



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
CONTEMP PETITION NO. 6 OF 2019
IN
PUBLIC INTERET LITIGATION NO. 71 OF 2013**

Ruju R. Thakker .. Petitioner
Versus
State of Maharashtra & Ors. .. Respondents

**WITH
PUBLIC INTEREST LITIGATION (L) NO. 22690 OF 2021**

Dr. Dhanalakshmi Iyer .. Petitioner
Versus
State of Maharashtra & Ors. .. Respondents

Ms. Ruju R. Thakker, petitioner in-person in
CONPP/6/2019 in PIL/71/2013.

Mr. Jamshed Mistry, *Amicus Curiae*, present.

Mr. P. P. Kakade, Government Pleader with Mr. Abhay L.
Patki, Additional Government Pleader & Mr. M. M.
Pabale, AGP for State of Maharashtra.

Mr. A. Y. Sakhare, Senior Advocate with Ms. Oorja
Dhond, i/b. Mr. S. K. Sonawane for MCGM.

Mr. A. A. Garge for respondent no. 3 (NMMC).

Ms. Madhuri Lakhani i/b. Motiwala & Co. for
respondent no. 7 in CONPP/6/2019.

Mr. Prathamesh Sawant i/b. Mr. Mandar Limaye for
Thane Municipal Corporation in PIL/71/2013.

Mr. Prashant Chawan i/b. Ms. Reshmarani Nathani for
respondent no. 9 (MSRDC).

Ms. Aparna Vhatkar for MMRDA.

Mr. Rohit Sakhadeo for respondent no.20/NMC.

Ms. Swati Sagvekar for respondent no. 6 (Vasai Virar
City Municipal Corporation).

Mr. Sachin P. Patil i/b. Mr. I. M. Khairdi for respondent
no. 25.

Mr. Ajit Hon for respondent no. 52 and 356.

Ms. Shradha K. Nakadi with Ms. Ruchi N. Nagda i/b. Mr.
Rupesh K. Bobade for respondent no. 321.

Mr. T. D. Deshmukh with Mr. Anshuman Deshmukh for
respondents 282 and 285.

Mr. Vikas Somawanshi with Mr. Roshan Chavan i/b. Mr.

Vaibhav Ugle for respondent no. 260.
Mr. Gaurav Ugale i/b. Mr. Shriram Kulkarni for respondents 54 to 59, 253, 357 & 358.
Ms. Sweta Shah i/b. Mr. Abhijit P. Kulkarni for respondent Pune Municipal Corporation.
Mr. Ravindra S. Pachundkar for respondents 334, 337, 327, 332, 335, 338 in PIL/71/2013.
Mr. A. S. Rao for KalyamDombivli Municipal Corporation.
Ms. Pushpalata B. Khot with Mr. Umesh Mankapure for respondent nos. 181 & 324.
Mr. Akshay Shinde for respondent no. 7 in PILL/22690/2021.

CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. & ARIF S. DOCTOR, J.

DATE: 9th AUGUST, 2023

P.C.:

1. Raising serious concern about the rising incidents of road accidents taking place on the roads, sometimes causing death or injury, learned Amicus and the petitioner, who appears in person, have drawn our attention to various newspapers reports where such incidents have been reported. We have perused these newspaper reports which are taken on record. The reports depict the poor and non-transportable condition of the roads which sometimes becomes the cause of such accidents.

2. The Court in its order passed on 7th December, 2022 has noted an earlier Judgment of this Court dated 24th February, and 12th April, 2018 in Public Interest Litigation No. 71 of 2013 wherein various directions were issued to all the Municipal Corporations and other authorities as also the State Government to maintain the streets and roads, including

footways/footpaths in good and proper condition. In the said order, it was also observed by the Court that it shall be the responsibility of the Corporations to keep the streets and footways properly levelled and surfaced and further that Corporations shall ensure that potholes and ditches are properly filled in. The said directions were issued by the Court keeping in view the statutory duty cast on the municipal bodies under various legislations. After noticing the directions contained in the order dated 24th February and 12th April, 2018, the Court very categorically observed in para 11(b) of the order dated 7th December, 2022 that, "it is made clear that if any untoward incident of the nature described above or as apprehended by the petitioner results in loss of life or limb, the respective Municipal Commissioner(s), Metropolitan Commissioner, Chief Engineer shall be held personally responsible."

3. Despite the aforesaid observations made by the Court, it appears that adequate measures have not been taken by the respective Corporations to ensure strict compliance of the order dated 24th February and 12th April, 2018.

4. It is in this backdrop that a prayer has been made by the petitioner to initiate contempt proceedings against the erring officials of the Corporations.

5. As per the newspaper reports tendered today to the Court, a 32 years old bike-rider is said to have lost his life while dodging the pothole on a road. He is said to have been hit by a dumper and to have succumbed to death. In respect of the said incident in the affidavit filed on behalf of the Kalyan Dombivali Municipal Corporation (KDMC), it has been

stated that the accident in which the motorcyclist died, did not occur on account of any potholes on the road, rather reasons for the accident are otherwise. The affidavit filed on behalf of the KDMC is taken on record. In view of the denial of the cause of death, as reported in the newspaper, by the KDMC, we need to ascertain if the death has occurred on account of poor condition of the road.

6. We, thus, appoint a Commission comprising of (i) Ms. Mansi Naik and (ii) Ms. Rashmi More, practicing lawyers of this Court, to execute Court Commission and ascertain as to whether the accident in which the motorcyclist died had occurred while he was trying to dodge the pothole on the road. The Advocate-Commissioners shall gather the necessary information by visiting the spot where the accident is said to have occurred. They shall also speak to the family members of the deceased, the people in the vicinity where the accident had occurred as also the officials of the KDMC. The Commission is expected to submit its report by the next date of listing which may be fixed day after tomorrow.

7. The actual costs of Commission, which will include to and fro transportation expenses and other incidental expenditure shall be borne by the KDMC. In addition, each Advocate-Commissioner shall be paid a fee of Rs.15,000/- (Rupees Fifteen Thousand only).

8. As observed above, despite the mandatory directions issued by the Court in its order dated 24th February and 12th April, 2018 in PIL No. 71 of 2013, the newspapers have reported that the condition of the roads is not good and further that on various roads potholes exist. The reports also

mention about uncovered/unguarded manholes which make the pedestrians or anyone using the roads prone to accidents to the extent that even their life may be in danger.

9. In the aforesaid view of the matter, we require the presence of (i) Commissioner, Municipal Corporation of Greater Mumbai, (ii) Commissioner, Navi Mumbai Municipal Corporation, (iii) Commissioner, Kalyan Dombivali Municipal Corporation, (iv) Commissioner, Vasai Virar Municipal Corporation, (v) Commissioner, Mumbai Metropolitan Regional Development Authority, (vi) Commissioner, Thane Municipal Corporation and (vii) Commissioner, Mira Bhayander Municipal Corporation before the Court on 11th August, 2023 at 10.30 a.m. to explain as to why they should not be made liable for disobedience and non-compliance of the judgment dated 24th February and 12th April, 2018 passed by this Court in PIL No. 71 of 2013.

10. Stand over to **11th August, 2023**. To be listed first on board.

11. Additional Affidavits dated 8th August, 2023 filed by Mr. Satish Damodar Chavan, Chief Engineer (Sewerage Operation), B.M.C. and dated 8th August, 2023 filed by Mr. M. M. Patel, Chief Engineer (Roads and Traffic), BMC are taken on record.

12. The Municipal Commissioners of the respective Corporations shall be apprised of this order by the learned counsel representing the respective Corporations forthwith.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)