

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO. 3 OF 2019
IN
PUBLIC INTEREST LITIGATION NO. 41 OF 2006

Nashik Municipal Corporation & Anr.	...	Applicant.
In the matter between		
Nashik Nagarik Kruti Samiti.	...	Petitioner.
V/s.		
The State of Maharashtra and others.	...	Respondents

Mr.R.D.Soni with Ranjeet Pawar for the applicant in CAI-37/19.

None for the petitioner.

Mr.M.L.Patil for the applicant in CAI-30/17 and CAI-3/19
and Respondent No.1 in PIL 51/16 and Respondent Nos.2 and 3 in
PIL 41/2006.

Ms.Lakshmi Bussa i/b. M.V.Kini &s Co. for Respondent No.6 in PIL
No.41/2006 and Respondent No.3 in PIL No.51/2016.

Ms.S.V.Bharucha with Mr.N.D.Sharma for Respondent No.4 in PIL
No.41/2006 and PIL No.51/2016.

Mr.P.P.Kakade, GP with Ms.Nisha Mehra, AGP for Respondent
Nos.1, 5, 7 & 8 in PIL No.d41/2006 and Respondent Nos.2 and 3 in
PIL No.51/2016.

CORAM : **PRADEEP NANDRAJOG, C.J.**
 AND N.M.JAMDAR, J.

DATE : **23 July 2019.**

P.C. :

The public interest litigation was filed raising an issue of
trees being felled in the areas comprising Municipal Corporation,

Nashik. The principal grievance emerged on account of Tree Authority not being constituted and this being in violation of the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975 ("Trees Act" for short). The order dated 2 May 2014 passed in the public interest litigation enlarges the scope of the proceedings by taking note of trees being felled on National Highway No.3 as well as on Manmad-Shirdi State Highway. Regarding trees being felled while expanding the highways, first direction issued in paragraph-16 was that compensatory planting should be resorted to and two retired Forest Officers named in the said direction were directed to supervise the same. Regarding felling of trees, it was directed that the Tree Authority shall be constituted as per decision in the case of *Deepak Balkrishna Vahikar and another v. The State of Maharashtra and others*¹. Direction No.vii was that till the Tree Authority was constituted as per decision dated 20 September 2013, no tree shall be felled except with the permission of this Court.

2. By and under Civil Application No.3/2019 the Nashik Municipal Corporation informs that Tree Authority has been constituted comprising two Councillors and two Members. The constitution of Tree Authority as per the application is contrary to the requirement of sub-sections (1) and (3) of section 3 of the Trees Act for the reason as per sub-section (1) not less than 5 and not more than 15 members have to be appointed on the Tree Authority from

1 PIL No.93/2009 decided on 20 September 2013.

amongst the members of the Municipal Corporation and as per sub-section (3) expert members have to be as per sub-section (3). This Bench has clarified on the legal position in the recent judgment in the case of *Zoru Darayus Bhathena v. Tree Authority, Mumbai and others*². The decision has explained the law declared in the case of *Deepak Balkrishna Vahikar & Anr. v. The State of Maharashtra & Ors.* (supra) and, thus, to the said extent direction No.(v) of paragraph-16 of the interim order dated 2 May 2014 requires to be set aside. We do so. However, pertaining to the application, we find that the Tree Authority has not been properly constituted by the Municipal Corporation, Nashik and, thus, we dispose of this application directing Municipal Corporation, Nashik to constitute Tree Authority within four weeks as per the decision in the case of *Zoru Darayus Bhathena v. Tree Authority, Mumbai and others* (supra) to which we have referred to herein-above.

N.M.JAMDAR, J.

CHIEF JUSTICE

2 O.S.PIL(L) No.60/2019 decided on 19 July 2019.