

**BEFORE THE NATIONAL GREEN TRIBUNAL
(WESTERN ZONE) BENCH, PUNE**

APPLICATION NO.157 OF 2016

CORAM :

**HON'BLE SHRI JUSTICE U.D.SALVI
(JUDICIAL MEMBER)**

**HON'BLE DR. AJAY A.DESHPANDE
(EXPERT MEMBER)**

IN THE MATTER OF :

Mr PRADEEP INDULKAR

Aged: 53 years,

Occupation: Documentary Film Maker

Residing at 29, Kaushik

Shreenagar, Thane-400 604.

APPLICANT

VERSUS

**1. MUNICIPAL CORPORATION FOR THE CITY OF
THANE**

Through The Commissioner,

2nd Floor, Mahapalika Bhavan,

Chandan Wadi,

Panchpakhadi,
Thane-400 602.

2. TREE OFFICER,

Thane Municipal Corporation,
Mahapalika Bhavan,
Chandan Wadi,
Panchpakhadi,
Thane-400 602.

3. SENIOR POLICE INSPECTOR,

Shreenagar Police Station,
Shreenagar,
Thane-400 604.

4. STATE OF MAHARASHTRA,

Through Home Department
Mantralaya,
Hutatma Rajguru Square
Nariman Point,
Mumbai-400032.

.....**RESPONDENTS**

Counsel for Applicant(s):

In person.

Counsel for Respondent(s):

Mr. Girish Paryani for Respondent Nos.1,2.

DATE : MARCH 16th, 2017.

J U D G M E N T

1. One Mr Pradip Indulkar, Resident of 29, Kaushik Shreenagar, Thane, has moved the present Application raising questions regarding tree cutting under the garb of trimming and pruning the trees in contravention of provisions of the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975. The Applicant is, therefore, seeking directions to Respondent No.1 Municipal Corporation for City of Thane, and Respondent No.4 State of Maharashtra to frame appropriate policies for setting Norms/Rules for tree trimming and action in the matter of complaints lodged by him from time to time and for payment of environmental compensation for environmental damage/loss caused due to negligence of the officers of Thane Municipal Corporation and Respondent No.2 Tree Officer in performing their duties.

2. According to him, he noticed haphazard cutting of branches of the trees standing on both sides of the road between Mavis Medical Store and Garden Society and from Garden Hotel to Dena Bank in the locality popularly known as Shreenagar at Thane (West) on 31.7.2015, and this

exercise of cutting of branches of the trees continued till 11.8.2015. The Applicant added that three (3) trees standing near the Fountain opposite to Thane Sahakari Bank, Shreenagar, Thane were found completely removed on 6.11.2015 and he later on learnt upon discussion with Dr Sunil More, Garden Inspector of Rayladevi-Wagale Estate Ward next day that no permission was granted by the Corporation for cutting the said trees. Furthermore, the Applicant states, he found two (2) trees near the Market building in Shreenagar popularly known as 'Shree Mangal Karyalaya', found trimmed heavily without leaving a single leaf on 27.6.2016. The Applicant states that he lodged complaints with Respondent No.1 Thane Municipal Corporation and Respondent No.2 Tree Officer as well as Respondent No.3 Senior Police Inspector, Shreenagar Police Station regarding the said cutting/heavy trimming of the trees from time to time, and found no positive response from them.

3. The Applicant submits that trimming/pruning is done for betterment of the tree and its growth, and needs to be done only up to certain age of the tree after informed decision is taken by the Tree Authority as per the law; and

any arbitrary act of trimming/pruning of the trees amounts to tree felling in terms of the provisions of Section 2(c) of the said Act. The Applicant further submits that trees are essential ingredients of environment and play key role in keeping environment pollution free and protected from irreparable environmental changes like global warming, caused due to imbalance in environment. Keeping this in mind, he submits that the legislature has enacted the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975. The Applicant submits that while cutting trees the Corporation is under obligation to take into consideration important aspects such as flowering of trees, age of trees, time of nesting of birds in order to keep delicate balance of nature undisturbed. According to the Applicant, the Resolutions dated 22.1.1999 and 24.4.2015 passed by the Tree Authority give unlimited powers to the Tree Officer to give permission to fell a tree without observing the provisions of law under Section 8 of the said Act, and as such, the same deserve to be set aside.

4. Only Respondent No.1 Municipal Corporation for City of Thane and Respondent No.2 Tree Officer, Thane Municipal Corporation filed a common reply on 19.12.2016.

5. We have heard the parties before us and perused pleadings on the record.

6. We do not find any specific reply to the contentions of Applicant regarding trimming/pruning of the trees noticed on 31.7.2015 and 11.8.2015 in the stretch of road between Mavis Medical Store and Dena Bank in Shreenagar, Thane (West). Para-5 of the reply refers to trimming of the trees within a society compound of Kaushik and Bhaktidham buildings following permission granted by the Tree Authority in accordance with law. The reply further speaks about some photographs of trimmed/cut trees referred to by the Applicant and those showing their growth thereafter. However, nothing has been placed before us to suggest any grant of permission by the Tree Authority to cut or prune the said trees.

7. As regards cutting of three (3) trees near Fountain opposite Thane Sahakari Bank, Shreenagar, Thane, the Respondent Nos. 1 and 2 submit that the said cutting of trees was done by some unknown persons and not by the Corporation and the wood of trees felled never came to hub of Thane Municipal Corporation; and Tree Officer, Mr. Sanjay Gavade had lodged complaint with Shreenagar

Police Station, Thane in respect of the said tree cutting and the Tree Officer is pursuing the said complaint with concerned Police Station. A photograph showing cut stumps of three (3) trees and outgrowth of basal shoots therefrom after a year are placed before us along with reply at page 65.

8. As regards trimming of three (3) trees noticed by the Applicant on 27.6.2016, the Respondents before us reveal that the said trees were routinely trimmed without any permission as no permission for doing so is required as trees fall within the limits of the Corporation. The Respondents further state that it may have then appeared to the concerned Officers that branches of the trees could endanger human life or could damage the property and, therefore, trimming was done in routine course. The photographs of the said trees trimmed are also produced on record along with reply at pages 70-71. The Respondents further state that the Garden Inspector Dr. Sunil More on inspection of Mangal Karyalaya near Lifeline Diagnostics on 8.7.2015 found that one tree was cut in half for construction of a shed on the property without seeking permission and immediately on 10.7.2015 a non-cognizable

complaint was filed against one Mr. Rajesh Bhutala with Shreenagar Police Station.

9. The Applicant filed a rejoinder dated 27.1.2017 to the reply of Respondent Nos. 1 and 2, along with 23 documents including photographs of trees cut, extracts of literature on pruning of trees and its effects, complaints made to the Tree Officer, the order dated 20.9.2013 passed by the Hon'ble High Court of Bombay in **PIL No.93 of 2009 : Deepak Balkrishna Vahikar And Anr Vs The State of Maharashtra and Ors** and the order dated 23rd April, 2013 passed by the Principal Bench of Tribunal in Application **No.82 OF 2013 : Aditya N. Prasad Vs Union of India & Ors**. The Applicant refuted the contentions of Respondent Nos. 1 and 2 and invited our attention to deleterious effects of unregulated and arbitrary trimming/pruning of trees. The Applicant submits that informed decision needs to be taken by the Tree Authority before exercising its powers under the said Act.

10. The Applicant in person argued that Section 2(c) of the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975 recognizes any act of burning, cutting or damaging tree as "tree felling" and, therefore,

trimming/pruning of trees which involves cutting of branches, leaves or part of the tree or any such act injurious to tree is a 'tree felling', which requires permission as contemplated under Section 8 of the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975 before such tree felling is done, and any trimming done without such permission will invite penal consequences as well as casts inalienable obligation to pay compensation for loss to environment caused on account of such illegal tree felling. He further submits that no person including the officer of Urban Local Authority of State Government or Central Government is immune to consequences that may befall as a result of illegal tree felling. He invited our attention to the provisions of the said Act and extracts from scientific literature I-1 to Q-1 and the photographs R-1 to V-1 annexed to the rejoinder.

11. Learned Counsel Mr. Girish Paryani appearing on behalf of Respondent Nos. 1 and 2 countered the argument of Applicant and submitted that the Tree Officer being the officer appointed by the Tree Authority constituted under the said Act and entrusted with duty of preservation of trees, which includes planting of new trees and other

operations for survival and propagation of trees vide Section 2(a) of the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975 requires no permission to carry out routine trimming of trees along public streets and trimming/pruning was done for growth of the trees upon considering public interest as well. He invited our attention to the photographs annexed to the reply at page 64,65,66,70 to 80 to suggest regeneration of foliage with passage of time. He further pointed out that the Tree Officer had lodged N.C complaint in respect of illegal felling of trees detected on 23rd June, 2015 and issued Notice dated 7.10.2015 to culprit Dr. Rajesh Bhutala. He further submits that phrase “to fell a tree” defined in Section 2(c) of the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975, does not include trimming and the trimming was done both in the interest of the tree and public interest. Thus, the controversy before us raises a question as to whether the Tree Officer being the officer appointed by the Tree Authority required no permission for trimming/pruning the trees.

12. At the outset, we may point out what ‘environment’ means from definition of ‘Environment’ under

Section 2(a) of the Environment (Protection) Act, 1986, which reads as under:

2(a)"environment" includes water, air and land and the inter- relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property;

13. The plants are thus inalienable component of 'environment'. It is well known that plants, particularly, the trees, contribute generously to the environment in terms of maintaining delicate environmental balance, particularly, in terms of ambient air quality, and provide succor and shelter to other living creatures. The preamble to the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975, reveals that the Act has been enacted to make better provisions for trees in the urban areas in the State by regulating felling of trees and providing for plantation of adequate number of new trees in those areas. The Act recognizes need for making better provisions for protection and Preservation of trees in the urban areas in the State in the face of growing urbanization and industrialization accompanied with indiscriminate felling of large number of trees in the urban areas. Thus, the object of this enactment to protect and preserve trees needs to be kept in mind while interpreting its provisions. It

is correct that 'preservation of trees' as per Section 2(c) of the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975, includes 'other operations of survival and propagation of trees' and term "trimming or pruning" is nowhere defined in the said Act, but going by the Dictionary meaning 'trimming/pruning' involves 'cutting' as can be seen from the relevant text in the Oxford Dictionary of English, 3rd Edition, quoted hereunder:

Prune: verb [with obj] trim (a tree, shrub, or bush) by cutting away dead or overgrown branches or stems, especially to increase fruitfulness and growth. Cut away (a branch or stem) in this way *prune back the branches. Reduce the extent of (something) by removing superfluous or unwanted parts: the workforce was pruned. Remove (superfluous or unwanted parts) from something: Eliot deliberately pruned away details.*

Trim: verb (trim, trimming, trimmed) [with obj]

1. Make (something) neat or of the required size or form by cutting away irregular or unwanted parts;

14. Section 2(c) of the said Act defines the phrase to **'fell a tree'** in the following words:

Section 2

.....

.....

(c) "to fell a tree" includes burning or cutting or [in any way damaging a tree;]

On summarizing this definition, one can easily perceive that any act of damaging a tree amounts to felling of a tree. If trimming/pruning of a tree is done without taking a decision as to what wanted and unwanted parts of the tree are and what would be good or bad for proper growth and/or survival of the tree, it will do harm/danger than good to the tree. It is, therefore, essential before trimming/pruning is done to take an informed decision as to whether such trimming/pruning would in any way damage the tree and to what extent the tree can be trimmed or pruned without causing such damage.

15. The extracts of scientific literature produced before us by the Applicant points out, that trimming is a most common activity that is undertaken routinely on ornamental trees for maximizing their benefits. Vide Ex. 'N-1' a literature on essay titled as 'Pruning Mature Trees'.

This literature further suggests that over pruning is dangerous inasmuch as it is one of the worst and most common mistake in tree maintenance vide Ex. 'N-1'. Reading of excerpts from the literature produced on **'Pruning Do's and Don'ts'**, 3rd edition, (Ex 'K-1') makes available the following material observations:

“Regardless of the state of life, there is no harm in removing the portion of branches that are dead, broken, spilt, dying, diseased, or rubbing against each other. However, indiscriminately removing branches with live foliage can reduce tree health and encourage development of weak structure. Anytime live branches are removed, some live wood transitions to non-living wood behind even a well-executed pruning cut. This must be balanced against the improved structure that results from structural pruning. Removing a few small diameter branches typically has little effect”.

Dangers of over Pruning:

- 1. Large or Profuse Cuts Lead to Decay Any cut made on a tree is a wound that must be healed. The fewer cuts made the better, smaller cuts throughout the tree's life are better than large cuts that should have been made many years ago when the tree was small. One large poorly made cut or too many cuts in the wrong places can ruin a tree for life.**

16. The photographs produced by the Applicant at Ex. 'S' 'V' and 'Z' collectively with the Application clearly depict denudation of tree of its foliage and well grown branches.

We have nothing before us to suggest that any informed decision was taken by the Tree Officer after considering pros and cons of trimming/pruning of trees pointed out by the Applicant. The photographs tend to clearly suggest brutal vandalism of men in office. On the other hand, the photographs produced by the Respondent Nos. 1 and 2 with the reply show how generous the nature is in regenerating foliage on virtually denuded trees. However, such generosity of the nature need not be taken for granted as there always would lie a risk of nature being not kind for one reason or other and the trees ultimately would be victims of its vagaries.

17. Section 8 of the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975, stipulates restrictions on felling of trees in following terms:

8. (1) On and after the date on which this Act is brought into force in any urban area, notwithstanding any custom, usage, contract or law for the time being in force, no person shall fell any tree or cause any tree to be felled in any land, whether of his ownership or otherwise,

(2) If 1[any person, including an officer of the urban local authority or an officer of the State Government or the Central Government, proposes] to fell a tree, he shall apply in writing to the [Tree Authority] for permission in that behalf. The application shall be

accompanied by 3[the description of the tree and] a site plan, indicating the position of the tree required to be felled and the reasons therefor.

[(3) (a) On receipt of such application, the Tree Authority shall cause the Tree Officer to personally inspect the tree and hold enquiry and submit a report to the Tree Authority within a period of thirty days from the date of receipt of such application. Adequate public notice shall be given by the Tree Officer by advertising in local newspapers as well as by affixing a notice on a conspicuous part of the tree that is required to be fell. Thereafter, the Tree Authority may give permission with or without conditions or refuse it, within a period of sixty days from the date of receipt of the application. However, no tree shall be felt until fifteen days after such permission is given:

Provided that, no such permission shall be refused if, in the opinion of the Tree Authority, the tree is dead, or diseased or wind-fallen, or it constitutes a danger to life or property, or obstructs traffic; and if any objection is received against such permission, the matter shall be placed before the Tree Authority for reconsideration, and a decision shall be taken within two weeks after giving a hearing to the person who has raised the objection.

(b) A report of permissions granted by the Tree Authority for felling trees shall be submitted at least once in six months to the concerned urban local authority in whose jurisdiction the Tree Authority is functioning.

(4) If the Tree Authority fails to inform the applicant of its decision within sixty days, from the date of the receipt of the application by it, or if the receipt of the application has been acknowledged by it within this period,

from the date of acknowledgement of the receipt of the application, the permission applied for shall be deemed to have been granted.

(5) Where permission to fell a tree is granted [Tree Authority] may grant it subject to the condition that the applicant shall plant another tree of the same or other [suitable local species] on the same site or other suitable place within thirty days from the date the tree is felled, or such extended time as the Tree Officer may allow in this behalf situated within that urban area, except with the previous permission of the Tree Officer.

18. In clear and unambiguous terms the law lays down that “no person shall fell a tree or cause any tree to be felled in any land whether of his ownership or otherwise situate within that urban area except with previous permission of the Tree Officer” and if any person including an Officer of the Urban Local Authority, State Govt. or Central Govt. proposes to fell a tree, he shall apply in writing to the Tree Authority for permission in that behalf. An elaborate procedure to deal with such Application is prescribed by law in the manner aforesaid. Nowhere have we found under the said Act any provision exempting the Tree Officer to give a go-by to the said provisions of law for the purposes of felling of trees which includes, in our opinion, trimming/pruning of the trees whether in routine or otherwise.

19. The public streets vest in the Corporation-Respondent No.1 by virtue of Section 202 of the Maharashtra Municipal Corporations Act, 1949 and as such it is for Respondent No.1 Corporation which is an Urban Authority as per Section 2(g) of Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975 to move an Application for the purposes of felling a tree on the public street, which includes its trimming/pruning as aforesaid to the Tree Authority for permission in that behalf.

20. In the instant case, nothing has been produced before us to suggest that such permission for trimming and pruning of the trees or for that purpose felling of the trees in question was granted by the Tree Authority. The fact that there was no informed decision taken by the Tree Authority for trimming or pruning the trees, it raises a presumption that there has been environmental damage caused due to it. There is no material before us to rebut this presumption. Hence, the Respondent Nos. 1 and 2 are liable to pay environmental compensation. In the facts and circumstances of the present case, we propose to grant notional environmental compensation.

21. The Hon'ble High Court of Judicature at Bombay while disposing off P.I.L.No.93 of 2009: **Deepak Balkrishna Vahikar & Anr Vs The State of Maharashtra and Ors** vide Judgment and order dated 20th September, 2013, directed Pune Municipal Corporation (PMC) to take necessary steps to ensure that census of trees adopting modern technology in a digitalized framework with geo tagging is duly completed and steps taken to ensure constitution of Tree Authority to discharge its obligations in terms indicated therein. The Hon'ble High Court considered the plea of the Petitioner therein for effective implementation of provisions of the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975 and on surveying provisions of the said Act had issued directions for adopting the procedure as suggested by PMC. We do not see any reason as to why Respondent No.1 Thane Municipal Corporation should not follow the footsteps of PMC.

22. In view of aforesaid discussion, we pass the following directions:

- 1** Respondent Nos. 1 and 2 shall pay compensation of Rs.50,000/- (Fifty Thousand

only). The amount shall be spent by Respondent No.1-Thane Municipal Corporation on environmental education and awareness in the Municipal Schools within three (3) months.

2. Respondent No.1 shall pay costs of Rs.5,000/- to the Applicant within a fortnight.

3. Respondent No.1 shall take necessary steps to ensure that census of trees adopting modern technology in digitalized framework with geo tagging is duly completed within a reasonable period.

4. Respondent No.1 Thane Municipal Corporation shall evolve the procedure for dealing with the proposals of tree felling, including trimming/pruning of trees and maintaining its record keeping in view the procedure suggested by the Pune Municipal Corporation (PMC) in **PIL No.93 of 2009 (Deepak Balkrishna Vahikar And Anr Vs The State of Maharashtra and Ors)** within two (2) months.

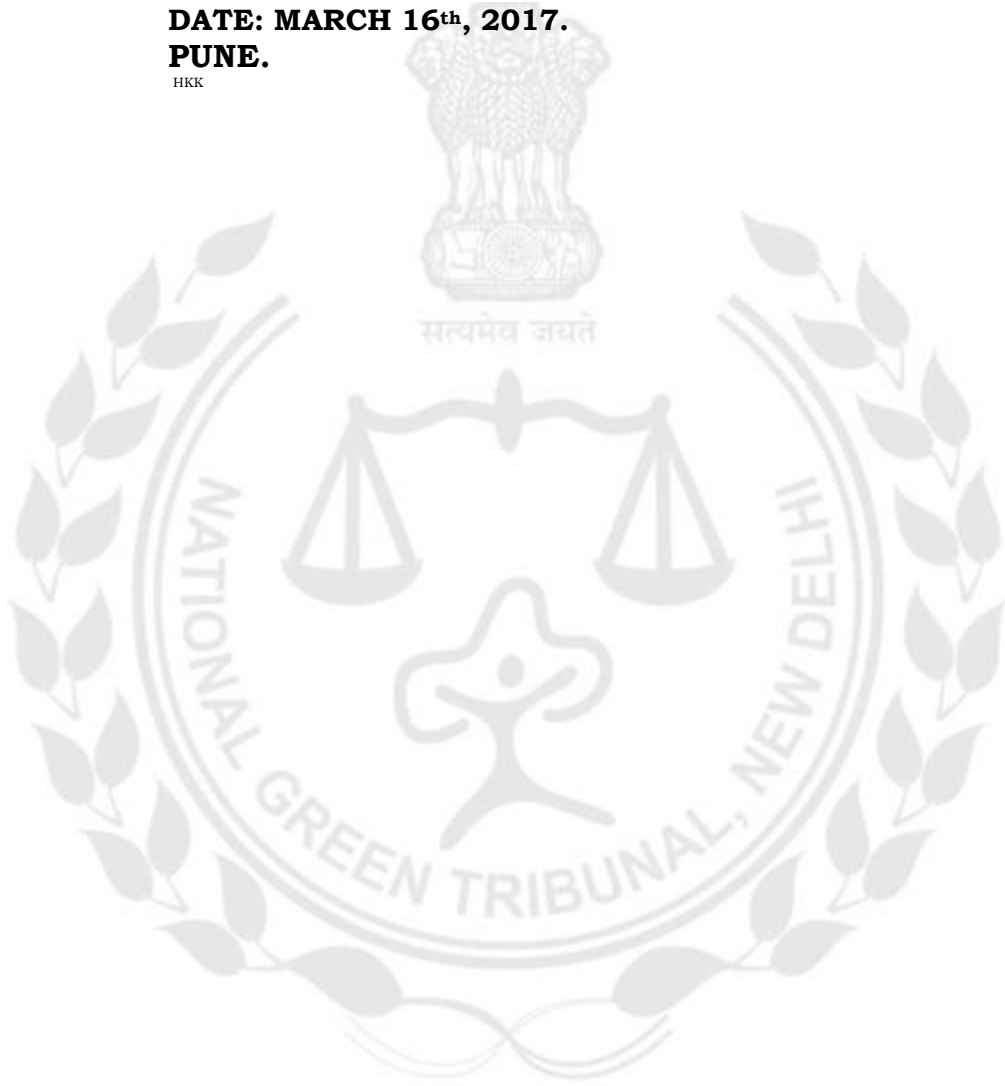
Application stands disposed off accordingly.

....., JM
(Justice U.D. Salvi)

....., EM
(Dr. Ajay A. Deshpande)

DATE: MARCH 16th, 2017.
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