

Shri Chetan Prithviraj Bora ... **Petitioner**

The State of Maharashtra and Ors... Respondents

Mr.M.L.Patil for Respondent No.2.

DATE :- JUNE 21, 2019

1. In the order passed by this Court in the Public Interest Litigation, which binds all concerned, including those not before the Court, the anxiety of this Court was that the trees would be cut and removed without any regard to the environment and related issues. The cutting of trees without guidelines and the permissions in relation thereto being granted routinely and mechanically necessitated this Court's intervention in the Public Interest Litigation No.41 of 2006.

2. Pertinently it is a Public Interest Litigation of Nashik Nagrik Kruti Samiti.

3. The direction in that was to the Municipal Corporation of city of Nashik and its Tree Authority to abide by the directions given by this Court to the Pune Municipal Corporation in the judgment and order dated 20th September, 2013 in Public Interest Litigation No.93 of 2009.

4. The constitution of Tree Authority by the Nashik Municipal Corporation was not found to be in accordance with law. Since that was not compliant with law, this Court in the Public Interest Litigation referred by us, namely, Nashik Nagrik Kruti Samiti's Public Interest Litigation, issued a direction restraining the Tree Authority from granting permissions for felling/pulling down trees without permission of this Court. It is only in case of extreme emergency that the Tree Authority shall be entitled to permit trimming of trees or felling of trees. In such a case, report in writing should be filed in this Court within fifteen days from the date of grant of permission with copies to the parties.

5. Now, Mr.Barve appearing on behalf of the petitioner in this petition says that on account of the directions in the Public Interest Litigation, he is compelled to approach this Court.

Properly understood, the directions do not totally take away the authority of the Nashik Municipal Corporation. The Court found that the Tree Authority constituted by the Nashik Municipal Corporation to be non compliant, yet, in cases of extreme urgency, that very authority was entitled to permit trimming or felling of trees, but it has to file a report before this Court.

6. The extreme argument is that the application of the petitioner in this petition was just taken on record and no action was taken in furtherance thereof. The property, more particularly described in para 2 of the petition, was purchased alongwith development rights on 6th June, 2016 by the present petitioner. Thereafter the petitioner commenced the development work on the basis of the Commencement Certificate dated 7th October, 2016.

7. The construction has been completed from ground upto seven upper floors. However, there are five coconut trees and two other trees which, according to the petitioner, are coming in the way of plastering and other completion works. They are required to be removed.

8. The application in that behalf was made to the Nashik Municipal Corporation, who vide Exhibit 'D', brought to the notice

of the present petitioner the pendency of the Public Interest Litigation and the nature of directions therein.

9. Now, in the whole petition, we do not find that any application was made invoking the extreme urgency clause. Secondly, neither the petition nor the application made says that the development cannot be taken to its logical conclusion, without cutting or felling of trees. What, on our inquiry, Mr.Barve had answered is also very relevant for our query was as to whether the development or plastering work can be completed by pruning or trimming the leaves/trees and is it necessary to fell them down or cut them completely. There is nothing on record to indicate that the development in pursuance of a Commencement Certificate cannot be completed unless the trees are felled. There is no alternative but to cut these tress. To our mind, therefore, this is not a case covered by the order of the Division Bench. Further, on incomplete materials we cannot allow parties like the petitioner to cut the trees and as old as they are and within the Nashik Municipal Corporation's limits. We have, therefore, no doubt in our mind that such petitions are but to get over the binding directions of this Court in the Public Interest Litigation. Secondly, with open eyes and in the teeth of the binding directions in the Public Interest Litigation, the petitioner purchased the

property. Thirdly and importantly, the petitioner obtained the development permission after the conveyance dated 6th June, 2016 conferring title on him. On 7th October, 2016, the Commencement Certificate was issued and all this while, the trees were standing and the development of ground plus seven upper floors (construction of a building) was complete with the trees standing there. It is inconceivable, therefore, that the plastering is affected by the existence of these trees. In the circumstances, this writ petition is not a *bona fide* attempt nor it is a case of extreme urgency permitting felling or cutting of trees.

10. The writ petition is dismissed.

(G.S.PATEL, J.)

(S.C.DHARMADHIKARI, J.)