



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

**CIVIL APPLICATION (O) NO. 398 OF 2024 IN
PUBLIC INTEREST LITIGATION NO. 15 OF 2021**

Swacch Association, through its Secretary,

vs.

Ministry of Environment and Forest, through its Secretary, New Delhi and others.

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. Parvez Mirza, Advocate for petitioner.
Mr. N. S. Deshpande, Dy. Solicitor General of India, for respondent nos. 1 and 3.
Mr. Mr. D.V. Chauhan, Government Pleader for respondent nos. 4 and 5.
Mr. S. S. Sanyal, Advocate for respondent no.6.
Mr. J. B. Kasat, Advocate for respondent nos. 7 and 8.
Mr Nitin Kirtane, Advocate alongwith Mr. Nachiket Moharir, Advocate for respondent no.9.

CORAM :- NITIN W. SAMBRE AND ABHAY J. MANTRI, JJ.

DATE :- 23rd JULY, 2024

Heard.

2. The issue in the civil application pertains to challenge to the permission granted by the Tree Authority in exercise of power under Section 8 of the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975 (for short, the said Act).

3. Amongst other, the contentions canvassed are, permission sought for felling of trees was not in accordance with the scheme contemplated under Section 8 of the Act as the request of contract is processed, whereas the trees of which felling is sought are located on the land owned by the railway authorities. It is claimed that unless the railway authorities intend to have felling of trees by moving an appropriate application as contemplated under Section 8 of the said Act, the permission ought not to have been processed.

4. Further contention is, the provisions of sub-section (3) of Section 3 of the said Act are not applied as the Tree Authority consists of Administrator, the Additional Municipal Commissioner, Deputy Municipal Commissioner and Garden Superintendent. It is claimed

that the Non-Government Organization (NGO) has proposed sub-section (3) of Section 3 of the said Act should have been also consulted.

5. Further contention is, the Tree Authority is yet to complete the census as has been provided under Section 7 of the said Act. That being so, for want of appropriate data, the decision of permission of felling of trees stands vitiated.

6. As against above, Mr. Kasat, learned counsel appearing for the respondent nos. 7 and 8-Tree Authority and Administrator would urge that as per the provisions of sub-section 1 of Section 3 of the said Act the powers are vested with the Administrator of the Municipal Corporation to act as Tree Authority. According to him, the census was lastly carried out in 2011. A fresh census is started by hiring the services of private contractor and appropriate data to that effect shall be placed on record along with the affidavit.

7. He would further urge that in case if the railway authorities who are owners of the land over which felling of trees is sought shall apply a fresh for grant of permission, same shall be considered in accordance with the provisions of sub-section (3) of Section 3 and Section 8 of the said Act. He would further claim that for want of census, the permission cannot be withheld or can be said to be vitiated.

8. In the aforesaid background, having considered the scheme of the said Act particularly sub-section (3) of Section 3, proviso to sub-section (1) of Section 3 and Section 8, it is desirable to have the application from the railway authorities seeking permission for felling of trees. Before making such an application, there has to be joint inspection by the highest officer of the railway authorities with the contractor so as to satisfy that felling of heritage and other trees is essential. Such application can be jointly signed by the contractors and the railway authority.

9. We are informed that aforesaid act be completed within a period of three days from today.

10. In case, if such application is received by the respondent-Tree Authority, the same, in our opinion, needs to be processed in accordance with Sections 3 and 8 of the said Act.

11. We are sensitive to the submissions of the counsel for the petitioner that the representative of the NGO needs to be nominated by the Tree Authority. Mr. Kasat submits that an expert if any recommended by the petitioner, so also the Administrator on his own can be considered to be nominated so as to have the required corum for constitution of Tree Authority for taking decision.

12. Let the aforesaid decision be taken by the Tree Authority as expeditiously as possible and in any case within a period of four weeks from the receipt of application.

13. While taking such decision, we also observe that the Tree Authority shall be sensitive of the order delivered at Principal Seat in P.I.L.No.210 of 2023 (*Parisar Sanrakshan Sanwardhan Sanstha and others vs. The Pune Municipal Corporation and ors.*) decided on 21.12.2023.

14. We permit the respective parties to place on record additional affidavit in regard to the decision taken.

15. Stand over to 21.08.2024 for further consideration.

(ABHAY J. MANTRI, J.)

(NITIN W. SAMBRE, J.)