

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

PUBLIC INTEREST LITIGATION NO. 9 OF 2021

Shweta D/o Dipendra Burbure and Anr.,
..VS..
Nagpur Municipal Corporation, Nagpur and Ors.,

WITH

PUBLIC INTEREST LITIGATION NO. 15 OF 2021

Swacch Association, Through ITS Secretary, Sharad Bhiharilal Paliwal,
..VS..
Ministry of Environment and Forest, New Delhi, through its Secretary and Ors.,

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Shri M. Anilkumar, Advocate for petitioner in PIL 9 of 2021.
Shri J. B. Kasat, Advocate for respondent Nos.1 and 11 in PIL 9 of 2021.
Smt. K. S. Joshi, G.P for respondent Nos.2 to 4 and 10 in PIL 9 of 2021.
Shri S. S. Sanyal, Advocate for respondent No.5 in PIL 9 of 2021.
Ms. Mugdha Chandurkar, Advocate for respondent Nos. 6 and 8 in PIL 9 of 2021.
Shri N. P. Lambat, Advocate for respondent No.7 in PIL 9 of 2021.
Shri Anand Parchure, Advocate for respondent No.9 in PIL 9 of 2021.
Shri R. M. Tahaliyani, Advocate, Shri A. B. Moon and Shri M. C. Jeswani, Advocate for petitioner in PIL 15 of 2021.
Ms Mugdha Chandurkar, Advocate for respondent No.1 in PIL 15 of 2021.
Shri Anand Parchure, Advocate for respondent No.2 in in PIL 15 of 2021.
Shri S. S. Sanyal, Advocate for respondent No.6 in PIL 15 of 2021.
Shri J. B. Kasat, Advocate for respondent No.7 and 8.
Smt. K. S. Joshi, G.P for respondent Nos.4 & 5 in PIL 15 of 2021.

CORAM : SUNIL B. SHUKRE AND
ANIL S. KILOR, JJ.

DATED : 02.09.2021

1. Leave to amend the cause title is granted by correcting the designation and address in respect of respondent No.2 and 9 and also to amend the petition by raising additional grounds of challenge. Amendment be carried out forthwith.

2. Copy of the amended petition be furnished to the respondents.

3. The Memo of petition as present on record be substituted by the amended Memo of Petition in two sets.

4. Issue notice for final disposal at admission stage to the respondents, returnable to **13.10.2021**.

5. Shri J. B. Kasat, learned counsel waives service of notice for respondent No.1 and 11. Smt. K. S. Joshi, learned G.P waives service of notice for respondent Nos.2, 3, 4 and 10. Shri S. S. Sanyal, learned counsel waives service of notice for respondent No.5. Ms Mugdha Chandurkar, learned counsel waives service of notice for respondent Nos.6 and 8. Shri Anand Parchure, learned counsel waives service of notice for respondent No.9. Shri N. P. Lambat, learned counsel waives service of notice for respondent No.7.

6. Heard.

7. Mr. Anilkumar, learned counsel for the petitioner has proposed several alternatives to the Authority which is carrying out the developmental work relating to the construction of building of Inter Modal Transport Station on the land belonging to Indian Railways, so that, a balance could be struck between development and environment. These suggestions are contained in the amendment application and we would request the Authorities, including the Special Purpose Vehicle constituted for the purpose of construction of the aforestated building, to look into them and consider their implementation, if possible, within the parameters of law. It also appears to us that there are certain permissions and clearances which are required and although it is the submission of Shri Anand Parchure, learned counsel for respondent No.9 that except for the permission of the Tree Authority, all the clearances, including environmental clearances have been obtained by respondent No.9, there appears to be disagreement on this submission between the parties.

8. Shri Anilkumar, learned counsel for the petitioner and Shri Sanyal, learned counsel for Maharashtra Pollution Control Board, would submit that the judgment rendered in the case of *Adarsh Co-operative Housing Society Ltd. Vs. Union of India and Ors., in Writ Petition No. 369 of 2011*, decided on *29.04.2016*, makes it clear that even in case of development proposed to be made on the land belonging to Central Government or the

Armed Forces or any other Authority, environmental clearance from the Appointed Authority is required for the reason that the provisions of the Environment (Protection) Act, 1986 override all other provisions made in all other Acts. Of course, in that case, provisions made in Section 11 (d) of the Railways Act, 1989 were not under consideration but it appears that afore-stated observations have been made in the context of the Environment (Protection) Act, 1986 and, therefore, this issue would be required to be considered by this Court after hearing the parties. That may, however, take some time and therefore, we may suggest to respondent No.9 to revisit its approach and stand that it has taken in the present case, explore the options available to it under the law, and see that if any environmental clearance is really required here, it is obtained as expeditiously as possible. If any directions are required to be issued by this Court, a prayer in that regard may be placed before this Court for its appropriate consideration.

9. It has also been brought to the notice of this Court that the application filed by respondent No.9, before respondent No.1, seeking permission to cut some trees is still pending with respondent No.1. It is also submitted that since the number of trees exceeds 200, the Authority to decide such an application would be the State Tree Authority. It is further submitted that the application along with all the objections taken thereon are being forwarded by the Nagpur Municipal Corporation to the

State Government for appropriate consideration and decision in the matter.

10. In view of the above submission, we direct respondent No.1 to forward the application along with all the objections and copy of this order to the State Government i.e. respondent No.2 within one week from the date of the order and we further direct respondent No.2 to decide the application seeking permission to cut the trees in the light of the objections taken thereon, within a period of four weeks from the date of receipt of the application along with the objections from respondent No.1.

11. Stand over to **13.10.2021**.

12. Authenticated copy of the order be furnished to the respondents.

JUDGE

JUDGE