



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
ORDINARY ORIGINAL CIVIL JURISDICTION**

**PUBLIC INTEREST LITIGATION (L) NO. 24245 OF 2023**

**Vanashakti & Anr. } Petitioners**  
**Versus**  
**Municipal Corporation of Greater } Respondents**  
**Mumbai & Ors. }**

Mr. Tushad Kakalia i/b. Mr. Yogesh H. Pandey for the petitioners.

Ms. P. H. Kantharia, Government Pleader with Ms. Jyoti Chavan, AGP for State of Maharashtra.

Ms. Oorja Dhond, i/b. Mr. S. K. Sonawane for MCGM.

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

**DATE: 4<sup>th</sup> SEPTEMBER 2023**

**P.C.:**

**1.** Heard Mr. Kakalia, learned counsel for the petitioners, Ms. Kantharia, learned Government Pleader for the State of Maharashtra and Ms. Dhond, learned counsel for Municipal Corporation of Greater Mumbai (hereafter referred as "MCGM").

**2.** Almost every year, without fail, just prior to the Ganesh Chaturthi festival the issue relating to environmentally and ecologically safe immersion of idols in various water bodies of the city of Mumbai, has been knocking the doors of this Court,

however, it appears that the authorities of the MCGM and other public bodies have not risen to the occasion with regards to the aspect of environmental impact/pollution causing concerns in the mind of the general public of the city.

**3.** This Court, as far back as on 22<sup>nd</sup> July 2008 issued certain directions, both to the Central Government as also to the State Government, while passing an order in Writ Petition No. 1325 of 2003, whereby it was expected of the Central Government to lay down certain guidelines for immersion of idols. In deference to the said order dated 22<sup>nd</sup> July 2008, the Central Pollution Control Board (hereinafter referred to as "the CPCB") issued guidelines, dated 12<sup>th</sup> May 2020, which commence with a very beautiful and meaningful quote from Shrimad Bhagwad Gita, which is extracted herein below: -

"To worship God and Goddess generally natural things like Milk, Curd, Ghee, Coconut, Betel leaves and river water are used. Generally, Idols are made with clay or locally available materials and then coloured with natural materials like Chandan, Turmeric etc. The religious scripts, mythology and religious rituals have attempted to drive the importance of preserving nature by adoring it through the centuries. Bhagavadgita (9.26) states:

***"Patram Pushpam phalam toyam, yo mey bhaktya prayachhati Tadaham bhakt yupahrutam asnaami prayataatmanaha"* which means**

*"If one offers me in pure consciousness with love and devotion a fruit, a flower, a leaf or even water, I delightfully partake of that offered article"*

भावार्थ : जो कोई भक्त मेरे लिए प्रेम से पत्र, पुष्प, फल, जल आदि अर्पण करता है, उस शुद्धबुद्धि निष्काम प्रेमी भक्त का प्रेमपूर्वक अर्पण किया हुआ वह पत्र—पुष्पादि मैं सगुणरूप से प्रकट होकर प्रीतिसहित खाता हूँ॥

**4.** The CPCB, while outlining that God and Goddess are worshiped generally with natural things and that idols are

made of clay or locally available natural materials, has provided, by issuing the guidelines, for various steps to be taken for preventing and checking the pollution being caused on account of the idols being immersed in the water bodies, which are made of a material other than natural substances such as Plaster of Paris (PoP). Clause 2(i) and 2(vi) of the said guidelines are quoted hereunder: -

**"2.0 GUIDELINES FOR IDOL MAKERS-CRAFTSMANS OR ARTISANS**

*(i) Idols made up of only natural, bio-degradable, eco-friendly raw materials without any toxic, inorganic raw materials such as traditional virtuous clay and mud as well as free from Plaster of Paris (PoP), plastic and thermocol (polystyrene) should be encouraged, allowed and promoted and Idols made up of Plaster of Paris (PoP) shall be banned.*

....

*(vi) Craftsmen or artisans or manufacturer involved in making idols should be registered with the civic bodies, and should involve in making eco-friendly idols in accordance with these guidelines. In case of Larger Scale Idol manufacturers (at least involved in making more than 100 idols in a day) shall obtain registration from the concerned ULBs (registration fee along with a deposit as decided by the ULB depending on the idol making capacity) and failing to comply with these guidelines or any violation of registration conditions, the deposit shall be forfeited by the ULBs apart from prohibition of idol making at least for two years."*

**5.** Clauses 4 (i) (iv), (v) and (vi) of the said guidelines are also relevant to be extracted hereinbelow, which read as under: -

**"4.0 ROLE AND RESPONSIBILITIES OF THE LOCAL AND URBAN AUTHORITIES**

*(i) Licenses/permits may be granted by the Local*

*and Urban Bodies within the respective jurisdiction to only those Idol manufacturers or makers or craftsman or artisans who uses only eco-friendly natural clay materials (but not PoP or baked clay) in making idols, prior to festive times.*

....

*(iv) As far as possible, instead of immersion of idols in water bodies, all the resident welfare associations or individual households in a city or town should be encouraged to create temporary ponds/tanks of suitable size and adequate capacity with necessary provision for collection and storage of segregated waste prior to immersion, and public should be involved for immersion of idols in such temporary/artificial ponds/ tanks made by the resident welfare association or individual household within their campus itself. The waste generated from designated idol immersion activity sites shall be collected and disposed of safely by the ULBs within 24 hours of completion of the idol immersion activity.*

*(v) Arrangements for temporary artificial idol immersion ponds or tanks in close vicinity of the public or on the banks of water bodies with all necessary safety provisions and waste collection centres prior to idol immersion should be arranged for ensuring safe idol immersion during festive season, by the concerned ULBs in association with the other departments as well as Pooja Organizing Committees.*

*(vi) The temporary Idol Immersion Ponds/Tanks with the liner made with well graded/highly impervious clay or eco synthetic liner should be arranged at suitable locations including on the banks of rivers or stagnant water bodies such as ponds or lakes shall be cordoned off and barricaded by ULBs and with all other necessary provisions keeping in view safety of the public (such as proper access, approach roads, sign boards, fire safety measure, barricades, designated space for keeping idols prior to immersion, suitable plat form with crane provision for idol immersion)."*

**6.** The guidelines, thus, clearly mandate that instead of immersion of idols in water bodies, the resident welfare associations or individual households should create temporary ponds/tanks of suitable size and adequate capacity with necessary provision for collection and storage of segregated waste prior to immersion. The guidelines also provide that public should be involved for immersion of idols in such temporary artificial ponds, then, the waste generated from idol immersion activity sites should be collected and disposed of safely by the urban local bodies within 24 hours. Various other provisions are also contained in the said guidelines, which are aimed at both the safe and eco-friendly immersion of idols as also respecting the religious feelings and sentiments of the people. Compliance with these guidelines will, therefore, not only ensure that there will be minimal damage to the environment but also that the purity of the idols is retained as they would not contain any toxic or non-biodegradable material which will ensure protecting the environment and ecology of the area.

**7.** We may also note that for the purposes of protecting the environment, the Central legislature has enacted Environment (Protection) Act, 1986 (hereafter referred to as "the Act of 1986"), where adequate powers have been vested in the Central Government to take measures to protect and improve environment. Section 3(2) of the Act of 1986 vests statutory authority in the Central Government to take measures which shall include measures for restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards. The prohibition can

also be imposed by the Central Government under section 3 of the Act of 1986 in such other matters as are deemed necessary or expedient for the purpose of securing the effective implementation of the Act. Section 3(1) and 3(2)(v)(xiv) of the Act of 1986 are extracted hereinbelow: -

**"3. Power of Central Government to take measures to protect and improve environment.** - (1) *Subject to the provisions of this Act, the Central Government shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution.*

(2) *In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the following matters, namely: -*

.....

(v) *restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;*

.....

(xiv) *such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act."*

**8.** The Central Government, for the purposes of giving effect to the provisions of the Act of 1986, has also made statutory rules known as Environment (Protection) Rules, 1986 (hereafter referred to as "the Rules of 1986"). Rule 4 of the Rules of 1986 clearly empowers the Central Government to issue directions, however, such directions are to be in writing. Rule 4 of the said Rules provides that the Central Government may take into consideration certain factors while

prohibiting or restricting carrying on of processes and operations in different areas. Rule 5(3)(a) of the Rules of 1986 provides that wherever it appears to the Central Government that it is expedient to issue prohibitions or restrictions for carrying on of certain processes and operations in an area, it may be done by a notification to be issued in Official Gazette of the Government.

**9.** In exercise of the aforesaid statutory provisions, the Central Government has issued a notification published in the Official Gazette on 5<sup>th</sup> December 2016 notifying an Eco-sensitive Zone known as Sanjay Gandhi National Park Eco-sensitive Zone. Clause (1) of the said notification provides that the boundary restrictions of the said zone shall be as given in Annexure-I appended to the notification. Annexure-I mentions area of Aarey Dairy Division and areas handed by Aarey to other State Departments under the heading 'Villages and Survey Numbers included in Eco-sensitive Zone'. Thus, it is not in dispute that the water body in respect of which this petition has been filed forms part of the Eco-sensitive Zone and hence, the notification dated 5<sup>th</sup> December 2016 will apply in its full force.

**10.** Clause 4 of the notification dated 5<sup>th</sup> December 2016 lists certain activities which are prohibited or are to be regulated within the Eco-sensitive Zone, which includes prohibition of discharge of untreated effluents and solid waste in natural water bodies or land area. Thus, it is not only the guidelines issued by the CPCB dated 12<sup>th</sup> May 2020, which, as observed above, were framed pursuant to the mandate of this Court in Writ Petition No. 1325 of 2003, but also the statutory



notification dated 5<sup>th</sup> December 2016, which clearly prohibits immersion of any substance which may be dangerous to the environment and ecology in the water body, which exists in the Aarey Milk Colony.

**11.** What we further notice from a perusal of clause 5 of the notification dated 5<sup>th</sup> December 2016 is that the Central Government has constituted Monitoring Committee for effective monitoring of the Eco-sensitive Zone, which is chaired by none other than the Commissioner of MCGM, however, the MCGM appears to be unmindful of its statutory duties cast on it, which is reflected from 2 (two) letters dated 19<sup>th</sup> July 2023 and 18<sup>th</sup> August 2023 written to the Chief Executive Officer, Aarey Milk Colony, whereby, it has been urged by the MCGM that necessary measures be taken for immersion of idols. The letter dated 19<sup>th</sup> July 2023 also makes a mention that the MCGM has published a Booklet, wherein the lake situated in Aarey Milk Colony has also been mentioned as an immersion site.

**12.** The issue being raised in this petition had cropped-up last year as well and this Court had taken cognizance of the same by entertaining Public Interest Litigation (L) No. 28846 of 2022. The Court also issued stringent directions to the State Government to take all appropriate steps to prevent any activity in the Eco-sensitive Zone for immersion of idols. The Court also provided in its order dated 8<sup>th</sup> September 2022 that if any such attempt is made by committing breach of provisions of law or flouting circulars issued by the State Government or Forest Department, the Forest Department shall be at liberty to take appropriate steps against the



violators. The Court also provided that in case any request is made by the Forest Department to the Police Department for assistance of additional police force, the superior authority of the Police Force shall consider that request and take appropriate decision thereon. Para 14 of the said order dated 8<sup>th</sup> September 2022 is extracted hereinbelow: -

***"14. We further direct that the Forest Department of the State Government shall take all appropriate steps to prevent any activities in the area of the Sanjay Gandhi National Park for immersion of the idols and if any such attempt is made by committing the breach of provisions of law or flouting circulars issued by the State Government or Forest Department the Forest authorities are at liberty to take appropriate steps against the violators. If request is made from the Forest Department to the Police department for assistance of additional police force or deployment of the police force, the Superior authority of the Police authority to consider that request and take appropriate decision by yourself."***

**13.** In the aforesaid facts, we fail to understand as to how the aforesaid two letters dated 19<sup>th</sup> July 2023 and 18<sup>th</sup> August 2023 (which are available at Exhibits 'K' and 'O' respectively of this PIL petition) have been issued by the MCGM. It is also not comprehensible as to how the MCGM has included the lake in its Booklet mentioning it as an immersion site.

**14.** We, thus, call upon the MCGM to file an affidavit by the next date as to what steps have been taken by it to ensure compliance of the statutory provisions of the notification dated 5<sup>th</sup> December 2016 issued by the Government of India under the Act of 1986 and to comply with the guidelines issued by the CPCB, dated 12<sup>th</sup> May 2020. The affidavit to be

filed by the MCGM will also explain, in respect of the subject matter of this PIL petition, as to what action has been taken by the Monitoring Committee constituted under clause 5 of the notification dated 5<sup>th</sup> December 2016.

**15.** We expect that by the next date of listing of this matter, the authorities of the MCGM as also all other authorities of the State Government including the officials of the Forest Department and the Chief Executive Officer of Aarey Milk Colony shall take adequate steps to ensure that the provisions of the notification dated 5<sup>th</sup> December 2016 as also the guidelines issued by the CPCB are strictly followed.

**16.** Stand over to **8<sup>th</sup> September 2023** at **2.30 p.m.**

JAYANT  
VISHWANATH  
SALUNKE

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JAYANT VISHWANATH  
SALUNKE  
Date: 2023.09.05  
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**(ARIF S. DOCTOR, J.)**

**(CHIEF JUSTICE)**