

ssp

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELATE JURISDICTION

CIVIL APPLICATION NO.221 OF 2013
IN
PUBLIC INTEREST LITIGATION NO.217 OF 2009

1 Municipal Corporation of
Greater Mumbai

...Applicant

vs.

Shri Pandurang Patil & Anr.

...Respondents

CIVIL APPLICATION NO.110 OF 2015
IN
PUBLIC INTEREST LITIGATION NO.217 OF 2009
(for intervention)

Shri Rajkumar Sharma

...Applicant

vs.

Shri Pandurang Patil and others

...Respondents

Mr.S.U.Kamdar, Senior Advocate with Mr.J.F.Reis,
Senior Advocate and Ms Komal Punjabi for the
applicant in CAI 221/2013 and for the respondent
No.1 in PIL 217/2009

Mr.T.N.Subramanian, Senior Advocate a/w Mr.Nikunj
Mehta and Mr.Ashok Purohit, Ms Anjanta Parveen and
Shalaka Moli i/b Ashok Purohit & Co for the
applicant in CAI 110/2015

Mr.S.G.Aney, Advocate General with Mr.A.B.Vagyani,
Government Pleader and Ms M.P.Thakur, AGP for State-
Respondent No.2 in CAI 221/2013

Ms Rekha Panchal for Maharashtra Pollution Control
Board

CORAM : A.S.OKA, &
C.V.BHADANG, JJ.

DATE : FEBRUARY 26 and 29, 2016

ORAL JUDGMENT: (PER A.S.OKA,J.)

1 The submissions of the learned counsel for the parties were heard on the last date. The Civil Application No.221 of 2013 made in a disposed of PIL by the Mumbai Municipal Corporation discloses shocking state of affairs in Mumbai. The city of Mumbai is stated to be the commercial capital of India. Now, it is sought to be made a "Smart" City. But, admittedly quantity of 60% to 70 % of the municipal solid waste generated every day in Mumbai is being illegally dumped in the city itself by the Mumbai Municipal Corporation. An affidavit was filed by the Municipal Commissioner of the Mumbai Municipal Corporation way back on 2nd March 2015 in which it is accepted that as of that date, there was a daily generation of 9400 Metric Ton (for short "MT") municipal solid waste and approximately 1000 MT of debris of buildings and that the generation of solid waste is likely touch 10,000 to 11,500 MT per day. The same affidavit and subsequent affidavits record the admitted position that there is only one proper facility in the city at Kanjur which has processing capacity of 3000 MT of solid waste per day. This facility is in conformity with the Municipal Solid waste (Management and Handling) Rules,2000 (for short "the MSW Rules"). Thus, as of March 2015, every day, a quantity of 7400 MT of municipal solid waste including the debris was being illegally dumped by the Mumbai Municipal Corporation (for short 'the said Corporation'). The dumping is made at the sites at Deonar and Mulund

which were required to be closed down long back as the same are not in conformity with the requirements of the MSW Rules. Today, after nearly one year, the quantity must be much more. On one hand, during last few years, the Government went on increasing Floor Space Index (for short "FSI") for the constructions in the city and on the other hand, though the MSW Rules came into force on 3rd October 2000, neither the State Government nor the said Corporation have bothered to comply with the MSW Rules. We may note here that Schedule-I of the MSW Rules contains implementation schedule. Read with Rule 4 of the MSW Rules, the Schedule-I provides that it is the obligation of a Municipal Authority to set up waste disposal and processing facilities in terms of the said Rules by 31st December 2003. If what is stated in the affidavits filed on record by the Municipal Commissioner and other Municipal Officers is taken as correct, by the end of the year 2019, there will be processing facilities in the city in conformity with MSW Rules which can deal with quantity of only 8000 MT per day. Going by the affidavit of the Municipal Commissioner filed in March 2015, by the end of 2019, the generation of solid waste will not be less than 14,000 to 15000 MT per day. Thus, there is no possibility that in near future, the said Municipal Corporation of the commercial capital of the country will be able to comply with the mandatory requirements of MSW Rules. The affidavits on record will show that as a result of the recent incidents of fire at Deonar Dumping ground where illegal dumping is being made, the

citizens in the locality suffered from respiratory diseases. The pollution level of the city increased alarmingly. In many parts of the city, Air Quality Index(AIQ) was more than 330. In the surrounding area of Deonar, schools were required to be kept closed for few days to protect the children from the pollution created by the fire. We are informed across the bar that on this Saturday also there was a fire. Perhaps, what happened at Deonar may be an indication of the things to come in future, unless drastic steps are taken by the State Government and by the said Municipal Corporation.

2 Now we come to the prayers made in Civil Application No.221 of 2013 filed in disposed of PIL. Way back on 2nd April 2013, this Court on the basis of the consensus of all the parties including the State Government disposed of the Writ Petition No.1740 of 1998 and other connected petitions including the present PIL No.217 of 2009. Clause 10 of the consent order granted only three months time to close down all the dumping sites which do not comply with the MSW Rules. Going by the said Judgment and Order, the dumping sites at Mulund and Deonar were required to be closed down by 2nd July 2013. Paragraph 15 of the said order granted maximum time of 24 months for setting up and commissioning of waste processing facility at existing sites. Thus, as far as the city of Mumbai is concerned, the time limit provided by the MSW Rules to set up waste disposal and processing facility is already over about 12 years back. The time provided under

the Judgment and order of this Court to close sites at Deonar and Mulund has expired two and half years back and the time to set up facilities granted under the orders of this Court has expired on 1st April 2015. Substantial part of the solid waste generated in the city is being dumped at Deonar in gross breach of MSW Rules and the aforesaid Judgment and order of this Court. The present Civil Application filed by the said Corporation contains following prayers:

“(a) The applicants' dumping ground at Mulund and Deonar be exempted from immediate discontinuance or closure as contemplated under clause 9 of the order dated April 2, 2013 passed in Public Interest Litigation No.217 of 2009 and that the Applicant be permitted to continue dumping of Municipal Solid Waste at its Mulund and Deonar site until the commissioning of the Kanjur site and setting up and commissioning new processing facility at the existing Mulund and Deonar site.

(b) That the period of 24 months as set out in clause 15 (5) (b) of the order dated April 2, 2013 for setting up and commissioning of waste processing facility at existing Mulund, Deonar and Kanjur site be made applicable to the applicants, subject to the receipts of approval by the Applicants on their pending proposal for grant of land on lease from the

State of Maharashtra and other permissions from Ministry of Environment and Forests (MoEF), Airport Authority of India (AAI), State Environment Impact Assessment Authority (SEIAA), Maharashtra Coastal Zone Management Authority (MCZMA), and Maharashtra Pollution Control Board (MPCB) and/or any other permissions in future if any as may be required.

(c) Pending the hearing and disposal of the present Application, the Applicants be permitted to continue dumping of Municipal Solid Waste at its Mulund, Deonar and Kanjur site.

(d) Ad-interim reliefs in terms of prayer clause © herein above.

(e) For such further and other reliefs as the nature and circumstances of the case may require."

3 We may note here that as far as the site of Kanjur is concerned, this Application is not pressed. This Application was filed on 5th August 2013. As stated earlier, even going by the affidavits on record, it is impossible for the said Municipal Corporation in near future to provide facilities in terms of the MSW Rules to deal with the entire quantity of solid waste generated every day in the city of Mumbai. As we have noted above, by the end of 2019, if everything goes smoothly for the said Municipal Corporation, the facilities

created in terms of the MSW Rules will be able to deal with quantity of only 8000 MT per day. Considering the large scale development in the form of construction of buildings which is being permitted in the city, in few years, quantity of solid waste generated may cross the figure of 15,000 MT Per day. The census figures will show that there is a steady increase in the population of the city.

4 Thus, no discussion is required to come to a conclusion that there is no equity in favour of the said Corporation as well as the State Government on the basis of which an equitable relief of extension of time can be granted. In fact, if the earlier orders passed in the present Application for extension of time are seen, this Court has granted extension of time while observing that unless the Municipal Authorities or the State do something drastic to improve the situation, there will be no option but to impose some restrictions on unabated development in the city. Moreover, it is the duty of this Court to ensure that not only the orders of this Court but also the provisions of the Environment Protection Act, 1986 (for short "the said Act of 1986") and the MSW Rules are implemented in as much as the breach thereof will amount to depriving large number of citizens of Mumbai a fundamental right guaranteed under section 21 of the Constitution of India. The right under the Article 21 of the Constitution of India includes right to live in a pollution free environment. The State has completely ignored Article 48-A of the Constitution

of India which enjoins it to improve the environment. Recent incidents of fire at Deonar show that that the fundamental right under Article 21 is completely violated. In fact, the failure to abide by and committing the breach of the MSW Rules may itself amount to violation of the right to live in a pollution free environment. The minutes of the meeting of the Committee appointed by this Court which are placed on record by the applicant in the Civil Application No.110 of 2015 (for intervention) indicate that some sort of division of the site at Deonar has been made by the anti-social elements amongst themselves.

5 Only way to ensure the implementation of the orders of this Court and the implementation of the provisions of the said Act of 1986 and the MSW Rules is to grant extension of time for a limited period subject to compliance with various terms and conditions which will ensure that in the meanwhile the quantity of Municipal Solid waste does not increase substantially.

6 Before we go into the affidavits filed on record dealing with the aspect of compliance as well as dealing with the aspect of serious situation which has arisen as regards dumping facility at Deonar, a brief reference to the provisions of the said Act of 1986 and the MSW Rules will be necessary. Section 3 of the said Act of 1986 confers power on the State Government to take measures to improve the environment. Clause (a) of

section 2 incorporates a very wide definition of "environment" which includes water, air and land and inter-relationship which exists among and between water, air and land and human beings, other living creature, plants, micro organisms and property. Clause (b) of section 2 provides that any solid, liquid or gaseous substance which may be injurious to environment will be environmental pollutant. Section 6 confers power on the Central Government to frame Rules to regulate environment pollution. Section 25 confers a power to make Rules on the Central Government. Section 15 provides that whosoever fails to comply or contravenes any provisions of the said Act of 1986 or the Rules made thereunder commits an offence which is made punishable under the said section.

7 The MSW Rules have been framed in exercise of powers under sections 3,6 and 25 of the said Act of 1986 which were brought into force with effect from 3rd October 2000 when the same were published in the Government Gazette.

8 Clause 15 of Rule 3 of the MSW Rules defines municipal solid waste which reads thus:

"(xv) **"municipal solid waste"** includes commercial and residential waste generated in a municipal or notified areas in either solid or semi-solid form excluding industrial hazardous waste but including treated bio-medical waste;"

Thus, any commercial or residential waste either in solid or in semi solid form excluding

industrial hazardous waste but including treated bio-medical waste is included in the definition of municipal solid waste. Clause (vii) of Rule 3 defines "demolition and construction of waste" which will include debris created by demolition of buildings and structures. Going by the definition of municipal solid waste, even demolition and construction waste will be a part of the municipal solid waste. Rule 4 is material which imposes responsibility on Municipal Authorities which reads thus:

"4. Responsibility of municipal authority .-

1. Every municipal authority shall, within the territorial area of the municipality, be responsible for the implementation of the provisions of these rules, and for any infrastructure development for collection, storage, segregation, transportation, processing and disposal of municipal solid waste.

2. The municipal authority or an operator of a facility shall make an application in **Form-I**, for grant of authorization for setting up waste processing and disposal facility including landfills from the State Board or the Committee in order to comply with the implementation programme laid down in **Schedule I**.

3. The municipal authority shall comply with these rules as per the implementation schedule laid down in **Schedule I**.

(4) The municipal authority shall furnish its annual report in **Form-II**,-

a. to the Secretary-in-charge of the Department of Urban Development of the concerned State or as the case may be of the Union territory, in case of a metropolitan city; or

b. to the District Magistrate or the Deputy Commissioner concerned in case of all other towns and cities,

with a copy to the State Board or the Committee on or before the 30th day of June every year."

(Underline added)

9 In the present case, the said Corporation is responsible for the implementation of the provisions

of the MSW Rules and for infrastructure development for collection, storage, segregation, transportation, processing and disposal of municipal solid waste. Rule 5 is also material which reads thus:

“5. Responsibility of the State Government and the Union territory Administrations .--

(1) The Secretary-in charge of the Department of Urban Development of the concerned State or the Union territory, as the case may be, shall have the overall responsibility for the enforcement of the provisions of these rules in the metropolitan cities.

(2) The District Magistrate or the Deputy Commissioner of the concerned district shall have the overall responsibility for the enforcement of the provisions of these rules within the territorial limits of their jurisdiction.”

The Rule makes the Secretary in charge of the Urban Development Department of the State Government overall responsible for enforcement of the provisions of the MSW Rules. Rule 6 makes the State Government and the Pollution Control Board responsible for monitoring standards as specified in Schedule-II, III and IV. Rule 7 provides that municipal solid waste generated in a city or a town shall be managed and handled in accordance with compliance criteria and the procedure laid down in the Schedule-II. Time schedule within which provisions of the MSW Rules shall be complied with by the Municipal Authority is provided in Schedule-I which reads thus:

Schedule I

[see rules4(2) and (3)]

Implementation Schedule

Serial No.	Compliance Criteria	Schedule
1.	Setting up of waste processing and disposal facilities	By 31.12.2003 or earlier
2.	Monitoring the performance of waste processing and disposal facilities	Once in six months
3.	Improvement of existing landfill sites as per provisions of these rules	By 31.12.2001 or earlier
4.	Identification of landfill sites for future use and making site (s) ready for operation	By 31.12.2001 or earlier

It is this Schedule which provides for setting up of solid waste processing and disposal facility by 31st December 2003. Schedule-II lays down the entire process to be followed for collection of municipal solid waste, segregation of municipal solid waste, storage of municipal solid waste, its transportation, its processing and disposal. Thus, for dealing with the municipal solid waste, there are six stages contemplated by Schedule-II starting from its collection till disposal after it is processed.

10 For the implementation of the MSW Rules, the PILs and writ petitions (including the PIL No.217 of 2009) were filed before this Court complaining about the failure of the Municipal Authorities in the State and the State Government to comply with the mandatory requirements of the MSW Rules. The

Judgment and Order dated 2nd April 2013 shows that the petitions were disposed of in terms of the draft minutes of the order which were prepared by the parties after long deliberations in which the Government Pleader and the officials participated. For the purposes of this Application, clauses 7 to 15 of the minutes of the order are material which read thus:

“Re: Local authorities which do not have the land fill sites/dumping ground :

7. (a) The authorized officer / local authority shall take steps for acquisition of notified / designated site for this purpose either in the Regional Plan or the Development Plan within a period of two weeks either under the provisions of Land Acquisition Act, 1894, Maharashtra Regional & Town Planning Act, 1966 or by mutual agreement with land owners.

(b) The process of selection and acquisition of sites including taking possession shall be completed expeditiously and not later than six weeks in accordance with, the guidelines prescribed in the Government Resolution dated 5th October 2012, Annexure-1 as well as GR dated 26th August, 2003.

(c) The selection of site shall also take into consideration appropriateness and suitability of site from viewpoint of CRZ Notification, EIA Notification and other Environmental Laws including Forest Laws as applicable.

(d) Wherever the Local Authority has an approved authorized site for land fill / dumping, the local authority shall immediately take steps to make it operational for that purpose within a period of 4 weeks.

(e) On selection, identification and acquisition of sites, the local authorities shall make the appropriate application not later than two weeks after taking possession of site, to the Pollution Control Board under Rule 6 of MSW Rules for authorization.

(f) The MPCB shall process the application and grant the authorization in

accordance with the provisions of Air Act and Water Act and MSW Rules 2000 preferably within a period of two weeks end not later than from receipt of application complete in all respects.

(g) On the aforesaid compliances the site shall be used by the concerned local authorities for land fill /dumping strictly in accordance with the MSW Rules 2000 and authorization granted by MPCB.

(h) The Nodal Officers/Authorized Officer shall monitor periodically the operation of such sites and compliance with MSW Rules and MPCB authorization on fortnightly basis and make report and take remedial measures to ensure compliance.

(i) In case there are no designated / notified sites the State Government shall assist such Local authority to identify, select and acquire the requisite site and notify or designate the same for land fill / dumping of MSW. The State Government shall initiate steps for this purpose preferably within two weeks from this order and complete the process as per statutory provisions for designation of the site.

(j) In case the site designated within the area of local authorities is encroached upon the local authorities shall initiate action for removal of encroachment within two weeks, including but not limited to, in accordance with the relevant Municipal law or the Maharashtra Land Revenue Code as the case may be for eviction of such unauthorized encroachers. In the event of such actions being taken no Court or authority in the State shall entertain any application or proceedings or suit in respect of such eviction and any such proceeding shall be filed only in this Court.

(k) In case there are any proceedings pending / orders passed in respect of any sites within the jurisdiction of Local Authority, such authority shall immediately take steps to get the stay orders vacated and / or bring it to the notice of this Court for appropriate directions.

Re: Local authorities which have inadequate facilities:

8. (a) The local authority will assess the need for the sites by taking into account the existing population and growth of population upto at least next 30 years.

(b) The local authorities shall take steps for selection, identification and

acquisition of additional sites by following the directions in the preceding paragraph under the heading “Re : Local authorities which do not have the land fill sites / dumping grounds.”

Re: The Local authorities which have facilities which are non-compliant with MSW Rules 2000 and MPCB authorization:

9 The MPCB shall make report in respect of each of the designated dumping site within jurisdiction of all Municipal Corporations, Municipal Councils and Panchayats to ensure Compliance with MSW Rules and these directions and directions of the Supreme Court. This exercise to be completed within a period of 8 weeks.

10. All dumping sites which do not comply with MSW Rules and other governing applicable laws and these directions and the sites which are not designated as per rules shall be discontinued and closed within a period of three months or an acquisition of new site whichever is earlier.

11. All sites which have exceeded their capacity shall be closed down as per procedure under MSW Rules.

Re: The Local authorities which do not have waste processing facilities:

12. The Local authorities shall take steps for treatment of solid waste in accordance with MSW Rules either through themselves or through an identified agency.

13. The Municipal Corporations and Councils shall adopt measures as per Schedule III of MSW Rules to ensure :

(i) Segregation of Municipal Solid waste

(ii) Setting up facilities for processing biodegradable waste by composting, vermi composting, anaerobic digestion or any other biological processing

(iii) Eventual elimination of landfilling requirements for biodegradable waste

(iv) The State Government shall take decision on the pending proposals / applications made by the local authorities for grant of lands on lease or otherwise, or grant of NOC etc. within a period of 45 days from date of this order.

(v) The Local authorities which have not made such applications shall do so within a period of 4 weeks to the State Government and the State

Government shall take a decision thereon within 45 days thereafter.

14. Sites for Composting, Vermi Composting etc.

(i) These sites shall also comply with these directions and MSW Rules (Schedule IV) (ii) MPCB shall prescribe cap on storage of wet garbage to be treated at these sites so that the site does not become a dumping ground

(iii) These sites shall also comply with the Rules for storage of garbage as permitted by MPCB under MSW Rules

(iv) In the event of non-compliance of these directions MSW Rules and parameters as regards, storage of wet garbage limit of storage and operation of composting or vermi compost plant, the same shall be closed down and shall not be re-operated until MPCB reports remedial measures and its compliance.

15. **General :**

Action Plan for Treatment and Processing of Solid Waste

Sl.No.	Action Plan Details	Time Schedule
1	To develop mechanism for collection, segregation (at source/site) & Transportation to processing facility & landfill site.	Within 2 months after possession of land
2	Settling up and Commissioning of Waste Processing Facility	
	(a) Selecting of technology	Within 2 months after possession of land
	(b) Preparation of Detailed Project Report	Within 2 months after selection of technology
	(c) Inviting tenders and appointment of Agency	Within 2 months after obtaining clearance from MCZMA/MOEF
	(e) Issuance of Work Order with the time frame & necessary conditions by Municipal Authority	Within 1 month
	(f) Settling of MSW processing facility & making it operational	Within 18 months from the date of work order
3	Development & Commissioning of secured landfill site	Within 12 months after possession of land
4	Closure of cell & its monitoring for at least next fifteen years as per Rules.	After exhausting capacity of the existing cell.

5	Improving of existing facility	
	(a) Closure of existing dump site if required as per MSW Rules.	Within 16 months
	(b) Setting up and commissioning of waste processing facility if not available at existing site.	Within 24 months
	(c) Improvement in the existing waste processing facility and secured landfill site in accordance with the MSW Rules.	Within 6 months
	(d) Development of new secured landfill site at existing site if not available	Within 12 months
6	(a) Application for Authorization by Municipal Authority (Rule 4(2))	As per Rules
	(b) Grant of a authorization for for processing facility and landfill site. (Rule 6 (2))	As per Rules

11 Now we deal with the affidavits filed dealing with the grant of extension of time. The first relevant affidavit is of 30th September 2015 filed by Shri Siraj Ahmed Abdul Khalique Ansari, the Chief Engineer (Solid Waste Management) of the said Municipal Corporation which records that the Mulund dumping ground was started in the year 1967 and the Deonar dumping ground was started in or about the year 1927. It records that there is only one project in the city which is in conformity with the MSW Rules which is at Kanjur. We must note here that the site at Kanjur was provided to the said Corporation under the orders of the Apex Court. It records that at the site of Kanjur, quantity of 3000 MT per day is being scientifically processed and disposed of and the said project has been approved by the Ministry of Environment and Forest and the Maharashtra Pollution Control Board. There is an affidavit dated 23rd October 2015 filed by Shri Swadheen S. Kshatriya, the Chief Secretary of the

Government of Maharashtra which refers to the decision taken by the State Government of the allotment of sites near Airoli Bridge at Mulund and at village Karvale Khurd, Taluka Ambernath, District Thane to the said Corporation. We may note that till that date, the actual allotment was not made. As far as allotment is concerned, the same was made only after several orders were passed by this Court and in particular the order dated 27th October 2015 which records that as per the decision of the State Government, the area of the site at village Karvale was 52.10 Hectare out of which only 39.90 Hectare was vesting in the State Government which was substantially encroached upon and the rest of the area was yet to be acquired. It is only after the said order that the State Government machinery moved with some kind of speed. There is an affidavit dated 10th February 2016 by Shri Ajoy Mehta, the Municipal Commissioner. It is a detailed affidavit which records the steps which the said Municipal Corporation proposes to take. The steps proposed to be taken as regards the sites as set out in the affidavit can be summarised as under :

(I) Mulund Dumping Ground :

The said dumping ground shall be closed down in a scientific manner for which tenders are already invited.

(II) Deonar Dumping Ground :

It is proposed that the Deonar dumping ground will

be utilised for putting up a Waste to Energy Plant of capacity of 2000 MT per day for which a consultant is being appointed. It is stated that out of total area of 120 H of the Deonar dumping ground, area of 10 H will be utilised for the said project. It will take care of 2000 MT of solid waste per day and the project is likely to be completed by February 2019. The rest of the portion of the land will be put to scientific closure.

(III) Mulund (East), near Airoli Bridge:

The site at Mulund is near Airoli Bridge. It is stated that the area of 32.77 H is under the process of demarcation which will be completed by April 2016. After the demarcation, a compound wall will be constructed. It is stated that by the end of 2019, the first phase of Waste to Energy Processing will commence which will take care of the quantity of 2000 MT per day and in future, the capacity will be increased progressively to 5000 MT per day.

(IV) Kanjur Scientific Processing Plant

It is stated that the plant which is already operational is in terms of the requirements of MSW Rules which has a capacity to deal with solid waste of 3000 MT per day and up to December 2016, the capacity will be increased to 4000 MT per day. It is submitted that by the end of the year 2018-2019, all permissions are expected to be granted.

**(V) Village Karvale, Taluka Ambernath,
District Thane (Near Taloja)**

What is allotted by the State Government is an area of 38.37 H, a portion of which is encroached upon. It is stated that additional area of 12.20 H will be acquired subsequently. It is stated that the process of removal of encroachments will be commenced by the State Government which is expected to be completed in May 2016 after which a demarcation will be carried out and thereafter, the construction of a compound wall will be commenced. Considering the fact that the land is encroached upon, perhaps the Municipal Commissioner has not set out the outer limit within which the facility will be set up thereon. He has stated that as and when the plant is set up, it will deal with the quantity of 3000 MT per day.

12 Analysis of the aforesaid affidavits shows that even if everything goes on smoothly, by the end of year 2019, the facilities in terms of the MSW Rules will be available to deal with the municipal solid waste of the quantity of only 8000 MT per day. These facilities may be sufficient to deal with only 50% to 60% of the municipal solid waste generated per day, as by that time, the generation of solid waste per day may easily reach quantity of 15,000 MT. There is absolutely no possibility that even till the end of the year 2019, facilities will be created in the city of Mumbai in terms of the MSW Rules to deal with the generation of entire quantity of the

solid waste generated every day. That is why in one of the earlier orders, this Court observed that in the city of Mumbai, the MSW Rules are being observed only in breach.

13 Now we come to the latest affidavit dated 15th February 2016 filed by Shri Swadheen Kshatriya, the Chief Secretary of the State Government. During the earlier hearing, an issue was raised by this Court as to whether the State Government intends to put any restrictions on the construction activities in the city. It is stated in the said affidavit that major proposals received in the city are of re-development projects of old buildings or slum re-development projects. It is stated that imposing restrictions on the construction activities will have serious consequences. By the said affidavit of the Chief Secretary, the State Government has expressed inability to impose any such restrictions on the constructions on the ground that the said restrictions will lead to creation of slums and that the construction industry in the city will be considerably affected. What is material is that in none of the affidavits placed on record either by the State Government or the Mumbai Municipal Corporation, it is stated that any scientific assessment is made of the impact of large scale constructions which are going on in the city on the generation of municipal solid waste including construction waste. This exercise was necessary as even by the end of the year 2019, the said Corporation will be in no position to make full

compliance with the MSW Rules. What is stated by the Chief Secretary in the affidavit is that a direction has been issued by the State Government under section 154 of the Maharashtra Regional and Town Planning Act, 1966 (for short "MRTP Act") to the said Corporation. Paragraph 2.1 of the said affidavit summarizes the directions issued by the Government Circular dated 15th February 2016. Paragraph 2.1 reads thus:

"2.1 I say and submit that the Government has issued following directions to the Municipal Corporation of Greater Mumbai (MCGM) under section 154 of the MRTP Act 1966 vide circular dated 15.2.2016.

(a) To segregate bio-degradable waste from dry waste and to process the bio-degradable waste in a decentralised manner, at least in some wards in Municipal Corporation of Greater Mumbai

(b) To impose the condition of segregating the waste and process the bio-degradable waste in-situ i.e within the plot area in a scientific manner, by occupier of the premises, while granting permission of development.

(c) To give necessary permission for processing bio-degradable waste within the plot area.

(d) Some area is reserved for Recreation Ground while giving permission for

construction on the area of more than 2000 sq.mts, and to give necessary permission for processing bio-degradable waste in the RG area."

14 We may note that as far as the clauses (b) and (d) are concerned, the same will be ineffective unless the same are incorporated in the Development Control Regulations (for short "DCR") which are applicable to the city of Mumbai. For complying with the directions contained in clause (a), the said Corporation will have to find out suitable sites in the thickly populated localities. Clause(c) provides for giving permission to the co-operative societies or the owners of the properties who come forward to set up facility of processing bio-degradable waste. Again for this measure, perhaps the amendment of DCR will be necessary for permitting setting up of such facilities on residential plots. Therefore, what is provided in the circular dated 15th February 2015 is not at all helpful today in any manner to control and curb the creation of more municipal solid waste. The implementation of the Circular can be made provided there is a modification of the DCR. We may note here that the State Government has not issued a direction under the provisions of section 37 of the MRTP Act to the said Corporation to start process of carrying out the necessary amendments to the said Regulations. Thus, the scenario which emerges is on the one hand there are no concrete measures suggested which will prevent the generation of more municipal solid waste in the city and on the

other hand, there is no possibility of the said Municipal Corporation making compliance with the requirements of the MSW Rules in near future. We may note here that the learned senior counsel representing the Municipal Corporation has tendered across the bar a chart showing details of the proposals for development received by the said Corporation during the period between 1st January 2014 till 30th September 2015 (21 months). The chart shows that out of 1700 proposals received, 1382 proposals (81.30%) are of redevelopment projects and only 318 (18.70%) proposals are of a new development. The chart is signed by the Chief Engineer (D.P.) of the Municipal Corporation. It records that the re-development projects are being undertaken under the clauses 5, 6, 7, 9 and 10 of the Regulation 33 of the DCR.

15 As stated earlier, there is no ground made out by the Municipal Corporation for grant of extension of time provided in the judgment and order in the PIL as even according to the case of the said Corporation, there is no possibility of creating facilities in near future in terms of the MSW Rules to deal with the entire quantity of solid waste generation in the city. The seriousness of the situation leaves no option for the Court but to grant extension of time so that there is some pressure on the said Corporation and the State Government to act. It is now high time for them to act. If no drastic steps are taken, the citizens will be exposed to grave danger of pollution. The

situation is alarming which poses a threat to the commercial capital of India which is to be converted into a "smart city". As far as this city is concerned, substantial compliance with the MSW Rules and the directions issued in the PIL appears to be a distant dream.

16 Therefore, the first question is the period for which the extension should be granted and the second question is, what the conditions, if any, should be imposed while granting the extension.

17 Considering the casual and indifferent manner in which the Authorities have proceeded, grant of a long extension will make the Authorities complacent and therefore, the only way to ensure that some drastic steps are taken by them is to grant a limited extension for the time being so that the Court can monitor the progress, if at all an Application is made for further extension. Hence, we propose to extend the time till 30th June 2017.

18 Now, we come to the second issue regarding the conditions which can be imposed. We have perused the Circular dated 15th February 2016. It is issued in exercise of the power under section 154 of the MRTTP Act. We have already held that the measures suggested therein are of no help to restrict the creation of municipal solid waste unless the DCR is modified. Therefore, the State Government will have to take steps either on its own or by directing the Mumbai Municipal Corporation to initiate process of

the necessary modification to the DCR. This process will take some time. Thus, it is not easy to implement the directions given under section 154 of the MRTP Act. For complying with the first direction of setting up facilities for processing biodegradable wastes, the said Corporation will find it difficult to find sites. Setting up adequate facilities for disposing of the entire quantity of solid waste generated in the city in terms of the MSW Rules appears to be a distant dream as the facilities which will be created by the end of the year 2019 will take care of only 50% to 60% of the total quantity.

19 As of today, neither the said Municipal Corporation nor the State Government have come out with any solution whatsoever for ensuring that the quantity of solid waste generated in the city every day should not increase. As stated earlier, the affidavit of the Chief Secretary indicates that the State Government is more worried about the impact of imposing any restraint on the new constructions in the city on the real estate industry. At this stage, we must note that while dealing with the similar issue concerning the Kalyan Dombivali Municipal Corporation (KDMC), this Court has imposed restraints on the grant of building permissions till the facilities are created in terms of the MSW Rules. It is true that the learned Advocate General may be right in making a submission that comparison cannot be made between the city of Mumbai and city of Kalyan Dombivali for various reasons.

20 Finding that the KDMC did not abide by the provisions of the MSW Rules, this Court in a PIL passed an interim order preventing grant of development permissions in the city. The Division Bench found that there was no possibility of the Municipal Authority of complying with the MSW Rules. In another case relating to the Municipal Corporation of the city of Thane, there was an assurance given by the Municipal Corporation that the facilities in terms of the MSW Rules will be created by the end of October 2017 which will cater the need of the entire quantity of the municipal solid waste created every day. Though while admitting the petition concerning the Municipal Corporation of the city of Thane, this Court has not imposed restrictions on the grant of development permissions, it was made clear in the order that if it is found that the Municipal Corporation is not abiding by the assurances, a drastic order imposing restrictions will be passed.

21 In the present case, we have already held that at the commencement of the year 2015, the generation of the municipal solid waste in Mumbai was about 10,400 MT (including the building waste) per day and today, it may be of the quantity of at least 11,000 MT per day. Today, only 3000 MT per day is being processed in terms of the MSW Rules which will be at the highest increased to 8,000 MT per day by the end of the year 2019. By that time, the per day generation of solid waste in the city may in all probability reach 15,000 MT.

22 We have also pointed out that out of the lands handed over by the State Government, the land at village Karvale has substantial encroachments upon it. In fact, in the earlier affidavit of the Chief Secretary, the stand taken was that the Municipal Corporation of City of Mumbai should remove the encroachments. However, when it was pointed out by this Court that the said Municipal Corporation cannot exercise statutory powers outside its territorial jurisdiction, now the State Government has made a statement that it will take up the work of removal of the encroachments. An area of 12 Hectare is not yet acquired and placed in the possession of the said Municipal Corporation.

23 There are large number of constructions going on in the city. But there is absolutely no possibility of the said Municipal Corporation complying the MSW Rules as well as the binding directions in the judgment and order of this Court dated 2nd April 2013 in near future. In fact, during last few years, the State Government has amended DCR providing for grant of more and more FSI. The State Government is encouraging unsustainable growth. Thus, there is a gross breach on the part of the Municipal Corporation of the statutory provisions of the MSW Rules. Moreover, there is a gross breach of the order passed by this Court on 2nd April 2013 in the PIL. As observed earlier, in fact, this is a fit case where this Court ought to have rejected the Application for grant of extension of time and

initiated penal action under section 13 of the said Act against all those who are responsible for the violations. Thus, in the city of Mumbai, the citizens are exposed to pollution thereby violating their fundamental rights under Article 21 of the Constitution.

24 The consequences of the failure to abide by the MSW Rules are writ large on record. We have already made extensive reference in this order to the recent incidents of huge fire at Deonar dumping ground. In the affidavit filed on record by Shri Rajkumar Sharma on behalf of the intervenors, the disastrous effects of the fire on the people living in the proximity of the Deonar site have been brought on record. The fire increased the pollution in the entire city to an alarming level. Local residents were affected by respiratory deceases. The local Schools were required to be kept closed for few days. The learned senior counsel representing the intervenors pointed out that even on Saturday, 27th February 2016 there was a fire on the Deonar dumping ground. The learned senior counsel further pointed out the earlier orders passed by this Court and the proceedings of the Advisory Committee constituted under the orders of this Court in another Writ Petition. What is recorded in the minutes of the meeting of the Advisory Committee appointed by this Court, which was held way back on 3rd May 2011, is very disturbing. The earlier contractors who were appointed by the Municipal Corporation i.e. M/s.Tatva Global Environment

(Deonar) Limited pointed out in the meeting that the entire area of Deonar dumping ground has been divided into various zones by the anti-social elements operating inside the dumping ground. It is further pointed out that the Closed-Circuit Television Cameras (for short "CCTV cameras") installed at the site are not working. There is no police protection around said site and there are breaches in the compound wall. We have already observed in the earlier part of this order that the fire at Deonar dumping ground has posed a major danger to the health of the citizens. The Air Quality Index figures placed on record show that due to smoke generated by the Deonar fire, alarming readings of air quality index were recorded in the city.

25 Going by the stand taken by the said Municipal Corporation, the capacity of processing of solid waste at Kanjurmarg is only of 3,000 MT per day. It is stated that the dumping at Mulund site has been stopped. Therefore, the only logical conclusion which can be drawn is that every day a quantity of at least 7,400 MT of solid waste is being dumped at Deonar site. There is no protection to the Deonar site in any manner. The security guards who were promised to be deployed at the site are not found on the site. There is no police protection to the site. As stated earlier, the CCTV cameras are not working. The No Objection Certificate (NOC) granted by the Airport Authority of India to the site has come to an end long back and, therefore, the height

of the ground cannot be increased. In fact, the Airport Authority of India had re-validated its NOC for Deonar only upto 12th July 2012 by a letter dated 7th December 2011. Thus, apart from the serious issue of the breaches of the provisions of the MSW Rules and breaches of the orders passed by this Court, the issue is of the threat to the health of the citizens of Mumbai. Due to the breaches on the part of the State Government and the Municipal Corporation, there is a complete violation of Article 21 of the Constitution of India.

26 Though, no case is made out for grant of extension of time, we are extending the time only with the hope that the State Government as well as the Municipal Corporation will take up speedy steps as pointed out earlier. The Secretary In-charge of the Urban Development Department is responsible for implementation of the provisions of the MSW Rules in the metropolitan cities. Thus, apart from the Municipal Corporation, the State Government is equally responsible for implementation of the MSW Rules, more so when it is its responsibility to procure the land for landfill sites for the benefit of the city of Mumbai. Unless drastic conditions are imposed for the grant of extension of time, neither the State Government nor the Municipal Corporation will take any serious steps. The culpable inaction of the Authorities for all these years is the cause of the serious situation in the city. In the earlier part of this order, we have already made a reference to the last affidavit dated 15th February

2016 filed by Shri Swadheen Kshatriya, the Chief Secretary of the Government of Maharashtra. If there was any seriousness on the part of the State Government, directions could have been issued by it to the Municipal Corporation to immediately adopt the procedure under section 37(1) of the MRTTP Act for the modification of the DCR. Though the State Government could have issued a direction to comply with the requirements in a time bound manner, the State Government has failed to do so.

27 We have already pointed out the subsequent part of the affidavit wherein the Chief Secretary has expressed that the real estate industry will suffer if there are restrictions imposed on the development. The learned senior counsel appearing for the Municipal Corporation has pointed out that nearly 80% to 85% proposals submitted for development are in respect of re-development projects. On one hand there is no real possibility of any Authority complying with the MSW Rules and on the other hand, the development by construction of buildings in the city continues on a very large scale. There are proposals for grant of additional FSI by amending the DCR. We are, therefore, of the view that, in case of certain development proposals, restrictions will have to be imposed. More so, because neither the State Government nor the Municipal Corporation has bothered to make a scientific assessment of the impact of large scale constructions going on in the city on the generation of the municipal solid waste in the city. Without

doing any such scientific study, a contention is sought to be raised by the State Government that there is nothing on record to show that the constructions which are coming up in the city, will have any major impact on the quantum of solid waste generation in the city. *Prima facie*, it is very difficult to accept the contention. In any case, this contention could not have been raised without making a scientific study. It is obvious that more and more constructions in the city will increase population density which will generate more and more municipal solid waste as also construction waste.

28 We are conscious of the fact that in the city of Mumbai there are large number of re-development projects which are going on and the occupants of the existing premises might have vacated their respective premises. Therefore, for the time being, we do not propose to impose any restrictions on the grant of the proposals/Applications for the re-development projects including the construction of sale component buildings. However, the restrictions will have to be imposed on consideration of fresh proposals/ Applications submitted for new construction of the buildings for residential or commercial purposes. The restrictions will have to be imposed on the implementation of the provisions of the DCR for grant of additional FSI which will be incorporated hereafter by amending the DCR. After imposing the restrictions as a condition for grant of extension of time, we propose to grant

liberty to the State Government to apply for modification of the order after making compliances. The State Government will have to amend the DCR to give effect to the directions issued on 15th February 2016 under section 154 of the MRTP Act. The facilities for processing the bio-degradable waste will have to be created in the city by the said Corporation in terms of the said directions. Moreover, the said Corporation or the State Government will have to undertake a scientific study of the assessment of the impact of the constructions which are likely come up in the city during the period of at least ten years from now on the generation of the municipal solid waste. Another compliance which can be made is by immediately providing additional lands on which facilities can be set up in terms of the MSW Rules so that by the end of the year 2019, the facilities will be sufficient to take care of quantity of 15,000 MT per day of municipal waste.

29 As far as the Deonar site is concerned, we propose to issue various directions starting with the constitution of a Monitoring Committee headed by a retired Civil Servant to monitor the activities at the site. The learned Government Pleader stated that Shri Rahul Asthana (IAS), a retired Civil Servant, who has worked as an Additional Municipal Commissioner of the Mumbai Municipal Corporation for three years, can be appointed to head the Committee as he has shown his willingness to take up the responsibility. It will be necessary to nominate a

senior retired IPS Officer to be a part of the said Committee. Moreover, a renowned expert in the field of environment should also be a part of the committee. We propose that a reputed institution, either the Indian Institute of Technology, Mumbai (for short "IIT") or the National Environmental Engineering Research Institute (for short "NEERI") should be appointed to not only give suggestions regarding the measures to be taken for the proper maintenance of the site at Deonar till the compliance of the MSW Rules, but also to supervise the measures taken by the Municipal Corporation. A representative of IIT or NEERI, as the case may be, will be the fourth member of the Monitoring Committee appointed by this Court. We propose to appoint Shri Rajkumar Sharma, who has filed number of petitions on the issue of Deonar ground, as the fifth member of the Committee. The State Government will have to nominate any Deputy Police Commissioner as the officer in-charge of the security of the entire site. As per the recommendations of the Monitoring Committee, adequate number of police personnel will have to be posted for the protection of the site as it is noted in the minutes of the Advisory Committee that the site has been taken over by the anti-social elements. If necessary, deployment of the State Reserve Police Force at site will have to be made. All necessary and immediate measures will have to be undertaken by the Municipal Corporation including the construction of compound wall or fencing, installation of CCTV cameras etc. as may be recommended by the Monitoring Committee

and the expert agency (IIT OR NEERI) appointed by the Municipal Corporation. The Municipal Corporation will have to nominate a Senior Officer not below the rank of a Deputy Commissioner who will be responsible for the implementation of the recommendations of IIT or NEERI, as the case may be, and the Monitoring Committee. The said Officer shall be the Secretary of the Monitoring Committee .

30 Hence, we dispose of the Applications by passing the following order:

O R D E R

(i)The Mumbai Municipal Corporation is hereby granted time till 30th June 2017 to comply with the directions contained in the judgment and order dated 2nd April 2013 passed in Writ Petition No.1740/1998 and other connected matters including PIL No.217 of 2009. Within the extended time, the Mumbai Municipal Corporation shall establish all the facilities in terms of the directions issued in the judgment and order dated 2nd April 2013 which will be capable of processing municipal solid waste of the quantity of at least 11,000 MT per day. Needless to state that the said facilities shall be strictly in accordance with the MSW Rules. The prayer for extension of time is granted as above, subject to the following conditions:

(a) The development permissions/IOD shall not be granted by either the said Municipal

Corporation or the State Government on the Applications/proposals submitted from 1st March 2016 for construction of new buildings for residential or commercial use including Malls, Hotels and Restaurants. Such Applications shall be processed, but the IOD and/or commencement certificate shall not be issued. It is obvious that in view of this restraint, no one can take advantage of deeming provisions in the DCR and MRTP Act. Needless to state that this condition will not apply to all the redevelopment projects covered by the clauses (5), (6), (7) (8), (9) and (10) of the DCR No. 33. This condition will not apply to the buildings proposed to be constructed for the hospitals or educational institutions. The condition shall not apply for consideration of the proposals for repairs/reconstruction of the existing buildings which do not involve use of any additional FSI in addition to the FSI already consumed. These restrictions shall apply only to the Applications/proposals submitted from tomorrow i.e. 1st March 2016;

(b) The State Government and/or the Municipal Corporation shall undertake a scientific assessment of impact on the generation of the municipal solid waste including construction waste in the city by construction of new buildings and new

development projects. The study shall include the assessment of the impact of the constructions likely to come up in the city for a period of at least 10 years. The State Government shall also take all the steps for the implementation of the directions in the circular issued on 15th February 2016 in accordance with section 154 of the MRTP Act;

(c) Even if there is an amendment of the DCR made hereafter providing for grant of additional FSI in the city, the benefit of the same shall not be extended to the building proposals/ Applications for development permissions including for the re-development projects submitted from tomorrow;

(d) Immediate steps shall be taken for amending the Development Control Regulations not only for giving effect to the directions issued in terms of the Circular dated 15th February 2016 but also for incorporating the suggestions in paragraph- 2.2 of the additional affidavit of Shri Swadheen Kshatriya dated 15th February 2016;

(ii) After completion of scientific study of the impact assessment as indicated above through a reputed agency; after carrying out amendment to the DCR as stated above; and after setting up facilities in various wards for segregating bio-

degradable waste from dry waste and its disposal as suggested in clause 2.1 of the affidavit dated 15th February 2016 of Shri Kshatriya, it will be open for the State Government as well as the Municipal Corporation to apply for modification of the conditions imposed above;

(iii) We direct the State Government to nominate an Officer in terms of Rule 5 of the MSW Rules who will be over all responsible for the enforcement of the MSW Rules in the State;

(iv) As far as Deonar dumping ground is concerned, the Municipal Corporation shall forthwith engage the services of IIT or NEERI as consultants to suggest the measures for properly maintaining the site till proper facility is created thereon as per the MSW Rules. The said agency shall be appointed not only to suggest measures but the also to supervise the implementation of the measures;

(v) A Monitoring Committee shall be constituted by the Mumbai Municipal Corporation for monitoring the maintenance of the site of the Deonar ground. The Monitoring Committee shall consist of (1) Shri Rahul Asthana, IAS (Retired) as the Chairman; (2) A retired Senior IPS Officer nominated by the State Government; (3) a representative nominated by IIT or NEERI, as the case may; (4) an Expert of repute in the field of Environment; and (5) Shri Rajkumar Sharma. The said Committee shall be constituted as expeditiously as possible and in any event, within a

period of six weeks from today. The Committee shall start functioning even before a representative is nominated by the IIT or NEERI, as the case may be. The committee shall recommend all necessary measures for the proper maintenance of the said site especially the safety measures. The Committee shall be entitled to issue necessary directions to the said Corporation and the Deputy Commissioner of Police appointed as per the directions issued under this order;

(vi) The said Municipal Corporation shall provide for payment of an adequate remuneration to the members of the Monitoring Committee. All arrangements for transport and other facilities shall be made available to the members of the Committee. An office premises with all the facilities and staff shall be made available to the Monitoring Committee.

(vii) The Municipal Corporation shall nominate any Officer not below the rank of Deputy Commissioner as in-charge of the Deonar site. Such Officer shall be nominated within a period of three weeks from today. The Officer so nominated shall be responsible for implementing the suggestions given by the IIT or NEERI, as the case may be, and/or by the Monitoring Committee. The said Officer shall also act as the Secretary of the Monitoring Committee. He shall attend the meetings of the Committee as its Secretary;

(viii) We direct the State Government to nominate any Officer not below the rank of a Deputy Commissioner of Police who will be in-charge of the protection of the Deonar site from the anti-social elements. The appointment shall be made within a period of three weeks from today. As per the suggestions of the Monitoring Committee, adequate number of police personnel shall be deployed by the said Officer at the site. He will be guided by the Monitoring Committee. Till the constitution of the Monitoring Committee, the State Government shall place such number of police personnel as may be required by the Deputy Commissioner so appointed. If necessary, the State Reserve Police shall be deployed.;

(ix) Pending the constitution of the Monitoring Committee and the recommendations of the Committee as well as IIT or NEERI, immediate steps shall be taken by the said Corporation to construct a fencing or compound wall around the Deonar site;

(x) Pending the constitution of the Monitoring Committee, the Municipal Corporation shall take steps for installing CCTV cameras at various strategic locations in and around the Deonar site;

(xi) The Municipal Corporation shall take immediate steps for removal of encroachments made on the Deonar site by construction of structures. The Deputy Commissioner of Police nominated as above shall deploy adequate police force for the assistance and protection of the Municipal staff for

the work of removal of encroachments;

(xii) We make it clear that the Municipal Corporation shall abide by the recommendations of the IIT or NEERI, as the case may be and the Monitoring Committee appointed under the orders of this Court for the management of the Deonar site till the facility as per the MSW Rules is established;

(xiii) As the Municipal Corporation will be bound by the recommendations of the IIT or NEERI, as the case may be and the Monitoring Committee, at this stage, we are not issuing any further directions as regards the Deonar site;

(xiv) If the Monitoring Committee is of the view that further directions are necessary for the protection and maintenance of the site at Deonar, the Monitoring Committee is free to make an Application to this Court through its Secretary for seeking appropriate directions;

(xv) We must add here that the Secretary of the Urban Development Department nominated by the State Government in terms of Rule 5 of the MSW Rules shall be invited to attend the meeting of the Monitoring Committee as a special invitee. The Deputy Commissioner of the Police appointed as above shall attend the meeting of the Monitoring Committee as and when required by the Committee;

(xvi)The Application made by the Municipal Corporation as well as the Application for intervention are disposed of in the above terms.

(C.V.BHADANG,J.)

(A.S.OKA,J.)

Bombay High Court