

A IN RE: FELLING OF TREES IN AAREY FOREST  
(MAHARASHTRA)

IA No. 68608 of 2023

In

B (Suo Moto Writ (Civil) No. 2 of 2019)

APRIL 17, 2023

**[DR. DHANANJAYA Y CHANDRACHUD, CJI,  
PAMIDIGHANTAM SRI NARASIMHA AND  
J. B. PARDIWALA, JJ.]**

C *Environment – Felling of trees – By order dated 29.11.2022, MMRCL was permitted to move the Tree Authority on its application for felling of 84 trees – On 02.01.2023, MMRCL, however, sought permission to cut 185 trees, without moving Supreme Court – On 15.03.2023, the Superintendent of Gardens and Tree Officer granted*  
D *permission for felling 124 trees and transplanting 53 trees, subject to the condition that 1533 trees would be planted on the property – The High Court held that propriety would require that trees shall not be felled in pursuance of the order dated 15.03.2023 until a clarification was sought from Supreme Court – Application for clarification filed in Supreme Court – Held: It was improper on the*  
E *part of MMRCL to move the Tree Authority for the felling of any trees in excess of 84 trees – If circumstances had transpired which led to a variation in the number of trees to be cut, the only correct course of action would have been to move Supreme Court – Now, any direction to stay permission granted on 15.03.2023 would bring*  
F *the public project to a standstill – Therefore, the previous order is modified by permitting MMRCL to act in compliance with the order dated 15.03.2023 – However, it would be necessary to penalize MMRCL for its conduct – MMRCL directed to deposit an amount of Rs. 10 lakhs with the conservator of forests – Conservator of Forests*  
G *to ensure all directions issued with regard to afforestation and for transplantation of trees are complied with and submit report – I.A. disposed of.*

CIVIL ORIGINAL JURISDICTION: IA No. 68608 of 2023 in  
Suo Moto Writ (Civil) No. 2 of 2019.

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Under Article 32 of The Constitution of India A  
By Courts Motion

Tushar Mehta, Shyam Divan, Gopal Sankaranarayan, Dhruv Mehta, Maninder Singh, C.U. Singh, Sr. Advs., Chirag Shah, Ms. Rukhmini Bobde, Ms. Soumya Priyadarshinee, Ankit Ambasta, Amit Kumar Shrivastava, Amlaan Kumar, Vishal Prasad, Ms. Pooja Dhar, Tushad Kakalia, Sudipto Sarkar, Ms. Aditi Gupta, Ashish Wad, Sandip Patil, Sidharth Mahajan, Ajeyo Sharma, Shyam Agarwal, M/s. J S Wad and Co, Siddharth Dharmadhikari, Aaditya Aniruddha Pande, Bharat Bagla, Sourav Singh, Shree Pal Singh, Ms. Anitha Shenoy, Ms. Srishti Agnihotri, Ms. Sanjana Thomas, Advs. for the Respondent. B C

The Judgment of the Court was delivered by

**DR. DHANANJAYA Y CHANDRACHUD, CJI**

1. Mumbai Metro Rail Corporation Limited<sup>1</sup> seeks a clarification of the order of this Court dated 29 November 2022. By the order of this Court, MMRCL was permitted to move the Tree Authority for felling 84 trees. MMRCL submits that 177 trees have to be felled or, as the case may be, transplanted for the Metro Car Shed Land at Aarey Colony admeasuring approximately 33 hectares for Mumbai Metro Line-3. Permission is hence sought to implement the permission which has been granted on 15 March 2023 by the Superintendent of Gardens of the Municipal Corporation of Greater Mumbai for felling 124 trees and transplanting 53 trees. D E

2. By the order of this Court dated 29 November 2022, an earlier order directing the preservation of the *status quo* on felling trees was modified, so as to permit MMRCL to move the Tree Authority on its application for felling 84 trees. Following the order of this Court, an application was initially moved on 19 December 2022 for permission to fell 84 trees. On 2 January 2023, MMRCL, however, sought permission to cut 185 trees, without moving this Court. F

3. By a communication dated 20 December 2022, the Deputy Superintendent of Gardens intimated the Deputy General Manager (Depot) of MMRCL that the site was jointly inspected by his staff, together with the representatives of MMRCL on 19 December 2022. Following G

<sup>1</sup> “MMRCL”

A the inspection, the Deputy Superintendent of Gardens sought compliance on the following aspects:

“1. Submit updated proposal for the current status of trees as per a fresh survey.

B 2. Mention missing/dead/fallen trees and also any new addition to the list of affected trees as a long period has lapsed since the last survey.

3. Number all such trees on the sites with black and white paint;

C 4. Submit details of land where the trees are to be proposed for transplantation and compensatory plantation.”

4. On 12 January 2023, the Superintendent of Gardens issued a public notice indicating that 185 trees would be affected of which 124 trees would be felled and 53 trees would be transplanted.

D 5. Since the action proposed was in excess of the 84 trees which were permitted to be felled by the order of this Court, a public interest litigation<sup>2</sup> was moved before the High Court of Judicature at Bombay. The Division Bench, by its order dated 9 March 2023, observed:

E “Public Notice has been issued by the Tree Authority. The Petitioner has already raised objection before the Tree Authority. The Petitioner can bring it to the notice of the Tree Authority, the order of the Apex Court. No final order has been passed by the Tree Authority. It is for the Tree Authority to consider whether those trees beyond 84 were shrubs or otherwise.”

F 6. On 15 March 2023, the Superintendent of Gardens and Tree Officer granted permission for felling 124 trees and transplanting 53 trees, subject to the condition that 1533 trees would be planted on the property. This led to the institution of another public interest litigation<sup>3</sup> before the High Court. The Division Bench, by its order dated 31 March 2023, observed and, in our view, correctly, that this Court had granted permission to move the Tree Authority only to the extent of 84 trees. G Hence, the permission which was granted in respect of 177 trees was beyond the permission granted by this Court on 29 November 2022. The High Court held that propriety would require that trees shall not be felled in pursuance of the order dated 15 March 2023 until a clarification

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<sup>2</sup>“Public Interest Litigation (L) No 2169 of 2023

H <sup>3</sup>Public Interest Litigation (L) No 8655 of 2023

was sought from this Court. It is in view of the above factual background, A  
that the application for clarification has been filed by MMRCL.

7. We have heard Mr Tushar Mehta, Solicitor General appearing on behalf of MMRCL, Mr Dhruv Mehta, senior counsel appearing on behalf of the Municipal Corporation, and Mr C U Singh and Mr Gopal Sankaranarayanan, senior counsel appearing on behalf of the respondents. B

8. At the outset, the Court must take notice of the fact that when the order dated 29 November 2022 was passed, it was on the specific request of MMRCL that it should be permitted to pursue its application before the Tree Authority for permission to fell 84 trees for the purpose of the work of the ramp. The Court modified the earlier order of *status quo* which held the field, to the above extent. If the number of trees that are required to be felled was in excess of the permission which was granted by this Court, to move the Tree Authority to fell 84 trees, propriety required that an application had to be moved before this Court for its permission and for modification of its order dated 29 November 2022. C  
Instead, it appears from the record that though initially the application was made for felling 84 trees, subsequently, a stand was adopted that actual number of trees would be in excess of what was originally envisaged. D

9. As a matter of fact, it would be necessary to refer to the affidavit which was filed by the Chief Project Manager of MMRCL before the High Court of Judicature at Bombay in which the following averments were incorporated: E

“24) In the aforesaid and such other relevant background of facts, in the humble submission of this Respondent, the number of trees that are required to be felled is an aspect which is incidental to the proposal which is pending for consideration before the first Respondent in respect of which the Hon’ble Supreme Court has granted liberty to the present Respondent to pursue, which is being done by the present Respondent. I therefore say that not permitting the answering Respondents to prosecute the present application in issue covering more number of trees over and above the number of trees incidentally mentioned in the aforesaid order of the Hon’ble Supreme court, in fact would amount to frustrating F  
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A                    the said order and/or preventing its implementation in its true letter and spirit.

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26) I hasten to state that if the contention of the Petitioner is accepted that will in fact amount to causing impediment in the effective implementation of the order of the Hon'ble Supreme Court. At this juncture, it also will be apposite to consider the well settled principle of law that the Judgment of the Hon'ble Supreme Court and/or of this Hon'ble Court cannot be read as a statute. I say that the Petitioner wants this Hon'ble Court to read the order of the Hon'ble Supreme Court as a statute, which is impermissible.”

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10. The above averments in the affidavit which was filed by MMRCL indicate that it was well aware of the fact that the order of this Court continued to operate. MMRCL sought to justify its application for felling of trees in excess of what was permitted by the specific directions of this Court. Such an exercise was clearly not contemplated in the order of this Court. We are constrained to observe that MMRCL has made an attempt to overreach the jurisdiction of this Court.

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11. The issue which, however, needs to be considered in the application for clarification is whether permission should be granted in terms of the order which has been passed by the Superintendent of Gardens.

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12. In the IA for clarification, it has been submitted that subsequent to the order of 29 November 2022, a joint inspection took place on 19 December 2022 between the officers of the Municipal Corporation and MMRCL since a period of approximately three years and ten months covering four monsoon seasons had elapsed from the date of the previous inspection which took place on 20 March 2019. It has been stated that in the course of the joint inspection, it was found that some trees were “missing/dead/fallen” and additional plants and trees had grown since the date of the previous inspection. Hence, it has been sought to be urged that the updated number of affected trees were estimated at 185, pursuant to which a public notice notice was issued by the Tree Authority on 12 January 2023.

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13. The Solicitor General, while adverting to the contents of the IA, also submitted that a compilation of relevant documents was placed on the record of this Court on 5 April 2023. A

14. On the other hand, it has been submitted by Mr C U Singh and Mr Gopal Sankaranarayanan that a survey was conducted in 2020 and, as a matter of fact, it was based on the survey that MMRCL had sought permission to prune a certain number of trees and to fell 84 trees. Senior counsel submitted that this Court permitted MMRCL to move the Tree Authority specifically with reference to the proposal for 84 trees. In other words, it has been urged before this Court that the fresh proposal which was made before the Tree Authority after the order of this Court dated 29 November 2022 was clearly not *bona fide* having due regard to the events which had transpired, resulting in the order of this Court. B C

15. It was improper on the part of MMRCL to move the Tree Authority for the felling of any trees in excess of 84 trees. If circumstances had transpired which led to a variation in the number of trees to be cut, the only correct course of action would have been to move this Court. We are, hence, of the view that it would be necessary for the Court to penalize MMRCL for its conduct. Having said that, the issue is as to whether the permission which has been granted on 15 March 2023 should be stayed by the Court, at the present stage. Any such direction will have the consequences of bringing the public project to a standstill. Such a course of action would not be desirable. As the Court noted in its previous order, substantial steps have already been taken by felling over 2000 trees for the purpose of the project. In this backdrop, we modify the previous order by permitting MMRCL to act in compliance with the order dated 15 March 2023. However, this shall be subject to the following directions: D E F

- (i) MMRCL shall, within a period of two weeks, deposit an amount of Rupees Ten Lakhs with the Conservator of Forests;
- (ii) The Conservator of Forests shall ensure that all directions which have been contained in the previous orders of the Tree Authority for afforestation have been duly complied with; G
- (iii) The Conservator of Forests shall submit a report before this Court indicating the status of compliance in regard to H

- A the directions which have been issued up-to-date for afforestation and for transplantation of trees; and
- (iv) In order to enable this Court to have objective assistance in regard to the compliance of the directions for afforestation, we request the Director of IIT Bombay to depute a team for the purpose of verifying compliance. A report shall accordingly be submitted before this Court within a period of four weeks. The costs, charges and expenses payable shall be borne by MMRCL.
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16. The IA is accordingly disposed of.

Ankit Gyan  
(Assisted by : Mahendra Yadav, LCRA)

IA disposed of.