

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO. 610 OF 2014

In the matter of the Contempt of Court  
Act 1971;

AND

In the matter of disobedience of orders  
Disobedience of orders contained in  
Hon'ble High Court Order dated 20  
September 2013 in PIL no. 93 of 2009

Nagrik Chetna Manch,

Non –Government Organisation

Registered under the Bombay Charitable Trust Act

Through it's President,

Maj. Gen. S.C. N. Jatar, Retd

Age 81 years, Occ.- Retired,

R/at. A-102 Neel Sadan, 1426 Sadashiv Peth,

Pune 411 030

PETITIONER

VERSUS

Shri. Vikas Deshmukh, IAS

The Municipal Commissioner,

The Municipal Corporation of Pune

Shivaji Nagar, Pune 411005

RESPONDENT

TO

THE HON'BLE CHIEF JUSTICE AND OTHER  
COMPANION JUDGES OF THE HIGH COURT  
OF JUDICATURE AT MUMBAI CIVIL APPELLATE  
JURISDICTION AT MUMBAI

THAT THE PETITIONER RESPECTFULLY SUBMITS AS UNDER:

Feeling aggrieved and dissatisfied by the total disrespect shown by the respondent to the order passed by this Hon'ble Court in Public Interest Litigation No.93 of 2009, the Petitioner is approaching this Hon'ble Court to pray that action under the provisions of the Contempt of Courts Act, 1971 may be initiated against the Respondent.

1] The Petitioner is the President and authorised signatory of a public charitable trust constituted under the provisions of the Bombay Public Trusts Act, 1960 and a society constituted under the provisions of the Indian Societies Registration Act, 1860, having its offices at A 102, Neel Sadan, 1426, Sadashiv Peth, Pune 411 030. It is submitted that the Petitioner organisation is open to all citizens and is not affiliated to any political party. The Petitioner largely comprises of senior company executives, professionals, social workers, retired defence officers and civil servants etc, who do not have any political affiliation. The Petitioner seeks issue-based support from the media and the public and networks with other like-minded NGOs to lend force to issues that the Petitioner takes up. The Petitioner's mission is "to inculcate thrift and scrupulous behaviour at various levels, and to bring transparency in governance by functioning as an active pressure group and conscience-keeper."

2] The Respondent is the Commissioner of Pune Municipal Corporation (PMC) and is mandated to comply with the provisions of the Maharashtra (Urban Areas) Protection and Preservations of Trees Act, 1975 (referred to as the Trees Act hereafter). The Respondent was one of the parties in the Public Interest Litigation No. 93 of 2009 for whom various directions have been issued by this Hon'ble court. The Respondent has also assured this Hon'ble Court for compliance with the various provisions of the Trees Act. It is submitted that the assurances given by the Respondent are referred

to by this Hon'ble Court in its judgement delivered on 20<sup>th</sup> September 2013 in P.I.L. No. 93 of 2009. A copy of the judgement and order passed on 20<sup>th</sup> September 2013 in P. I. L. No. 93 of 2009 is hereby annexed to the memo of the Contempt Petition and marked as **Annexure A**.

3] That, the Hon'ble High Court was pleased to impose specific restrictions, directions and duties upon the Respondent and further directed the Respondent to establish a Tree Authority with specific number of members which till date the Respondent has not only totally failed to implement but has also violated Section 3(1) of the Trees Act.

That, in paragraphs no. 14 to 19 of the order dated 20 September 2013; the Hon'ble Court issued directions in detail laying down a procedure and method of carrying out the tree census. The Hon'ble Court has held that Section 7(b) the Trees Act 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 was to take place once every five years thereafter.

The respondent has contended that the tree census is now complete in the year 2013 and tree census as directed by the Hon'ble court is in process. A copy of the reply given by the Public Information Officer by his letter outward no. 488 dated 26/06/2014 is hereby annexed and marked as **Annexure B**. The tree census should have actually been done by using modern technologies as directed by the Hon'ble Court in its order dated 20<sup>th</sup> September 2013 in PIL 93/2009 and not manually as has been done.

4] The Hon'ble High Court in its order dated 20/09/2013 directed the Respondent to use modern technologies like "Radio Frequency Identification Devices (RFID)" and "Geo-Tagging" to create a data base for

effective mapping and enumeration of trees for management of trees and green cover. This was agreed to by the Respondent. The order of the Hon'ble High court said, "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 one or more software expert/s having special skills with mobile application development, such as 'Android'; one or more Botanist/s and/or Horticulturist/s; a legal expert; and an Urban or Town Planner."

5] The Hon'ble Court expected that the above part of the exercise should be completed by the committee within a period of three months from 20 September 2013, that is by 20 December 2013. The Hon'ble Court was 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, that is by 20 April 2014. The Petitioner further says that the Pune Municipal Corporation through the Respondent had committed to the Hon'ble High Court that in the budget for 2013-14, an amount of Rs. 1.20 crores had 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.

However, the Respondent has failed to form such a committee of experts and has failed to adhere to the time lines specified in the Hon'ble

Court order dated 20 September 2013, thus wilfully violating the said judgement of the Hon'ble High Court and delayed the entire process of the tree census, which is mandatory as per the said Trees Act.

6] It is submitted that the Hon'ble Court had further clarified in paragraph 19 of the said order 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 existing scheme subject to the approval of the Court for the effective implementation of the Act and the Rules. The Hon'ble Court further held, "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."

It is submitted that the Respondent has not only failed to comply with the above directions of the Hon'ble Court to complete the digitized tree census in seven months from 20 September 2013 i.e. by 20 April 2014 but has misled the Hon'ble Court in Civil Application 42 of 2014 into believing that the Applicant concerned can apply to the Tree Authority because the Tree Authority has been established. In fact, the establishment of the Tree Authority is also illegal as brought out in paragraphs 7 and 8 below.

7] The Petitioner states that paragraph 20 of the order of the Hon'ble High Court dated 20 September 2013, fixed the number of members of the Tree Authority at seven and Hon'ble Court directed that those corporators who are science graduates would be preferred. Under Section 3(3) of the said Trees Act, the number of nominated members is then also to be restricted to seven. The Hon'ble High Court considered a membership of seven non-official members fair and proper having regard to the need of

making the functioning of the Tree Authority of manageable proportion. The Hon'ble Court further observed that the nominated members should belong to independent NGOs and the PMC stated that not more than one person shall be appointed from the same NGO. As regards the nominated members, wider representation was to be given to diverse cross sections of NGOs with special knowledge or expertise in plantation and preservation of trees.

It is submitted that, prior to the judgement by the Hon'ble High Court dated 20/09/13 in PIL 93 of 2009; there were 13 corporator members nominated as members of the Tree Authority by political parties in proportion to their representation in the PMC General Body. This Tree Authority ceased to exist on 20 September 2013 when the Hon'ble High Court changed its composition as given above. However, the PMC has selected 13 members from NGOs on the basis of recommendations from these 13 corporator-members of the old and now defunct Tree Authority. This defunct Tree Authority was established under resolution no. 40 dated 18/05/2012. A copy of the resolution number 40 dated 18/5/2012 is hereby annexed to the memo of the Contempt Petition and marked as **Annexure C.**

It is submitted that after the judgement in PIL No.93 of 2009, the Respondent ought to have obtained fresh sanction of the General Body of PMC for seven corporator-members for nomination on the Tree Authority as per the new norms specified in the Hon'ble Court order dated 20 September 2013 and then established a Screening Committee appointed by the General Body as stated in paragraph 22 of the said Hon'ble Court order to nominate members on the Tree Authority from non-official organisations. It is submitted that the Respondent did not follow the directions of the Hon'ble Court in PIL No. 93/2009 but appointed the Screening Committee by Municipal Commissioner's Resolution number 6/493 dated 03/03/2014 and committed contempt of the Hon'ble Court.

8] It is submitted that the Petitioner received a copy under the RTI Act, 2005 of the proceedings of the meeting of the Screening Committee held on 03/03/2014 to recommend names of designated members from NGOs on the Tree Authority along with a copy of the proceedings of the adjourned meeting of the Tree Authority held on 12/03/2014 for selecting designated NGO representatives on the Tree Authority. Copies of the same are hereby annexed to the Contempt Petition and marked as **Annexure D (Colly)**.

It is submitted that the Respondent was present at the adjourned meeting of the defunct Tree Authority comprising 13 corporators and 13 officers of the Garden Department as recorded in the proceedings at Annexure D.

It is submitted that the Respondent has erred in forming the Screening Committee under his own orders because the authority to form such a committee rests with the General Body in terms of paragraph 22 of the Hon'ble High Court order and also as the appointing authority of the Tree Authority in terms of Section 3(3) of the said Trees Act, which says, "...the urban local authority concerned shall constitute a Tree Authority..." Also, paragraph 22 of the Hon'ble High Court order dated 20/09/2013 clearly states that the respective members of the Screening Committee from the Department of Environment of the College of Engineering or Pune University and from the Government College of Agriculture should be Heads of Departments while the members appointed by the PMC are not heads of departments. Further, the designation of Mr Mohan Dhere as Tree Officer is also illegal as brought out in paragraph 9 below.

It is stated in Annexure D that after explaining the procedure followed by the Screening Committee in respect of short-listing of the eligible NGOs that had applied in response to the advertisement in the newspapers, the 13 corporator-members of the defunct Tree Authority proceeded to make the final selection of NGOs for membership of the Tree

Authority. Mr. Mohan Dhere acting as the Tree Officer and Member-Secretary of the Tree Authority familiarised the defunct Tree Authority with the following important information:

- a. Social Forestry Division is in the process of making regulations regarding registration of NGOs and shall be sending the regulations for approval of the Government of Maharashtra.
- b. Copies of the certificates of registration with the Charity Commissioner by NGOs are enclosed with the applications.
- c. Even if the PMC appoints NGOs to the Tree Authority, it will be appropriate to cancel their memberships if they are not ultimately registered with the Social Forestry Division.
- d. The final lists of eligible and non-eligible NGOs has been prepared after due checks.
- e. The Municipal Prosecutor explained the mandatory qualification of registration with the Social Forestry division and minimum ten years experience in planting, protection, and preservation of trees as per existing law.

The Respondent then made the members of the defunct Tree Authority aware of the criterion specified by the Hon'ble High Court. In brief, these are as follows:

- a. Not more than one member from an NGO.
- b. Wider representation to diverse cross sections of NGOs with special knowledge and experience of at least five years.
- c. All nominated members should not belong to one NGO.
- d. Preference to qualified persons with degree / diploma in agriculture / forestry / horticulture and experience in various facets for at least five years.
- e. Preference to NGOs with national presence.

Mrs. Kamal Vyawahare, Mr. AV Tingre, Mr. AB Rane, Mr. HN Rasane and Mr. PS Sutar tabled a proposal regarding selection of NGOs. In accordance with the proposal, the names of 13 NGOs were put forward. There is no record of the system adopted or the selection criteria considered by the worthy members of the defunct Tree Authority in

selecting NGO members on the Tree Authority. It will be seen that none out of the 13 finally nominated on the Tree Authority is qualified in terms of the said Trees Act and/or the Hon'ble High Court Order dated 20 September 2013 nor is any of them so far registered with the Social Forestry Division of the Government of Maharashtra.

In view of the infirmities due to transgression of the provisions of the Trees Act, Tree Rules (Rule 4.iv), and the order of the Hon'ble High Court dated 20 September 2013 while forming the Tree Authority, in the constitution of the Screening Committee, in exceeding the number of members of the Tree Authority beyond 15, in irregularly appointing the member-secretary of the Tree Authority and in nominating 13 NGOs and their representatives that do not meet with the specified criteria, there is contempt of the Hon'ble Court.

9] It is further submitted that Shri Mohan Dhere acted as the Tree Officer not being appointed as such under Section 2 (e) of the Trees Act, which reads, "'Tree Officer" means an officer appointed as such by the Tree Authority for the purpose of this Act". The fact is that "Tree Authority" ceased to exist after 20/09/2013, the date when the Hon'ble High Court passed its order. As such, the Respondent was aware that Shri Mohan Dhere does not have any right to use the powers of a Tree Officer such as granting permissions for pruning or issuing no-objection certificates prior to the issuance of completion certificates for buildings. Hence, after the judgement of the Hon'ble Court dated 20 September 2014, no one existed as the Tree Officer but one Shri Mohan Dhere on behalf of the Respondent granted 75 illegal approvals to the Building Department to facilitate permissions to developers/builders for construction. A copy of the letter of the Garden Department, PMC letter outward no. 7653 dated 24/02/2014 is hereby enclosed and marked as **Annexure E**. The Petitioner states that the Respondent has acted in total

disregard to the orders passed by the Hon'ble Court dated 20 September 2013 in Public Interest Litigation No. 93 of 2009 and in this particular instance, developers/builders have benefited.

10] The Petitioner states that, in effect, the Hon'ble High Court has directed the respondent to follow the provisions of the Trees Act. There are norms for the number of trees to be planted along roads, parks, hill slopes, green belts, riverside, banks of water bodies, stadiums, playgrounds etc as specified in Schedule I of Section 7 (h) of the Rules of the Trees Act issued vide Maharashtra Government Gazette dated 14/12/2009 but the Respondent has totally failed to abide by the above provision in the Rules.

11] The Petitioner states that the Respondent has intentionally violated the orders by the Hon'ble High Court dated 20/09/2013 in PIL 93 of 2009. It is submitted that, as stated in earlier paragraphs of the contempt petition, the Respondent has shown total disregard and disrespect to the orders passed by the Hon'ble High Court in PIL No.93 of 2009. It is submitted that the Respondent has failed to keep over-all control and has failed to follow the provisions of the Trees Act as per the directions of the Hon'ble High Court. This conduct of the Respondent shows that he does not have any respect towards the order passed by this Hon'ble Court and is wilfully disobeying the orders of this Hon'ble Court. Hence it is prayed that action under the provisions of the Contempt of Courts Act, 1971 may be initiated against the Respondent.

12] That on 19<sup>th</sup> June 2014, a contempt notice was issued to the respondent which was duly received by him on the same date but even after expiry of more than 38 days of the receipt of the said notice, the Respondent has taken no action to comply with the order passed by this

Hon'ble Court in P.I.L. No.93 of 2009. A copy of the Contempt Notice is hereby annexed to the memo of the contempt petition and marked as

**ANNEXURE F**

The Petitioner submits that as stated in earlier paragraph that the Respondent has wilfully disobeyed the order passed by this Hon'ble Court in P.I.L. No. 93 of 2009 and deserves to be punished under the provisions of the Contempt of Courts Act, 1971.

13] That the contempt committed by the Respondents is continuous and continuing day to day.

14] The Petitioner craves leave to add, alter or amend any of the foregoing grounds, if and when found necessary.

15] The Petitioner states that there is no delay or latches in filing the present petition. That the Petitioner issued contempt notice on 19<sup>th</sup> June 2014 and the Respondent even after receipt of the said notice did nothing to comply with the orders passed by this Hon'ble Court.

16] The Petitioner has not filed any other contempt petition either in this Hon'ble Court or in the Hon'ble Supreme Court of India for this cause of action.

17] The Petitioner and the Respondent are in Pune, and the cause of action has arisen within the appellate jurisdiction of this Hon'ble Court, hence, this Hon'ble Court has jurisdiction to entertain and decide this petition.

## **PRAYER**

THE PETITIONER ABOVE NAMED RESPECTFULLY PRAYS AS UNDER

A] That the Hon'ble Court in exercise of the powers under Contempt of Court Act, 1971 as also in exercise of the inherent powers vested in this Hon'ble Court by virtue of the provisions under Article 215 of the Constitution of India, may be pleased to declare and hold the Respondent guilty of civil Contempt of Court for having disobeyed the orders passed on 20 September 2013 in PIL No 93 of 2009 and be further pleased to punish the Respondent for such terms of simple imprisonment and/or fine of such amount as this Hon'ble Court may deem fit and proper.

B] That this Hon'ble Court be pleased to direct the Respondent to purge the contempt and to strictly comply with the directions issued by this Hon'ble Court in PIL No. 93 of 2009.

C] That the cost of the contempt petition may be awarded to the Petitioner.

D] And such further just and other reliefs or directions as the nature and circumstances of the case may require be passed.

AND FOR THIS ACT OF KINDNESS THE PETITIONER ABOVE NAMED  
SHALL DUTY BOUND EVER PRAY

Pune

Dated

Petitioner

## **Affidavit**

I, Maj. Gen. S.C.N. Jatar, Age 81 years, Occ.- Retired, residing at A-102, Neel Sadan, 1246 Sadashiv Peth, Pune 411 030 being President of Nagrik Chetna Manch, Non Government Organisation registered under the provisions of Bombay Public Charitable Trust Act and under Societies Registration Act having its office at Ganapati, Survey No. 9/2, Pradhikaran, Nigdi, Pune 411 044 solemnly state as under: -

I say that I am Petitioner in this contempt petition. I say that the contents of the petition and its annexures are true and correct as per my information and belief and are as per the instructions given by me to my Advocate. I say that legal submissions are based upon the advice given by my Advocate which I believe to be true and correct.

Solemnly affirmed at Pune on this      day of July 2014.

I KNOW AFFIANT

AFFIANT

ADVOCATE