

Diksha Rane

**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
Vs
State of Maharashtra and ors. .. Respondents

Mr. Jamshed Mistry, Amicus Curiae along with Mr. Dipesh Siroya present.

Ms. Ruju R. Thakker, Contempt Petitioner-in-person present.
Mr. Abhay L. Patki, Addl. Government Pleader for respondent no.1.

Mr. A. A. Garge for respondent no.3 – Navi Mumbai Corporation and for respondent nos. 5 and 280 in PIL/71/2013.

Mr. Ajai Fernandes a/w. Mrs. N.D. Motiwalla i/by. Motiwalla & Co. for Respondent no.7.

Mr. P. P. Kakade, Government Pleader a/w. Mrs. R. A. Salunkhe AGP for State of Maharashtra.

Mr. I. M. Khairdi for respondent no.25 in PIL/71/2013.
Mr. R. V. Dighe i/by. Mr. A. S. Rao for respondent no.4 in CONPP/6/2019 and for respondent no.17 in PIL/71/2013 - (KDMC).

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

Mr. Mandar V. Limaye for respondent no.10 in CONPP/6/2019 and for respondent no.4 in PIL/71/2013 (Thane Municipal Corporation).

Mr. Rohit Sakhdeo a/w. Mr. Pushkar Nagpurkar for respondent no. 20 (Nashik Municipal Corporation) in PIL/71/2013.

Mr. Prashant Chavan i/b Reshmarani Nathani for respondent no.9 in CONPP/6/2019 and for respondent no.13 in PIL/71/2013.

Mr. Gaurav Yadav i/by. BJ Law Offices for Respondent no. 29

in CONPP/6/2019.

Mr. Malhar Pawar i/by. Mr. Nandu Pawar for Respondent no.319 in PIL/71/2013.

Roshan M. Chavan i/by. Mr. Vaibhav V. Ugle for Respondent no. 260 in PIL/71/2013.

Mr. Swapnil Telang i/by. Mr. Umesh Mankapure for Respondent nos. 181 and 324 in PIL/71/2013.

Mr. Pranjal M. Khatavkar a/w. Mr. Shriram S. Kulkarni for Respondent nos. 54 to 59, 357, 358 in PIL/71/2013.

Mr. Ajit Hon for Respondent Nos. 52 & 356 in PIL/71/2013.

Mr. Sadashiv Salunkhe, Secretary (Roads), PWD and Ms. Pradnya Walke, Deputy Secretary (Roads) present.

Dr. Dhanalaxmi Iyer petitioner-in-person in PILL/22690/2021 (Not on Board;Taken on Board).

WITH
WRIT PETITION NO.3170 OF 2022

Binod Agarwal s/o. Sitaram Agarwal .. Petitioner

Vs

State of Maharashtra and ors. .. Respondents

Mr. Binod Agarwal, petitioner-in-person present.

Mr. Milind More, Additional Government Pleader for State-respondent nos.1 and 2.

Ms. Rupali Adhate for respondent no.3-MCGM.

CORAM : DIPANKAR DATTA, CJ. &
M. S. KARNIK, J.

DATE : SEPTEMBER 30, 2022.

P.C. :-

1. The menace of bad road conditions, the effect thereon on the life and limb of the citizens, and the measures which should be taken to do away with this recurring problem year

after year, is elaborately dealt with in a judgment delivered by this Court (Coram: - A. S. Oka and P. N. Deshmukh, JJ.). The judgment was delivered as far back as in 2018. The petitioners and the concerned interveners submit that with the onslaught of monsoon, potholes resurface and thus there is no improvement at the ground level. Arguments are advanced that the main reason being the erring contractors are not made accountable.

2. Countering these allegations, compliance affidavits are placed on record, indicating the efforts made by the State Government/the Municipal Corporation of Greater Mumbai (hereafter 'MCGM' for short) to comply with the order of this Court in letter and spirit. On behalf of the State/MCGM, it is submitted that they are equally concerned with the life and limb of its citizens. It is pointed out that MCGM has prepared a detailed action plan to tackle the menace of potholes during the monsoon and long term measures to get rid of the bad road conditions.

3. The Commissioner of MCGM-Dr. Iqbal Singh Chahal, during the course of hearing today, made a detailed presentation of the action plan prepared by MCGM towards "Pothole Free Mumbai". The Commissioner elaborated on the following aspects:-

- (i) Major cause for potholes during monsoon and the reason why the road conditions are damaged at other times;
- (ii) The technology and the materials being used to

fix potholes during monsoon;

(iii) Short term and long term measures towards ensuring pothole free Mumbai roads during monsoon;

(iv) Overall improvement of the conditions of the roads in Mumbai.

Mr. Chahal has also submitted that in deference to the earlier order passed by this Court, twenty (20) roads which are in very poor condition and requiring urgent repairs have been identified and within three (3) months, complete repairs will be effected.

4. We take the detailed action plan prepared by the Commissioner, MCGM on record. What we gather from the Commissioner's presentation is that not all the roads within the jurisdictional limits of MCGM are under its control. There are several other statutory authorities, including the Public Works Department (hereafter 'PWD' for short), which are tasked with the up-keep and maintenance of these roads. It is seen that some of the roads, not within the control of MCGM are in a bad condition. According to the Commissioner, if all the roads within the jurisdiction of MCGM are handed over to it, the task of coordination, monitoring, up-keep and maintenance of these roads would become more effective and convenient. In the submission of the Commissioner, this would be a major step forward in ensuring better roads.

5. It is pointed out that the State Government is equally concerned with the problem and steps are being taken in

the right direction to ensure proper road condition at all times in terms of the order passed by this Court. The Secretary (Roads), PWD, is personally present. He submits that on its part, the State Government is doing everything possible for improvement of the road conditions not only in Mumbai, but all over Maharashtra.

6. We find the suggestion of the Commissioner that all the roads in Mumbai be handed over to one authority i.e. MCGM appealing, from the point of view of coordination, monitoring, up-keep and maintenance of the road. Of course, this is a decision which can be best left to the executive. We endorse the submission of the Commissioner that a holistic view has to be adopted by the concerned authorities in ensuring that potholes and bad road conditions do not become a cause for damage to life and limb and consequent despair for the human kind in future. Hope springs eternal.

7. From the presentation made by the Commissioner and from the response of the State Government, we observe that the authorities are inclined to respond positively. We are satisfied with the assurance that proper steps would be taken to curb the menace.

8. The State Government and MCGM, no doubt, will audit the performance of the erring road contractors responsible for the bad road conditions. Our immediate concern is ensuring that MCGM takes urgent steps in fixing the potholes existing as on today.

9. As was submitted by the Commissioner, we record that

- (i) All the potholes will be fixed immediately;
- (ii) Around 125 Kms of asphalt roads will be resurfaced with asphalt bitumen within three (3) months;
- (iii) The total length of the roads within MCGM's jurisdiction is 2050 kms. The cement concretization of the roads is complete to the extent of 990 kms. Tenders have been awarded and the ongoing works for cement concretization of the roads is to the extent of 265 kms. Tenders floated and likely to be awarded in November 2022 are for the length of 397 kms. The balance length, to be improved in Phase-II, is 398 kms.

10. We expect MCGM to complete the cement concreting of the roads under its jurisdiction within a period of thirty (30) months from today.

11. The State Government to consider the suggestion of the Commissioner to hand over all the roads within the jurisdiction of MCGM for up-keep and maintenance to MCGM.

12. The petitioners have placed photographs on record to indicate that the quality of the cement concretized roads in some of the wards is not at all satisfactory as cracks have already started appearing on the surface. The Commissioner will look into this grievance and take

appropriate steps.

13. The Secretary of the PWD has assured us that there will be a continuous improvement in overall road conditions in the State of Maharashtra which will be regarded as a work in progress.

14. We propose to monitor the progress every two (2) months. The concerned authorities who are tasked with the construction, up-keep and maintenance of the roads, to file status reports before the date fixed for the next hearing.

15. Stand over to **December 1, 2022.**

(M. S. KARNIK, J.)

(CHIEF JUSTICE)