the Project from consultants, PMC, NGOs, etc (including the background for its approval) and its current status to understand the main objective in taking up the project,
- b. To work out an environment impact assessment for the project,
- c. To work out the necessity for the project, based on traffic demand analysis supported by fact-finding or planning surveys,
- d. To assess the benefits to the society, such as, reduction in vehicle operational cost, saving in travel time, de-congestion of roads, improved level of service, increased comfort to passengers and enhancement in land value as a result of the project to assess whether the cost of the project is lower than the cost reductions to the project users

and other beneficiaries during the estimated period,

e. As a consequence of the above analysis, to work out economic and financial rates of returns to assess the cost-benefit to the city of Pune,

f. Lastly, to recommend if there is any other more cost-effective manner in which the objective of the project could be achieved."

13 In the same interim report, there are recommendations of the Committee of Experts. The paragraph 17 of the report reads thus:

"Recommendations of the Expert Committee

17 The Expert Committee then re-visited the ToR and **noted that EIA report does not exist for the Project.** The Expert Committee has inferred that critically relevant data based on which it can express a view on paragraphs 2(c) to (f) the above are not available. **It, therefore, decided to request the PMC to carry out the necessary surveys to generate the required data by employing a qualified and experienced consultant.** The Expert Committee was of the view that the consultant should give a presentation of its methodology for obtaining the data to work out the necessity for the Project and assess the benefits to the society so that its

methodology would reflect the requirements of the Expert Committee. The Expert Committee therefore unanimously recommends;

a. PMC to appoint an institution such as GoI-recognised National Environmental Engineering Research Institute to carry out the EIA for the project (paragraph 3.b of the ToR),

b. PMC to employ a qualified and experienced consultant with both traffic and transportation and finance expertise to carry out surveys and studies to ascertain the necessity of the Project and work out financial/economic analyses (paragraph 3.c, d, e and f of the ToR).

c. The consultants to present its methodology to the Expert Committee before finalising it,

d. The members of the Expert Committee to continuously interact with NEERI and the Consultant,

e. PMC to ensure that the above tasks are carried out in a time bound manner to avoid unnecessary delays in the execution of the Project if it is found viable, and

f. That the Expert Committee should submit its final report within 30 days of the receipt of the reports from NEERI and the Consultant."

(emphasis added)

14 In terms of the said recommendations, the Municipal Corporation appointed SERI to make Environment Impact Assessment and Traffic Study. The report submitted by the SERI was placed before the meeting of the Committee of Experts on 18th January 2011. The minutes dated 4th February 2011 recorded of the meeting dated 18th January 2011 record the unanimous recommendation of the Committee. The said minutes have been signed by Shri Vivek Kharadwadkar, the Additional City Engineer (Roads) of the Pune Municipal Corporation who was the Secretary of the Committee. The relevant part of the minutes reads thus :

"The EC was of the unanimous view that the Report did not keep the basic objective of the Survey/Study in view and is thus not acceptable to the EC. The EC unanimously decided that the failure to deliver on the part of SERI in spite of detailed discussions with the institution prior to the survey calls for strict action and termination of contract. However, the EC felt that SERI

should be given one more chance to correct all the anomalies in the report and submit a revised report."

(emphasis added)

15 Thereafter, a meeting of the Committee was held on 28th February 2013 to consider the modified report of the SERI. Five members of the Committee including Shri Pramod Nirbhavane, the Additional City Engineer (Roads) of the Pune Municipal Corporation attended the meeting. Two invitees were also present. In the affidavit dated 15th April 2013 of Shri Jathar who is the member of the Committee of Experts and the President of the petitioner, it is stated that in the meeting held on 28th February 2013, the majority of the members of the Committee of Experts were of the opinion that the modified report of SERI does not make out a case for permitting the construction of the proposed road and therefore, they decided not to recommend the construction of the proposed road. In paragraph 7 of the affidavit, it is specifically contended that behind back of the Committee of Experts, a revised report of SERI was uploaded on the website of the Pune Municipal Corporation on 5th March 2013. After noticing that the members of the Committee lodged a serious protest with the Additional City Engineer (Roads) of the Pune Municipal Corporation. The details of the material differences between the report of August 2012 and the report of the same

date which was uploaded on 5th March 2013 have been set out in paragraph 8 of the said affidavit. A report of majority of the members of the Expert Committee is annexed to the said affidavit as Annexure IV. It recommends that the construction of the proposed road should not be undertaken. In paragraph 19 of the said affidavit, Shri Jathar has stated that on 12th March 2013, he issued e-mail to Mr.Nirbhavane requesting him to hold a meeting of the Committee, but no meeting was convened. A copy of the said e-mail has been annexed as Exhibit-IX to the said affidavit. The contents of the said affidavit of Shri Jathar have not been dealt with by the Pune Municipal Corporation by filing any affidavit.

16 We have already quoted the terms of reference of the Committee of Experts as per the order 24th August 2007 of the Municipal Commissioner. The Committee was to make recommendations to the Municipal Corporation after considering the report of the project consultants. Interim report of the Committee of Experts is annexed to the affidavit of Shri Madhav Latkar, the Development Engineer of the Pune Municipal Corporation. The recommendations in the said interim report are already quoted above. The recommendations clearly provide that after the report of the Agency appointed by the Municipal Corporation submits its report, the Committee of Experts will submit a final report. As the contents

of the affidavit dated 15th April 2013 of Shri Jathar are not disputed, it is apparent that the final recommendations were never submitted by the said Committee as the Additional City Engineer (Roads) of the Pune Municipal Corporation failed to convene a meeting of the Committee. Thus, the Municipal Corporation does not have the benefit of the recommendations of the Committee of Experts constituted by the Municipal Commissioner under his order dated 24th August 2007 as the Member Secretary who was the Additional City Engineer (Roads) did not convene the meeting of the Committee.

17 The Municipal Commissioner realised the necessity of constituting a Committee of Experts. Unless the Committee is allowed to submit its final report and the same is considered by the Pune Municipal Corporation, surely, the Municipal Corporation cannot proceed with the construction of the proposed road. This is so in the light of the fact that before passing the impugned Resolution, the Environment Impact Assessment was not made and the attention of the General Body was not invited to the fact that the man made forest will be destroyed by the construction of the proposed road. In fact this Court has recorded a finding that non consideration of several factors including the provisions of the Constitution and statutory mandatory duties of the Corporation has resulted in vitiating the decision making process. When the Municipal Commissioner on his own appointed the

Committee of Experts, the Municipal Corporation cannot proceed further with the decision to construct the proposed road without allowing the Committee to submit its final recommendations.

18 There is one more aspect of the matter. In the year 1982, the draft revised Development Plan was prepared by the Municipal Corporation and was submitted to the State Government for sanction. Admittedly, there was a provision made therein for the construction of the proposed road. However, that proposal was not approved by the State Government while sanctioning the Development Plan in exercise of the powers under section 31 of the MRTP Act. Though the impugned Resolution was passed in purported exercise of powers under section 205 of the MMC Act, the fact that the State Government in the year 1987 thought it fit not to permit construction of the proposed road is very relevant.

19 The concept of burden of proof in the cases affecting the environment is well known. We need not elaborate the said concept. In the case of **M.C. Mehta v. Kamal Nath**⁵, the Apex Court held thus:

“35. We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public

5 (1997) 1 SCC 388

who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the Constitution. But in the absence of any legislation, the executive acting under the doctrine of public trust cannot abdicate the natural resources and convert them into private ownership, or for commercial use. **The aesthetic use and the pristine glory of the natural resources, the environment and the ecosystems of our country cannot be permitted to be eroded for private, commercial or any other use unless the courts find it necessary, in good faith, for the public good and in public interest to encroach upon the said resources."**

(emphasis added)

20 Unless a proper study is made by the Committee of Experts, it cannot be held that the destruction of the forest for the construction of the proposed road is in public interest and is for a public good.

21 Therefore, for all the reasons recorded earlier, the impugned Resolution will have to be set aside. However, it will be open for the Pune Municipal Corporation to invite the recommendations from the Committee of Experts already constituted by the Municipal Commissioner and thereafter, to take a fresh decision. If some of the the members of the said Committee are not available, it will be open for the Municipal Corporation to re-constitute the Committee. Considering the mandatory obligation of the Municipal Corporation under the MMC Act, before taking a drastic decision of the construction of the proposed road which will substantially destroy the man made forest, the Environment Impact Assessment needs to be made. Before taking a conscious decision, if any, of permitting the construction of the proposed road, the impact of the construction of the proposed road on the environment will have to be considered by the Municipal Corporation in the light of the mandate of the Articles 48A and 51A and its mandatory duty to protect environment.

22 Considering the material placed on record and the reasons recorded above, as of today, the

impugned resolution will not stand the test of legality. We may make it clear that we have not gone into the issue whether there can be a reservation shown for the construction of the proposed road in the revised Development Plan. All contentions of the parties in that behalf are kept open.

23 Hence, we pass the following order:

- (i) Subject to observations made in the Judgment, the impugned Resolution No.532 passed by the General Body of the Pune Municipal Corporation on 27th February 1996 is hereby quashed and set aside;
- (ii) Rule is accordingly made absolute with no order as to costs.

(V.L.ACHLIYA,J.)

(A.S.OKA,J.)