

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

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**CONTEMPT PETITION NO. 6 OF 2019**

**IN**

**PUBLIC INTEREST LITIGATION NO.71 OF 2013**

**RUJU R. THAKKER**

**)...PETITIONER**

**V/s.**

**STATE OF MAHARASHTRA & ORS. )...RESPONDENTS**

Mr. Jamshed Mistry, Amicus Curiae a/w Mr. Dipesh U. Siroya present.

Ms. Ruju R. Thakker, Contempt Petitioner-in- person present.

Mr. P.P.Kakade, GP a/w Mrs. R. A. Salunkhe AGP for Respondent no. 1 -State of Maharashtra.

Mr. A A Garge for Resp No.3 in CONPP/6/2019

Mr. A. Y. Sakhare, Senior Advocate along with Ms. Rupali Adhate for Respondent no.2 in CONPP/6/2019 and for Respondent no. 3 in PIL/71/2013 - (MCGM).

Mr. Ankush Jagdale, Executive Engineer (Roads), Eastern Suburbs present.

Mr. Sushant Patil, Road Engineer, present.

Ms. Aparna D. Vhatkar for Respondent no.6/(MMRDA)

Ms. Pooja V. Bendkule i/by. Mr. I.M. Khairdi for Respondent no. 25 in PIL/71/2013.

Mr. Rohit Sakhdeo for Respondent no. 20 (Nashik Municipal Corporation) in PIL/71/2013.

Mr.Aditya Mahadik i/b Abhijit Kulkarni for Resp. Pune Municipal Corporation.

Ms. Swati Sagvekar, for Respondent no.5 - Vasai Virar City Municipal Corporation in CONPP/6/2019.

Mr. N. R. Bubna for Respondent no.11 Mira Bhayander Municipal Corporation in CONPP/6/2019.

Mr. R. V. Dighe i/b. Mr. A. S. Rao for Respondent no. 4 – Kalyan Dombivali Municipal Corporation in CONPP/6/2019.

Mr. Prashant Chavan i/b. Ms Reshmarani Nathani for Resp No 9 in CONPP/6/2019

Mr. Ajai Fernandes i/b. Motiwala & Co. for Resp No. 7 in CONPP/6/2019.

Mr. Gaurav Yadav i/b B J Law Offices for Resp No 29 in PIL/71/2013.

Mr. Tejesh Dande a/w Mr. Bharat Gadhavi, Mr. Pratik Sabrad & Ms. Trushna Shah for Respondent no 85.

Mr. Abhijit Adagule for Respondent no 26 – Kolhapur Municipal Corporation

Mr. Vikas Somawanshi i/b Vaibhav Ugle for Respondent no 260

Mr. Pranjal M. Khatavkar i/b S.S. Kulkarni for Respondent nos 54 to 59, 357 and 358 in PIL

Mr. Shailesh Chavan i/b Milind Deshmukh for Respondent nos 291, 341, 353 & 355

Mr. Mandar Limaye for Thane Municipal Corporation

**CORAM: DIPANKAR DATTA, CJ & ABHAY AHUJA, J.**

**DATE : DECEMBER 7, 2022**

**P.C.:**

1. Heard.
2. Affidavit-in-reply dated 25<sup>th</sup> November, 2022 of the Superintending Engineer of respondent no.6 - Mumbai

Metropolitan Regional Development Authority, Compliance Affidavit dated 28<sup>th</sup> November 2022 of the Executive Engineer (Roads) of respondent no.7 - Board of Mumbai Port Authority and Affidavit-in-reply dated 5<sup>th</sup> December 2022 of the Executive Engineer of the respondent no.9 - Maharashtra State Road Development Corporation Ltd. are taken on record.

3. This contempt petition has been circulated on the urgency that there are several manholes which have been left unguarded and open across Mumbai - Thane and Virar - Vasai risking not only the life of human beings but also domestic animals.

4. Ms. Thakker, the petitioner-in-person, draws the attention of this Court to a recent news report of a pregnant cow having fallen in an unguarded manhole who had to be rescued after a seven hours rescue operation using excavators and hydra cranes. She tenders across the Times City issue of The Times of India, dated 2<sup>nd</sup> December 2022, depicting pictures of an open drain with the cow and efforts at rescuing her by the officials of the Disaster Management Cell, the fire brigade and animal welfare activists. The said news paper report is taken on record and marked "X" for the purposes of identification. It is reported that the said open

drain is in Thane where drain lids were apparently open for the purposes of ventilation but the same were kept unguarded/ungrilled leading to the falling of the pregnant cow into the said drain, moans whereof were heard by passers-by after which the authorities were alerted leading to the rescue and care of the traumatised cow.

5. Mr. Jamshed Mistry, learned amicus curiae would submit that earlier by an oral judgment dated 24<sup>th</sup> February and 12<sup>th</sup> April 2018 of this Court in PIL No.71 of 2013, cognizance whereof was taken suo motu, by this Court and after considering the various provisions of the Mumbai Municipal Corporation Act and the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965, with respect to the mandatory duties and obligations to ensure safety, this Court had observed that the said obligations were very relevant as the material brought on record showed that the potholes or bad condition of roads or open manholes resulted in casualties after sunset due to poor lighting arrangements on streets.

6. We observe from the said judgment that after capturing the entire gamut of provisions with respect to the mandatory duties and obligations of the Municipal Corporation / Municipal

Council / public bodies to maintain the lights of streets including drains, manholes etc., this Court had issued *inter alia* the following directions in paragraph 46 which are set out as under :

“.....

*(A) (A) All the Municipal Corporations, MMRDA, MSRDC, CIDCO and MbPT as well as the State Government shall maintain all the streets/roads including footways/ footpaths within its respective jurisdictions in good and proper condition. It shall be their responsibility to keep the streets and footways properly levelled and surfaced. It shall be their responsibility to ensure that potholes and ditches thereon are properly filled in. The work of filling in the potholes shall be carried out scientifically as an ongoing project;*

*(B) While granting permissions to various authorities to do digging work on the streets, a condition shall be incorporated by all the Municipal Corporations/other Authorities of prominently displaying at the site of the work the following details :- (a) the name, address and contact details of the agency which is doing the digging work and (b) the extent of the digging work permitted and (c) the period within which the work shall be completed. The display boards shall also record the outer limit within which the streets shall be restored to its original condition. Similar Boards shall be displayed at the sites where major repair/reconstruction work of streets is undertaken;*

.....

*(iii) In view of the provisions of the Right of the Persons with Disabilities Act, 2016, necessary steps/ precautions shall be taken by the all the concerned Authorities for protecting the rights of*

*visually impaired persons as observed in the body of this Judgment;*

*(iv) In addition to the above directions, we direct that as far as open manholes are concerned, the Municipal Corporations and other authorities bound by the directions shall take all possible steps to ensure that no open manholes are left unprotected without erecting barricades, without putting on warning lights and without providing effective warning to the citizens including those who are visually impaired. All necessary precautionary steps shall be taken to ensure that the incident of citizens falling inside the open manhole are not repeated;*

*(v) .....The State Government shall also take appropriate policy decision of laying down technical specifications of the streets and footways, the specifications of the material which should be used and specifications of the methods which should be repair of streets. used for construction or The State shall issue necessary directions to the authorities which do not have benefit of expertise of the Committee.*

.....

*(xi) We direct the State Government to call for the information from all Municipal Corporations and Municipal Councils as well as other Authorities regarding compliance with various directions issued under this judgment and order. The reports shall be called on quarterly basis. The said Authorities shall accordingly submit compliance reports to the State Government;*

*(xii) Detailed compliance reports compiled by the State Government shall be regularly placed before this Court;"*

7. It has been submitted by the petitioner-in-person as well as the learned amicus curiae that despite the aforesaid directions, there are several open manholes on the road

dividing the Eastern Express Highway and the Service road which now comes under the Mumbai Municipal Corporation near bus stops making it risky for people boarding buses. It is submitted that there are approximately 577 manholes on the Eastern Express Highway and there are pavements, bus stops where children, elderly and disabled people also pass by, whose lives would be in danger with so many unattended and unmonitored manholes all over the place.

8. It is submitted that this abysmal state of affairs is, despite the directions contained in the judgment of this Court dated 24<sup>th</sup> February and 12<sup>th</sup> April 2018 as well as several orders being passed thereafter, directing the respondents to ensure that the citizens get good quality of roads. The quality of roads in the State of Maharashtra is going from bad to worse adding to the woes of the citizens and residents of the State.

9. Ms. Thakker submits that the orders have not been complied with by the respondents and there has been a deliberate and wilful defiance of the same. Petitioner submits that, therefore, urgent directions ought to be issued by this Court, so that such untoward incidents can be averted.

10. Mr. Sakhare, learned senior counsel representing the Mumbai Municipal Corporation, submits that the sewers and drains in Mumbai are usually opened just before the rainy season for cleaning purposes. However, they are also opened either for underground repairs or for ventilation; that after the work is done, the drains are closed. He submits that, as far as the recent incident of the pregnant cow is concerned, as soon as the authorities were intimated, the rescue team arrived and undertook the successful rescue operation of saving the pregnant cow.

11. Having heard the petitioner-in-person and the learned counsel for the parties, this Court deems it appropriate to pass the following directions :

(a) Let detailed affidavits be filed by the Municipal Commissioners of Mumbai Municipal Corporation, Thane Municipal Corporation, Navi Mumbai Municipal Corporation, Mira-Bhayander Municipal Corporation, Kalyan-Dombivli Municipal Corporation, Vasai-Virar Municipal Corporation, Metropolitan Commissioner, MMRDA, the Chief Engineer (Roads) of the Board of Mumbai Port Authority, the Chief Engineer of the Public Works Department of the State of Maharashtra, in



relation to the aforesaid grievances within a period of two weeks, in particular setting out (i) the steps taken to comply with the directions contained in paragraph 46 (as set out above) of the judgment dated 24<sup>th</sup> February and 12<sup>th</sup> April, 2018, (ii) the preventive safety measures they would undertake, including use of modern technology for monitoring of manholes/open drains/sewers/ventilation shafts and their coverings, as well as setting out (iii) the road map of actions under Chapter IX (Drains and Drainage Works) including Section 153 (Drains to be constructed and kept in repair by the Commissioner) and Section 329 (Commissioner to take proceedings for repairing or enclosing dangerous places) of the Mumbai Municipal Corporation Act, 1888 and Chapter XII (Drains and Drainage) of the Maharashtra Municipal Corporation Act, 1949 and other relevant laws so as to avoid recurrence of such incidents in future.

(b) 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.

**12. List on 22<sup>nd</sup> December 2022.**

**(ABHAY AHUJA, J.)**

**( CHIEF JUSTICE)**