

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. OF 2018

Preeti Sharma Menon

...Petitioner

*Versus*

Union of India& Ors.

...Respondents

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**CHALLENGE**

The present Writ Petition seeks to invoke Article 21 of the Constitution of India and thereby seeks a direction against Respondent No. 3 to desist from destroying the natural tree cover of Aarey Colony in Mumbai any further.

**SYNOPSIS**

<b>Sr. No.</b>	<b>Date</b>	<b>Event</b>	<b>Exhibit No.</b>	<b>Page No.</b>

**I. POINTS TO BE ARGUED**

Whether Respondent No. 3 is justified in cutting more than 100 trees in Aarey Colony for allied activities of Metro Car Shed (such as constructing ramps, approach roads) when the permission for cutting of trees for main activities of constructing metro car shed and a Metro Railway Station is yet to be granted?

**II. ACTS AND LAWS RELIED UPON**

1. Constitution of India, 1950
2. Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975

**III. AUTHORITIES AND CASE LAWS CITED**

At the time of arguments

Advocate for the Petitioners

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

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In the matter of Article 226 of the Constitution of  
India, 1950

And

In the matter of Articles 21, 47, 48-A and 51-  
A(g) of the Constitution of India, 1950

And

In the matter of Maharashtra (Urban Areas)  
Protection and Preservation of Trees Act, 1975

1) Preeti Sharma Menon )  
Age 49, Indian National )  
having her Address at 3/1 Krishna Baug, )  
R C Marg, Chembur, )  
Mumbai – 400 071 )                      ... Petitioner

*Versus*

1) Union of India, )  
through the Secretary, )  
Ministry of Environment, Forests and Climate Change,) )  
Indira Parayvaran Bhava, Aliganj, )  
Jor Bagh Road, New Delhi-110003. )

2) State of Maharashtra, through )  
The Secretary, Environment Department )  
Government of Maharashtra, having its office a t )

New Administrative Building, 15th Floor, Madam )  
Cama Road, Mantralaya, Mumbai 400032 )

3) Mumbai Metro Rail Corporation Limited through )  
Its Director having office address at Namttri Building )  
Bandra-Kurla Complex, Behind MMRDA. )  
Bandra East. Mumbai -400051 )

4) The Municipal Corporation of Greater Mumbai, )  
Through The Municipal Commissioner )  
having his office at MCGM Headquarters, )  
Palika Bhavan, Opp CST Station, Mumbai – 400 001 )

...Respondents

**TO,**

**THE HON'BLE CHIEF JUSTICE**

**AND OTHER PUISNE JUDGES OF**

**THIS HON'BLE COURT**

**THE HUMBLE PETITION OF THE PETITIONERS**

**ABOVENAMED**

**MOST RESPECTFULLY SHEWETH:**

1. The Petitioner No. 1 is a social activist and an anti-corruption crusader working for the betterment of society since the many years.
2. The Respondent No.1 is the Secretary, Ministry of Environment and Forests and Climate Change and is responsible for identifying, preserving and protecting the environment of the country. Respondent No. 2 is the Secretary, Environment

department of State of Maharashtra and is responsible for protection of the Environment of the State of Maharashtra. Respondent No. 3 is a corporation engaged in the Business of Urban Transportation and has undertaken the Metro 3 Underground Metro Rail project in Mumbai. Respondent number 4 is the Municipal Corporation of Greater Mumbai and responsible for protecting the tree cover of Mumbai city and also sanctioning tree felling proposals.

3. The present Writ Petition seeks to invoke Article 21 of the Constitution of India and thereby seeks a direction against Respondent No. 3 to desist from destroying the natural tree cover of Aarey Colony in Mumbai any further.

#### **FACTS IN BRIEF**

4. Aarey Colony is situated in the Northern Suburbs of Mumbai and is known for its lush green cover with tall trees, grasslands and rocky hills. This area is also popular among the citizens and is used for nature walks, exercise, family picnics and a fresh air zone. There are cattle sheds and many units are engaged in the Business of Dairy farming in the region.
5. In the year 2014, it was publicly known that Respondent NO. 3 had planned to undertake the Metro 3 Corridor project. The route proposed was Colaba in South Mumbai to SEEPZ in Andheri. However for the purpose of real estate development in the nearby areas, the line was extended into the Green Zone called Aarey Colony and a Metro Service Station, also called the Metro Yard/Shed, alongwith a railway Station was proposed inside Aarey. Further the project of the service centre envisaged a loss of close to 3000 trees at one location alone in Prajapur Pada CTS Nos. 9, 10, 11, 12, 13 on an area of 33 ha of land. Alarmed by the drastic huge loss of trees, citizens campaigned against the location of the yard inside the Forested area. A PIL (L) No. 138 of 2014 was filed in the Hon'ble High Court of Bombay by citizens to save the trees which

was dismissed by this Hon`ble court *vide* order dated 08.01.2015 on the grounds that since the Tree Authority which was the sanctioning authority for tree felling had not given any permissions to cut the trees. The Hon`ble court held that the said petition was premature. Copy of the said order dated 08.01.2015 is annexed hereto as **EXHIBIT – A**.

6. The Petitioner submits that as per her information, another Original Application (being O.A. No. 34 of 2015) was filed by a Public Trust, Vanashakti in the Hon`ble National Green Tribunal in the year 2015. The Hon`ble Tribunal had ordered a Status Quo to be maintained inside the Aarey Colony. The said Application was disposed off on 20/09/2018 without any decision and the NGT had directed the Applicants therein to withdraw the OA. The reason given was NGT's lack of Jurisdiction to declare any area as Forest, which was one of the prayers of the Applicants in the matter.
7. Subsequently on 26<sup>th</sup> September 2018, the Petitioner chanced upon an advertisement in the newspaper DNA which stated that the public was invited to give objections or suggestions to the proposed cutting of 2700 trees inside Aarey colony to locate or construct the Metro Service Station (Car Shed). Attached as **EXHIBIT – B** hereto is a copy of the said Advertisement.
8. The Petitioner respectfully submits that on 29<sup>th</sup> September 2018, while driving past Aarey Colony she happened to see massive trees being felled. The site was near Unit number 19 inside Aarey on the Aarey Marol Road. On making enquiries, she learnt that the approach ramp and road to the car shed were being constructed and hence the trees were seen as an obstruction to be removed. It was seen that more than 100 huge trees were cut and many more were being surveyed. It is the estimation of the petitioner that almost 400 or more full

growntrees are being slated for chopping. Annexed hereto as **EXHIBIT- C** are photos taken on the site by concerned citizens who were also present at the site.

9. The Petitioner respectfully submits that this act is reckless and permanently damamging to the Environment. Further more it is also seen as being illegal since the purpose of entering Aarey or extending the Metro 3 line up to Aarey is to create a Metro Station and Car Shed inside it. So far, no tree felling permission has been granted to Respondent No. 3 for its project of Metro Station and the Metro car shed. It is mandatory that all permissions needed for such an activity are obtained before doing any activity on the ground. The position today is the same as it was in 2015 when the Hon`ble High Court of Bombay observed that no permissions were given by the Tree Authority. When the main project itself has not received the required sanction, it is extremely reckless on the part of Respondent No. 3 to cut down such huge heritage trees.
10. The Petitioner has sent representations to the respondents seeking their intervention. However owing to the alarming emergency of the situation, the Petitioner is forced to move this Hon`ble Court. Copy of the representation is hereto annexed as **EXHIBIT – D**.
11. The petitioners respectfully submit that the Constitution of India places an unshirkable responsibilty on every citizen to protect the flora and fauna of the nation. Further more the principles of Sustainable Development imply that needless damange to the environment must be avoided.
12. The Petitioner has not filed any other Petition either before this Hon`ble Court or before any other court in India with regard to the subject matter of this Petition.



13. The Petitioner does not have any civil, criminal or revenue litigation, which has or could have a legal nexus with the issues involved in the present Writ Petition.

14. The Petitioner has no other alternative or equally efficacious remedy available and the reliefs prayed for in the present Petition, if granted, would be complete.

15. The Petitioner resides in Mumbai. The Respondents have their offices in Maharashtra, and the area that forms the subject matter of the present Petition is situated in Mumbai Suburban District in Maharashtra. This Hon'ble Court therefore has jurisdiction under Article 226 to entertain and try the present Petition on the Original Side.

16. The Petitioners will rely upon documents, a list whereof is annexed hereto.

17. The Petitioner has not received any caveat from the Respondents as on date of filing of this Petition.

18. The Petitioners have paid the fixed Court fee of Rs. \_\_\_\_\_ ( /-.)

### **GROUND**

19. Being aggrieved by the acts of omissions and commissions on the part of the Respondents, the Petitioners wish to approach this Hon'ble Court on the following grounds:

- a) That the Public hearing for the tree cutting for the project's main purpose i.e the Metro Service Station or Car Shed is yet to be conducted. The date for the said hearing is on 10.10.2018.

- b) That the permissions needed to set up the car shed involves sanction from the Tree Authority. Without the felling of the trees, the Metro Station and Car Shed cannot be built.
- c) The work undertaken by the respondent before the permissions needed for the main activity are obtained is in violation of the Precautionary Principle in matters concerning environment. If the permissions are denied, there will be great permanent loss to the environment which is avoidable at this stage.
- d) That no harm will be caused since this facility will be needed 3 years from now after the 33 km tunnelling has been completed.
- e) That Article 48-A of the Constitution of India lays down that it is the duty of the State to make an endeavour to protect and improve environment and to safeguard the forest. The land covered by Aarey is covered by dense tree cover.
- f) That the Hon'ble Supreme Court in *State of Gujarat v. Mirzapur Moti Kureshi Kassab Jamat*, (2005) 8 SCC 534 held as under:

*“Article 48-A deals with “environment, forests and wildlife”. These three subjects have been dealt with in one article for the simple reason that the three are interrelated. Protection and improvement of environment is necessary for safeguarding forests and wildlife, which in turn protect and improve the environment. Forests and wildlife are clearly interrelated and interdependent. They protect each other.”*

- g) That the Hon'ble Supreme Court in the *Research Foundation for Science Technology and Ecology Vs Union of India and ors* (W.P. No. 657 of

1995)held that the right to information and community participation for protection of the environment, forest and human health is a right that flows from Article 21.

- h) That the Hon'ble Supreme Court in *Orissa Mining Corporation vs. Ministry of Environment & Forests [2013] 6 S.C.R. 881* as well as in *Deepak Kumar &Ors vs. the State of Haryana &Ors.*has decried the attempt of authorities to grant respective environmental clearances/permissions in a piecemeal manner.
- i) That the doctrine of sustainable development has been well recognised by Hon'ble Supreme Court in *Indian Council for Enviro-Legal Action v. Union of India [1996 (5) SCC 281]* where Their Lordships held:

*“While economic development should not be allowed to take place at the cost of ecology or by causing widespread environment destruction and violation; at the same time, the necessity to preserve ecology and environment should not hamper economic and other developments. Both development and environment must go hand in hand, in other words, there should not be development at the cost of environment and vice versa, but there should be development while taking due care and ensuring the protection of environment.”*

## **PRAYERS**

20. In the aforesaid premise, the Petitioner therefore humbly prays that:

- a) That this Hon'ble Court be pleased to issue a writ of Mandamus and/or any other writ or order or direction in the nature of Mandamus directing Respondent No. 3 to stop the indiscriminate premature felling of Trees inside Aarey colony

forthwith till such time that all permissions (including tree felling permissions) have been obtained to construct metro car shed/metro station.

- b) That this Hon'ble Court be pleased to issue a writ of Mandamus and/or any other writ or order or direction in the nature of Mandamus directing Respondents or their agents/officers/contractors or other party to not cut any trees in Aarey Colony pending approval of permissions for tree cutting inside the Main Car Shed facility.
- c) That pending hearing and final disposal of the Petition, this Hon'ble Court be pleased to pass an order directing Respondents or their agents/officers and any other party to not cut any trees in Aarey Colony till such time that all permissions (including tree felling permissions) have been obtained to construct the main metro car shed/metro station in Aarey.
- d) For ad-interim reliefs in terms of prayer (c) above.
- e) For costs of the petition;
- f) For such further and other reliefs as this Hon'ble Court may deem fit and proper in the nature and circumstances of the present case.

Petition drawn by

Advocate for Petitioners

Petitioner No.1

**VERIFICATION**

I, Ms Preeti Sharma Menon, age 49 years, Petitioner herein, residing at 3/1 Krishna Baug, RC Marg, Chembur Mumbai 400071 Marg, Bhandup Village (East), Mumbai - 400 042 do hereby state and solemnly declare that what is stated in para no. 1 to 18 is true to my own knowledge and what is stated in remaining paras in 19 to 20 is stated on information and belief and I believe the same to be true.

Solemnly declared at Mumbai )

On this day of October, 2018 ) Petitioner

Identified by me

Advocates for Petitioners

Before me

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

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**AFFIDAVIT IN SUPPORT OF THE**  
**PRESENT PETITION**

I, Ms Preeti Sharma Menon, age 49 years, Petitioner herein, residing at 3/1 Krishna Baug, RC Marg, Chembur Mumbai 400071 and working as self-employed, do hereby state on solemn affirmation as under:

1. I say that I have filed the above Petition on the facts set out and the reliefs more specifically set out in the Petition. I repeat, reiterate and adopt each and every fact, submission and grounds relied in the Petition as if the same were set out herein and submit that the same be treated as a part of this Affidavit. I crave leave to refer to and rely upon the Petition as and when necessary.
2. I say and submit that if the reliefs sought in the Petition are not granted grave irreparable loss and injury will be caused to the public at large. However in the event the same are granted no loss, harm or injury will be caused to the Respondents.
3. I say and submit that the Petitioner has no personal or private interest in the subject matter of the Petition and is filing the same for the benefit of the public at large. The Petitioner submits that the present Petition is filed to ensure that the

Respondents take measures that are necessary to reduce the environmental damage caused due to reckless chopping of trees.

4. I undertake to pay the cost if directed by this Hon'ble Court in the event the present Petition is found to be frivolous, motivated for reasons other than those mentioned in the Petition or filed for extraneous consideration.
5. I say that the PAN CARD No. of the Petitioner is \_\_\_\_\_ and her email ID is \_\_\_\_\_@gmail.com. The Petitioner submits that her annual income for the current financial year is Rs. \_\_\_\_\_/00/- only.
6. In view of the above, I therefore pray that the present Petition be made absolute with ad-interim reliefs in terms of prayer clauses ( ) and ( ) of the Petition.

Solemnly affirmed at Mumbai \_\_\_\_\_ )

Dated this \_\_\_\_ day of October, 2018 \_\_\_\_\_ ) Petitioner

Identified by me

Advocate for the Petitioner

Before me





**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

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**MEMORANDUM OF REGISTERED ADDRESS**

Priti Sharma Menon

C/ O

**ADVOCATE'S CONTACT DETAILS**

Advocate for the Petitioner

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

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**ADVOCATE FOR PETITIONER**

Office Notes. Office Memorandum of Coram Appearance Court Order or Direction and Prothonotary Orders	Court's Order or Judge's Order
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Office Notes. Office Memorandum of Coram Appearance  
Court Order or Direction and Prothonotary Orders

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Judge's Order

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...Respondents

To,

Prothonotary & Senior Master,

High Court, O.O.C.J.,

Mumbai, 400 001

Sir,

ADVOCATE'S CERTIFICATE

We \_\_\_\_\_ Advocates for the Petitioner do hereby certify that the present Writ Petition is required to be placed before the Division Bench as per the amended Rule 636 (I)(b) of the Bombay High Court, O.S. Rules. Therefore the Writ Petition is required to be placed before the Division Bench.

Dated this    day of October, 2018

Advocates for the Petitioner

**IN THE HIGH COURT OF  
JUDICATURE AT BOMBAY  
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**WRIT PETITION**

Dated this      day of October, 2018

**ADVOCATE'S DETAILS**