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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
CIVIL APPLICATION (ST) NO.30048 OF 2017
IN
PUBLIC INTEREST LITIGATION NO.41 OF 2006

The State of Maharashtra	... Applicants
In the matter between	
Nashik Nagrik Kruti Samiti	... Petitioners
Vs.	
The State of Maharashtra and Ors.	... Respondents

Mr. A.B. Vagyan, Government Pleader a/w Mr. Manish M. Pabale, AGP for the Applicants.

Mr. Tejesh Dande i/by Tejesh Dande & Associate for the Petitioners.

Mrs. S.V. Bharucha & Mr. N.D. Sharma for the Respondent No.5.

**CORAM : A.S. OKA &
RIYAZ I. CHAGLA, JJ.**

DATE : 28th FEBRUARY, 2018

PC.

. Not on Board. Taken on Board.

1 The learned Government Pleader tenders draft amendment which is taken on record and marked “X” for identification. Amendment is permitted to be carried out within a period of one week from the date on which this order is uploaded.

2 Heard the learned Government Pleader for the applicants and the learned counsel appearing for the Writ Petitioner. Our attention is invited to the order dated 2nd May, 2014 in the main PIL and in particular, the directions contained in clause (viii) of paragraph 16.

3 By filing this Civil Application, it is pointed out that it is necessary for the applicant to cut 3 trees and transplant 27 trees for facilitating construction of Mother and Child Care Unit in the District Hospital at Nashik. Our attention is invited to the annexures to the Civil Application as well as the averments made in the Civil Application. It is pointed out that the proposal is to establish Mother and Child Health Care Centre consisting of ground plus four stories in the precinct of District Hospital at Nashik. The Mother and Child Health Care Centre is proposed to be constructed under the National Health Mission. It is pointed out that an application was made to the Tree Authority on behalf of the District Hospital for grant of necessary permission. In the meeting of the Tree Authority of the Nashik Municipal Corporation it is recorded that the applicant desires to transplant 27 trees and cut three trees. It is stated that before doing the same, the applicant will have to plant 30 new trees. There are other conditions suggested by the Tree Authority. We have also perused additional affidavit of Dr. P.S. Gunjal, in-charge Chief Administrative Officer of the said Hospital and in

particular averments made in paragraphs 4 and 5. The learned Government Pleader states that when the process of transplanting of 27 trees is undertaken, advance notice will be given to the PIL petitioner to enable the representative of the PIL petitioner to remain present.

4 The factual situation pointed out in the application and additional affidavit is extraordinary. Mother and Child Care Unit cannot be constructed by the State Government unless permission is granted to cut 3 trees and transplant 27 trees. The applicant has accepted the conditions recorded in second paragraph of Resolution No.145 of the Tree Authority of the Nashik Municipal Corporation.

5 Considering the nature of the work which the applicant - State proposes to carry out, permission will have to be granted as prayed for.

6 Accordingly, we pass the following order :-

ORDER

- (i) The prayer clause (a) as amended is granted subject to further direction that the Municipal Commissioner of Nashik Municipal Corporation shall pass a specific order imposing normal terms and conditions which are

imposed while granting such permissions. This exercise shall be completed by the Municipal Commissioner within a maximum period of two weeks from the date on which an authenticated copy of this order is produced in the office of the Commissioner;

(ii) We accept the statement made by the Government Pleader that sufficient advance notice will be given to PIL petitioner of the time and date when the applicant proposes to transplant 27 trees. Needless to add that applicant will abide by the terms and conditions which may be imposed by the Municipal Commissioner and the statement made in this Application;

(iii) We make it clear that this order is passed only in view of the fact that the State Government proposes to construct the said Centre in larger public interests;

(iv) Civil Application is disposed of on above terms.

(RIYAZ I. CHAGLA, J)

(A.S. OKA, J)