

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO.93 OF 2009

Deepak Balkrishna Vahikar and another
versus
The State of Maharashtra and others

Petitioners

Respondents

Mr.R.B.Paranjpe with Mr.Vishal V. Kale and Mr.J.D.Khairnar for
Petitioners.

Mr.A.B.Vagyani, AGP with Mr.P.B.Darandale, Assistant to G.P. for
Respondent State.

Mr.A.A.Kumbhakoni with Dr.Sadhana Mahashabde and
Mr.A.P.Kulkarni for Respondents 2 and 3.

Mr.Sunil B. Limaye, Director of Sanjay Gandhi National Park and
Professor Jitendra Shah, Research Scientist, GIC, IIT Mumbai are
present.

CORAM : DR.D.Y.CHANDRACHUD AND
M.S.SONAK, JJ.

DATE : 20 September 2013

JUDGMENT (PER : DR.D.Y.CHANDRACHUD, J.) :

1. The present Public Interest Litigation has been instituted for the effective implementation of the provisions of the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975. In exercise of the powers conferred by the Act, the State Government has framed the Maharashtra (Urban Areas) Protection and Preservation of Trees Rules, 2009.

2. The city of Pune covers an area of 243.48 square kilometers. The city has expanded in the last several decades by leaps and bounds resulting in a reduction in the green cover. As the population has expanded, unregulated development has resulted in a rapid deterioration of green areas in the city. The Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975 ('the Act') provides for the establishment of a Tree Authority in Section 3. The Tree Authority is to consist of a Chairperson who is to be the Commissioner of the Municipal Corporation and not less than five and not more than fifteen persons from amongst members of the Urban Local Authority. Sub-section 3 of Section 3 provides for the nomination of representatives of civil society organizations with a special knowledge or expertise in the planning and preservation of trees. Section 3(3) provides as follows :

"3. Establishment of Tree Authority :

(1)

(2)

(3) Every Tree Authority may nominate representatives of non-official organizations, who have special knowledge or practical experience in the field of planting and preservation of trees, as members of the Tree Authority, but the number of such nominated members shall not exceed the number of members appointed under sub-section (1). These members shall be nominated in such manner and for such period as may be prescribed"

Presently thirteen Corporators have been nominated as members of the tree authority. There is no representative of any non-governmental

organization. There is one tree officer who has been appointed in exercise of the powers conferred by Section 5(1). Section 5(1) empowers an urban local authority to appoint one or more of its officers as tree officers. A tree officer, in the case of Pune Municipal Corporation ('PMC') is a Garden Superintendent. There is one Chief Garden Superintendent who is assisted by one Garden Superintendent and it is proposed to enhance the strength of the latter to two. There are two Assistant Garden Superintendents, four Supervisors and four hundred workmen. The number of Supervisors is proposed to be increased to eight, the number of Horticulture Mistries is proposed to be increased to forty seven, Malis to one hundred and thirty six and the workmen to five hundred and fifty. A proposal has been sent to the State Government for sanction. The area of the PMC is for the purposes of administrative convenience bifurcated into four zones and each one is headed by a Zonal Commissioner of the rank of Deputy Municipal Commissioner. There are seventy six electoral wards which are administered by fifteen ward offices headed by an officer of the rank of Assistant Municipal Commissioner.

3. Section 7 of the Act defines the duties of the Tree Authority as follows :

"7. Duties of Tree Authority : Notwithstanding anything contained in the relevant Act or in any other law for the time being in force, and subject to any special or general directions given by the State Government, the Tree Authority shall be responsible for:

(a) protection and preservation of all trees in all lands within its jurisdiction;

- (b) carrying out a census of the existing trees in all lands within its jurisdiction once before December 1996 and thereafter once in every five years;
- (c) prescribing standards specifying the number and types of trees which each plot of land shall have and which shall be planted therein;
- (d) development and maintenance of nurseries for the supply of seeds, sapplings and trees to persons who desire to plant new trees or to replace trees which have been felled with the previous permission of the Tree Officer or involuntarily uprooted;
- (e) transplanting of trees necessitated by construction of new roads or widening of existing roads or for safeguarding danger to life or property;
- (f) organization of flower, fruit, vegetable, tree or plant shows at least once a year and assisting private and public institutions in organizing such shows, and creation of consciousness of importance of trees and vegetation to the human welfare;
- (g) grant of advice and technical assistance to any person seeking such advice or assistance in any matter connected with planting, protection and preservation of trees;
- (h) planting and maintaining such number of trees as it considers necessary, according to the prescribed standards along the roads in public parks and gardens and on banks of rivers or lakes or sea shores, on hills, open spaces or public places;
- (i) undertaking any other schemes or measures for achieving the objects of this Act."

4. Section 8 stipulates that on and after the date on which the 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, situated within that urban area, except with the previous permission of the Tree Officer. Under sub-section 2 of

Section 8, an application for the felling of a tree has to be submitted to the Tree Authority and must be accompanied by the description of the tree and a site plan indicating the position of the tree required to be felled and the reasons for felling. Under sub-section 3, on receipt of an application, the Tree Officer has to cause the tree to be personally inspected and after holding an inquiry to submit a report to the Tree Authority within a period of thirty days from the receipt of an application. The Tree Officer has to give a public notice in the newspapers and to affix a notice on a conspicuous part of the tree which has to be felled. Thereafter the Tree Authority is vested with the discretion to give permission with or without conditions or to refuse permission within a period of sixty days from the date of receipt of an application. However, no tree is to be felled until fifteen days elapse after the permission is given. The proviso to sub-section 3(a) stipulates that no permission is to be refused if in the opinion of the Tree Authority, a tree is dead, deceased or windfallen, or constitutes a danger to life or property, or obstructs traffic. Sub-section 4 of Section 8 contains a deeming provision under which if the Tree Authority fails to inform the applicant of its decision within sixty days from the receipt of an application, or if the receipt of application is acknowledged within that period from the date of acknowledgement of the receipt of the application, the permission applied for shall be deemed to have been granted.

Section 9 empowers the Tree Officer to require the owner/occupier of the land concerned to plant adequate number of trees, as prescribed under Section 7(c) of the Act. Similarly, under Section 10,

the Tree Officer has authority of planting a tree in place of a tree which has fallen or has been destroyed. Section 11 stipulates that where any order is made under Sections 8, 9 or 10, it shall be the duty of the owner or the occupier of the land who is directed to plant a tree, to see that the tree grows properly and is well preserved and shall give a report to the Tree Officer once in six months about the conditions of such tree or trees for a period of three years. Section 12 allows the Tree Officer to permit an individual, body corporate or an institution to adopt any tree for a specified period.

5. Section 19 of the Act requires approval of the Tree Officer before permission is granted for the development of land by the urban local authority. Section 19 also imposes a condition to the effect that a completion or occupation certificate in respect of a building shall not be issued unless the authority competent to issue the certificate is satisfied that the condition subject to which the permission for development of the land was given, has been complied with. Section 19 provides as follows :

"19. Permission for development of land to be given with approval of Tree Officer : Notwithstanding anything contained in the relevant law or any other law for the time being in force :

(a) any authority or officer of the urban local authority, who is empowered to give any permission for development of land, shall not give such permission, except with the approval of and subject to the conditions, if any, imposed by the Tree Officer in regard to the preservation or plantation of trees on such land;

(b) no completion or occupation certificate in respect of any building shall be issued under the relevant law unless the authority competent to issue such certificate is satisfied that the conditions subject to which permission for development of the land as aforesaid was given have been complied with."

6. Section 7(b) requires the carrying out of a census of the existing trees in all lands within the jurisdiction of the authority, once before December-1996 and thereafter once in every five years. Rule 6 requires the Tree Authority to carry out the census of the existing trees within its jurisdiction in Form-A appended to the Rules.

7. Rule 3 stipulates that for being nominated as a representative of non-official organizations on the Tree Authority, a person shall be an active member of a non-official organization registered with the Social Forestry Department of the Government and shall have an interest in tree plantation, tree preservation, tree protection etc. and shall possess a rich experience of at least five years in the field.

8. After the petition was filed before this Court, interim orders were passed from time to time for regulating the felling and cutting of the trees. By an order dated 6 May 2009, a Division Bench of this Court consisting of J.N.Patel and Mrs.Mridula Bhatkar, JJ. issued an ad-interim direction to the Municipal Corporation not to permit felling or cutting of trees within municipal limits without the approval of the Court. Thereafter several orders have been passed by the Court regulating the felling of the trees subject to conditions imposed by the Court. These orders have regulated the felling, cutting and

transplantation of trees within the municipal limits of PMC. The procedure which is followed during the pendency of this petition for dealing with applications, may now be elucidated. An application for felling, cutting or transplantation of the trees is initially processed by the PMC after site visit. An expert committee has been appointed by the PMC and the members of the committee physically inspect the trees in issue and make a recommendation. After receipt of the report of the expert committee, a public notice is issued calling for objections from the general public and a notice is pasted on the tree concerned. Objections, if any, are entertained upon which a docket is prepared in respect of every application. This is then placed before the Tree Authority and is also uploaded on the website of PMC. Each applicant has thereafter submitted Civil Applications before this Court, in which orders have been passed. Once an order has been passed by this Court, the Tree Officer or, as the case may be, the Garden Superintendent issues a conditional permission upon due verification of compliance of the conditions imposed by the Court. The Court has been informed that undertakings furnished by the Applicants have been periodically verified by the Tree Officer or the Garden Superintendent. During the course of the last verification carried out by the PMC, notices have been issued in 177 cases. It has been found that undertakings in 94 cases have been complied with whereas a breach has been committed in 83 cases. The Tree Officer/Garden Superintendent is taking follow-up action where a breach has been found. During the pendency of this PIL and as and when interim orders were passed, the Court has, broadly speaking, required each Applicant seeking felling of trees, to plant new trees in

the proportion of 1:3. The conditions which have been stipulated by the Court required the following compliance :

(i) In compliance with the report of the expert committee, three new trees shall be planted for every existing tree to be felled;

(ii) The trees to be planted shall be of local species;

(iii) A plan shall be annexed to the undertaking earmarking the places at which the trees shall be replanted;

(iv) The name of the person/agency which shall carry out the plantation is to be indicated;

(v) The trees which are to be replanted shall not be small saplings, but shall be half grown trees of a sufficient growth which shall ensure their survival;

(vi) The Applicant shall continue to maintain the aforesaid trees after plantation or, as the case may be, uprooting of the trees;

(vii) The Applicant shall not use or develop the property on which the plantation is to be done, in such a manner which will adversely affect the growth or survival of the trees planted/transplanted thereon; and

(viii) The work of transplantation shall be done by an agency

to be nominated by the Garden Superintendent of the Pune Municipal Corporation or the Deputy Municipal Commissioner concerned and subject to the due supervision of the Garden Superintendent or the Deputy Municipal Commissioner who shall personally verify as to whether the transplantation has been carried out properly with a view to ensuring the survival of the tree or the trees, as the case may be.

9. By an order dated 16 September 2010 this Court directed the PMC to file a comprehensive affidavit in relation to the issues raised in this PIL. The PMC filed its affidavit-in-reply. During the course of the hearing the Court directed PMC to submit a comprehensive scheme for effectively implementing the provisions of the Act and the Rules. A draft scheme has been prepared by PMC which has been improved upon from time to time having due regard to the suggestions which have been received, inter alia, from the parties to the litigation. A final version of the scheme approved by the PMC has been presented to the Court. Before we deal with the salient aspects of the scheme, it will be necessary for the Court to refer to certain issues which have arisen during the course of the proceedings.

10. As noted earlier, Section 8(4) of the Act contains a deeming provision under which permission is deemed to have been granted, where the Tree Authority fails to inform the Applicant of its decision within sixty days of the receipt of an application. In view of this deeming provision, it is mandatory for the Tree Authority to take a decision in respect of every application within the stipulated period. However, it has been pointed out by the PMC before the Court that

the experience is that the members of the Tree Authority fail to take a decision within the stipulated period of sixty days “for reasons that need not be mentioned”. Evidently, members of the Tree Authority (which consists of municipal corporators), delay decisions on applications for felling, cutting or transplantation of trees for extraneous reasons so that once the period of sixty days has elapsed, a fait accompli is presented and the application is deemed to have been granted. This is, in the view of the Court, is a sorry state of affairs. The Tree Authority is not an authority that has been constituted for the destruction of trees. The primary object of the Tree Authority is to ensure the preservation and protection of the trees, the plantation of trees and the enhancement of the tree cover. Evidently, however, this purpose has been defeated. The object of the Act has been defeated by the failure of the PMC to co-opt members of civil society on the Tree Authority. The object underlying the provisions of Section 3(3) is that civil society organizations with special knowledge or practical expertise in the preservation of trees, should be co-opted as non-official representatives. It is an unfortunate reflection on the state of affairs in the PMC that not a single non-official organization has been co-opted in the Tree Authority at present. In consequence, the entire work of the Tree Authority is manned by municipal corporators. The applications are not disposed of within the statutory period of sixty days with the result that a developer goes scot-free and can destroy trees virtually at will. Such a state of affairs needs urgent remedial attention by the Court. Article 21 of the Constitution which recognizes the right to live, it is well settled, includes the right to a clean and healthy environment. The protection of the environment is

a fundamental duty under Article 51(A)(d) of the Constitution. Our jurisprudence has now been expanded to incorporate the principles of sustainable development. Sustainable development seeks to draw a balance between the needs of development in the present with the need to preserve and protect the environment in the interests of future generations. The doctrine of public trust recognizes that the environment should be protected for future generations. Legislation, such as the Trees Act, must, therefore, be interpreted by the Court consistent with the need to ensure sustainable development so that the green cover in urban agglomerations of the State, is not destroyed by rapacious development motivated by human greed.

11. Section 8(4) provides for a deeming permission. But it is equally well settled that where a statutory provision stipulates that an application would be deemed to be granted after a stipulated period, it must, be complete in all respects and must comply with the law. The legislature could not possibly have intended a deeming provision to apply even though a legal obligation is not fulfilled. We also take serious note of the failure of the members of the Tree Authority to dispose of applications within the stipulated period of sixty days. We hereby place the members of the Tree Authority on notice that they shall follow the mandate of the law and take a decision on each application within a period of sixty days, failing which they shall invite an action in exercise of the contempt jurisdiction of this Court, if such dereliction is brought to the notice of the Court.

12. Section 19 of the Act which is a non-obstante provision, makes it clear that permission for the development of land shall not be given except with the approval of and subject to the conditions imposed by the Tree Officer or the Garden Superintendent in regard to the preservation or plantation of trees on such lands. The provision also stipulates that no completion certificate in respect of a building shall be issued unless the authority competent to issue such a certificate is satisfied that the conditions subject to which permission for development was given have been complied with. In view of these mandatory provisions, the Building Department of the PMC must not issue either a completion or occupation certificate in respect of any building constructed in pursuance of permission for development without the previous approval and sanction of the Tree Officer or, as the case may be, the Garden Superintendent. It has become necessary for the Court to issue these directions since the Building Department of the PMC has issued a circular on 20 December 2011 stating that there is no need to obtain permission/clearance from the Garden Department and that it is for the Building Permission Department to verify the requirements of plantation of trees while granting a completion or occupation certificate. We clarify that though the grant of a completion or occupation certificate lies within the jurisdiction of the Building Permission Department, the issue as to whether the requirements of the Trees Act have been duly fulfilled, is a matter which must fall within the jurisdiction of the Tree Authority or, as the case may be, the Tree Officer/Garden Superintendent. Hence, before granting a completion or occupation certificate, prior approval of the Tree Authority must be obtained.

13. Another dubious method which has recently been followed by developers and builders, is for developing agricultural lands, where a number of trees are situated. An agriculturist applies for permission to remove the trees on the ground that he or she intends to use the land for agricultural purposes, some times for ostensibly converting the use from Horticulture to Agriculture. After obtaining permission for cutting and felling of trees on such grounds, which is generally granted, trees in huge numbers are cut and the land is levelled. Thereafter instead of using the land for agricultural operations, permission is obtained from the Collector for conversion of land from agriculture to non-agriculture. As a result, the builder or developer who is the architect of these dubious methods, puts up plans before PMC seeking building permission. In order to obviate such instances, we are of the view that an undertaking must be taken by the Tree Officer before permission is granted to an Applicant for cutting or felling of trees. The undertaking must specify that upon the grant of permission for cutting or, as the case may be, for felling of trees, the land shall be utilized strictly for agricultural, or as the case may be, horticulture purposes for a stipulated period of at least three years, and any breach or deviation therefrom shall invite a penal consequence under Section 21 of the Act. The Tree Authority shall take necessary action in accordance with these directions for curbing such instances of mischief.

14. Section 7(b) stipulates that one of the duties of the Tree Authority is to carry out a census of the existing trees in all the lands

situated within its jurisdiction. The first census was to be carried out before December-1996 while each subsequent census is to take place once every five years thereafter. In the case of PMC, the last census was initiated in 2007 and took six years for completion in 2013. According to the PMC, this delay took place principally because of the non co-operation of the contractor appointed for the purpose of conducting the census through a tendering process as well as because of the non co-operation of private citizens. During the course of the hearing the Court passed two orders on 29 January 2013 and 21 March 2013. By those orders the PMC was directed to forward copies of the draft scheme prepared for the effective implementation of the Act and Rules to the Chief Conservator of Forests and to the Director of Sanjay Gandhi National Park for their expert suggestions. Accordingly, PMC forwarded copies of the draft scheme and conducted meetings with Mr.Sunil Bhalchandra Limaye, the Director of Sanjay Gandhi National Park and Professor Jitendra Shah, Research Scientist, GIC Lab, IIT, Mumbai. The Court expresses its appreciation to Mr.Limaye and Mr.Shah for their able assistance to the Court by spending time apart from their official duties. These experts were assisted in their work by Mr.Rajendra Jagtap, the Deputy Municipal Commissioner. The Court also expresses its appreciation for his able assistance.

15. The assistance of the experts has been obtained for ascertaining whether a census of trees can be carried out in future by utilizing modern technology and in particular with the help of Radio Frequency Identification Devices (RFID). The modalities which were

used by the PMC for carrying out the census of the trees were largely manual without the aid of modern technology and hence it became necessary to allow these experts to consider measures to adopt modern technology for managing the trees and the green cover. During the course of the meeting between the PMC and the experts referred to above, a conclusion was arrived at that an effective census of trees can be carried out by utilizing the process of geo tagging. By the process of geo-tagging (additional geographical identification meta-data to various media such as geo-tag photograph or media) the latitude and longitude of every tree in an urban agglomeration can be verified, documented and preserved. In the process, a photograph of every individual tree is taken, which is automatically tagged to the Global Positioning System ('GPS'). During the course of the hearing, this Court had observed that PMC can take a lead role in the State of Maharashtra for developing a Geographical Information System ('GIS') based system which includes as its components geo-tagging and the creation of a data base for effective mapping and enumeration of trees.

16. In pursuance of the directions which were issued by the Court, the PMC set up a panel consisting of Professor Jitendra Shah of IIT, Mumbai and the Director of Sanjay Gandhi National Park Mr. Sunil Limaye together with the Additional Municipal Commissioner. A pilot project utilizing geo-tagging was carried out for the census of trees. The pilot project was carried out in four electoral constituencies of Pune city. A comprehensive report on the pilot project emphasizing public participation, has been submitted on 17 September 2013. In addition to the pilot project conducted by the

Expert Committee, the PMC had also entrusted a private agency (Smart Survey, Pune) the task of conducting a pilot project for carrying out a census of trees. This agency conducted the pilot project in respect of certain selected public and private properties. The PMC has, thus, received two pilot project reports, one conducted by a private agency and other by the experts appointed by the Court.

17. As a public authority, PMC is required to follow a tender process when it allows anybody to conduct a census/survey of trees. A prerequisite to the tender process is preparation of the tender document which incorporates all the relevant technical specifications to be adopted by the selected bidder. In the first stage, the PMC has to finalize the technical aspects before proceeding with a formulation of the tender document. PMC has hence proposed to the Court that it will appoint a committee of experts which may include the following:

- (i) One or more software expert/s having special skills with mobile application development, such as `Android`;
- (ii) One or more Botanist/s and/or Horticulturist/s;
- (iii) A legal expert; and
- (iv) An Urban or Town Planner.

PMC has stated that the committee will hear presentations from software developers/agencies including the aforesaid agency (Smart Survey, Pune) and the experts appointed by the Court for the pilot project before finalizing the technical specifications and the tender

documents. Presently there may be no precedent which will furnish a guide for comprehensive specifications for such a survey with the objectives set out by the Court. Tender documentation requires detailed specifications of the requirements of the local body in technical terms in the proposed GIS/GPS based tree census. The technical specifications may incorporate minimum requirements and desirable requirements in recommending technology and processes for conducting a tree census/survey. The committee must bear in mind several aspects, these being :

(i) Affordability : The survey rate per tree should be affordable while providing an incentive to NGOs, academic institutions and other bodies with a view to strengthen public participation;

(ii) Reproducibility : The model should be such that it can be expected to be spread across all cities;

(iii) Flexibility : The model should be sufficiently flexible so that urban agglomeration of different sizes with a different I.T. enabled environment can adopt the system; and

(iv) Scalability : The process should be easy to maintain at a city level while at the same time be scalable for a group of cities or for the State.

18. While finalizing the specifications, the committee would be at liberty to seek written inputs from relevant authorities and may request different stakeholders to submit their presentations. We would expect that this part of the exercise should be completed by the

committee within a period of three months from today. The Court has been informed that after formulation of the basic tender document, PMC will float tenders after following the requisite procedure and thereafter appoint a selected bidder in accordance with law for implementing the project of conducting a tree census by using digitized/paperless process. The tender process shall be completed preferably within a period of four months thereafter. The Court has been informed that in the budget for 2013-14, an amount of Rs.1.20 crores has been earmarked for conducting the aforesaid exercise of a tree census and that for 2014-15, the amount is to be enhanced to Rs.2.00 crores.

19. We clarify that until the completion of the aforesaid digitized tree census, applications for felling/cutting or, as the case may be, transplantation of the trees, shall be dealt with strictly as per the scheme subject to the approval of the Court for the effective implementation of the Act and the Rules. Once the exercise is completed and the entire data in the electronic format is available through web application, the scheme finalized and approved by the Court may be suitably modified so as to take into account the need to make the entire process in a digitized format. During the course of the submissions PMC has indicated that the procedure to be followed, broadly stated, would include the following :

- (i) The Surveyor logs in with his login credentials;
- (ii) Android application authenticates user and gives access for survey;

(iii) The Surveyor records the requisite details and tree records;

(iv) The data so recorded is electronically (without human intervention so that it is not tampered) transferred from android application to the web server;

(v) On approval of such data by the competent person/authority it gets inserted into the actual database which then becomes open for public access;

(vi) All these activities are stored (data log files) where user login date, time, ip and other details can be seen.

Similarly it has been stated before the Court that the technology to be employed should have the following basic features :

a) The method for recording of the data should be user friendly and even a surveyor who is not an expert in the operation of hand-held machines should be able to enter the data. The data fields must be easy to understand and easy to operate;

b) Database of trees & properties must be in accordance with the requirements of the Maharashtra Preservation of Trees Act 1975 and amendments of 2009;

c) The latest technology should be used that will automate

the tree census process, and will digitize the tree census data. Every tree surveyed must have a tree identification key. However, it should be possible to capture latitude, longitude and other tree data with or without the availability of the Internet connection. Mapping of each tree should be possible by using GPS locations on Google map or GIS map or GIS application;

d) The application should support all versions of Android mobiles/tablets having compatibility with all screen sizes and various models/makes;

e) It should be possible to store date and time of every data capture for an individual tree, which will make it possible to check the efficiency of an individual surveyor;

f) The transfer of data from the handheld device to the server should be automatic and not manual so that the data so recorded by the surveyor is not tampered;

g) The web application should process and store the data;

h) The Server should be capable of storing unlimited data having unlimited hosting space and bandwidth. Web application should be developed using proven and tested programming tools/languages;

i) Preferably, the Application should be able to generate

notice as required by various provisions of the Act and the rules e.g. to the property owner for plantation of deficit number of trees (Section 7c);

j) The web application should be developed in such a way that, mapping & tracking of special attention trees; like endemic, rare and endangered trees will be possible;

k) Preferably the application should be able to store the observations and suggestions of plant species for plantation in the property based on natural diversity of trees in the area;

l) The web application should be able to calculate annual carbon assimilation rate of trees in the city/ward/sub ward, property/individual tree;

m) The application should be capable of taking geo-tagged pictures for reference (single image/panoramic view/video);

n) Using web application, anyone should be able to see the tree census data;

o) The data so collected and processed must be fully secured, while developing web application, particularly in respect of threats from hackers;

p) The server should be capable of storing unlimited data

and should have unlimited bandwidth;

q) The web application should be capable of generating different reports such as :

- i. Property wise data;
- ii. Area/ward/pin code data;
- iii. Scientific name;
- iv. Common name;
- v. Flowering season;
- vi. Flower colour;
- vii. Fruiting season;
- viii. Native/exotic trees;
- ix. Growth rate;
- x. Wild/cultivated trees;
- xi. Tree use; and
- xii. Tree condition.

20. That leaves the Court with two aspects to be considered namely (i) the Constitution of the Tree Authority; and (ii) the procedure to be followed. As regards the constitution of the Tree Authority, under Section 3(2), only the members of the urban local authority [as defined in Section 2(g)] can constitute the Tree Authority. For the constitution of the Tree Authority, the minimum required strength is five members while the maximum permissible is fifteen. PMC has stated that the total number of members should be fixed at seven and that those corporators who are Science Graduates would be preferred.

A membership of seven non-official members is, in our view, fair and proper having regard to the need of making the functioning of the Tree Authority of manageable proportion. Under Section 3(3), the total number of nominated members cannot exceed the number of corporators, who constitute the Tree Authority. Hence, the nominated members would also be restricted to seven. The nominated members should belong to independent NGOs and PMC has stated that not more than one person shall be appointed from the same NGO. As regards the nominated members, wider representation needs to be given to diverse cross sections of NGOs with a special knowledge or expertise in plantation and preservation of trees with a minimum experience of at least five years. Care shall be taken to obviate a situation which had occurred in the past whereby all the nominated members belonged to the same NGO. While nominating the non-official members, preference shall be given to qualified persons with a degree or diploma in agriculture/ forestry/horticulture with an expertise of five years in plantation/ preservation/transplantation of trees and/or in environment protection. PMC has stated that preference would be given to those NGOs who have a national presence.

21. The scheme envisages that since there are four zones in PMC, each zone should have an independent zonal officer appointed in terms of Section 5 of the Act. While making the appointments, preference would be given to qualified persons with a degree or diploma in agriculture/forestry or horticulture or having an expertise in the field of plantation/preservation or transplantation of trees and in

the area of environmental protection. All the Tree Officers shall work under the Tree Authority and will independently discharge their duties in respect the zone within their jurisdiction. Each Tree Officer will be personally held responsible for following the requisite procedure and for due compliance of the undertakings and conditions imposed on applicants for permission under the Act and Rules. Each Tree Officer will have an independent establishment working under him for the effective discharge of his duties and would be accessible on an official website. In terms of the provisions of Section 5(2), the Commissioner of PMC shall authorize any functional officer not below the rank of an Assistant Municipal Commissioner, as a Tree Officer for a particular zone.

22. PMC has agreed to constitute an Expert Committee consisting of at least six members who may be appointed by the General Body of the PMC from amongst candidates who are selected by a screening committee consisting of the following persons :

(i) The Head of the Department of Environment of the Government College of Engineering or Pune University;

(ii) The Head of the Department of Environment/Horticulture/ Agro Forestry Department of the Government College of Agriculture;

(iii) A nominee of NEERI or the Deputy Director, Social Forestry.

For this purpose PMC has stated that it would invite applications accompanied by a resume from the members of public at large for appointment as members of the expert committee. Wide publicity would be given to such invitation for nominations in the print and electronic media. PMC has assured the Court that the selection process shall be conducted in an open and transparent manner. We also clarify that if a person of eminence has to be appointed to the expert committee, it will be open to the screening committee to shortlist a non-applicant as well who has consented to work as a member of the expert committee. More than one person from the same NGO shall not be shortlisted. The expert committee will work with a minimum quorum of three members.

23. As regards the procedure to be followed for taking a decision on applications for replantation, cutting or, as the case may be, plantation of trees, we accept the proposal of the PMC which is in the following terms :

“The Proposed Procedure

1. Every Application either for replanting/cutting of tree shall be addressed to the Tree Authority. However, the same for the administrative convenience be submitted with the Tree Officer of the PMC.
2. The application shall be accompanied by the documents set out at **Annexure-I** in addition to the accompaniments prescribed by the said Act & Rules.
3. The application shall be made in the form prescribed by Rule 9 of the said Rules. The application

shall state self-explanatory reasons keeping in view the provisions of the said Act & the Rules, for replanting/cutting, as the case may be, the tree in issue. The applicant shall state the number and the type of trees situate in the concerned plot in which the tree(s) in issue is/are situate enabling examination of the matter in the light of Section 7(b) of the said Act.

4. The Tree Officer of the concerned zone after scrutinizing the application and after getting the same duly filled in by the applicant, within one week shall personally inspect the tree(s) in issue. A report of such inspection with material particulars in writing shall be prepared, which report will include the actual status of the tree(s) in issue and suggestions as to the proposed action to be taken in that regard, such as cutting/transplantation.

5. The said report along with appropriate recommendation(s) of the Tree Officer will be sent to the expert committee, which will personally inspect the site as & when it deems fit and make its recommendation(s).

6. The Tree Officer shall cause publication of a notice in the local news paper as also on the website/internet inviting objections/suggestions, if any, in regard to the application(s) so made. The copies of these applications shall be supplied well in advance to the nominated NGO-members of the tree authority. The Tree Officer shall also comply with the provisions of Section 8(3)(a) such as affixing the notice on the conspicuous part of the tree.

7. The Tree Officer shall submit to the Tree Authority the entire proposal for its consideration along with objections/suggestions, if any, received in response to the aforesaid public notice.

8. The Tree Authority, in accordance with law shall take a provisional decision on the application, which

shall be intimated to each applicant(s). The Tree Authority shall make every endeavor to preserve the tree in issue and shall prefer transplantation to any other available option.

9. In terms of the provisional decision of the Tree Authority the applicant shall submit appropriate undertaking and/or make appropriate security deposit with the Tree Authority. The applicant shall also comply with other requisite directions/conditions that may be issued/imposed by the Tree Authority. The draft of the undertaking is **Annexure-II**.

10. The Tree Authority shall issue a final order, taking into consideration due compliances made by the applicant. A copy of the final order along with the copy of the undertaking and other requisite papers will be sent to the Tree Officer of the respective zone for his record as also for appropriate action.

11. The Tree Authority shall authorize in every zone at least three agencies for carrying out the work of cutting/transplantation of trees and shall fix as also notify the charges that may be recovered by such an agency from the concerned applicant in that regard. Every applicant who is required to carry out cutting/transplantation shall not get the cutting/transplantation work carried through anybody else than such an authorized agency.

12. Only when it is inevitable the Tree Authority may permit felling of tree(s). However, the same shall be subject to the condition that the applicant plants trees in the minimum proportion of **1:3**. All trees to be so planted shall satisfy minimum following specifications :

- a) The height shall not be less than Six feet;
- b) The Collar Girth should not be less than Ten centimeters;

c) The age of the sapling should not be less than five years;

d) The species of the sapling should be local or indigenous;

e) Preferably endemic and local trees supplied by the garden department of the Corporation be used for plantation. In case if these are not available, then species recommended by forestry department shall be used for plantation.

13. The Tree Authority shall also consider, while taking any decision, various orders passed by the Hon'ble High Court from time to time on various applications seeking permissions for either felling of trees or for transplantation thereof, in their proper perspective.

14. The Tree officer shall supervise the execution of the order issued by Tree Authority and will accordingly submit monthly reports with the Tree Authority. Every such report shall be submitted by the 10th day of each English calendar month.

15. The Tree Officer shall be personally responsible to supervise the implementation of each and every order of the tree authority as also the compliance of each and every clause of every undertaking submitted by each of the applicants, in so far as his zone is concerned.

16. The Tree Officer shall maintain a register in appropriate format for recording his every personal visit and the aforesaid compliances, which register shall be made available during office hours on all working days for inspection to general public.

17. The Tree Officer shall also be personally responsible for due compliance of every direction(s) issued by the Hon'ble High Court and shall also maintain a similar separate register for recording such compliances, which register shall also be made available

during office hours on all working days for inspection to general public.

18. In case of every new construction that is carried out within the limits of the PMC, the Building Completion Certificate shall not be issued unless the concerned Tree Officer issues a prior certificate to the effect that the orders of the Tree Authority, if any, particularly the conditions imposed by the same, if any, are fully complied by the developer/owner. Tree Officer has to issue the certificate within 60 days.

19. The Tree Officer may be empowered to take a decision of permitting pruning/cutting of such trees by the municipal staff under his personal supervision that on his personal inspection are found by him to be completely dead or that cause an immediate as also imminent danger to human life or property or that obstruct the smooth flow of traffic on any public street.

20. The Tree Authority shall also take into consideration the provisions of the Wild Life Act wherever applicable while considering any application made to it for granting permission under the said Act and the Rules framed thereunder. The Tree Authority will, as far as possible, preserve big, old trees or snags which are required for nesting of birds. In this regard, the opinion of local Assistant Conservator of Forests (Wildlife) shall be taken into consideration by the Tree Authority.

21. The Tree Authority shall regularly maintain its website for publishing the relevant information relating to the tree census as also tree cutting and/or transplantation. The Tree Authority shall display on its website all the requisite information in the form of a docket in respect of each and every application received and/or processed by the Tree Authority in regard to cutting or transplantation of tree(s).

ANNEXURE-I**Accompaniments of the application**

1. A map indicating location of the existing trees in the entire plot in which the tree(s) in issue is situate. The location of the tree(s) in issue to be shown in red colour as against the rest of the trees that are to be shown in green colour. The data of the concerned tree(s) and surrounding trees as far as possible should be in the format prescribed for the census survey.
2. Adequate and appropriate photographs of the tree(s) in issue.

For removal of trees obstructing the Construction/ other work:

- i) Application under Proforma 'C'.
- ii) Commencement Certificate.
- iii) Sanctioned plan showing tree(s) in issue in red colour, other trees in green colour and location of proposed tree(s) plantation /transplantation in blue colour.
- iv) Adequate and appropriate Photographs of the tree(s) in issue.
- v) Appropriate Undertaking.
- vi) A certificate of the concerned Architect to the effect that without felling of the concerned tree(s) permissible developmental activity(ies) in terms of the DCR cannot be carried out at the site in issue.

For pruning of dangerous branches of trees :

1. Adequate and appropriate Photograph of tree(s) in issue showing dangerous branches, proposed to be removed.

2. Appropriate Undertaking to the effect that only permitted trimmings of dangerous branch will be carried out.

ANNEXURE-II

Undertaking

I, Age. ... years, do hereby state on solemn affirmation as under:-

1. I have filed the present application for seeking permission for transplantation/felling of trees in terms of the recommendations of the Expert Committee.

2. I hereby undertake that I shall plant local species of trees which shall not be small saplings, but shall be of such age that on plantation they will grow. I undertake not only to ensure their survival but also their growth.

OR

I hereby undertake that I shall transplanttree(s) in terms of the order of the Tree Authority and shall make every endeavor that these tree(s) not only survive but also grow.

3. I undertake to continue to maintain such tree(s) for a period of two years from plantation/transplantation and that I shall submit a quarterly compliance report in this regard with the concerned Tree Officer.

4. I Undertake to comply with each and every condition and direction issued by the Tree Authority and/or Tree Officer in its true letter and spirit as also with the provisions of the Maharashtra (Urban Area) Protection and Preservation of Trees Act, 1975 and the Rules framed thereunder.

Solemnly affirmed at.....)

This....day of.....)

.....Deponent.

Identified by me.”

24. The resolution of the complex issues which have arisen before the Court in the PIL has been made possible as a result of the non adversarial approach adopted by the PMC in the present case. The experts who have devoted a considerable amount of time and offered valuable suggestions must be appreciated by the Court. Both Mr.Sunil B. Limaye, Director of Sanjay Gandhi National Park and Mr.Jitendra Shah, the expert from IIT, Mumbai have devoted a considerable amount of time and effort in ensuring that the pilot project for geo-tagging of trees attains finality, which would help not only the residents of Pune but also of other cities and urban agglomerations of the State. The officers of the PMC who have been associated with the work of the public interest litigation including Mr.Ashok Ghorpade, Garden Superintendent, have given their wholehearted assistance and effort to complete the pilot project. We would request the Commissioner of PMC to take a special note of the appreciation of the work which has been rendered by Mr.Ashok Ghorpade and record the same in his service book.

25. Finally, as we conclude, the Court also expresses its appreciation for the able assistance rendered by Mr.A.A.Kumbhakoni, counsel for the PMC (instructed by the legal adviser Ms.Sadhana Mahashabde), and by all the other learned counsel.

26. We now direct that the PMC shall take necessary steps to effectuate this order to ensure that the census of trees adopting modern technology in a digitized frame work with geo-tagging is duly completed. All steps shall be taken to ensure that the constitution of the Tree Authority is carried out in terms as indicated to the Court. Above all, we would seek to emphasize that the Tree Authority is not an authority for the destruction of trees but for the preservation of trees and the enhancement of the fast depleting green cover in the urban areas of the State.

27. The petition is accordingly disposed of. There shall be no order as to costs.

(DR.D.Y.CHANDRACHUD, J.)

(M.S.SONAK, J.)

MST