

# Civic body in HC line of fire

## Court Directs PMC To Include Citizens In Tree Authority

Ananya Dutta | TNN

**Pune:** The Bombay High Court has in a recent order reprimanded the Pune Municipal Corporation (PMC) for failing to include members of civil society organizations in the tree authority. It has issued instructions on the body's formation body and also how it should operate.

In an order passed by a bench headed by Justice D Y Chandrachud on September 20, the court observed that the primary object of the tree authority was to ensure the preservation and protection of trees, planting trees and enhancing tree cover, but this purpose has been defeated. "The object of the act [the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975] has been defeated by the failure to co-opt members of civil society organizations in the tree authority," the order states.

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— HC Order

Currently, the tree authority has 13 corporators as its nominated members, but there is no representative from any nongovernmental organization (NGO), the court observed.

The PMC has told the court that it would restrict the number of corporators to seven and that only those corporators who are science graduates will be preferred. The court has also restricted the number of nominated members from NGOs to seven.

"The nominated members should belong to independent NGOs and PMC has stated that not more than one person shall be appointed from the same NGO. As regards the nominated members, wider representa-

tion needs to be given to diverse cross section of NGOs with a special knowledge or expertise in plantation and preservation of trees with a minimum experience of at least five years," the order states.

The 34-page order also lays down the procedure to be followed for taking decisions on applications for planting, re-planting or cutting trees.

On being asked when the PMC will appoint the new tree authority as per the court's guidelines, chief garden superintendent Ashok Ghorpade said that the PMC was awaiting legal opinion of its lawyers. "We have asked our lawyers to study the high court's order and are waiting for their opinion," he said.

Tree activists have welcomed the court decision. Activist Vinod Jain said, "Currently, the entire process of granting permissions for the felling of trees lacks transparency. If we want to raise our objections, we don't even get a hearing. If representatives of NGOs are included in the body, we will at least be assured of a hearing and can hope for greater transparency in the process."

The court has also instructed the PMC to form an expert committee which will look into the Geographic Information System (GIS)/ Global Positioning System (GPS)-based tree census. The court had set up a panel including professor Jitendra Shah from the Indian Institute of Technology (IIT) Bombay and Sunil Limaye, director of the Sanjay Gandhi National Park, who carried out a pilot project. Another pilot project has been carried out by a private agency, Smart Survey.

As per the court's directive, the PMC will have to float tenders to outsource the tree census and the expert committee will help finalize the technical aspects before the tender document is drafted.

The court has directed the expert committee to bear in mind the affordability, replicability, flexibility and scalability when deciding on the technical specifications.

The Bombay High Court has observed the following "dubious methods" employed to circumvent the implementation of the Maharashtra (Urban Areas) Protection and Preservation of Trees Act, 1975

### Problem | Deeming Provision

According to Section 8(4) of the act, the Tree Authority has to inform applicants who seek permission to fell trees its decision within 60 days, failing which the permission is deemed to have been given. Members of the tree authority delay decisions for "extraneous reasons" so that once the stipulated period lapses, the permission to fell trees is deemed to have been granted.

**HC remedy** | The court has placed the members of the Tree Authority "on notice" that if they fail to take a decision on each application within 60 days, they will be charged with contempt of court.

### Problem | Building Department Circular

The building department of the PMC issued a circular on December 20, 2011 that builders need only its clearance and not from the garden department for obtaining a completion or occupation certificate.

**HC remedy** | The court has clarified that though the grant of a completion or occupation certificate lies in the jurisdiction of the Building Permission Department, the issue of whether requirements of the Trees Act have been fulfilled lies with the Tree Authority. Before granting a completion or occupation certificate, prior approval of the Tree Authority must be obtained.

### Problem | Permissions for Agricultural land

Some developers and builders develop agricultural lands where many trees are located. The permission to cut the trees is sought on grounds that it is required for agricultural purposes. After obtaining the permission, trees are cut in huge numbers and the land is levelled. Instead of using the land for agriculture, permission is then sought from the collector for conversion of land from agriculture to non-agriculture.

**HC remedy** | The court has directed the Tree Authority to take an undertaking before granting permission on these grounds, which specifies that the land shall be utilised strictly for agricultural or horticultural purposes for a stipulated period of at least three years.

