

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.10549 OF 2025

Santosh Kalpanath Jaiswal.

...Petitioner

Vs

Dahanu Municipal Council & Anr.

...Respondents

Mr. Swapnil Shanbhag i/b. Jinal Sanghvi, for Petitioner.

Mr. Nitin Gangal with Prapti Karkera, for Respondent Nos.1 and 2.

Mr. Kedar B. Dighe, Addl. Govt. Pleader with Dhruvi Kapadia, AGP for the State.

CORAM: G. S. KULKARNI &
ARIF S. DOCTOR, JJ.

DATE: 6 August 2025.

P.C.

1. We permit the petitioner to amend the petition to implead the Government of India and the State of Maharashtra as party respondents as also to incorporate appropriate prayers. Amendment be carried out by tomorrow. Amended copies of the petition be served on the parties.

2. We have heard learned Counsel for the parties. The primary objection of the petitioner is in regard to the order dated 23 May 2025 passed by the Administrator and Chief Officer, Dahanu Municipal Council. In passing such order, the Chief Officer is stated to have exercised powers under the Maharashtra (Urban Areas) Tree Protection and Preservation Act, 1975 (for short '**the Tree Act**'), so as to order 759 trees to be cut for the purpose of road widening. The petitioner in this context, made a representation, which as on date is pending

consideration of respondent Nos.1 & 2. However, from what has been urged before us on behalf of the petitioner, the issue which arises for consideration is whether the Chief Officer of respondent No.1 can solely function as a Tree Authority, considering the provisions of Section 3 of the Tree Act, which provides that in any urban area the urban local authority concerned shall constitute a Tree Authority, consisting of the Chairman and other, not less than five and not more than fifteen persons, from amongst its members, appointed in such manner and for such period as that authority may determine. Under subsection (2) of Section 3 the Chairman of the Tree Authority shall be the Chief Officer of the Municipal Council. Thus, when the Chief Officer has exercised such power, we have grave doubt whether he has jurisdiction to exercise powers as a Tree Authority, as solely the Chief Officer, although is the Chairman of the Tree Authority, the Chief Officer cannot to be the Tree Authority defined and constituted under Section 3 of the said Act.

3. The second issue which has arisen for our consideration, from what has been submitted by Mr. Gangal, learned Counsel appearing for respondent Nos.1 and 2, is in the context of his contention that the order dated 23 May 2025 passed by the Chief Officer permitting cutting of 759 trees of different varieties was subjected to an approval of the Dahanu Taluka Environment Protection Authority (for short 'DTEPA') in DTEPA No.13 of 2024. The operative order of the order dated 22 July 2025 passed by the DTEPA in the context of the trees, is required to noted which reads thus:

“ORDER

- (1) DTEPA Case No.13 of 2024 is disposed of.
- (2) The order dated 23.05.2025 made by the Municipal Council, Dahanu is approved, in the matter of cutting of trees on terms and conditions mentioned herein.**
- (3) The SDO, PWD, Dahanu is permitted to cause cutting of trees strictly in accordance with the terms and conditions as well as the plan by DCF, Dahanu.
- (4) Municipal Council, Dahanu shall remove all encroachments with police help for ensuring 30 meter wide road open area throughout the municipal area right from Railway Station, Dahanu; and shall not make any exception in the matter. The SDO, PWD, Dahanu and Chief Officer, Dahanu Municipal Council shall be responsible if any exception is made. They shall make measurements showing clear 30 meter space after removal of encroachments and submit to the DTEPA.
- (5) SDO, PWD, Dahanu AND Municipal Council, Dahanu shall with DCF, Dahanu shall cause plantation in the ratio 1:10 on the sites to be indicated by DCF, Dahanu under the supervision of DTEPA Monitoring Committee.
- (6) OSD, DTEPA shall get the Monitoring Committee constituted within eight weeks from today.
- (7) This draft order was set to all Hon'ble Members of this Authority for approval as the case may be till 14.07.2025. Considering their deemed approval, the order is pronounced today i.e. on this 22nd day of July, 2025.”

(emphasis supplied)

4. On being appraised of such orders passed by the DTEPA, we asked Mr. Gangal as to the jurisdiction of the DTEPA under the Tree Act to approve the orders passed by the Chief Officer passed under the Tree Act. On this Mr. Gangal has drawn our attention to a Notification dated 19 December 1996 issued by the

Government of India in exercise of powers under sub-section (3) of Section 3 of the Environment (Protection) Act, 1986 in which the following jurisdiction has been conferred on the authority:

“2. The Authority shall exercise the following powers and perform the following functions, namely :-

- (i) exercise of powers under section 5 of the Environment (Protection) Act, 1986 for issuing directions and for taking measures with respect to matters referred to in clauses (v), (vi), (vii), (viii), (ix), (x) and (xii) of sub-section (2) of section 3 of the said Act;
- (ii) to protect the ecologically fragile areas of Dahanu Taluka and to control pollution in the said area;
- (iii) to consider and implement the “Pre-cautionary Principle” and the “Polluter Pays Principle”;
- (iv) to consider and implement the recommendations given by the National Environmental Engineering Research Institute, Nagpur, in respect of Dahanu Taluka;
- (v) to ensure the implementation of the notifications issued by the Government of India in the Ministry of Environment and Forests No. S.O. 114 (E) dated the 19th February, 1991 and No. S.O. 416 (E) dated the 20th June, 1991;
- (vi) to comply with the relevant orders issued by the Bombay High Court and the Supreme Court from time to time;
- (vii) to deal with any other relevant environment issues pertaining to Dahanu Taluka, including those which may be referred to it by the Central Government in the Ministry of Environment and Forests.”

5. It clearly appears that no jurisdiction is conferred on the DTEPA under the Tree Act. Certainly the position would be as to whatever jurisdiction is expressly conferred on the DTEPA, it is such jurisdiction which can be exercised by the DTEPA and not the jurisdiction which is not so conferred. However, in the present case, the DTEPA in fact has exercised jurisdiction in granting an approval to the orders which are passed under Section 8 of the Tree Act, as if such authority or jurisdiction is conferred on it under the notification (supra)

constituting such authority. Thus, it would be a case of a jurisdiction being exercised by the DTEPA, which is not available with the said DTEPA, qua the felling of trees, which is solely governed by the Tree Act. Mr. Gangal's contention in this regard is that the jurisdiction of the DTEPA extends to the environment protection and to protect the ecologically fragile areas which would include cutting of trees, falling within the purview of the Trees Act. Cutting of trees certainly is not in the environmental interest.

6. We need to examine these legal issues as to whether paragraph (2) of the Notification dated 19 December 1996 issued by the Government of India, can be read so as to confer such jurisdiction under the Trees Act with the DTEPA, or would it be the case of implied jurisdiction which can be read into such Notification as urged by Mr. Gangal, and most importantly when the Tree Act is not included in paragraph (2) of the said Notification.

7. The aforesaid discussion would post two issues to be considered, **firstly** whether the Chief Officer can himself act as a Tree Authority under Section 3 so as to pass an order under Section 8 ?, and **secondly**, whether DTEPA would have any jurisdiction to grant approval to the orders passed under Section 8 of the Trees Act ?

8. Let a reply affidavit on these issues be placed on record by respondent Nos.1 and 2.

9. Till the adjourned date of hearing, we order that felling of trees shall be stayed.

10. Learned Advocate for respondent Nos.1 and 2 shall inform the learned Advocate for the petitioner, the actual number of trees, if any, which till date are cut. This order be telephonically informed to the concerned official.

11. Stand over to **12 August 2025**.

(ARIF S. DOCTOR, J.)

(G. S. KULKARNI, J.)