

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

NOTICE OF MOTION (L) NO.858 OF 2016
IN
WRIT PETITION NO.1762 OF 1999

Municipal Corporation of Greater Mumbai
and Another. .. Applicants

In the matter between-

The Bombay Environment Action Group. .. Petitioner

Vs.

Municipal Corporation of Greater Mumbai
and Others. .. Respondents

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Shri S.S. Pakale along with Ms. Geeta Joglekar for the Applicants.
Ms. Shreya Parikh along with Ms. Apurva Gupte i/b M/s. Hariani & Co for the
Petitioner.
Ms. Kavita Anchan i/b M.V. Kini & Co for the Respondent No.11.
Shri S.K. Nair, Special Counsel along with Ms. Kavita N. Solunke, AGP for
Respondent State.

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CORAM : A.S. OKA &
SMT.ANUJA PRABHUDESSAI, JJ

DATED : 9TH JANUARY 2017

PC.

1. This Notice of Motion is taken out by the Mumbai Municipal Corporation. On 11th July 2016, earlier Notice of Motion (L) No.477 of 2016 filed by the Applicants was disposed of by this Court on the basis of the unconditional undertaking given on behalf of the Municipal Corporation. This Court granted extension for the vehicles subject matter of this Notice of Motion till 31st December 2016 with a

rider that the Applicants will not be entitled to seek further extension. Though this Notice of Motion along with the Notice of Motion (L) No.864 of 2016 was taken out by the Municipal Corporation for grant of further extension till 31st December 2017, Notice of Motion (L) No.864 has been permitted to be withdrawn as prayed. As far as this Notice of Motion is concerned, the Applicants are confining the prayer only to four vehicles. Three vehicles out of four are used for the purposes of blood bank and fourth one is used as an ambulance. Today, an affidavit is filed in this Notice of Motion by Shri Vijay M. Balamwar, the Deputy Municipal Commissioner (Solid Waste Management) of the Mumbai Municipal Corporation under the instructions of the Municipal Commissioner. The Paragraphs 3 and 4 of the said affidavit read thus:

- “3. In the said list details have been given of, work orders issued for procurement of Blood Bank vehicles and the said vehicles are at fabrication stage. Though in the Affidavit in support of the Notice of Motion, it is mentioned that the body fabrication of 4 Nos of Blood Bank vans is under progress, and are likely to be received by 31/03/2017, it is humbly requested to kindly grant extension upto 30th June 2017 as and by way of precautionary measure. The said services are related to emergency health services and need to be operated uninterruptedly, therefore, extension is sought for six months i.e. 30.06.2017.
4. I am aware that the undertaking was given by MCGM in June 2016, however, due to some unforeseen reasons and facts beyond control, the said vehicles could not be procured/hired before 31.12.2016.

2. We have already made a reference to the order passed on 11th July 2016 in the earlier Notice of Motion (L) No.477 of 2016. In light of the undertaking given by the Applicants in the said earlier Notice of Motion and the order dated 11th July 2016 passed thereon, in normal course, this Court would not have considered the prayer made in this Notice of Motion on merits. However, we find that the four vehicles are being used for the purposes of Blood Bank and Ambulance. That is the only reason that by way of indulgence, we propose to accede to the prayer made by the Municipal Corporation. Moreover, in the affidavit-in-support of the Notice of Motion, the photographs have been annexed showing that the work of fabrication is going on of the new vehicles.

3. Accordingly, we dispose of the Notice of Motion by passing the following order:

ORDER :

- (a) We accept the undertaking of the Municipal Corporation to stop user of the four vehicles subject matter of the Notice of Motion on or before 30th June 2017;

- (b) In view of the said undertaking, the Notice of Motion is made absolute in terms of prayer clauses (a) and (b) with modification that the permission is granted only till 30th June 2017;
- (c) We make it clear that apart from the fact that no further extension shall be granted, as an undertaking has been given by the Municipal Corporation under the express order of the Municipal Commissioner, contempt proceedings will have to be initiated personally against the Municipal Commissioner, if it is found that the vehicles are plied after 30th June 2017.

(SMT.ANUJA PRABHUDESSAI, J)

(A.S. OKA, J)