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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

PUBLIC INTEREST LITIGATION NO. 17 OF 2021

Pratik Rajendra Otourkar .. Petitioner

Vs.

Pune Municipal Corporation & Ors. .. Respondents

Mr. Amol Gatne for petitioner.

Mr. Abhijeet P. Kulkarni for respondent no.1/PMC.

Ms. Sarika Shetye i/by Mr. S. B. Shetye for respondent no.3/MPCB.

Mr. Saket Mone a/w Mr. Subit Chakrabarti a/w Mr. Abhishek Salian i/by Vidhi Partners for respondent no.4.

Mr. P. P. Kakade, Govt. Pleader a/w Ms. R. A. Salunkhe, AGP for respondent nos.5 to 8/State.

**WITH
WRIT PETITION ST. NO. 94470 OF 2020**

Pune Municipal Corporation, through
Joint Municipal Commissioner .. Petitioner

Vs.

The State of Maharashtra & Ors. .. Respondents

Mr. Abhijeet P. Kulkarni and Prasad Kulkarni i/by MGK Legal for the petitioner/PMC.

Mr. P. P. Kakade, Govt. Pleader a/w Ms. R. A. Salunkhe, AGP for respondent no.1/State.

Ms. Sarika Shetye i/by Mr. S. B. Shetye for respondent nos.2 and 3/MPCB.

**CORAM: DIPANKAR DATTA, CJ. &
ABHAY AHUJA, J.**

DATE : NOVEMBER 21, 2022

P.C.:

PIL No. 17 of 2021:

1. The petitioner has approached this Court with the instant public interest litigation to hold the action of the respondents 1 and 2 in running a Solid Waste Management Processing Plant and actually using it as a dumping ground on Plot No.88, Phase 2, Ramtekadi Industrial Estate Harda, Hadapsar, Pune in violation of provisions contained, *inter alia*, in the Environment Protection Act, 1986 (hereafter “the said Act”, for short) as illegal.

2. There are multiple prayers in the PIL petition of which the relevant prayers read as follows: -

[A] That this Honourable Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate, writ direction or order under Article 226 of the Constitution of India, 1950, holding that the action of the Respondent No.1 and 2 in running the Solid Waste Management Processing Plant and actually using it as the “Dumping Ground” is completely illegal and unconstitutional and violative of the Constitution of India as well as the provisions of the Maharashtra Regional and Town Planning Act, as well as the Environment Protection Act, and be pleased to direct the Respondent No.1 and 2 to stop forthwith using the suit property as the ‘Solid Waste Management Processing Plant’ as well as the ‘Dumping Ground’.

[B] That this Honourable Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ direction and order under Article 226 of the Constitution of India, 1950, directing the Respondent to forthwith remove, the entire garbage which have been spread over illegally by the Respondent No.1 and 2 on suit property and shift the

same to Dedicated Garbage Dumping Ground of the Respondent No.1 and 2, within such time as the Honourable Court may deem fit, and ask the Respondent No.1 and 2 to give periodically reports this Honourable Court.

[D] That this Honourable Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ direction and order under Article 226 of the Constitution of India, 1950, holding that the public purpose viz. 'S. M. Municipal Purpose' used in the Development plan, published on 5th January 2017 would not include 'Dumping Ground' as well as 'Solid Waste Management Processing Plant' for which separate provisions have been made under Central Act and therefore, the said property cannot be used, for the 'Solid Waste Management Processing Plant' or for 'Dumping Ground'.

[E] That this Honourable Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ direction and order under Article 226 of the Constitution of India, 1950, directing the Respondent Maharashtra Pollution Control Board to take action against the Respondent No.1 and 2 for not complying with the terms and conditions of the Solid Waste Management Rules as well as the terms and conditions on which the Letter of Authorization has been given, by the Respondent Pollution Control Board to Respondent No.1 and 2.

[F] That this Honourable Court be pleased to issue a writ mandamus or writ in the nature of mandamus or any other appropriate writ direction and order under Article 226 of the Constitution of India, 1950, for quashing and setting aside the Letter of Authorization given by the Respondent Maharashtra Pollution Control Board to Respondents viz. Pune Municipal Corporation, Shivaji Nagar, Pune – 411 005 and the Learned Municipal Commissioner."

3. It has been brought to our notice that the National Green Tribunal, Principal Bench, New Delhi (hereafter "the said Tribunal", for short) was approached with similar

grievance by two individuals who filed separate original applications and the said Tribunal by its order dated 3rd March, 2022 has passed certain directions for compliance of the provisions of the said Act. The Tribunal has also directed payment of compensation by the party which was entrusted by the Pune Municipal Corporation for handling and disposal of solid waste.

4. We are informed that from the order of the said Tribunal, a Civil Appeal [**Civil Appeal Diary No(s). 10994/2022 – Rochem Separation Systems (I) Pvt. Ltd. & Anr. vs. The Municipal Corporation of the City of Pune & Ors.**] has been carried to the Supreme Court by the party which was made liable to pay compensation by the Tribunal and its direction for payment of compensation has since been stayed by the Supreme Court.

5. We have read the order of the said Tribunal. It is still in *seisen* of the proceedings before it having called for compliance report as on June 30, 2022. One reason for not entertaining the PIL petition is the pendency of the proceedings before the said Tribunal touching the same subject matter. The other reason is the decision of the Supreme Court in **Bhopal Gas Peedith Mahila Udyog Sangathan vs. Union of India**, reported in (2012) 8 SCC 326, which sounds a caution that the High Courts must not entertain petitions filed under Article 226 of the Constitution relating to any of the 'Schedule' enactments and ought to relegate the aggrieved party to the forum available under the National Green Tribunal Act, 2010. The said Act being a 'Schedule' enactment, the petitioner ought to approach the

Tribunal if he is still aggrieved and is so advised.

6. For the reasons aforesaid, the PIL petition stands dismissed. No costs.

7. This order, however, shall not preclude the petitioner to pursue his remedy before the appropriate forum in accordance with law.

WRIT PETITION ST. NO. 94470 OF 2020:

The writ petition stands dismissed as infructuous accepting the submission of Mr. Kulkarni, learned advocate for the petitioner, Pune Municipal Corporation. No costs.

(ABHAY AHUJA, J.)

(CHIEF JUSTICE)

Digitally
signed by
PRAVIN
DASHARATH
PANDIT
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