

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO. 2565 OF 2019

Zoru Darayus Bhathena } Petitioner
versus
Tree Authority, Mumbai and Ors. } Respondents

WITH
PUBLIC INTEREST LITIGATION (L) NO. 86 OF 2019

Zoru Darayus Bhathena } Petitioner
versus
Water Resources Department, }
State of Maharashtra and Ors. } Respondents

WITH
WRIT PETITION NO. 1487 OF 2019

Vanashakti and Ors. } Petitioners
versus
Union of India and Ors. } Respondents

Ms.Sonal with Mr.Manoj Shirsat and Mr.Kainaz Irani
for the petitioners in WPL/2565/2019 and
PILL/86/2019.

Mr.Zaman Ali for the petitioners in WP/1487/2019.

Mr.Akshay Shinde for respondent-Mumbai Metro Rail
Corporation Limited in all petitions.

**CORAM :- S. C. DHARMADHIKARI &
A. K. MENON, JJ.**

DATED :- OCTOBER 5, 2019

P.C. :-

1. This Bench was specially constituted to consider a request made by the petitioners in Writ Petition (L) No. 2565 of 2019 along with Public Interest Litigation (L) No. 86 of 2019 and Writ Petition No.1487 of 2019.

2. The two praecipes moved are on the basis that all these petitions were rejected by a detailed judgment passed by a Division Bench presided over by the Hon'ble the Chief Justice on 4th October, 2019. The praecipe moved by one Pushpa Thapa-advocate for the petitioners in Writ Petition (L) No. 2565 of 2019 along with Public Interest Litigation (L) No. 86 of 2019 makes reference to the oral request made after the judgment was pronounced. The Division Bench dismissed these petitions by two different orders and at that stage, the petitioners prayed for a stay order, restraining the Mumbai Metro Rail Corporation Limited (MMRCL) from proceeding to clear the site by cutting the trees. The MMRCL is respondent no. 13 in Writ Petition No.1487 of 2019 and respondent no.4 in Public Interest Litigation (L) No.86 of 2019. It is stated to be a party also in Writ Petition (L) No. 2565 of 2019 (respondent no.2).

3. It is stated in the praecipe that the request was that no trees should be cut till the parties move the Hon'ble Supreme Court. This request is stated to be orally made and rejected. Certain oral observations are attributed to the Division Bench and further premised on that, today the matter is moved in Chambers before this specially constituted Bench to restrain the MMRCL from cutting the trees.

4. Ms.Sonal appearing for the original petitioners would submit that after the judgment was pronounced and the petitions were dismissed, the Bench expected the Corporation not to go ahead and cut the trees. That expectation is belied by the ground level situation and today, the position is that from the evening of 4th October, 2019 uptill now, the tree cutting is in progress at the site. The Corporation, therefore, should be restrained from cutting the trees until the parties move the Hon'ble Supreme Court for appropriate reliefs. The request is that the Hon'ble Supreme Court is closed for Dussehra vacation and will open only on 14th October, 2019. Until then, the restraint order be passed.

5. Mr.Akshay Shinde appearing for the MMRCL states that the request made and orally before the Bench after the order was pronounced has been rejected. He would submit that it is not proper to refer to any oral understanding in the court for that is neither reflected in the judgment and order nor is it in the record. Therefore, neither the oral application for stay is referred nor the oral understanding. In these circumstances, he would submit that this court should not grant any relief. He would also submit that bearing in mind the huge investment any delay in the project, the overriding public interest would suffer.

6. Having noted the rival contentions, we are of the firm opinion that the petitioners attempted to question the tree cutting at the site in not one, but two legal proceedings. The Division Bench has followed another order dated 25th October, 2018 rendered in the writ petitions, one of which was also by Mr.Zoru Darayus Bhathena. Now, in the second round, all the petitions are dismissed by the detailed judgments dated 4th October, 2019. Once all the substantive proceedings are dismissed, it would not be proper to pass any restraint order and merely on a praeceipe.

7. There is nothing on record to show that any request was made to stay the operation, implementation and enforcement of the judgment and order, nor any specific restraint was sought. We cannot proceed on any oral understanding. Merely because another Bench is constituted, it would not be proper to grant any relief. The nature of the relief is such that if it is granted, that would directly contravene the observations, findings and conclusions in the detailed judgment.

8. Hence, the request is refused.

(A.K.MENON, J.)

(S.C.DHARMADHIKARI, J.)