

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO. 2565 OF 2019

Zoru Darayus Bhathena
Age-44 years, Occ. - Business,
501, Vijay Deep, Plot No. 102, 10th Road,
Khar W, Mumbai – 400 052 .. Petitioner

Vs.

1. Tree Authority, Mumbai
MCGM, Mahapalika Marg,
Mumbai-01
2. Mumbai Metro Rail Corporation Ltd.
Plot R-13, E Block, BKC, Mumbai-51.
3. State of Maharashtra
Through office of the Government Pleader
Bombay High Court, Mumbai-400 001 .. Respondents

Mr. Janak Dwarkadas, Senior Advocate a/w. Ms. Sonal and Ms. Rishika Harish i/b Pushpa Thapa for the Petitioner.

Mr. Aspi Chinoy, Senior Advocate and Mr. Ravi Kadam, Senior Advocate a/w. Mr. Ashish Kamat, Ms. Aruna Savla, Smt. Vidya Gharpur, Smt. S. M. Modle and Ms. K. H. Mastakar for Respondent No.1- MCGM.

Mr. Ashutosh Kumbhakoni, Advocate General i/b Akshay Shinde for Respondent No.2.

Mr. Ashutosh Kumbhakoni, Advocate General a/w. Ms. Geeta Shastri, Addl. Govt. Pleader for Respondent No.3-State.

WITH
WRIT PETITION NO.2410 OF 2019

Shri. Yashwant Kamlakar Jadhav
Age: 56 years, Occu: BMC Corporator
71/74, Bilakhadi Chambers, 2nd floor,
Saint Mary Road, Mazgaon Tadwadi
Mumbai 400010 ..Petitioner

Versus

1. Tree Authority of the Municipal
Corporation of Greater Mumbai
MCGM Headquarters, 1, Mahapalika
Marg, Mumbai 400001
2. The Municipal Corporation of Greater
Mumbai, Through the Municipal
Commissioner,
MCGM Headquarters, 1, Mahapalika
Marg, Mumbai 400001 ..Respondents

Mr. Rakesh Kumar Singh, Advocate for the Petitioner.
Mr. Aspi Chinoy, Senior Advocate a/w Ms. Aruna Savla, Smt. Vidya
Gharpur, Smt. S. M. Modle and Ms. K. H. Mastakar, Advocates for
Respondent - MCGM.

**CORAM: PRADEEP NANDRAJOG, CJ. &
SMT.BHARATI DANGRE, J.**

RESERVED ON : OCTOBER 01, 2019

PRONOUNCED ON : OCTOBER 04, 2019

JUDGMENT [PER PRADEEP NANDRAJOG, CJ.] :

1. The two captioned petitions are being disposed of by a singular order because in both petitions the challenge is to the resolution dated 29th August 2019 passed by the Tree Authority Mumbai. The Petitioner in Writ Petition No. 2410/2019 has prayed as under:-

“(a) that this Honourable Court be pleased to issue an appropriate writ, order or direction under Article 226 of the Constitution of India and call for the papers and proceedings relating to the Resolution dated 29.08.2019 annexed and marked at Exhibit-A to the petition passed by Respondent No.1 authority and after examining the legality and propriety thereof be pleased to quash the same.”

2. The Petitioner in Writ Petition (L) No. 2565/2019 has prayed as under:-

“(a) that this Honourable Court be pleased to issue an appropriate writ, order or direction under Article 226 of the Constitution of India and call for the papers and proceedings relating to the Impugned Resolution dated 29.08.2019, as recorded in the Minutes of Meeting annexed and marked at Exhibit-C to the petition, passed by Respondent No.1, approving the Respondent No.2’s proposal to remove 2646 trees at Aarey (2185 cut & 461 transplant) and after examining the legality and propriety thereof be pleased to quash the same”

3. The Maharashtra (Urban Areas) Protection and Preservation of Trees Act 1975 requires, vide Section 3 thereof, a Tree Authority to be constituted and for the area comprising Municipal Corporation of Greater Mumbai the authority has been constituted comprising 19 members: 13 being Corporators and 5 nominated Expert and 1 Municipal Commissioner who is the Chairperson of the Tree Authority. The duties and functions of the Tree Authority are as per Section 7 of the Trees Act, 1975. As per the said Act if large number of trees have to be felled the procedure to be followed is that the persons/body desirous of felling the trees has to make an application to the Tree Officer who has to visit the site and identify the trees proposed to be felled and prominently display on the trees that permission has been sought to fell the tree. The Tree Officer has also to publish a notice in the locality where the tree is standing. Objections if any received have to be considered by the Tree Officer and the proposal prepared by the Tree Officer has to be placed before the Tree Authority for a decision to be taken.

4. In the decision dated 19th July 2019 disposing of *PIL (L) No. 60/2019 Zoru Darayus Bhathena Vs. Tree Authority, Mumbai* noting the object of the Trees Act, 1975 it was observed that the object of nominated Experts as members of the Tree Authority was to enrich the

decisions by the Tree Authority after taking advantage of the experience of the Expert Members. It was observed that the responsibility of the Expert Members was to guide the other Members of the Tree Authority and thus it was directed that it would be advisable that Expert Members give their in-puts in writing for the reason scientific in-puts cannot be properly understood by way of oral suggestions. It was directed that in its decision the Tree Authority should record the discussion on the in-puts, if any, given by the Expert Members so that the features of an informed decision were self-evident. The reason being, though an administrative decision is taken by the Tree Authority, the same is amenable to the writ jurisdiction of a Court and the law was well settled: Even an administrative decision must contain brief reasons showing that the decision making authority has come to grips with the issue raised and with due application of mind has reached the conclusion.

5. In the decision reported as *1997 (1) SCC 388 M.C.Mehta Vs. Kamal Nath* the public trust doctrine was restated by the Supreme Court: The State being a trustee of all natural resources which were meant for common good of the citizens of this country. Though, concerning administrative decisions the law is that a Writ Court would focus on the decision making process and not the decision; pertaining to the merits of a decision unless unreasonableness of the kind

popularly known as *Wednesbury's* unreasonableness was to be found, the administrative decision would not be interdicted. But pertaining to issues of environment, in the decision reported as *(2006) 3 SCC 549 Intellectual Form Vs. State of Andhra Pradesh* the Supreme Court held that where an issue relates to a resource held by the State as a trustee, a higher degree of judicial scrutiny of any action of the Government would be warranted. In the decision reported as *2019 SCC OnLine 441 Hanuman Laxman Aroskar Vs. U.O.I.* the Supreme Court held that vegetational cover must be taken seriously and there should be no lacuna in regard to disclosures and appraisals on this aspect of the matter. In the decision reported as *(2006) 3 SCC 208 S.N.Chandrashekar & Ors. Vs. State of Karnataka & Ors.* the Supreme Court cautioned the administrative authorities not to pose wrong questions for the reason, wrong questions result in wrong answers.

6. We have noted aforesaid opinions for the reason during the hearing of the Writ Petitions learned Senior Counsel Shri. Janak Dwarkadas had relied upon them and learned Advocate General and learned Senior Counsel Shri. Aspi Chinoy had not disputed the principles of law laid down as the guiding star for this Court while deciding the two Writ Petitions.

7. The facts are also not in dispute. On 21st July 2017 Mumbai

Metro Rail Corporation Ltd. (“MMRCL”) applied for permission to fell trees at Aarey on a plot of land ad-measuring 33 hectare reserved in the Development Plan for construction of a Metro Car Shed. On 26th September 2018 the Tree Officer, after visiting the site and identifying the trees proposed to be felled and affixing the notice on each tree, issued the public notice to conduct a public hearing on 10th October 2018. The public notice was that 2238 trees were proposed to be cut and 464 trees were to be transplanted. Large number of written objections were filed OnLine and the number is approximately one lakh. An issue was raised in *W.P. (L) No.3411/2018 Priti Sharma Menon Vs. U.O.I.* which was decided on 11th October 2018. Therefore, the Tree Officer republished the notice on 30th June 2019 notifying that the public hearing would be held on 8th July 2019 notifying this time that there were 3691 trees on the plot where the Metro Car Depot was proposed to be established by MMRCL; 2702 trees would be affected : 2238 to be felled and 464 to be transplanted. Once again, approximately one lakh objections were received. Considering the objections MMRCL reduced the number of trees to be transplanted to 461 and the number of trees to be felled to 2185. Thus, 56 trees were saved. At the public hearing the view of the citizens were thus taken qua 2646 trees i.e. 2185 to be felled and 461 to be transplanted.

8. The proposal of MMRCL was tabled before the Tree Authority and the members of the Tree Authority decided to visit the site on 4th July 2019. Two expert Members out of the five visited the site along with the Corporator Members and gained personal knowledge of the location of the trees as well as the species of the trees; broadly classified as native trees i.e. trees naturally found in the forest and ornamental trees i.e. the trees which were planted in the forest area.

9. The objections received from the public were forwarded by the Tree Officer to MMRCL on 17th July 2019. On 10th August 2019 the Members of the Tree Authority once again visited the site and on 13th August 2019, three experts : Dr. Deepak Apte, Dr. Sashirekha Sureshkumar and Dr. Chandrakant Salunkhe submitted, by way of their opinion, their views to the Municipal Secretary, MCGM. Since arguments turned on said communication, we note the same. It reads as under:

“Date : 13th August 2019.

*To,
The Municipal Secretary,
MCGM, Mumbai*

Sub : Report on Mumbai Metro Line-3 (Colaba-Bandra-SEEPZ) car depot at Aarey colony regarding Tree removal proposal of affected trees in car depot layout reg.

Observations recorded by following members of expert committee of Tree Authority based on short visit made to

Mumbai Metro Line-3 (Colaba-Bandra-SEEPZ) car depot at Aarey colony on 10th August 2019 for consideration by the Committee.

Members of the expert committee did not have adequate time to examine all tree details as given in the inventory and thus we are only listing our observations. These are by no means final recommendations.

Observations of the small portion of the above site visited are as follows:

i. Terminalia bellerica/Beheda tree found on site seems to be very old and need to be retained as a unique/heritage tree as these trees are presently harboring many orchids on it.

ii. Adenonia digitata tree is recommended for cutting in the inventory but it is long living tree and responds well to transplanting hence can be put under transplanting category.

iii. All trees (e.g. Sterculia alata) along the Aarey-Powai road/along the boundary wall that are not falling in the construction area and are very tall may be retained. These trees are acting as a green belt.

iv. It is also observed that there are many indigenous trees found in construction area that also can be preserved by either retaining or transplanting. Further any tree above 50 ft height required to be retained.

v. There are so many discrepancies found in the tree inventory given/data collected during 2012, 2014 and 2017 in the above said site, namely 1652, 2298 and 3691 respectively. Similarly there is lot of confusion in the common name/scientific names of the trees.”

10. On 17th August 2019 Mr. Subhash K. Patne, another expert nominated on the Tree Authority submitted his views in writing. Being relevant for our opinion we note the same. It reads as under:

“17.08.2019

To,
The Chairman,
Tree Authority Committee,
M.C.G.M.
Mumbai.

Ref. : Proposal No.2 for Metro 3 Car Shed.

This refers to our meeting held on Tuesday 13th Aug-2019, regards to the above subject matter, I would like to advise our Tree Authority Committee as under:

- 1. As per the survey of Trees for the Proposal No.2 carried out there are existing 3691 nos trees which I consider as 100% green cover of the area.*
- 2. Out of Total nos of Trees to be retained are 989 nos for which I appreciated the decision of the tree authority & 464 nos trees are to be transplanted in a perfect technical manner to get maximum survival.*
- 3. Trees to cut down are 2238 nos which I feel is too high which is 61% of the green-cover.*

4. *Out of trees to cut down, there are 623 nos Subabul Trees which can be transplanted with 100% survival rate. This would bring down the nos of trees to be cut down as well as percentage of Green-cover removal.*

5. *Out of 2238 nos trees to cut down there are 30 nos of trees have already fallen down & 26 nos are already dead.*

6. *To recover the loss of Green-cover the client or the Management of Metro No.3 are prepared to plant 6 nos of trees for cutting of each tree which is an excellent proposal, which means almost 6 times new green cover would be developed for the proposed loss of green-cover.*

7. *I recommend to plant fast growing trees & the species can be selected so that they also could be transplanted even after 25 years. This is in the interest of saving Green-cover as much as we can.*

8. *The species for the new plantation to be selected for tree cutting or non-survival of trees transplanted should grow to the height of 20ft to 25ft & should form a big & very thick jungle within 3 years, even before the completion of the Metro 3 project.*

9. *For new plantation the technical norms could be laid out & maintain the plantation for minimum 3 years to establish plantation on its own. For this, I advise you to outsource the organisation which is technically well equipped for the successful of the project of tree transplantation.*

10. *I hope you would appreciate my recommendations & I offer myself to help our Garden Dept. maximum possible for the success of the various projects in future during my tenure.*

11. I recommend also for any other projects wherein there is a loss of Green-cover which is to be recovered could be followed with the above norms & I feel that our future M.C.G.M. Tree Authority Committee after few years will discuss about only Tree Transplantation & not Tree cutting. This would surely enhance the micro-climatic conditions in the region thus helping in reducing the Global Warming as well.”

11. Thus, in compliance with the decision dated 19th July 2019 in PIL (L) No. 60/2019 the written opinion of the Experts was made available to the members of the Tree Authority.

12. A meeting of the Tree Authority was scheduled to be held on 29th August 2019. A notice dated 23rd August 2019 was drawn up; to be served upon the members of the Tree Authority and along there with a compilation of documents spanning 986 pages was appended. The first 622 pages contain a list of 3691 trees which were found on the 33 hectare land on which the Metro Car Shed was proposed to be established, with the species thereof recorded.

13. A perusal of the 986 pages compilation, on the subject of grant of permission for felling of trees stated to be creating obstruction in the proposed construction of the Metro Car Depot located in Aarey Colony in K/East Division, Andheri reveals that after listing the 3691 trees it contains a reference to the proposal received in furtherance of Section 8

of the Maharashtra Urban Are (Trees) Protection and Preservation Act, 1975, from the Mumbai Metro Rail Corporation to fell 2238 trees and to transplant 464 trees i.e. 989 trees were saved by the project proponent on its own initiative. It records that on receipt of the said proposal, the first site inspection was carried out by the Members of the Tree Authority on 4th July 2019 and it was noted that 3691 trees were standing at the site, out of which 2702 trees were causing obstruction in the construction of the proposed car depot. 2238 trees came to be identified as the one which are required to be cut and 464 trees were identified as the one's to be transplanted. The compilation of documents contain a chart enlisting the reference number of 3691 trees, their location and botanical name, the width and the height of the tree and the decision taken by the Tree Authority as to whether the Tree is required to be cut/retained/transplanted. The compilation/proposal makes a reference to the objections received at two stages. It is set out that in terms of the Trees Act of 1975, notice came to be issued in the local newspaper on 29th September 2018 and it was also pasted on all the trees proposed to be cut. Pursuant to the said notice, hearing was held in the office of the Garden Superintendent on 10th October 2018 and there is a reference to 20 objections, raised during the said meeting. The proposal then makes a reference to the notice published in the local newspaper on 30th June 2019, pursuant to the orders passed by this High Court, informing that

a hearing is scheduled in the office of MMRDA on 8th July 2019 under the Chairmanship of the Deputy Commissioner (Zone-III). The objection raised during the hearing are also enlisted and it broadly make reference to the objection of the present petitioner i.e. Zoru Bhatena. The individual objections as well as the objections raised by the representative of the Tribals residing in the Aarey Colony, representative of the Tribal Women as well as the representative of Bombay City are specifically referred to. It also contains the objections received through e-mail and raised by the public at large during the public hearing which was held on 8th July 2019. The compilation/proposal also makes a reference to the response received from the MMRCL as against the specific objections raised opposing the proposal of the MMRCL regarding permission to cut the trees. A exhaustive reference is made to the site inspection conducted on 4th July 2019 and the Minutes of the proceedings of Inspection dated 20th August 2019 are reproduced in detail. It records that the under noted Members of the Tree Authority were present for inspection on 20th August, 2019 viz. Shri Yeshwant Jadhav, Chairman, Standing Committee, Shri Umesh Mane, Chairman, Market and Garden Committee, Smt.Alka Kelkar, Smt.Suvarna Sahdev Karanje, Riddhi Bhaskar, Abdul Rashid Kaptan Malik, Shri Abhijit Samant, Shri Jagdish Kutty Amin, Sushma Kamlesh Lad, Shri Subhash K. Patne and Dr.Chandrakant Salunkhe i.e. total 11 in number. It is also recorded

that the Garden Superintendent and Tree Officer, Deputy Garden Superintendent, the officials of MMRCA were also present during the site visit. It is recorded that at the outset of the meeting at site, the Chief Project Proponent highlighted the details of the Project and updated the members about the proposal which covered 3691 trees and also figured out as to which trees are to be cut, rehabilitated and those which can be retained. It was also informed that during the inspection the project proponent had informed that it had already planted 20900 trees in the Sanjay Gandhi National Forest and 11400 trees are yet to be planted. Some discussion also took place about the pending proceedings and the expert members of the Tree Authority highlighted their concern and suggested the steps to save as many trees as were possible. It records that the project proponent also made a reference to the objections received and asserted that 2238 trees are required to be cut since they are causing obstruction in the proposed work. Shri Kaptan Malik a member of the Tree Authority demanded that the trees to be cut should be clearly stated and actually shown. Shri Yeshwant Jadhav posed a specific question as to whether the big trees like Banyan and Peepal can be transplanted and on this query being raised, Shri Subhash Patne, an expert member, informed that such trees can be transplanted with a 100% success rate and also expressed that only trees like Subabul should not be transplanted. The members thereafter agreed that the necessary decision would be taken during the course of

the meeting. The proposal also contains a reference to the Resolution No.30 passed in the meeting of the Tree Authority held on 21st August 2019 and the Commissioner makes a detail narration of the objections, the stand of the MMRCL and a reference to the site visit conducted by members of the Tree Authority. The decision which was taken for retaining 52 trees which were initially proposed to be cut on the issues raised by the Members of the Tree Authority also finds place in the ultimate paragraph of the proposal. It also mentions that decisions taken to retain three trees which were proposed to be transplanted and one Behada tree in respect of which an objection was raised by the Members of the Tree Authority on 13th August, 2019. With the said modification, the fresh proposal for consideration before the Tree Authority was restricted to cutting of 2188 trees and transplantation of 461 trees by retaining 1045 trees. The said proposal made under Section 8(3)(c) of the Maharashtra Urban Are (Trees) Protection and Preservation Act, 1975 came to be forwarded for circulation and to be considered in the meeting of the Tree Authority to be held on 29th August 2019.

14. It is in this backdrop of the facts that we proceed to note the contentions advanced at the hearing of the two writ petitions. But, before that we would like to note that the writ petition filed by Yashwant K.Jadhav is sheer voyagerism. It is sans any material

particulars and bereft of concise statement of material facts concerning the meeting of the Tree Authority held on 29th August 2019 which records that 17 out of 19 members were present at the meeting. 13 out of 15 Corporators, 3 out of 5 nominated experts and the Municipal Commissioner. During course of the meeting, 2 corporator members namely Mr. Kutty and Mrs. Rai walked out before the proposal could be put to vote and thus only 15 remained. Request made by Yashwant Jadhav to adjourn the meeting was rejected by 6 votes : 8 votes and the proposal was put to vote. 8 votes were to accord approval to fell or transplant 2646 trees. 8 votes were to reject the proposal. In the petition it is pleaded by Shri. Yashwant Jadhav that *on or about 27.8.2019* he received a proposal for the meeting to be held on 28th August 2019 at 12 Noon. The statement in the petition is false for the reason we had summoned the record of MCGM at the hearing held on 1st October 2019 and the same revealed that the notices were dispatched through a Special Messenger at 8.30 p.m. on 23rd August 2019. Thus, his grievance and the grievance in the other petition that members of the Tree Authority were given inadequate time because the documents with the notice of the meeting spanned 986 pages is patently false. As noted above, 622 pages out of 986 pages were simply a list of the number of trees with their details on the 33 hectare land. Thus, the number of pages to be read was only 364. Surely, from 24th till 28th August 2019, there being five days intervening the date of the

notice and the date of the meeting, were enough. His further assertion that there were heated discussions and *a few of the members prevented the other members* from raising or discussing the issue is again sans any concise statement of material facts; much less material particulars. No names of the members who prevented the others from expressing their views have been detailed. No names of members who were prevented from expressing their views have been stated. That the discussion was heated is a matter of inference and the pleadings of fact would be to briefly narrate what was said for and against by the protagonist and the antagonist. Not a word has been uttered by the gentleman. It is pleaded that *the said minutes of the meeting do not display the true and correct facts*. This plea is once again a bald plea. In what manner the minutes are incorrectly recorded has not been stated. We are sad to note that two members : Jagdish Kutty and Sushama Kamlesh Rai who had walked out of the meeting when the request to adjourn the meeting was declined and had not participated in the discussions and were not present at the voting have filed a joint affidavit to support their colleague Mr. Yashawant Jadhav by deposing that the resolution finally passed was *by a farcical voice vote*. If they were not present at the voting, the question of the two asserting a fact/event having taken place in their presence is a false assertion. The pleadings being on oath made before a Court in judicial proceedings would attract the offence of perjury, but we leave it at that with the

hope and belief that representatives of the citizens of this country would discharge their duties faithfully and honestly and not play partisan games in a Court of law.

15. Having noted the relevant facts we repel the contentions advanced in both petitions that inadequate time was given to the members of the Tree Authority and therefore, the deliberations which took place on 29th August 2019 are tainted in law. Besides, it assumes importance and therefore, we highlight that the deliberations by the members of the Tree Authority were not only at the meeting held on 29th August 2019. They had discussed the issue at the site visits held on 10th August 2019 and 20th August 2019 and what was discussed at the site has been neatly presented as a bonsai in the report prepared by the Tree Officer to which we have alluded to herein before.

16. Shri. Janak Dwarkadas learned Senior Counsel for the protagonist urged that the illegality in the meeting held on 29th August 2019 is : (i) The correspondence between the Tree Officer and the Project proponent was not placed before the authority. (ii) The objections received from the public were not placed before the Tree Authority. (iii) That it was inconceivable that the Experts who had opposed the proposal in writing on 13th August 2019 and 17th August 2019 would have changed their views without any valid justification.

Learned Counsel highlighted that the three Experts could not be expected to vote in favour of the proposal and therefrom it needs to be inferred that the vote count recorded was not reflective of the truth i.e. the three experts did not vote in favour of the proposal. Counsel placed reliance upon the e-mail sent by Dr. Sashirekha Sureshkumar, annexed as Exh.G to W.P.(L) No. 2565/2019 in which she has written that being a teacher in Botany and lover of nature she could never recommend the felling of trees. Learned Senior Counsel conceded that the written opinions dated 13th August 2019 and 17th August 2019 were considered by the authority evidenced by the fact that Behada tree which was a unique heritage tree, was removed from the proposal to be felled and that the trees along boundary line, being 56 in number, were saved i.e. proposal 1 and proposal 3 in the letter dated 13th August 2019 were accepted. The grievance was to 623 Subabul tree being felled as against the recommendation in the letter dated 17th August 2019 addressed by Subhash K. Patne that said trees could be transplanted and pertaining to 1 tree : Adensonia Digitata (a Solitary tree) statedly capable of being transplanted as per the second opinion expressed in the letter dated 13th August 2019. It was lastly urged that the number of trees which were affected varied from time to time and the Tree Authority has not even adverted a bare minimum thought thereto. The information was put in a tabular form as under:

<i>Date</i>	<i>Document</i>	<i>Trees to be cut</i>	<i>Trees to be transplanted</i>	<i>Total number of affected trees</i>	<i>Total number of trees on plot</i>
2012	<i>EIA by Metro3</i>	<i>Not stated</i>	<i>Not stated</i>	1652	<i>Not stated</i>
2014	<i>TA Proposal & HC Order</i>	254	2044	2298	2298
2015	<i>TCR & Govt. Order approving TCR</i>	<i>Not stated</i>	<i>Not stated</i>	<i>Less than 500</i>	<i>Not stated</i>
2016	<i>MMRCL's letter dt 1.4.2016</i>	<i>Not stated</i>	<i>Not stated</i>	<i>50% of trees on plot</i>	<i>Not stated</i>
2017	<i>UDD Notification dt.24.8.17 & 9.11.17</i>	<i>Not stated</i>	<i>Not stated</i>	<i>Trees on 5 hectare area to be conserved permanently</i>	<i>Not stated</i>
2019	<i>TA Public notice dated 30.6.19</i>	2238	464	2702	3691

17. Whilst it may be true, that in decision of the Tree Authority no reasons are to be found as to why the sole *Adensonia Digitata* and 623 *Subabul* trees were not agreed to be transplanted and the decision taken was to fell the trees. But the fact of the matter remains, a fact which was not disputed by learned counsel for the petitioners and even Mr. Zoru Bhatena a wildlife expert who was present in Court at the hearing of the writ petition filed by him, that *Subabul* tree has a tap-root and is not a tree native to the Indian forest. It is an ornamental

tree brought from the shores outside the shores of India.

18. Shri. A.A.Kumbhakoni learned Advocate General had produced for our perusal a decision taken by the Tree Authority on 18th March 2011 recording 26 species of trees which were recommended not to be transplanted, and therefore felled, if the girth of said species of trees was more than 6 inches and height above 10 feet because the said species of trees have a tap-root and if old, the survival rate on transplantation is bare minimum.

19. Shri. Aspi Chinoy learned Senior Counsel for the project proponent rightly urged that administrative decisions have not to be reasoned as judicial decisions are, and it would be sufficient if application of mind is to be found in the decision of the administrative body.

20. In this connection it becomes relevant to note the brief summary drawn up by the Tree Officer which forms part of the compilation circulated to the members of the Tree Authority on 23rd August 2019 records that at the 3rd visit of the Tree Authority at the site on 20th August 2019, Shri. Yashwant Jadhav posed a specific question as to why, if big trees like Banyan and Peepal can be transplanted, why not the Subabul trees, to which the expert Member Shri. Subhash Patne responded that even such trees could be transplanted with 100%

success rate. This shows that the issue of survival rate of the Subabul trees on being transplanted was discussed. In view of the scientific material placed before us of Subabul trees, having tap-roots and if they crossed the age of 5 or 6 years, survival rate upon transplantation being minimal, we hold against the Greens and in favour of the project proponent. We find from the material on record that the views of the Experts which were in writing were duly considered by the Tree Authority and for good and valid reasons, in part were accepted and part were rejected.

21. The objections that the correspondence between the Tree Officer and project proponent was not placed before the Tree Authority is without any substance because the Tree Officer has in his report listed the substance of the objections and the response thereto from the project proponent. The purpose of an agenda note is to facilitate the decision maker to know the rival view points projected. Even in meetings of corporates the entire correspondence exchanged is not placed before either the Board of Directors or the General Body of the Shareholders. A summary of the correspondence on an issue is placed. Similarly, there is no merit in the contention that the one lakh objections were received from the public were not placed before the Tree Authority. The report summarises the objections and the response of the project proponent. Surely, one lakh objections, most of which

were repetitive was not expected to be placed before the Tree Authority. The argument that it was inconceivable that the experts who opposed the proposal in writing on 13th August 2019 and 17th August 2019 would change their view is an argument which overlooks the fact that all proposals of the experts except two, were accepted. The first pertained to the solitary Beheda tree and the second to 623 Subabul trees. The only point in issue was : Whether the trees could be transplanted or had to be felled. There was no variation in the opinion that the said trees had to be removed from the site so that the Metro Car Shed could be constructed. There are good reasons for taking the view that the trees would not survive if transplanted and thus it would be futile to spend good money to transplant the trees which ultimately would by and large die and therefore it made good sense with good reason to fell the trees. It happens in life that one feels that the view taken by him/her is logically stronger than the view of the other person but there being logic in the opposite view, except the will of the majority. We cannot speculate as to what could be the reason which led the three Experts to accept the opposite view, but merely from the fact that on said issue the three experts having opined that the trees could be transplanted ultimately agreed that the trees be felled. The e-mail sent by Dr. Sashirekha Sureshkumar has intrinsic evidence of the probable outcome of the outcry in the social media by tree lovers. She has written that as lover of nature she could never recommend the

felling of trees itself shows that she was driven into writing the e-mail for the reason all experts were in agreement that apart from the 56 trees at the boundary of the plot which were unanimously agreed not to be felled even by the project proponent, save and except the 623 Subabul trees and the solitary Behada tree, all others had to be felled. She was thus a party to the view that other than the 623 Subabul trees, the solitary Behada tree and 56 trees at the boundaries, all other trees had to be felled and we highlight that the number would be about 1500 trees.

22. Pertaining to the last submission of the fluctuating numbers of trees as per the data given at the hearing, which we have reproduced in paragraph 16 above, the response is simple. The report of 2012 prepared by RITES refers to 1652 trees which would be affected. But at that time, exact boundaries of the plot allotted were not known. The proposal to cut 254 trees and transplant 2044 pertains to the year 2014 and by then exact boundaries of the plot were not known, besides what were saplings in 2014 grew into trees by the year 2019. The data concerning the years 2016-2017 is likewise explainable. In our opinion, this is simple quibbling or at best squabbling for the reason it is not the case of the petitioners that the census data did not reveal the existence of 3691 trees at the 33 hectare of land and the listing of each tree in over 600 pages of the compilation sent by the Tree Officer to

the Members of the Tree Authority is incorrect.

23. The deliberations of the Tree Authority have to be considered in light of the site visits held on 4th July 2019, 10th August 2019 and 20th August 2019. The fact that the proposal of the project proponent was scaled down with reference to the number of the trees to be felled is itself proof of the decision making process being fair, transparent and based on reason.

24. In connection with the issues of environmental concerns, it has to be noted that the project proponent has already planted 20,900 trees with GPS tagging on each plant in Sanjay Gandhi National Park and the survival rate is 95%, proved by the letter dated 27th September 2019 addressed by the Chief Conservator Forest and Director Sanjay Gandhi National Park to the Chief Project Manager of MMRCL. This establishes that about 7 times the number of trees to be felled have been replaced by planting saplings of trees, which process commenced two years ago. Further, the project is being financed substantially by Japan International Cooperative Agency (“JICA”) and the project is registered with The United Nations Framework for Climate Change (UNFCCC). It is thus being monitored by Foreign Agencies on the environmental impact. The project report demonstrates that the benefits and/or reduction in Carbon di-oxide emissions by virtue of the project demonstrate that the same would be reduced by 2,61,968

tonnes over ten years because of reduced dependence on motorised transport. The aforesaid Carbon di-oxide sequestration of 2702 trees for their entire lifetime calculated at 12,79,062 kg would be compensated in 3948 fully loaded trips of Metro Trains operating.

25. Thus, as in the two companion petitions which we have dismissed today, the Greens fail even in these two petitions, but not on account of sailing their boats in the wrong channel, but on merits.

26. The two Writ Petitions are dismissed. We impose no costs on the petitioner of WP (L) No.2565/2019 but for voyagerism while dismissing WP No. 2410/2019, we impose costs in sum of Rs.50,000/- upon the petitioner thereof requiring the costs to be deposited with the High Court Legal Aid Fund.

SMT.BHARATI DANGRE, J.

CHIEF JUSTICE