

IN RE FELLING OF TREES IN AAREY FOREST
(MAHARASHTRA)
(IA No. 169860 of 2022)

In

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

NOVEMBER 29, 2022

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

Metro Projects: Mumbai Metro Rail Corporation Limited (MMRCL) – Aarey car depot for Metro Line – Court to consider as to whether it ought to permit the Tree Authority to decide application filed by MMRCL for felling of 84 trees or alternatively, whether no part of the Aarey car shed should be allowed to proceed pending the final disposal of the proceedings – Held: In projects involving large outlay of public funds, the Court cannot be oblivious to the serious dislocation which would be caused if the public investment which has gone into the project were to be disregarded – Considerations pertaining to environment are of concern because all development must be sustainable – Having regard to the entirety of the material before it, if the State Government has come to the conclusion that the original decision to allow the Metro car depot for Metro Line-3 be located at Aarey has to be restored, it would not be possible for the Court at the interim stage to stay the decision – Moreover, a substantial number of trees pertaining to the area which falls within the segment of the car shed and the ramp have already been felled – 2,144 trees were felled in executing the work pertaining to car depot, while, 212 trees were felled in connection with the work of the ramp – What is now sought is permission to apply to the Tree Authority for the felling of 84 trees pertaining to the ramp – Without a ramp the work which has already been completed would be of no consequence and would be wholly ineffective – Hence, having due regard to the circumstances, MMRCL should be permitted to pursue its application before the Tree Authority for the permission to fell 84 trees for the purpose of the ramp – However, the Tree Authority would be at liberty to take an independent decision on the application and determine what conditions, if any, should be imposed if it decides to grant its permission.

A CIVIL ORIGINAL JURISDICTION: IA No. 169860 of 2022 in
Suo Moto Writ (Civil) No. 2 of 2019.

(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

With

B IA Nos. 104736, 104886 of 2022 and 178233 of 2019 in SMW
(Civil) No. 2 of 2019, IA No. 105220 of 2022 in SLP (Civil) No. 14933 of
2019 and IA Nos. 107131 and 50314 of 2022 in SLP (Civil) No. 31178 of
2018.

C Chander Uday Singh, Ms. Anitha Shenoy, Sr. Advs., Ms. Srishti
Agnihotri, Ms. Sanjana Grace Thomas, Ms. Mantika Vohra, Ms. Namrata
Sarah Caleb, Amjid Maqbool, Ms. Prerna Priyadarshini, Advs for the
Petitioner.

D Tushar Mehta, SG, Ms. Aishwarya Bhati, ASG, Maninder Singh,
Dhruv Mehta, Sr. Advs., Ms. Rukhmini Bobde, Chirag Shah, Kanu
Aggarwal, Utsav Trivedi, Ms. Soumya Priyadarshini, Ankit Ambasta,
Amit Kumar Srivastava, Amlaan Kumar, Vishal Prasad, Ms. Ruchi Kohli,
S. S. Rebello, Ms. Archana Pathak Dave, Ms. Deepabali Dutta, Siddhanth
Kohli, Ishaan Sharma, Arvind Kumar Sharma, G. S. Makker, Siddharth
Dharmadhikari, Chirag Shah, Aaditya Aniruddha Pande, Akshay Shinde,
Abhikalp Pratap Singh, Bharat Bagla, Ms. Kirti Dadheech, Ashish Wad,
E Mrs. Tamali Wad, Sidharth Mahajan, Ajeyo Sharma, Shyam, Ms.
Anupama, M/s. J S Wad and Co, Tanmaya Agarwal, Ms. Pooja Dhar,
Pratul Pratap Singh, Shree Pal Singh, Advs. for the Respondent.

By Courts Motion.

F The Judgment of the Court was delivered by

DR. DHANANJAYA Y CHANDRACHUD, CJI

G 1. On 15 April 2019, this Court, while considering Petition for
Special Leave to Appeal (Civil) No 31178 of 2018, declined to grant
interim relief in IA No 33819 of 2019. The reliefs which were sought in
the application for interim relief were in the following terms:

- H “a) ... stopping all activities being carried out by the Respondent
No-4 on the land in question inside Aarey Colony;
- b) ... directing the Respondents to carry out the activities for
setting up Metro Car depot at the alternative sites referred
to in paragraph 3 of the present application;

- c) ... staying the operation of the observations made at page 92 of the impugned order to the effect that Aarey Milk Colony area cannot be referred to as forest; and A
- d) ... any other order or further order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case." B

2. Subsequently, on 7 October 2019, this Court, while entertaining a *Suo Moto Writ Petition*¹, passed an order recording the statement of the Solicitor General appearing on behalf of the State of Maharashtra that no further trees were being felled till the next date of listing.

3. On 5 August 2022, this Court directed that all the connected writ petitions and Special Leave Petitions could be listed for final disposal. No specific interim directions were issued in view of the position of Mumbai Metro Rail Corporation Limited² that no further trees had been felled since the order dated 7 October 2019 and none be cut till the next date of hearing. C
D

4. The position in regard to the permissions which have been sought for the felling of trees in respect of the proposed depot at Aarey for Metro Line – 3 has been summarized in a plan which has been placed on the record by the Solicitor General. The position is elucidated below:

- A Car Depot E
- (i) Permission applied on 21 July 2017;
- (ii) Permission granted by the Tree Authority on 13 September 2019;
- (iii) Trees permitted to be cut – 2185; and F
- (iv) Actual number of trees cut – 2144.
- B Ramp area
- (i) Permission applied on 6 September 2017;
- (ii) Permission granted by the Tree Authority on 6 July 2018; G
- (iii) Trees permitted to be cut – 235; and
- (iv) Actual number of trees cut – 212.

¹ *Suo Moto Writ Petition (Civil) No 2 of 2019*

² MMRCL

A C Shunting area

- (i) Permission applied on 11 February 2019;
- (ii) Total number of trees affected – 84; and
- (iii) Grant of permission awaited.

B 5. The IA which has been moved by MMRCL³ is for permission to enable it to move the Tree Authority for the felling of 84 trees required for the purpose of proceeding with the shunting segment of the Aarey car depot. For convenience of reference, the relief which has been sought in IA moved by MMRCL is extracted below:

C “a) Direct/permit the Tree Authority to decide the application dated 11.02.2019 filed by MMRCL pending before it and pass final order thereof with respect to cutting of the 84 trees under The Maharashtra (Urban Areas) Protection and Preservation of Trees Act 1975 located on Metro Car Shed Land at Aarey Colony admeasuring approximately 33 hectares for the Mumbai Metro Line-3 project in Mumbai and permit, MMRCL to implement such decision of the Tree Authority, as the case may be;”

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E 6. Apart from the IA which has been moved by MMRCL, this Court is seized of the following IAs:

- i. IA No 104886 of 2022 in *Suo Moto Writ Petition (Civil) No 2 of 2019* seeking, *inter alia*, that (a) the order dated 21 July 2022 issued by the Urban Development Department of the Government of Maharashtra be kept in abeyance as it permits work on the car depot at Aarey, (b) the Government of Maharashtra submit the Wildlifereport on the Aarey Car Shed plot and to grant protection to wildlife on the said plot and declare the area as a forest;
- ii. IA No 178233 of 2019 in *Suo Moto Writ Petition (Civil) No 2 of 2019* seeking *inter alia*, the issuance of directions to the Government of Maharashtra to declare Aarey as a forest and direct that no trees be cut;
- iii. IA No 107131 and IA 50314 of 2022 in *Special Leave Petition (Civil) No 31178 of 2018* seeking, *inter alia*, a

H ³ IA No 169860 of 2022 in *Suo Moto Writ Petition (Civil) No 2 of 2019*

direction restraining the respondents from carrying out all work of construction within the 33 hectares area implicating the Aarey car project; A

- iv. IA No 105220 of 2022 in Special Leave Petition (Civil) No 14933 of 2019 for restraining the respondents from carrying out any consequential activities, including clearing of plants, excavation of vegetation or proceeding with any construction. B

7. In order to appreciate the salient facts insofar as they pertain to the IAs before this Court, it would be appropriate, at this stage, to advert briefly to the course of events.

8. On 6 January 2021, the Government of Maharashtra constituted a committee chaired by the Chief Secretary for examining whether the proposed car depot at Aarey should be realigned and relocated. The Committee submitted its report on 21 January 2021. The Committee was of the considered view that the location of the car depot at Aarey should be realigned so that an integrated car depot would be set up both for Metro Lines – 3 and 6 at Kanjurmarg. The report of the Committee was accepted by the State Government on 23 March 2021. C D

9. On 17 March 2022, the Union Government in the Ministry of Housing and Urban Affairs addressed a communication to the Chief Secretary of the Government of Maharashtra, following a meeting which was convened on 23 September 2021 between the Ministry and the officials of the State Government “to discuss the Aarey depot issue which is seriously hampering the progress of Metro Line-3 project”. The letter recorded that a decision was taken that Delhi Metro Rail Corporation⁴ and M/s SYSTRA, the consultant appointed by MMRDA, would hold a meeting to sort out technical issues in the event that the depot was shifted to Kanjurmarg. Thereafter, following the meetings between DMRC and SYSTRA, DMRC submitted a report on 11 February 2022. Both DMRC and SYSTRA have agreed that there are ‘inherited’ operational and maintenance constraints in the proposal to have a common depot for two or more lines at Kanjurmarg. Some of the major observations in the report are summarized in the communication dated 17 March 2022 and are extracted below: E F G

- “(i) The simulation exercise done by M/s SYSTRA is incomplete as no simulation internal to depot has been done. M/s

⁴ DMRC

- A SYSTRA had informed that simulation internal to depot may require involvement of signalling contractor, which was beyond their scope of work. Thus, it could not be checked by DMRC that proposed plan of induction of trains from depot could really materialise or not. DMRC has recorded their own experience that inducting trains from the depot consistently at a frequency of 4 minutes continuously for 3 or more hours is a challenging task.
- B
- (ii) There is a compromised time of maintenance window due to running of Line-3 trains for 7.5 km on Line-6 network upto Kanjurmarg. This will also have an adverse impact on restoration time in the event of failure of Line-3 train during regular operation period.
- C
- (iii) There is sub optimal utilization of trains as at least two trains are to be kept as hot standby at SEEPZ village station.
- D
- (iv) 100% punctual operation throughout the trips all the time in a day is rarely possible in real life operations as lot of factors affect train movement. Any deviation in train movement will lead to detention at L-3 & 6 connections while transferring of trains between L-3 & 6. Thus, the detention of trains mid-section seems real and unavoidable.
- E
- (v) There is a requirement of same signalling system from the Line-3 supplier for Line-6 and thus related compulsions.”

10. In the above backdrop, the communication of the Union Ministry of Housing and Urban Affairs noted that the proposed integration of two lines at SEEPZ village station would be a permanent risk to reliable train operations of both the lines. DMRC’s report had suggested that the decision to adopt an integrated depot for Metro Lines – 3 and 6 should be taken only if it is absolutely unavoidable even with possible mitigation measures in the present plans at Aarey. The communication also records that the conclusion of the report of the Committee chaired by the Chief Secretary to the Government of Maharashtra that the current land and design of the depot at Aarey would be insufficient to cater to the project design life requirement of Line-3, thereby necessitating an alternative location at Kanjurmarg is factually incorrect. In the opinion of the Union Ministry of Housing and Urban Affairs, the land at Aarey is sufficient to meet the current and projected requirement up to 2055 and, hence, it

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would not be prudent to shift the location to Kanjurmarg at the present stage of the project. Moreover, it has been stated that: A

- (i) The project is in a significantly advanced stage of completion;
- (ii) The combined depot plans will introduce operational and maintenance bottlenecks in the functioning of the network for the entire lifecycle of a high capacity metro line; and B
- (iii) While the land at Aarey is free from encumbrances, the land at Kanjurmarg is under litigation.

11. Consequently, the State Government was requested to reconsider its decision to shift the depot of Line-3 from Aarey colony to Kanjurmarg and to allow the restarting of the depot work of Line-3 at Aarey colony for expeditious completion of the project in public interest. C

12. Responding to the above communication, the State Government has on 21 July 2022 taken a decision to allow the work of the Metro Car Depot at Aarey to proceed. D

13. Appearing on behalf of MMRCL, the Solicitor General has highlighted that:

- (i) The overall cost of the Metro project ranges in the vicinity of Rs 23,000 crores, which is now projected to escalate to Rs 37,000 crores; E
- (ii) Nearly 95 per cent of the project work has been completed;
- (iii) Permission had already been granted for the felling of 2,185 trees envisaged in the segment pertaining to the car depot and 235 trees for the segment pertaining to the ramp, while, permission has been sought of this Court to move the Tree Authority for the felling of 84 trees which would be occasioned in the segment pertaining to shunting; and F
- (iv) Having regard to the overall contours of public interest bearing on the project, the orders passed by this Court on 7 October 2019 and 5 August 2022 may be clarified to the extent that MMRCL may be allowed to move the Tree Authority for the grant of felling permission. G

14. While opposing these submissions, Mr C U Singh and Ms Anitha Shenoy, senior counsel, have urged that apart from rejecting the relief which has been sought by MMRCL, there are valid grounds for this H

A Court to not allow the decision of the State Government which was taken on 21 July 2022 to allow the car depot project at Aarey to proceed. It has been urged that:

- B (i) The decision which has been taken on 21 July 2022 amounts to a reversal of a considered view which was taken by the State Government on 23 March 2021, while accepting the report of the Expert Committee chaired by the Chief Secretary dated 21 January 2021;
- C (ii) The decision of the Committee was based on cogent considerations, including the fact that the capacity of the proposed car shed at Aarey would be exhausted in 2031 leading to a further need for the felling of approximately 1000 trees should an expansion proposal be taken up in the future;
- D (iii) Once a considered decision was taken by the State Government to accept the report of the Committee chaired by the Chief Secretary, there was no valid basis to rescind the decision in the absence of scientific material which would indicate that a contrary view was more desirable; and
- E (iv) The area in question is sensitive ecologically having due regard to its proximity to the Sanjay Gandhi National Park, which is rich in bio-diversity.

F 15. Ms Anitha Shenoy, senior counsel, while buttressing the above submissions, urged that the project involving the construction of a Metro Line has high pollution potential falling within the red category. Moreover, it was submitted that on 12 October 2020, a notification has been issued under which 286 hectares of land have been notified as forests. Senior counsel submitted that, in this backdrop, the decision of the State Government to the effect that full capacity utilization of the car shed at Aarey would be reached in 2031 necessitated the realignment of the car shed at Kanjurmarg. Hence, it was urged that there was no valid basis for the State Government to rescind its decision.

H 16. While analyzing the merit of the rival submissions, it must, at the outset, be noted that the validity of the judgment dated 26 October 2018 and of the two judgments dated 4 October 2019 would fall for

determination when the Special Leave Petitions are taken up for final disposal. A

17. This Court, by an order dated 15 April 2019, declined to grant interim relief. At that stage, when the Court proceeded to decline interim relief, the State Government had filed its affidavit indicating the inherent public interest involved in the execution of the project. In regard to the alternate site, the affidavit of the State Government explained that in November 2011, a detailed project report for the Metro corridor had been prepared. A six-Member Technical Committee chaired by the Metropolitan Commissioner, MMRDA was constituted to consider alternate sites. The Technical Committee submitted its report on 11 August 2015 and considered the various sites, including the following: B C

- “a) Backbay Reclamation, Colaba
- b) Mumbai Port Trust
- c) Mahalaxmi Race Course
- d) Dharavi D
- e) Bandra Kurla Complex
- f) Mumbai University, Kalina
- g) Aarey Colony E
- h) Sariput Nagar
- i) Kanjur Marg.”

18. In its affidavit, the State Government submitted that after considering the options above, the Committee found that three sites at or beyond the terminal points meet the requirements. Thereafter, the Technical Committee submitted its report recommending as follows: F

- “i) The Metro-III car-depot be located at Kanjur Marg, with only a small stabling unit at Aarey Depot;
- (ii) In case the land was not made available at Kanjur Marg within a period of three months then the car-depot was proposed to be located at Aarey Colony within a 20.82 hectare area; and G
- (iii) Measures would have to be taken to mitigate environment damage at Aarey Colony.” H

A 19. The report of the Technical Committee was accepted by the State Government on 16 October 2015. The State Government explained the steps which were taken thereafter pursuant to the report of the Technical Committee. This Court, after having considered the application for interim relief, considered it appropriate to decline relief.

B 20. Now, it is in this backdrop that this Court must consider as to whether it ought to permit the Tree Authority to decide the application dated 11.02.2019 filed by MMRCL for felling of 84 trees. Alternatively, there is a wider relief which has been sought in the companion IAs that no part of the Aarey car shed should be allowed to proceed pending the final disposal of the proceedings.

C 21. In such projects involving large outlay of public funds, the Court cannot be oblivious to the serious dislocation which would be caused if the public investment which has gone into the project were to be disregarded. Undoubtedly, considerations pertaining to the environment are of concern because all development must, it is well settled, be sustainable.

D The State Government which had taken a decision in the first place to accept the Technical Committee report in 2015, later on, changed its view while deciding upon the realignment of the Metro car project at Kanjurmarg. Subsequently, various aspects were pointed out to the State Government by the communication dated 17 March 2022 of the Union Ministry of Housing and Urban Affairs. At this stage, it cannot be gainsaid that the factors which have been set out in the communication dated 17 March 2022 cannot be disregarded. Having regard to the entirety of the material before it, if the State Government has come to the conclusion that the original decision to allow the Metro car depot for Metro Line-3 be located at Aarey has to be restored, it would not be possible for the Court at the interim stage to stay the decision.

E 22. Moreover, it must also be noted that a substantial number of trees pertaining to the area which falls within the segment of the car shed and the ramp have already been felled. Consequently, this Court was apprised on 7 October 2019 and 5 August 2022 that no further trees were required to be felled. As already noted earlier, 2,144 trees were felled in executing the work pertaining to car depot, while, 212 trees were felled in connection with the work of the ramp. What is now sought is permission to apply to the Tree Authority for the felling of 84 trees

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pertaining to the ramp. It needs no emphasis that without a ramp the work which has already been completed would be of no consequence and would be wholly ineffective. Hence, having due regard to the above circumstances, we have arrived at the conclusion that MMRCL should be permitted to pursue its application before the Tree Authority for the permission to fell 84 trees for the purpose of the ramp. We clarify that the Tree Authority would be at liberty to take an independent decision on the application and determine what conditions, if any, should be imposed if it decides to grant its permission. A B

23. The order of this Court, which has the effect of directing the preservation of *status quo* on the felling of trees, shall accordingly stand modified to the above extent thereby permitting the MMRCL to move the Tree Authority on its application for felling of 84 trees. The state government would be at liberty to proceed further. C

24. The IAs are accordingly disposed of.

25. The entire batch of petitions would be listed for hearing and final decision on 7 February 2023. D

Devika Gujral
(Assisted by : Shubhanshu Das, LCRA)

IAs disposed of.