



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

WRIT PETITION NO. 5915 OF 2024

- 1) **Vishal Gajanan Wardhe,**
Aged about 32 years, Occ.-Education,
R/o. Bhim Nagar, Daryapur,
Tq. Daryapur, Dist. Amravati.
- 2) **Aniruddha Shankarrao Wankhade,**
Aged about 33 years, Occ.-labour,
- 3) **Sunil Dilip Gawai,**
Aged about 35 years, Occ.-Labour,
Nos.2 and 3 R/o. Sai Nagar,
Daryapur, Tq. Daryapur,
District Amravati.

.... **PETITIONERS**

// **VERSUS** //

- 1) **Chief Officer,**
Municipal Council, Daryapur,
Tq. Daryapur, District Amravati.
- 2) **Range Forest Officer, (Regional),**
Paratwada Range, Daryapur,
Tq. Daryapur, District Amravati.
- 3) **Sub Divisional Officer,**
Public Works Department,
Sub Division, Daryapur,
Tq. Daryapur, District Amravati.

.... **RESPONDENTS**

Mr. R. J. Shinde, Advocate for the Petitioners.
Mr. G. R. Bhake, Advocate for Respondent No.1.
Ms. D. I. Charlewar, Assistant Government Pleader for
Respondent Nos.2 & 3.

Name of the
Hon'ble
Ladyship is
mentioned as
per order
dt.23.06.2025.

CORAM : SMT. M. S. JAWALKAR, J.

DATE ON RESERVING THE JUDGMENT : 21.04.2025.
DATE ON PRONOUNCING THE JUDGMENT : 06.06.2025.

JUDGMENT :

1. **RULE.** Rule made returnable forthwith.
2. Heard finally with the consent of the learned Counsel appearing for the parties.
3. Being aggrieved by the Judgment and order dated 26.09.2024, passed by learned District Judge-2, Achalpur in M.C.A. No.68/2023, thereby the appeal filed by the Respondent No.1 is allowed and quashed and set aside the order at Exhibit-5 dated 18.10.2023 passed by the learned Civil Judge, Senior Division, Daryapur in Regular Civil Suit No.155/2022 and also rejected the application at Exhibit-5 filed by the Petitioners in Regular Civil Suit No.155/2022.
4. The Petitioners are the original plaintiffs and the Respondents are the original defendants in Regular Civil Suit No.155/2022. The Petitioners/plaintiffs are the Social Workers and also tree lovers. There are green trees on the road from bus depot Daryapur to Shivajinagar, Daryuapur, these are very old trees. The defendant Municipal Council invited tenders for cutting

these trees. There were total 42 trees. Out of them, three trees were cut. These trees were adding to beauty of the city. They were protecting commuters from intense heat and were also source to generation of oxygen. The Petitioners have filed a Regular Civil Suit No.155/2022 before the learned Civil Judge, Senior Division, Daryapur for permanent injunction along with the application for temporary injunction and prayed that till final disposal of the suit, trees should not be cut. The Defendant No.1 appeared in the matter and filed his reply and opposed the suit and application at Exhibit-5. The Defendant Nos.2 and 3 also filed their reply. The learned Civil Judge, Senior Division, Daryapur, after hearing both the parties, allowed the application Exhibit-5 and granted temporary injunction during the pendency of the suit thereby directing the Respondent No.1 not to cut 39 trees.

5. The above said order dated 18.10.2023 was challenged by the Respondent No.1 before the learned District Judge-2, Achalpur by filing the Misc. Civil Appeal No.68/2023. The learned District Judge allowed the said appeal vide order dated 26.09.2024 and quashed and set aside the order dated 18.10.2023, passed below Exhibit-5 filed in Regulation Civil Suit No.155/2022 and rejected the Application Exhibit-5. The said

order is the subject matter of challenge in the present writ petition.

6. Learned Counsel for the Petitioners contended that the learned Appellate Court ought to have considered that the Government Resolution dated 16.02.2021 passed by the Tree Authority, mentions that age of trees was within range of 80 to 85 years. In view of notification issued by the Government of Maharashtra dated 21.09.2021, all these trees would be heritage trees. These heritage trees provide protection to travelers in the city. Ecologically their existence is necessary for maintaining balance. It is further submitted that the learned Appellate Court ought to have considered that the learned Trial Court has passed the reasoned order thereby restrained the Respondent No.1 to cut the heritage trees, but erroneously the learned Appellate Court rejected the application Exhibit-5 filed by the Petitioners. It is further submitted that Respondent No.1 issued a communication dated 01.10.2024 to the Police Station Officer, Police Station, Daryapur and demanded police protection regarding cut of the trees from the road of Shivaji Chowk to old Nagar Parishad, Daryapur. Hence, the impugned order needs interference by this Court and aforesaid order needs to be set aside.

7. As against this, the learned Counsel for the Respondents supported the order passed by the learned Appellate Court and contended that at the time of allotting tender of cutting of trees, the Municipal Council, Daryapur executed an Agreement in favour of the Executive Engineer, P.W.D., Amravati on 19.09.2022 to plant new trees on same road. Section 21(1) of Maharashtra (Urban Areas Protection & Preservation of Trees), 1975 applies to felling of trees on or along the public road undertaken by the P.W.D. It is further submitted that the road widening work is allotted to the P.W.D. for public purpose. The disputed trees are standing by the side of road which is having heavy traffic and there are many important institutions and government offices on the road. Therefore, traffic on the said road would be more than normal, during peak hours. If road is not widened, there could be road traffic accidents and inconvenience may occur to general public. Therefore Respondent No.1 is required to carry out the work of widening of the road.

8. Learned Counsel for the Respondents further submitted that the Maharashtra (Urban Areas Protection & Preservation of Trees), 1975 does not define the heritage trees. The said act provides for establishment of tree authority and

further provides that transplantation of trees necessitated by the construction of new road and widening of existing road. Therefore, the legislature contemplates that in case of widening of the road, there is cutting of trees for widening of road may be compensated. In fact new trees were planted in the year 2022-2023, 2023-2024 as per contract. It is submitted that work of widening of road is now currently on hold therefore, public money is not utilized. On this count, the Petition needs to be dismissed.

9. Heard learned Counsel for the Petitioners and learned Counsel for the Respondents. Perused the impugned order and the documents placed on record.

10. It appears that in Regular Civil Suit No.155/2022 filed by the present Petitioners, the application for temporary injunction below Exhibit-5 was allowed by order dated 18.10.2023. Against the said order, the Municipal Council, Daryapur preferred a Misc. Civil Appeal No.68/2023 before the learned District Judge, Achalpur. The Learned District Judge allowed the appeal and set aside the order passed by the learned Civil Judge, Senior Division, Daryapur on Application Exhibit-5

dated 18.10.2023. It was the contention of the plaintiffs that there are 42 trees which are on the road from Bus Depot Daryapur to Shivaji Nagar, Daryapur. The Municipal Council invited tender for cutting these trees. The plaintiffs sought declaration that 39 trees be declared as heritage trees and defendant Municipal Council be perpetual restrained from cutting these trees. The Municipal Council, Daryapur opposed the said application and raised preliminary objection that there was no notice as per Section 80 of the Code of Civil Procedure was issued. The trees are required to be cut for widening of the road. In order to ascertain age of the trees, correspondence was made with defendant Range Forest Officer, even decision to cut trees was taken before the District collector, who has rejected the objection to cut trees. The Executive Engineer of P.W.D. has also decided to plant new trees in order to compensate cutting of old trees by entering into a contract to that effect. The Range Forest Officer determined the age of those trees. The learned Trial Court considered the age of trees as 82 to 85 years and in view of Notification issued by the Government of Maharashtra dated 21.09.2021, trees which are above 50 years, that trees should be considered as heritage trees, they cannot be cut.

11. It is a fact on record that the road which is a main road, which is extremely narrow and in view of presence of these trees, road widening could not take place. A contract for cutting trees and planting new trees have already been granted. Even contract of road widening have already been granted. The age of trees have already been determined by the Range Forest Officer. The Letter dated 12.09.2022 shows that maximum age of trees in question could be 46 years. Thus, all the trees were below age of 50 years. The Resolution dated 16.02.2021 shows that the Tree Authority have already been granted approval to cut the trees. There is absolutely no prohibition to cut the trees for public use such as widening of the road. The learned Trial Court appears to be mislead itself and committed an error by granting temporary injunction. So far as Notification dated 21.09.2021 is concerned, which provides that 50 years and above old trees should be categorized by the Trees Authority as “heritage trees”. Thus it provides determining factor for categorizing as heritage trees. Though, in view of Resolution dated 16.02.2021, age of trees in question mentioned as 82 to 85 years, however, there is nothing in the said resolution to point out as to whether any scientific method was applied for determining the age of trees. As against this, the Range Forest Officer conducted a panchnama of trees and

after carrying out measurement of trees, their age was determined. As per their established method, the age of tree was found to be maximum 46 years. The learned District Judge, Achalpur duly considered this aspect.

12. As such, the trees were neither heritage trees nor there is any prohibition to cut the same for road widening project. It also revealed from the record that widening of road is halted as trees were not cut. Already there is an agreement for plantation of trees. In fact, this road is connecting to Court, Police Station, Office of S.D.O., Banks and Schools. Thus, there are many important institutions and Government Offices on the road. In view thereof, road widening is in the interest of general public to avoid traffic accident and inconvenience. Moreover, all precautions are taken to plant more trees than existing. All these aspects are duly considered by the learned District Judge-2, Achalpur and there is no merit in the petition. Hence, the Writ Petition stands **dismissed**. No order as to costs.

(SMT. M.S. JAWALKAR, J.)

At this juncture, learned Counsel for the Petitioners seeks time to approach the Hon'ble Apex Court, however,

considering the fact that public project is halted due to the litigation filed by the Petitioners. In my considered opinion, there is no case to grant any stay. Hence, the oral request is rejected.

(SMT. M.S. JAWALKAR, J.)

Kirtak