



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**NAGPUR BENCH, NAGPUR.**

**CRIMINAL WRIT PETITION (WP) NO. 777 OF 2023**

Sachin S/o. Devidas Puneekar and others

.Vs.

Ashok S/o. Bhaiyyaji Chourikar and another

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Office Notes, Office Memoranda of Coram,  
appearances, Court's orders of directions      Court's or Judge's orders.  
and Registrar's Orders.

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Mr Sumant Deopujari, Advocate for the petitioners  
Mr N. R. Bhisikar, Advocate for respondent No.1  
Mr J. B. Kasat, Advocate for respondent No.2

**CORAM : G.A. SANAP J.**

**DATE : AUGUST 06, 2024**

Heard finally, at the admission stage. Perused the record and proceedings.

2. In this writ petition, the petitioners have questioned the correctness of the judgment and order dated 19.06.2023 passed by the learned Additional Sessions Judge-8, Nagpur, whereby the learned Sessions Judge allowed the appeal filed by respondent No.1 against the judgment and order passed by the learned Judicial Magistrate First Class, Corporation Court, Nagpur dated 26.04.2022 and set aside the said order.

3. The petitioners and respondent No.1 are neighbors. There is a big mango tree on the premises of respondent No.1, near the common compound wall

between the houses of the petitioners and respondent No.1. The tree is 65 years old and as such, it is a heritage tree. The petitioners made a grievance that the tree is old and branches of the tree are falling on their property and causing damage. In short, it was contended by the petitioners before the Magistrate that the dry leaves and dry branches of the tree falling on their property has been causing nuisance to them. It has posed serious danger to the lives and property of the petitioners. The complaints were made by the petitioners to the authority. When they realized that the authorities are not paying heed to their complaint, they have filed a complaint before the Magistrate under Section 431 of the Maharashtra Municipal Corporation Act, 1949 (for short 'the MMC Act').

4. Respondent No.1 filed the reply and opposed the contentions. It was the contention of respondent No.1 that the mango tree is a heritage tree. It is in good condition. The tree is not posing any danger to the lives and property of the petitioners. The compound wall between the two properties is at a distance of 5 feet from the tree. The grievance was made by respondent No.1 that this unnecessary dispute was raised by the petitioners.

5. Learned Magistrate, on consideration of the evidence, on record, allowed the application and issued a direction for cutting the mango tree above 25 feet from ground level. The respondent, being aggrieved by this order, filed the appeal under Section 432 of the MMC Act. Learned Sessions Judge, on reconsideration of the material, found that the order was without application of mind to the facts, circumstances and evidence brought on record and as such, set aside the order passed by the Magistrate. The petitioners have challenged this order in this writ petition.

6. I have heard the learned Advocates for the parties. Perused the record and proceedings.

7. It needs to be stated at the outset that this Court, on 30.11.2023, issued a direction to the officials of the Nagpur Municipal Corporation to pay a visit to the spot, examine the status of the tree in question and file a report. This Court again, vide order dated 14.12.2023, directed respondent No.2 to file on record a specific report as regards the status of the tree in the context of the grievance made by the petitioners and also the defence *put forth* by respondent No.1. This Court again vide order dated 15.02.2024, granted a liberty to respondent

No.2 to take the assistance of the experts in this field for this purpose.

8. In my view, the dispute between the parties can be set at rest on perusal of the report submitted by the Municipal Corporation with the assistance of the experts. The report is dated nil. It has been placed on record on 14.03.2024 with pursis dated 14.02.2024. Copies of the report are provided to the petitioner and respondent No.1.

9. Perusal of the report would show that the inspection was carried out on 21.02.2024. The necessary details with regard to the height, age and the present condition of the tree have been recorded in this report. The Committee has recorded its observations in the report. The Committee has suggested certain measures to be adopted by respondent No.1 to properly maintain and preserve the tree. The necessary directions to that effect are at clause 4 of the report. The Committee has recorded that the tree is healthy and a food bearing tree. It has also been observed that this tree is a habitat for the birds in the area. The report further states that considering the present condition of the tree, there is no possibility of fall of the tree and as such, damage to the adjoining

occupants, which include respondent No.1. The report further states that the grievance as to the nuisance, if any, can be taken care of by cutting the dry branches of the tree.

10. The existence of trees and forests is essential to maintain the ecosystem. It is not out of place to mention that the depleting strength of the trees is a matter of grave concern. The apathy to plant the trees and the cutting of the trees for development activities is one of the causes for the depleting strength of the trees. The tree in question is 65 years old. It is a fruit bearing tree. Learned Advocate for respondent No.1 submits that the petitioners are enjoying the fruits of the trees falling on their property. Learned Advocate for respondent No.1 makes a statement across the bar that the petitioners would be at liberty to enjoy the fruits falling on their property. The report is part of the record. It is marked as article 'A'. In view of this concrete report, I do not see any substance in this petition.

11. It is our collective duty to plant more and more trees to maintain the ecosystem. The concretization in the urban areas has, to some extent, affected the natural chain and growth of the trees. In this factual situation,

while falling the existing trees, great care is required to be taken. The mechanism provided, for cutting or falling the tree in case of extreme urgency, is required to be adhered to in letter and spirit. In this case, the mango tree, which is a fruit bearing tree, is hale and hearty. It is in good condition. The tree is not differentiating between the petitioners and respondent No.1 in the matter of the generation and distribution of oxygen. The mango tree is a source of fresh oxygen for the petitioners and respondents. In this context, the petitioners and the respondents are required to take proper care of the tree. As and when a danger is posed to the life and property of the petitioners due to the dried branches of the tree, the petitioners can bring it to the notice of the respondent No.1 as well as to the Authority. If the branches are dried, the petitioners can make a proper application before the authority. The petitioners can also bring this fact to the notice of respondent No.1. As and when such an application is made, the officials of respondent No. 2 shall ensure that the dried branches are cut without wasting any time so as to avoid any damage to the person and property of the petitioners as well as respondent No.1.

12. Respondent No. 1 is directed to comply with the condition Nos. 2 and 3 of the report marked as article

‘A’ within a week from today.

13. The compliance report be submitted by respondent No.1 to this Court as well as to the officials of the Municipal Corporation.

14. The officials of the Municipal Corporation, on receipt of the compliance report, shall pay a visit to the spot and see that the order of this Court is complied with.

15. In view of this, the writ petition stands **disposed of**. Pending applications, if any, stand disposed of.

(G. A. SANAP, J)

*Namrata*