

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

PUBLIC INTEREST LITIGATION NO. 71 OF 2013

The High Court on its own Motion
High Court of Judicature at Bombay. ... Petitioner.

V/s.

The State of Maharashtra and others. ... Respondents.

Mr.J.K.Mistry with Mr. Dipesh U.Siroya, Amicus Curiae present
Ms.Ruju R. Thakkar for the applicant/intervenor
Mr. A.B.Vagyani, Government Pleader with Mr.Manish Pabale, AGP
for the respondent State
Mr.A.Y.Sakhare, Senior Advocate with Ms.K.H.Mastakar, Ms.Vandana Mahadik,
Ms.Shital Mane, Mr.Sagar Patil for the respondent- MMC.
Mr.Advait Sethna with Mr.Dhanesh Shah for the respondent- Union of India.
Mr.Advait Sethna for the respondent No.16.
Mr.Nishant Rana with Mr.Vishesh Kalra i/b. Vidhii Partners
for the respondent No.7.
Mr.Shilesh Chavan i/b Mr.Milind Deshmukh for the respondent
Nos. 291, 341, 353, 355.
Mr.T.D.Deshmukh with Sagar Kursija for the respondent Nos.282 & 285.
Mr.Nakul Vane with Mr.Ravindra S. Pachundkar for the
respondent Nos.327, 332, 334, 335, 337 & 338.
Mr.Amol Patil with Mr.Pravin Deshmukh for the respondent
Nos.55, 214, 377 to 379, 383 to 389 & 391 to 398.
Mr.Dinesh P. Adsule for the respondent No. 365.
Mr.R.S.Apte, Senior Advocate with Mr.Mandar Limaye for the respondent No.4.
Mr.S.R.Nargolkar for the respondent No. 289.
Mr.Shriram Kulkarni for the respondent Nos.54 to 59, 253, 357 and 358.
Mr.I.M.Khairadi for the respondent No. 25.
Mr.Akshay Shinde for the respondent Nos.181 to 190.
Mr.K.P.Shah for the respondent No.328.
Ms.Aparna Devkar for the respondent Wardha Municipal Council.

Mr.A.P.Kulkarni for the respondent Nos.23 & 267.
Mr. Rahul M. Wasnik for the respondent No.206.
Mr.Ajit Hon for the respondent Nos.52 & 356.
Mr.Tejas Dande with Mr.Bharat Gadhavi i/b Tejas Dhande & Associates for the respondent No.85.
Mr.A.A.Gadge for the respondent New Mumbai Municipal Corporation.
Mr.Anoop V. Patil for the respondent No.235.
Mrs.Leena Temkar for the respondent Nos.100 to 110.
Mr.Sarthak Diwan i/b. Mr.A.M.Kulkarni for the respondent Nos.89 to 92.
Mr.Karan S.Thorat with Mr.S.T.Mohate for the respondent Nos.252 & 254.
Mr.Mayur Jadhav i/b Mr.S.B.Shetye for Uran and Rajapur Municipal Council.
Ms.Apeksha Dangche i/b. Mr.Shakuntala Wadekar for the respondent Nos.281, 312, 284 and 340.
Mr.Ajay Fernandes with Ms.Sneha Pandey for the respondent No.8.
Mr.N.R.Bubna for the respondent No.6.
Mr.Nirmal R.Dayame for the respondent Nos.165 & 170.
Mr.Kamal Khata i/b. M/s.Rustamji and Ginwala for the respondent Nos.10 & 11.
Mr.Gaurav Sharma i/b. Mr.A.M.Kulkarni for the respondent Nos.39 to 92.
Mr.Girish V.Wani for the respondent Nos.157, 163, 167, 164, 169 & 171.
Mr.Tejas Bendre with Mr.Vinayak Bendre for the respondent No.50.
Mr.S.N.Deshpande & Mr. B.S.Chandhekar for the respondent No.156.
Mr.B.S.Chandhekar for the respondent No.154.
Mr.Prabhakar M. Jadhav for the respondent No.287.
Mr. Abhijit Adagule for the respondent No.26.
Mr. Nishant Rana a/w Mr. Vishesh Kalra for the respondent No. 7
Mr. R.A. Naik I/b Mr. U.R.Mankapure for the respondent Nos.181 & 324.
Mr.Vishwanath Talkute for the respondent No.361.
Mr.I.M.Khairadi for the respondent No.25.
Mr.Pradeep Patil with Ms.Arohi Tanksale for the respondent Nos. 75, 179,173, 191 to 199,219,225,228,230,231,258,259 and 261 to 264.
Mr.Vaibhav V. Ugle for the respondent No.260.
Mr.Prashant Chavan i/b. Reshmarani Nathani for the respondent No.13.
Mr.Siddheshwar Biradar i/b. Mr.Ajinkya Reddy for the respondent No.193.
Mr.Vinod S.Chate for the respondent- Igatpuri Municipal Council.
Mr.Govind B.Solanke with Mr.Sanjay Dudhane for the respondent No.257.
Mr.Yogesh Morbale with Mr.Vinod Sangvikar i/b. Mr.Gajendra D.Jain for the respondent No.237.
Mr.S.A.Sahu with Mr.M.I.Dhatrak for the respondent Nos.37, 93, 94, 96, 98, 99, 113 to 119, 121 to 127, 144 to 146, 148, 149, 200, 204, 210, 211, 213, 217, 368 to 370, 373, 375 & 382.
Mr.A.A.Garge with Ms.Tejashree Joshi for the respondent Nos.5 & 280.
Mr.I.M.Khairdi for the respondent No.25.
Mr.Akshay Kapadia i/b. J.Shekhar & Co. for the respondent No.25.

Mr.Ravindra Pachundkar and Ms.Shraddha Pawar for the respondent Nos.327, 332, 334, 335, 337 & 338.

Mr.G.S.Keluskar for the respondent No.22.

Mr.A.S.Rao for the respondent Nos.17, 23 & 64.

Mr.A.M.Adogule for the respondent No.26.

Mr.Mandar Limaye for Shirur Municipal Corporation and Barshi Municipal Corporation.

Mr.Ketan Joshi for the respondent No.292.

Mr.Ketan Joshi with Mr.Amol Patil i/b. Mr.Pravin Deshmukh for the respondent Nos.214, 292, 378, 377, 379, 383 to 389 and 391 to 398.

Mr.Pradip Patil with Ms.Arohi Tanksale for respondent Nos.191, 192, 173, 179, 178, 180, 219, 225, 228, 230, 231, 258, 259, 261 to 264, 276 to 279 & 194 to 199.

Mr.Yashodeep Deshmukh for Malvan Municipal Council.

Mr.Harshad Sathe i/b Mr.Harshad Bhadbhade for Chiplun, Mohod & Ratnagiri Municipal Council.

Mr.A.M.Kulkarni with Mr.Sarthak Diwan for the respondent Nos.86 and 89 to 92.

Mr.Rupesh K.Bobade for the respondent No.321.

Mr.Shivshankar D. Patil and Mr.Manish Trapti for the respondent Nos.272 to 274.

Mr.Sarang Satish Aradhya with Mr.Milind Prabhune for the respondent Nos.34, 38, 152, 331, 352 and 359.

Mr.U.M.Maske Patil with Mr.R.V. Naiknaware for the respondent Nos. 40, 42, 45, 48, 255.

Mr.Prashant Kamble i/b. Mr.A.S.Rao for the respondent Nos.11 & 136.

Mr.N.R.Dayama for the respondent Nos.165 & 170.

Mr.Abhinav K.Dhabarde for the respondent Nos.95, 97, 372 & 376.

Mr.Arsh Mishra with Ms.Khushboo Agarwal i/b. M.V.Kini & Co. for the respondent- NHAI.

Mr.Ashish Pawar i/b. Mr.Amit Karande for the respondent No.305.

Mr.G.W.Mattos for the respondent No.11/MMRDA.

Mr.R.K.Bobade for the respondent No.321.

Ms.Priyanka Bhadrashete i/b. Mr.N.N.Bhadrashete for the respondent Nos. 343, 344, 346 & 350.

Ms.Savin Bangera i/b. Mr.Nandu Pawar for the respondent No.319.

Mr.Amit Sale with Mr.Amol Patil for the respondent Nos.74, 77, 153.

Mr.Gaurang Jhaveri i/b. Mr.Vishal Kale for the respondent Nos.219 & 229.

Mr.Jitendra Gaikwad for the respondent No.32.

CORAM : A.S.OKA AND P.N.DESHMUKH, JJ.

DATE : 24th February and 12th April 2018.

ORAL JUDGMENT : (Per A.S.Oka, J.)

OVERVIEW AND BACKGROUND

This suo motu public interest litigation (PIL) concerns poor condition of roads in the areas falling within the jurisdiction of the Municipal Corporations and Municipal Councils in the State. This petition takes a note of hardships and inconvenience caused to the citizens due to poor state of roads in the State and in particular, in the municipal areas. The reasons for poor condition of roads can be several such as poor or bad quality of workmanship, improper technology used in construction of roads and/or in repairs of roads, poor maintenance of roads, heavy rainfall, failure to provide proper storm water disposal system, increase in traffic intensity for which the roads are not designed, etc.

2. A letter was addressed by one of the Hon'ble sitting Judges of this Court (G.S.Patel, J.) on 24th July 2013 to the Hon'ble the Chief Justice. The letter refers to the law laid down in PIL No.259/2005. The letter refers to the news items appearing in various newspapers regarding large number of potholes on the roads, traffic accidents and large number of casualties suffered by riders of two wheelers. Cognizance of the said letter addressed to the Hon'ble the Chief Justice was taken by the First Court by an order dated 29th July 2013 by which this Court initiated a suo

motu PIL by issuing notices to various parties. Thereafter, orders were passed from time to time dealing with various issues including the order dated 20th May 2015 which laid down a law on the subject and issued several interim directions. We propose to advert to these orders in the subsequent part of this Judgment.

PROVISIONS OF MUNICIPAL ACTS REGARDING PUBLIC STREETS AND MANDATORY DUTIES

3. At the outset, it is necessary to note the legal provisions as regards the obligation of the Municipal Authorities and the State as well as other statutory corporations and statutory entities when it comes to construction, improvement and maintenance of roads. In that context, we are referring to the provisions of the municipal laws prevailing in the State.

The Mumbai Municipal Corporation Act, 1888

4. Firstly, we are dealing with the provisions of the Mumbai Municipal Corporations Act, 1888 (for short “the Act of 1888”). In the said Act of 1888, section 3 contains various definitions. There are three definitions with which we are concerned. The first definition is of a “street” which is in clause (w) of section 3 which reads thus:

“(w) "street" includes any highway and any causeway, bridge, via duct, arch road, lane, footway, square, court, alley or passage, whether a thoroughfare or not, over which the public have a right of passage or access or have passed and has access uninterruptedly for a period of twenty years; and when there is a footway as well as carriageway in any street, the said term includes, both;”

Secondly, the definition of “public street” in clause (x) of section 3 is relevant which reads thus:

“3. Definitions of terms.

(x) "public street" means any street heretofore levelled, paved, metalled channelled, sewerred or repaired by the corporation and any street which becomes a public street under any of the provisions of this Act; or which vests in the corporation as a public street;”

Thirdly, the definition of “drain” in clause (u) of section 3 needs to be noted which reads thus:

“(u) "drain" includes a sewer, pipe, ditch, channel, tunnel and any other device for carrying of sewage, offensive matter, polluted water, sullage, waste water, rain water or sub-soil water, and any ejectors, compressed air mains, sealed sewage mains and special machinery or apparatus for raising, collecting, expelling or removing sewage or offensive matter to the sewage outfall;”

As can be seen from the definition of street, it is a very wide definition which includes all categories of roads such as alley or passage over which the public have a right of passage or access or over which the members of public have passed and have access uninterruptedly for a period of twenty years. Second part of the said clause makes it clear that when there is a foot-way (popularly known as footpath) as well as carriageway in any street, the same are part of the street. Therefore, when there is a street on the side of which there are footways, even the footways are a part of the of street. The moment a street as defined in clause (w) of section 3 is levelled, paved, metalled, channelled, sewerred or repaired by the Corporation, it becomes a public street. Even otherwise, if a street as

defined in clause (w) is vested in the said Corporation, it becomes a public street. When we deal with public street, necessarily, we have to deal with drains as defined in clause (u) of section 3 which are passing below or above the streets as defined.

5. The earlier orders refer to obligatory duties of the Mumbai Municipal Corporation constituted under the said Act of 1888 which are provided in section 61. The earlier orders refer to clauses (m) of section 61, but we find that even clauses (n) and (o) of the said section are relevant for our consideration. Clauses (m) (n) and (o) of section 61 read thus:

“61. Matters to be provided for by the corporation.

It shall be incumbent on the corporation to make adequate provision, by any means or measures which it is lawfully competent to them to use or to take, for each of the following matters, namely :—

.....

(m) the construction, maintenance, alteration and improvement of public streets, bridges, culverts, causeways and the like and also other measures for ensuing the safe and orderly passage of vehicular and pedestrian traffic on streets;

(n) the lighting, watering and cleansing of public streets;

(o) the removal of obstructions and projections in or upon streets, bridges and other public places;

.....”

(emphasis added)

Thus, the mandatory duties or mandatory obligations of the Municipal Corporation are not confined to maintenance or improvement of public streets. It is also an obligation of the Corporation to take measures to

ensure safe and orderly passage of vehicular and pedestrian traffic on the street. Therefore, the mandatory obligation is to ensure that the public streets are maintained in such a fashion and in such a manner that the same continue to be safe for passage of vehicular and pedestrian traffic. Another obligation is lighting and cleansing of public streets. This obligation is very relevant as the material brought on record shows that potholes or bad condition of roads or open manholes resulted in casualties after sunset due to poor lighting arrangements on streets. Clause (o) is also relevant which mandates that it is the mandatory duty and obligation of the Municipal Corporation to remove all obstructions and projections in or upon streets.

6. As stated earlier, even when the Court considers the issue of public streets, the Court is also concerned with the drains which are made below or on the public streets. Section 221 of the said Act of 1888 deals with the drains, which reads thus:

“221. Drains to be constructed and kept in repair by the Commissioner.

(1) The commissioner shall maintain and keep in repair all municipal drains and, when authorised by the corporation in this behalf, shall construct such new drains as shall from time to time be necessary for effectually draining Brihan Mumbai.

(2) The Commissioner shall also, in the case of any street in which there is a municipal drain, construct at the charge of the municipal fund such portion of the drain of any premises to be connected with such municipal drain as it shall be necessary to lay under any part of such street and the portion of any connecting drain so laid under the street shall vest in the corporation and be maintained and kept in repair by the Commissioner as a Municipal drain.”

Thus, sub-section (1) of section 221 imposes an obligation on the Municipal Commissioner to maintain and keep in repair all municipal drains. If the drains are covered by manholes, it follows that properly maintaining manholes becomes a part of legal obligation of the Corporation. Then, we come to provision of section 308 which imposes prohibition on any person erecting or setting up or placing against or in front of any premises any structure or fixture which will overhang, jut or project into, or in any way encroach upon, or obstruct the safe or convenient passage of the public along any street. Sub-section (2) of the same section confers powers on the Commissioner to remove such projections. Since the powers are vested in the Commissioner, it is an obligation of the Commissioner to exercise those powers. The another applicable provision is section 321 which deals with precautions to be taken for public safety whilst municipal works are in progress in any street. The said section reads thus:

“321. Precautions to be taken for the public safety whilst municipal works are in progress in any street.

(1) Whilst the execution on any work on behalf of the corporation is in progress in any street, the Commissioner shall—

(a) take proper precaution for guarding against accident by shoring up and protecting the adjoining buildings;

(b) have any place where the soil or pavement has been opened or broken up, fenced and granted;

(c) have a light sufficient for the warning of passengers set up and kept every night against any such place and against any bars, chains or posts set up under section 319, for so long as such place shall be continued open or broken up, or such bars, chains or posts shall remain set up.

(2) No person shall, without the written permission of the Commissioner or without other lawful authority, remove any shoring--timber or fence, or extinguish any light, employed or set up for any of the purpose of this section.”

The work covered by section 321 will be the work of maintenance of streets, drains passing below the streets or which are covered by manholes. Therefore, where manholes are opened for the purpose of carrying out any work, it is the mandatory duty of the Municipal Corporation to take proper precautions for protecting the citizens against accidents. What is material is clause (b) which provides that the Commissioner shall have any place where the soil or pavement has been opened or broken up, fenced and granted. Therefore, when a manhole or pavement is opened, the mandatory obligation under clause (b) comes into picture. Clause (c) is also material. It provides that the Commissioner shall have a light sufficient for warning of passengers set up and kept every night against any such place and against any bars, chains or posts set up under section 319. Section 319 of the said Act of 1888 reads thus:

“319. Commissioner may close street in which work is in progress.

(1) The Commissioner may, whilst any such work as aforesaid or any work which may lawfully be executed in any street is in progress, direct that the said street shall be wholly or partially closed for traffic or for traffic of such description as he shall think fit; and shall set up in a conspicuous position an order prohibiting traffic to the extent so directed, and fix such bars, chains or posts across or in the street as he shall think proper for preventing or restricting traffic therein.

(2) No person shall, without the permission of the Commissioner or without the lawful authority, remove any bar, chain or post so fixed or infringe any order prohibiting traffic so set up.”

Power under section 319 is of closure of streets for carrying out work. Thus, when a street or a manhole is dug up for carrying out work, it is the obligation of the Municipal Corporation to take all precautions for guarding against accident. It is also the mandatory duty to fence the place which is open and to fix a light on the fence sufficient for warning the passengers. The lights must be kept on throughout the night.

7. There are other provisions regarding imposing prohibition on digging streets without prior permission of the Municipal Corporation. While we are dealing with the provisions of the the said Act of 1888, section 518 thereof is material which reads thus:

“518. Power to State Government, to provide for performance of duties in default of any municipal authority.

(1) If, upon complaint being made to it and after such inquiry as it thinks fit to make, it shall at any time appear to the State Government that any of the provisions of sections 61, 62, 62C, 62D, 62E, 89F, 134, 225, 381, 381-A, 434, 438 and 513A have not been or are not being duly carried out or enforced, the State Government may make an order prescribing, a period within which such provision shall be carried out or enforced:

(2) Provided that, except in any case which appears to the State Government to be one of emergency, no such order shall be made until after the expiry of one month from the date of service of a written notice on the Corporation, and if the State Government shall think fit, on

the Commissioner, requiring cause to be shown why such order should not be made, nor until the cause, if any so shown has been considered by the State Government.

(3) If, within the period prescribed in an order made under sub-section (1) the provision is not carried out or enforced, the State Government may appoint some person to carry out or enforce the same and may direct that the expense of carrying out or enforcing such provision together with such reasonable remuneration to the persons carrying out or enforcing the same as the State Government shall determine and the cost of the proceedings under this section shall be paid out of the municipal fund.”

(emphasis added)

8. As stated earlier, clauses (m), (n) and (o) of section 61 impose mandatory duty on the Municipal Commissioner regarding streets. Sub-section (1) of section 518 provides that if a complaint is made to the State that the provisions of section 61 are not being carried out or enforced, the State Government may pass an order prescribing a period within which such provisions shall be carried out or enforced. A procedure for passing such orders is also laid down. We must state here that it is not the case made out by the State in the present petition that, at any time, the said powers were exercised by it. It is also not the case that all the mandatory duties of the Corporation have been carried out or have been enforced. Another relevant provision is section 520C which empowers the State to issue instructions or directions. The said section reads thus:

“520C. Power of State Government to issue instructions or directions.

Notwithstanding anything contained in this Act, the State Government may issue to the Corporation general

instructions as to matters of policy to be followed by the Corporation in respect of its duties and functions, and in particular it may issue directions in the larger public interest or for implementation of the policies of the Central Government or the State Government and the National or the State level programmes, projects and schemes. Upon the issue of such instructions or directions, it shall be the duty of the Corporation to give effect to such instructions or directions:

Provided that, the State Government shall, before issuing any instructions or directions under this section, give an opportunity to the Corporation to make representation within fifteen days as to why such instructions or directions shall not be issued. If the Corporation fails to represent within fifteen days or, after having represented, the State Government, on considering the representation, is of the opinion that issuing of such instructions or directions is necessary, the State Government may issue the same.”

It is a very wide power vesting in State Government to issue general instructions as to the matters of policy to be followed by the Corporation in respect of its duties and functions. Therefore, it is possible for the State Government to give effective directions to the Municipal Corporation in what manner its mandatory duties under section 61 should be discharged and in particular regarding public streets. This provision authorizes the State to formulate a policy as regards the construction/maintenance of streets and direct the Municipal Corporation to implement it.

The Maharashtra Municipal Corporations Act, 1949

9. Then, we go to the next municipal legislation, the Maharashtra Municipal Corporations Act, 1949 (for short “the said Act of

1949) which governs all the Municipal Corporations in the State except the Mumbai Municipal Corporation. Some of the provisions of the said Act of 1949 are *pari materia* with the provisions of the said Act of 1888. Clause (17) of section 2 defines “drain”, which reads thus:

2. Definitions.

.....
 (17) “drain” includes a sewer, tunnel, pipe, ditch, gutter or channel and any cistern, flush-tank, septic tank or other device for carrying off or treating sewage, offensive matter, polluted water, sullage, waste water, rain water, or sub-soil water and any culvert, ventilation shaft or pipe or other appliance or fitting connected therewith, and any ejectors, compressed air mains, sealed sewage mains and special machinery or apparatus for raising, collecting, expelling or removing sewage or offensive matter from any place;

Clause (63) of section 2 defines “street”, which reads thus:

“ (63) “street” includes any highway, and any causeway, bridge, viaduct, arch, road, lane, footway, sub-way, court, alley or riding path or passage, whether a thoroughfare or not, over which the public have a right of passage or access or have passed and had access uninterruptedly for a period of twenty years, and, when there is a footway as well as a carriage way in any street, the said term, includes both;”

Clause (52) of section 2 defines “public street”, which reads thus:

“ (52) “public street” means any street,—
 (a) heretofore levelled, paved, metalled, channelled, sewerred or repaired out of municipal or other public fund, or
 (b) which under the provisions of section 224 is declared to be, or under any other provision of this Act becomes, a public street;

The aforesaid definitions are more or less similar to the corresponding definitions under the said Act of 1888.

10. Section 63 of the said Act of 1949 deals with the obligatory and discretionary duties of the Municipal Corporations constituted under it. Clauses (18) and (19) of section 63 read thus:

“63. Matters which may be provided for by the corporation at their discretion.

It shall be incumbent on the Corporation to make reasonable and adequate provision, by any means or measures which it is lawfully competent to it to use or to take, for each of the following matters, namely:--

.....
 (18) the construction, maintenance, alteration and improvement of public streets, bridges, sub-ways, culverts, cause-ways and the like;

(19) the removal of obstructions and projections in or upon streets, bridges, and other public places;

.....”

Section 153 deals with “drains”, which reads thus:

“153. Drains to be constructed and kept in repair by the Commissioner.

(1) The Commissioner, shall maintain and keep in repair all municipal drains and shall with the approval of the Corporation construct such new drains as shall from time to time be necessary for effectually draining the City.

(2) The Commissioner shall also, in the case of any street in which there is a municipal drain, construct at the charge of the Municipal Fund such portion of the drain of any premises to be connected with such municipal drain as it shall be necessary to lay under any part of such street and the portion of any connecting drains so laid under the street shall vest in the Corporation and be maintained and kept in repair by the Commissioner as a municipal drain.”

Again the said provision is similar to the corresponding provision under the said Act of 1888. Section 157 provides for cleaning of drains. Section 226 deals with projections and obstructions upon the streets. It is not necessary to quote the said provisions as the same are similar to the corresponding provisions of the said Act of 1888. There is a provision made in section 235 dealing with contingencies when the streets are broken up for carrying out work. Section 235 reads thus:

“235. Streets when broken up for any municipal purposes to be restored without delay.

Wherever the soil or pavement of any street is opened or broken up by or under the order of the Commissioner, or of any municipal officer or servant, for the execution of any work on behalf of the Corporation, the work on account of which the same shall have been opened or broken up shall be completed and the soil or pavement filled in, reinstated and made good with all convenient speed; and on completion of the work, the surplus of earth and materials, if any, excavated and all rubbish occasioned thereby shall be removed without delay.”

It is a salutary provision which lays down that whenever the soil or pavement of any street is opened or broken up for any work of the Municipal Corporation, on completion of the work, the same should be restored without any delay. Non removal of surplus earth and materials lying on public streets is also one of the causes of accidents and it may endanger public safety. It also provides that excavated earth and materials and all rubbish occasioned thereby shall be removed without any delay. Section 238 of the said Act of 1949 reads thus:

“238. Precautions to be taken for public safety whilst municipal works are in progress in any street.

(1) Whilst the execution of any work on behalf of the Corporation is in progress in any street, the Commissioner shall—

(a) take proper precaution for guarding against accident by shoring up and protecting the adjoining buildings;

(b) have any place where the soil or pavement has been opened or broken up, fenced and guarded;

(c) have a light sufficient for the warning of passengers set up and kept every night against any such place and against any bars, chains or posts set up under section 236 for so long as such place shall be continued open or broken up, or such bars, chains or posts shall remain set up.

(2) No person shall, without the written permission of the Commissioner or without other lawful authority, remove any shoring timber or fence or remove or extinguish any light employed or set up for any of the purposes of this section.”

This section deals with precautions to be taken for public safety whilst municipal works are in progress in any street. This provision is similar to the corresponding provision under the said Act of 1888.

Section 448 of the said of 1949 reads thus:

“448. Power of State Government to require performance of duties in default of any municipal authority.

(1) If it shall at any time appear to the State Government upon complaint or otherwise that default has been made in the performance of any duty imposed on any of the municipal authorities by or under this Act or by or under any enactment for the time being in force, the State Government may, if satisfied after due inquiry that the alleged default has been made, make an order prescribing a period for the performance of that duty:

Provided that, except in any case which appears to the State Government be one of emergency, no such order shall be made until after the expiry of one month from the date of service of a written notice on the Corporation, and if the State Government shall think fit, on the Commissioner requiring cause to be shown why such order should not be made, nor until the cause, if any, so shown has been considered by the State Government.

(2) If the duty is not performed within the period prescribed in an order made under sub-section (1), the State Government may appoint some person to perform the same and may direct that the expense of performing such duty, together with such reasonable remuneration to the person performing the same as the State Government shall determine and the cost of the proceedings under this section shall be paid out of the Municipal Fund.”

Hence, as in the case of said Act of 1888, on the failure of the Municipal Corporation to perform its mandatory duties, directions can be issued by the State Government prescribing a period for performance of those duties. Section 450A reads thus:

“450A. Power of State Government to issue instructions or directions.

Notwithstanding anything contained in this Act, the State Government may issue to the Corporation general instructions as to matters of Policy to be followed by the Corporation in respect of its duties and functions, and in particular it may issue directions in the larger Public interest or for implementation of the policies of the Central Government or the State Government and the National or the State level programs, projects and schemes. Upon the issue of such instructions or directions, it shall be the duty of the Corporation to give effect to such instructions or directions:

Provided that, the State Government shall before issuing any instruction or directions under this section, give an opportunity to the Corporation to make representation within fifteen days as to why such instructions or direction shall not be issued. If the Corporation fails to represent within fifteen days or, after having represented the State Government, on considering the representation, is of the opinion that issuing of such instructions or directions is necessary, the State Government may issue the same.”

This is a plenary power given to the State Government to issue directions as to the matters of policy to be followed by the Corporations in respect of its duties and functions and, in particular to issue directions in larger public interest.

The Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965

11. Then, we come to the provisions of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (for short “the said Act of 1965”). Clause (48) of section 2 of the said Act defines “street” which reads thus:

“2. Definitions.

In this Act, unless the context otherwise requires,—

.....
 (48) “street” means any road, foot-way, square, court-alley or passage, accessible whether permanently or temporarily to the public, whether a thoroughfare or not, and shall include every vacant space, notwithstanding that it may be private property and partly or wholly obstructed by any gate, post, chain or other barrier, if houses, shops or other buildings about thereon and if it is used by any persons as a means of access to or from any public place or thoroughfare, whether such persons as occupiers of such buildings or not; but shall not include any part of such space

which the occupier of any such building has a right at all hours to prevent all other persons from using as aforesaid;”

Drain is defined in clause (10) of section 2 which reads thus:

“2. Definitions.

In this Act, unless the context otherwise requires,—

.....
 (10) “drain” includes a sewer, tunnel, pipe, ditch, gutter or channel and any cistern flush-tank, septic tank, or other device for carrying off or treating sewage, offensive matter, polluted water, sullage, waste water, rain water or sub-soil water and any culvert, ventilation shaft or pipe or other appliance or fitting connected therewith, and any electors, compressed air main, sealed sewage mains and special machinery or apparatus for raising, collecting, expelling or removing sewage or offensive matter from any place;”

Section 49 deals with obligatory duties of the Municipal Council. In this case, we are concerned with clauses (c), (f) and (i) of sub-section (2) of section 49, which read thus:

“49. Duties and functions of the Council.

(1)

(2) In addition to the duties imposed upon it by or under this Act or any other law for the time being in force, **it shall be the duty of every Council to undertake and to make reasonable provision for the following matters within the limits of the municipal area, and when effective measures cannot otherwise be made then even outside the said limits, namely:—**

.....

(c) **cleansing public streets, places and sewers, and all spaces, not being private property, which are open to the enjoyment of the public, whether such spaces are vested in the Council or not removing noxious vegetation and abating all public nuisances;**

.....

(f) **removing obstructions and protections in public streets or places and in spaces, not being private**

property, which are open to the enjoyment of the public, whether such spaces are vested in the Council or in Government;

.....
 (i) **constructing, altering and maintaining public streets**, culverts, municipal boundary marks, markets, slaughter-houses, laterines, privies, urinals, drains, sewers, drainage works, sewerage works, baths, washing places, drinking fountains, tanks, wells, dams and the like;”
 (emphasis added)

Section 186 deals with displacement of pavement or any work which is carried on any public street, which reads thus:

“186. Displacing pavements, etc.

(1) No person shall without the permission of the Chief Officer or any other lawful authority displace, take up, or make any alteration in, or make any hole in, or otherwise damage the pavement, gutter, flags or other materials of any public street, or the fences, walls, or posts thereof, or any municipal lamp, lamp-post, bracket, water-post, hydrant, or other accessories of a lamp, water-post or hydrant or such other municipal property therein, or extinguish a municipal lamp.

(2) Every person to whom any permission is granted under sub-section (1), shall, at his own expense, cause the place where the soil or pavement has been opened or broken up, materials have been taken up or any erection or other thing set up to be properly fenced and guarded, and in all cases in which the same is necessary to prevent accidents, shall cause such place to be well lighted during the night.

(3) Any person who contravenes any provision of sub-section (1) shall, on conviction, be punished with fine which may extend to one thousand rupees.

(4) Any person who has displaced, taken up or made alteration in or made a hole in or otherwise damaged any such pavement, gutter, flags, or other materials, of any,

public street or such fences, walls, posts, municipal lamp, lamp-post, bracket, water-post hydrant or other accessories of a lamp, water-post or hydrant, or other municipal property or extinguished a municipal lamp, whether with or without the permission required under sub-section (1), shall, in addition to any penalty under sub-section (3), be liable to pay the expenses which the Council may incur in replacing or restoring the same. Such expenses shall be recoverable in the same manner as an amount due on account of a property tax.”

As in case of the other two municipal statutes, under section 312A, a power is conferred on the State Government to issue instructions as to matters of policy to be followed by Municipal Councils in respect of its duties and functions. As in case of the other two municipal laws, there is a power conferred by section 312 to enforce performance of mandatory duties of the Municipal Councils. However, the power under section 312 is required to be exercised by the Director of the Municipal Administration of the State Government.

THE LAW RELATING TO TOWN PLANNING

12. Since we are on the provisions of the municipal laws, at this stage, a useful reference can be made to the provisions of the Maharashtra Regional and Town Planning Act (for short “MRTP Act”). Clause (19) of section 2 of the MRTP Act defines “Planning Authority” which means a local authority. The local authority is defined in clause (15) of the said section which means a Council or a Nagar Panchayat constituted under the said Act of 1965; a Corporation constituted under the said Act of 1888; and a Corporation constituted under the said Act of 1949. Under the MRTP Act, under section 21, it is the obligation of the Planning

Authority to prepare a draft Development Plan. The entire process of preparation of a draft Development Plan and ultimate sanction thereof is contained in Chapter-III. Thus, in case of Municipal Corporations and Municipal Councils, in their capacity as Planning Authorities, they are under an obligation to prepare a draft Development Plan and thereafter to revise the same in accordance with section 38 from time to time. The contents of a Development Plan are set out in section 22. Clause (d) thereof makes it clear that in a Development Plan, there can be proposals for transport and communication, such as roads, high-ways, etc. Clause (m) contemplates framing of Development Control Regulations which can provide for various aspects of construction of streets. Providing for construction and maintenance of streets is an essential part of any Development Plan under the MRTP Act. Section 154 of the MRTP Act reads thus:

“154. Control by State Government.--

(1) Notwithstanding anything contained in this Act or the rules or regulations made thereunder, the State Government may, for implementing or bringing into effect the Central or the State Government programmes, policies or projects or for the efficient administration of this Act or in the larger public interest, issue, from time to time, such directions or instructions as may be necessary, to any Regional Board, Planning Authority or Development Authority and it shall be the duty of such authorities to carry out such directions or instructions within the time-limit, if any, specified in such directions or instructions.

(2) If in, or in connection with, the exercise of its powers and discharge of its functions by any Regional Board, Planning Authority or Development Authority under this Act, any dispute arises between the Regional Board, Planning Authority or Development Authority, and the

State Government, the decision of the State Government on such dispute shall be final.”

Section 154 is a plenary power of the State Government to issue directions to the Planning Authorities for the purpose of implementation of and bringing into effect Central or State Government's programmes, policies, projects for efficient administration of the MRTTP Act. The State Government can always issue a direction to the Municipal Corporations for making a provision for proper construction and maintenance of streets by incorporating suitable provisions in the Development Plan.

OBLIGATIONS OF MUNICIPAL AUTHORITIES REGARDING PUBLIC STREETS

13. The effect of the aforesaid provisions of the three municipal enactments will have to be considered. As stated earlier, the definition of “street” or “public street” in various municipal laws referred above is very wide which include foot-ways or footpaths. The mandatory duty of the Municipal Corporations and the Municipal Councils is to construct, maintain and improve public streets, bridges, causeways, culverts etc. The mandatory duties also include the duty of taking measures for ensuring safe and orderly passage of vehicular and pedestrian traffic on streets. Another obligation is to maintain public streets clean and to provide adequate lights thereon. The third obligation is to remove obstructions, projections upon the streets. Thus, the streets should be constructed, maintained and improved with the object of ensuring safe and orderly passage of vehicular and pedestrian traffic. It follows that it is the mandatory obligation of all the Municipal Authorities to ensure that the

streets are constructed and maintained in a good condition so that the passage of vehicular and pedestrian traffic will be safe and orderly. When the streets or footpaths are not levelled properly or when there are potholes thereon or when there are ditches thereon, it cannot be said that safe and orderly passage of vehicular and pedestrian traffic is ensured. The footways and footpaths have to be properly maintained as otherwise it will affect smooth flow of pedestrian traffic. If manholes on the streets (including on foot-ways) are fixed in such a manner that the same obstruct the safe and orderly passage of vehicular and pedestrian traffic, it can be said that the Municipal Authorities have performed their mandatory duties. The manholes must be fixed in such a manner that the level of the manholes is same as the level of the public streets which include footways. Obviously, the manholes cannot be kept open on streets including footways as it will endanger the life of pedestrians. It will also endanger the life of those who are using vehicles. Another mandatory duty of the Municipal Authorities is of keeping the streets properly lighted after sunset.

14. As far as digging or repair work on the public streets is concerned, it follows that while the work is in progress, the Municipal Authorities are under a legal obligation to make such arrangements which will ensure the safety of pedestrians and vehicles. It is their duty to ensure that the citizens who use streets are protected and taken care of. We have also pointed out the provisions which impose a duty on the Municipal Authorities to take precautions for public safety while the municipal works are in progress in streets. The first mandatory duty in such a case is to take appropriate precautions for guarding against

accidents by shoring up and protecting the adjoining buildings. Second mandatory obligation is to ensure that the place which have been dug open for repair work should be properly fenced and guarded. Lastly, the mandatory duty is to provide lights sufficient for warning the pedestrians and drivers of the vehicles which shall be put up throughout night. The lights should be fixed against bars, chains or posts set up around the place where the work is in progress. Needless to say that these provisions will also apply when for carrying out work or otherwise, manholes are kept open. If any work is in progress on footways or if the manholes are kept open for any work, naturally, all the aforesaid mandatory requirements provided in the Statutes will have to be complied with. The other issue which is canvassed is about those who are visually impaired. When the obligation of the Corporations, the Councils and other Authorities is to take all precautions for guarding against accidents, naturally, all such steps are required to be taken which will enable a person who is visually impaired to get a notice of the work in progress or of an open manhole. This aspect will be discussed in detail in further part of the judgment. Plenary powers have been conferred on the State Government or in case of Municipal Councils, on the Director of Municipal Councils to issue orders to the Municipal Corporations or Councils, as the case may be, to ensure that they perform their mandatory duties. The State Government can also formulate policies in what manner the mandatory obligations as regards the streets should be performed and issue directions on the basis of the said policies.

**LEGAL PROVISIONS APPLICABLE TO OTHER STATUTORY
AUTHORITIES**

15. While dealing with the legal obligations of the Municipal Corporations and the Municipal Councils, we will have to advert to other provisions governing statutory authorities which are involved in construction, repairs and maintenance of roads. One such authority in the context of the city of Mumbai or some other cities is the Mumbai Metropolitan Region Development Authority (MMRDA) constituted under the Mumbai Metropolitan Region Development Authority Act, 1974 (for short “the said Act of 1974”). The provisions of the said Act of 1974 empower MMRDA to prepare a project or scheme with a view to provide an infrastructure within its territorial limits and execute the same. Section 17 of the said Act of 1974 reads thus:

“17(1) Notwithstanding anything contained in this Act or the Mumbai Municipal Corporation Act or any other law for the time being in force, the Authority may, in consultation with the Municipal Commissioner of the Brihan Mumbai Municipal Corporation, prepare any project or scheme with a view to provide an infrastructure within the territorial limits of the Brihan Mumbai Municipal Corporation and execute the same.

Explanation :For the purposes of this section, the term “infrastructure” shall also mean and include streets, roads, bridges and any other means of transport and communication, and activities related or incidental for the execution of such infrastructure project or scheme and shall not include other items specified in sections 61 and 63 of the Mumbai Municipal Corporation Act, 1888 (Bom.III of 1888).

(2) For the purposes of preparation and execution of a project or scheme under subsection (1), the Metropolitan Commissioner and the Authority shall be deemed to be the Municipal Commissioner and the Corporation, respectively, under the Mumbai Municipal Corporation Act, 1888 (III of 1888) and the Maharashtra Regional and Town Planning Act, 1966, and shall, respectively, exercise the powers of the Municipal Commissioner and the Corporation under the said Acts.”

(emphasis added)

As is clear from explanation-1 to section 17, the term “infrastructure” will include streets, roads, bridges etc. Sub-section (2) of section 17 specifically provides that for preparation and execution of a project or scheme under sub-section (1) of section 17, the Metropolitan Commissioner appointed under the said Act of 1974 and MMRDA shall be deemed to be the Municipal Commissioner and the Corporation, respectively, both under the said Act of 1888 and the MRTP Act. Therefore, it can safely be said that when MMRDA exercises power under sub-section (1) of section 17 of preparing a project or a scheme which involves construction of streets, it is bound by all the obligations of the said Municipal Corporation under the said Act of 1888. Moreover, for certain areas, MMRDA is also a Planning Authority within the meaning of the MRTP Act.

16. As regards the Maharashtra State Road Development Corporation Limited (for short “MSRDC”), it is a Corporation set up and owned by the Government of Maharashtra. The main object of MSRDC is to promote and operate, to plan, to construct and to manage the projects of roads. The Hon'ble Minister of Public Works Department (Public

Undertakings) is the ex-officio Chairman of MSRDC. One of its duties which can be culled out from the Citizen's Charter published by MSRDC is to maintain roads and bridges in its jurisdiction in proper condition and keep the same repaired. Thus, the obligation of MSRDC is the same as Municipal Authorities in relation to streets under its control.

17. In the city of Mumbai, certain streets are constructed and/or maintained by Mumbai Port Trust (for short "MbPT") established under the Major Ports Trusts Act, 1963 within the limits of the said Port Trust. MbPT being a statutory authority has the same obligations as regards the public streets under its control. The City and Industrial Development Corporation of Maharashtra Limited (for short "CIDCO") is a State Government owned Company which is a Planning Authority in certain areas. It is also having the same obligations as regards the streets within its jurisdiction. The State Government is maintaining certain streets. Its obligations are the same.

CONSTITUTIONAL OBLIGATIONS

18. In the order dated 20th May 2015, this Court has extensively referred to PIL Suo Motu Writ Petition No.8/2005 and (PIL) Suo Writ Petition No.259/2005 in which the issue of poor condition of streets is dealt with. Copies of the orders passed in the said PILs were annexed to the letter of Hon'ble Judge of this Court on the basis of which the present Suo Motu PIL was initiated. The order dated 31st August 2006 and, in particular first paragraph thereof makes it clear that directions were issued to the Mumbai Municipal Corporation, MMRDA, MbPT, MSRDC

and the Thane Municipal Corporation. Paragraph-9 of the said order dated 31st August 2006 is very relevant, which reads thus:

“9. It is the obligation of the Civic Authorities and the other agencies of the State to secure to the public the means of communication in good and proper condition. There cannot be any justification for the bad roads in the financial capital of the country. The people of Mumbai contribute hugely to the revenue of the Centre, the State and the Civic Body. Are they not entitled to the good civic amenities including roads in good condition? How long the citizenry would continue to suffer bad roads? In the context of the constitutional provisions, the existence of roads in reasonable conditions is embraced in the citizens’ right to life. Every person is entitled to ‘life’ as enjoined under Article 21 of the Constitution of India. The directive principles have been read into Article 21 to make life more meaningful and not mere its existence. Good roads are the necessity to the life. There has to be roads for communication in reasonable condition in view of the constitutional imperatives. This is well settled. It needs no emphasis. It is thus imperative for the MCGM to make available proper roads to the people in the city of Mumbai through out the year. The Corporation has to discharge its constitutional and legal obligations unflinchingly. What we have said above is applicable equally to all the other authorities like Mumbai Metropolitan Region Development Authority, Mumbai Port Trust, Maharashtra State Road Development Corporation, the Public Works Department and the Thane Municipal Corporation. It is their duty, responsibility and obligation to provide proper roads within their jurisdiction to the commuters through out the year. By not doing so, these authorities may expose themselves to serious consequences by infringing the valuable rights of the people. Lest it must be forgotten, bad roads mean physical damage, huge economic loss and more accidents.....”

(emphasis added)

It is in the light of the aforesaid law laid down by the Division Bench that this Court in its order dated 20th May 2006 held that right to have roads in a reasonable condition is a part of the fundamental right guaranteed to the citizens under Article 21 of the Constitution of India. This issue was dealt with by another Division Bench in the context of temporary structures erected on public streets. In the judgment of this Court dated 10th, 11th & 16th August 2016 rendered in PIL No.173/2010 (*Dr.Mahesh Vijay Bedekar v. State of Maharashtra*), this Court quoted paragraph-9 of the Judgment and Order dated 20th May 2015 passed in this PIL to which we have referred above. This Court also relied upon the decision of the Apex Court in the case of *Sudhir Madan v. MCD*¹. This Court, in paragraph-27 of the said decision held thus:

“27. Thereafter, in paragraph 9, this Court in Judgment and Order dated 20th May 2015 held thus:

“9. As pointed out earlier, by the judgment and order dated 31st August, 2006 this Court has already held that the right to have roads in reasonable condition is a part of the fundamental right guaranteed under Article 21 of the Constitution of India. Thus, the Division Bench has placed the right of citizens to have pothole free roads in reasonable condition on the highest pedestal of fundamental rights under Article 21 of the Constitution of India. Existence of such fundamental right creates corresponding obligation in all the authorities which are “State” within the meaning of Article 12 of the Constitution of India. For the infringement of the fundamental right guaranteed under Article 21 of the Constitution of India, a citizen can demand compensation apart from seeking the enforcement of the right. Moreover, a citizen has a right to make

1 (2009) 17 SCC 332

grievances regarding the violation of such right and get the grievances redressed.”

Thus, the right to have roads in a reasonable condition is a part of fundamental right guaranteed under Article 21 of the Constitution of India. The basic object of constructing roads is to allow the passage of vehicles. The basic object of making footpaths/ footways which are a part of street is to allow the citizens to walk and travel from one place to another. If obstructions are created on the streets or footpaths in such a manner that it prevent the citizens from beneficially or reasonably enjoying their right of passage through the streets and footpaths, surely it will amount to infringement of the fundamental right under Article 21 of the Constitution of India to have streets in a reasonable condition. The fundamental right to have the streets in a reasonable condition will naturally encompass in it right to have the same free of any obstruction which prevents its beneficial or reasonable user. The Apex Court has expanded the scope of Article 21 of the Constitution of India. The Apex Court has held that the right to live dignified life is also a part of Article 21 of the Constitution of India. Right to live a meaningful life is also a part of Article 21 of Constitution of India. In the case of *Sudhir Madan v. MCD* (2009) 17 SCC 332, the Apex Court in paragraph 6 observed thus:

“6. The scheme need not be populist in its appeal, but must be practical and consistent with the rights of citizens, who have a fundamental right to use the roads, parks and other public conveniences provided by the State.”

(emphasis added)

This Court reiterated that right to have streets in a good condition is a part of fundamental rights guaranteed by Article 21 of the Constitution of India and this fundamental right will naturally comprise of a right to have the same free of any obstruction and danger or risk.

THE STATE GOVERNMENT DECISION

19. Before we proceed further, a note will have to be taken of various orders passed by this Court from time to time in the present Suo Motu PIL. The order dated 13th August 2013 passed by the first Court refers to a Government Resolution dated 28th September 2012 by which a Committee was constituted by the State Government for dealing with the issues of roads within the limits of greater Mumbai. The Government Resolution records that a uniform criteria will have to be accepted in the city of Mumbai for the construction, maintenance and repairs of the roads. The committee under the chairmanship of the Municipal Commissioner of the Mumbai Municipal Corporation was constituted. The terms of reference have been set out in clause (2) of the said Government Resolution. One of the terms of reference was the methodology to be followed while the said Corporation takes over the roads constructed by the other Government entities. It also records that the Committee should evolve common technical specifications which can be made available to all agencies to maintain and repair the roads. It was observed in clause (2) that the Committee will consult the Standing Technical Advisory Committee (for short "STAC") constituted by the Mumbai Municipal Corporation. It also provides that the Committee will formulate a policy dealing with construction, repairs and maintenance of the roads and forward it to the State Government. The recommendations of the Committee are not on record.

GRIEVANCE REDRESS MECHANISM

20. Under the order dated 20th May 2015, extensive directions

were issued for setting up a Grievance Redress Mechanism and precautions to be taken while granting permissions for digging the streets. It provides for creation of a Grievance Redress Mechanism for lodging complaints regarding bad condition of roads through various modes. Various directions were issued under the said order regarding placing on record the material to show techniques used by different Municipal Corporations for construction of the streets, for maintenance thereof and for carrying out repairs thereto. Certain directions were also issued to the State Government, MMRDA and MSRDC. The order dated 7th August 2015 refers to the affidavit filed on behalf of the State Government which records that in terms of directions issued on 20th May 2015, a committee has been constituted by the State Government which is likely to take decisions within a period of two months. There are various directions issued from time to time regarding setting up of a proper Grievance Redress Mechanism. There are orders passed relating to specific roads in the city of Mumbai with which we are not concerned at the time of final disposal of this petition. The order dated 15th July 2016 passed by the Division Bench makes a note of the fact that Grievance Redress Mechanism provided by the Mumbai Municipal Corporation was not functioning properly. Some of the orders deal with specific cases where it was found that manholes were kept open. In order dated 10th March 2017, the Division Bench of this Court has referred to the assurance given by the Additional Municipal Commissioner of the Mumbai Municipal Corporation and has recorded that there is a ray of hope that in the coming monsoon, the citizens will have pothole free roads. A judicial notice of the fact will have to be taken that such expectation was never fulfilled in the monsoon of 2017.

THE COMMITTEES APPOINTED UNDER THE INTERIM ORDERS

21. By order dated 3rd August 2017, the first Court appointed the Secretary of the Maharashtra State Legal Services Authority as the Nodal Officer for the city of Mumbai and the Member Secretaries of the District Legal Services Committees as Nodal Officers for the districts. They were empowered to receive complaints regarding poor conditions of roads. A direction was also issued to publish notice in various newspapers informing public at large about the appointment of Nodal Officers. Under further order dated 8th November 2017, the Division Bench observed that considering limited numbers of complaints received by the Nodal Officers, probably the members of public have no time to read newspapers and have no time to bother about the safety of users of the roads. Under the said order, a Committee of two Hon'ble Judges of this Court (K.R.Shriram and G.S.Kulkarni, JJ.) was constituted and the Secretary of the Maharashtra Legal Services Authority was directed to bring to the notice of the Committee the earlier orders as well as the said order. The recommendations of the Committee of two Hon'ble Judges are on record the last of which is of 19th January 2018.

22. By order dated 19th January 2018, as this Court found that substantial expenditure has been incurred by the Secretary of the Maharashtra Legal Services Authority for publishing advertisements in newspapers, the State Government was directed to reimburse the said amount to the Maharashtra Legal Services Committee.

23. There are various reports submitted by the Secretary of the Maharashtra Legal Services Authority on record. We have perused the said reports. There are action plans submitted by the MMRDA, the Kalyan Dombivali Municipal Corporation (KDMC) and the Navi Mumbai Municipal Corporation (NMMC). These action plans throw some light on the issues which trouble all local authorities. Before we go to the suggestions submitted by the Committee headed by Hon'ble Shri Justice K.R.Shriram, we must formulate some of the points on which directions are required to be issued. The first and foremost will be making available an easily accessible grievance redress mechanism to the citizens to complain about the bad/poor/improper conditions of the streets. When we say bad condition of the streets, it will also include bad condition of footpaths/ footways as well. Bad condition does not necessarily mean existence of potholes on the streets. If a street is not properly levelled or if a street has a bumpy ride, it will be a bad condition of street. Similarly, if certain works are being carried out on the streets or footways and sufficient safeguards as laid down in the Statutes are not provided, this default will fall in the category of improper condition of streets. If, at a crucial junction or a crucial part of a street or footpath, there is no provision for street lights, it will have to be attributed as a bad or improper condition of streets. If the manholes are not maintained properly, it will be also a bad condition of road. The citizens have right to express grievances about the condition of streets which are not maintained consistent with the mandatory obligations of the Municipal and other Authorities as the same infringe their fundamental right under Article 21 of the Constitution of India. The second part of the directions will be not only about the action taken on the complaints filed, but certain

directions will have to be issued dealing with the situation where the complaints are neither responded to nor any steps are taken on the complaints. In this context, certain directions will have to be issued to the State Government for exercise of its plenary powers under the municipal laws. There are ancillary issues such as digging of the roads by different authorities such as electric companies, telephone companies, cellphone companies, internet providers etc. for laying or for repairs to the cables.

24. This Bench heard the matter extensively and started the dictation of judgment on 24th February, 2018. By the end of the day, the judgment could not be completed. From 26th February, 2018 there was a change of assignment. The Hon'ble the Acting Chief Justice subsequently passed an order directing that this Petition shall be placed before this Bench. That is how, today, we are continuing with the further part of the judgment.

25. On 12th April 2018, after the matter was called out, our attention was invited by the learned senior counsel appearing for the Mumbai Municipal Corporation to the order dated 19th March, 2018 passed by the Apex Court in Special Leave Petition (Civil) Diary No.3720/2018. He stated that the said Municipal Corporation has preferred the said Special Leave Petition (SLP) for challenging the interim orders dated 3rd August, 2017 and 8th November, 2017. He pointed out that what is under challenge before the Apex Court is the order by which the Secretary of the Maharashtra State Legal Services Authority was

appointed as the Nodal Officer for Mumbai City and for respective Districts, the Member Secretaries of the State Legal Services Authorities were appointed as Nodal Officers. He pointed out that the second challenge is to the constitution of the Committee of two Hon'ble Judges of this Court under the order dated 8th November 2017. The order dated 19th March 2018 produced by him shows that both the orders have been stayed by the Apex Court while issuing notice. The learned counsel pointed out that this is the only order passed in SLP. As the challenge before the Apex Court is admittedly to the two interim orders and as the Apex Court has not stayed the hearing of the PIL, we are proceeding to dictate further part of the judgment.

26. We have already discussed the issue of the Planning Authorities taking all possible steps for safety of the citizens wherever the work of repairs, reconstruction of streets and footways is in progress or work involving digging of the roads and footways is in progress or wherever the manholes on the streets and footways are opened. In the earlier part of the judgment, we have already come to the conclusion that many of the interim directions issued in this behalf deserve to be continued.

RIGHTS OF VISUALLY IMPAIRED PERSONS

27. However, during the course of final hearing, one more issue was canvassed as to what protection should be given to the visually impaired persons. This Court has already held that right to have streets and footways in good condition is a right protected by Article 21 of the Constitution of India and therefore, there is a corresponding obligation on

the part of the local authorities to ensure that the said fundamental right is not infringed. Therefore, interim directions have been already issued for barricading areas and for taking several other steps in respect of portions of the streets and footways which are under repairs and for barricading the area of open manholes.

28. As far as the visually impaired persons are concerned, what is operating in the field is the Rights of Persons with Disabilities Act, 2016 and in particular sub-section (1) of Section 3 thereof which reads thus :-

3. Equality and nondiscrimination.-- (1) The appropriate Government shall ensure that the persons with disabilities enjoy the right to equality, life with dignity and respect for his or her integrity equally with others.”

It is the obligation of the appropriate Government to ensure that persons with disabilities enjoy the right to live with dignity equally with others. Therefore, it is the obligation of all the authorities to ensure that such steps are taken which will completely protect the persons with visual disabilities. The measures which are indicated in the judgment for normal citizens may not be sufficient for visually impaired persons and, therefore, it is the obligation of the local authorities to ensure that such additional measures are taken which will protect the fundamental rights of the persons with visual disability by providing means or methods which will give sufficient warning to visually impaired person wherever such work is going on on streets . As the principle laid down in the said Act of 2016 is that the persons with disabilities enjoy the same benefits and rights which normal citizens enjoy, the local authorities will have to do everything

possible so that the rights of disabled persons and especially visually disabled persons are protected and additional measures are taken by using various methods including the use of equipment which will give signal by noise to visually impaired persons. Thus, additional directions will have to be issued apart from the directions which are already issued.

OBLIGATIONS OF THE TRAFFIC POLICE

29. One of the several reasons for traffic congestions on the streets is a bad condition of streets. Whenever, in a particular street or in a particular area, there is traffic congestion on account of bad condition of the streets, it is the duty of the traffic police department to communicate the same to the concerned local authority so that the local authority takes immediate measures. It cannot be disputed that it is the legal obligation of the traffic police to ensure that such traffic congestion is avoided and when the cause of traffic congestion is the bad condition of streets, it becomes the duty of the traffic police to inform the concerned local authorities about the bad condition of the streets. The State Government will have to issue necessary directions to the traffic police so that the traffic police take up such matters with the local authorities.

MONITORING OF GRIEVANCE REDRESS MECHANISM

30. There are interim orders which govern the field which direct creation of Grievance Redress Mechanism. There is a compliance to some extent with the interim directions which are in force for a considerably long time. We must note here that once it is held that it is a fundamental right of the citizens to have streets and footways in a reasonable

condition, the citizens have right to make grievance about the denial or infringement of the said fundamental right. The existence of fundamental right in favour of the citizens creates a corresponding obligation which requires the local and other authorities to ensure that grievances of the citizens regarding violation of fundamental rights are redressed and taken to its logical conclusion. As far as this mechanism is concerned, there are compliance affidavits filed on record. While deciding the petition finally, we are not dealing with the issue of substantial compliance with the interim orders as we are granting additional time to comply with the same. As regards the Grievance Redress Mechanism, there is some argument made by the intervenors. As stated in the compliance report dated 5th January, 2018 submitted by the Urban Development Department, a website www.voiceofcitizens.doc was launched where complaints could be made. It is pointed out by the intervenors that the said facility is no more in existence which was functioning very effectively. If that be so, the Municipal Corporation of Greater Mumbai or the State Government will have to consider the suggestion of reintroduction of the said facility. We must note here that even assuming that the Grievance Redress Mechanism is in place as per the interim orders passed by this Court, there has to be an element of accountability and therefore, the Municipal Corporations and other authorities will have to ensure that the performance of the Grievance Redress Mechanism is regularly monitored with a view to ensure that no complaint remains unattended and the complainant is duly informed about the action taken on the basis of the complaint. This again is the legal obligation of the local authorities. Unless this aspect is dealt with, creating Grievance Redress Mechanism will be hardly of any consequence. If Grievance Redress Mechanism

provided at all levels works effectively, there will not be any occasion for the citizens to approach the Court of Law complaining about the inaction. There is a right vesting in the citizens to know the action taken on the basis of their complaints.

CENTRALIZED GRIEVANCE REDRESS MECHANISM

31. There is one more issue canvassed, especially in relation to city of Mumbai. It was pointed out that the streets in substantial part of the city are being maintained by the Mumbai Municipal Corporation. However, there are streets in Mumbai which are being maintained by the State Government or MMRDA or MSRDC or MbPT. A citizen may not know the agency which is maintaining a particular part of a street. The same is the position about various highways and the roads connecting towns. Considering this situation which prevails in Mumbai and considering the fact that such situation may arise at different places in the State, it will be ideal if the State Government creates a Centralized Grievance Redress Mechanism by providing one toll free number (with sufficient number hunting lines), one cell phone number and one website on which complaints about bad condition of streets in the State could be lodged. This suggestion deserves consideration. When a citizen is travelling from one city to another, it is impossible for him to know within the jurisdiction of which local authority a particular area or segment of street will fall. From the reports filed on record by the Urban Development Department, from the affidavits filed on record, and from the submissions filed on behalf of the State Government, it is apparent that the State Government has accepted the need to ensure that streets and footways are maintained in good condition. We, therefore, propose to

direct the State to take steps to create such centralized mechanism so that complaints received through the said mechanism can be transferred by the State Government to the appropriate local authority responsible for maintenance of the concerned segment of a street.

TECHNIQUES USED FOR CONSTRUCTION/REPAIRS OF STREETS AND TERMS AND CONDITIONS OF ROAD CONTRACTS

32. There are submissions canvassed across the bar as regards the techniques used for both, construction of streets and for repairing the streets including filling the potholes. The other issue was what should be the terms and conditions which should be incorporated in the contracts which are executed by the local bodies with the contractors who are appointed either for construction of the streets or for carrying out the repairs to the existing streets and footways. Another aspect which was argued was that whenever such work is carried out by a contractor, there has to be an agency which will deal with quality control of the material used for the work, techniques used for the work and quality of the work in general. We have perused the reports which are filed on record on behalf of the State Government and in particular the Urban Development Department. The Urban Development Department has also placed on record various Government orders and resolutions which deal with the issue. In the compliance report/ note dated 5th January, 2018 submitted by the Urban Development Department, it is stated that for maintaining quality control of the roads various measures have been taken by the State Government. Reference is also made to making a third party technical audit mandatory. Reliance is placed on the Government Resolution dated 2nd March 2009 issued in that behalf. The note also refers to guidelines

issued by the State Government by a Government Resolution dated 16th January 2016 which provide for the terms and conditions for sanctioning road related financial grants to the local authorities. It is contended that the said guidelines contain quality measures.

33. On this aspect, it will be necessary to consider the stand taken by the Mumbai Municipal Corporation. It is pointed out that as far as techniques used for construction of roads for carrying out repairs etc. are concerned, there is a committee constituted which is known as Standing Technical Advisory Committee (STAC) which is entrusted with the function of issuing guidelines from time to time. It is pointed out that in terms of the interim orders issued from time to time, the Municipal Corporation has issued norms including a circular dated 4th July 2016. The Municipal Corporation has brought on record the procedure adopted for awarding road contracts. It is stated as to how a Design Consultant designs roads by taking into consideration the guidelines issued by STAC and the guidelines issued by Indian Road Congress. The Municipal Corporation also highlighted as to how corrective measures are taken during the monsoon period. Various statements are made regarding the action taken on the basis of the complaints. All that we can say is that there are steps taken by the Mumbai Municipal Corporation. However, there is no material on record to accept the tall claim made by it about the absence of complaints even during the monsoon.

34. We are conscious of the fact that as far as the terms and conditions of the road contracts are concerned, it is a matter of policy. However, as noted in the earlier part of the judgment, the State

Government has a statutory control over the Municipal Corporations and the Municipal Councils. There is power to issue directions to these authorities to ensure that they perform their mandatory duties. The State Government will have to consider of issuing the directions to the local authorities as regards the terms and conditions which should be normally incorporated in road contracts so that the contractors do not take any undue advantage of loopholes and that contractors are made bound by various onerous clauses which require them to maintain quality of the roads. A contention was canvassed on behalf of the sixteenth respondent- Indian Road Congress that specifications and guidelines notified by the said entity should be taken into consideration. Even the said submission merits consideration. It is ultimately for the State Government to consider in what manner it will lay down the policy.

35. Before issuing directions, the State Government we will have to consider whether some of the local authorities have adopted the techniques or methodology which take care of such contingencies. We, therefore, propose to direct the State Government to make appropriate policy in that behalf and exercise plenary powers vesting under the municipal laws to issue directions. The State Government must consider the measures taken by Navi Mumbai Municipal Corporation some of which are very innovative.

ISSUE OF OPEN MANHOLES

36. During the pendency of the petition, there was an unfortunate incident in the City of Mumbai. A medical practitioner of some repute unfortunately fell into an open manhole and he lost his life.

Such incident should never have happened in this city. It is pointed out across the bar that the Municipal Corporation is in the process of taking remedial steps by adopting various methods including fixing grills so that even if the cover of a manhole remains open, there would be no such incident.

37. The intervenor appearing in person has pointed out that there were accidents of the persons riding two wheelers as a result of manholes being left open on the streets without sufficient warning or without any warning to the drivers of the vehicles. It is pointed out that as a result of the reckless act of keeping the manholes open without displaying any warning, there has been loss of lives due to accidents involving vehicles and, in particular two wheelers. If a citizen suffers from an injury of any nature as a result of the neglect on the part of the local authorities or the State, as the case may be, to maintain the streets in a reasonable condition, apart from the regular remedy under the law, even a public law remedy will be available to such citizens for infringement of fundamental rights and by taking recourse to a public law remedy, such a person who is a victim of the accident or in case of fatal accidents, his legal representatives can maintain a public law action for seeking compensation against the authorities which are negligent. This aspect will have to be borne in mind by all the local authorities which are entrusted with the duty of maintaining of streets in proper condition.

FLOWER BEDS AND TRAFFIC ISLANDS

38. One Mr. Kamlakar Ratnakar Shenoy, intervenor has filed written submissions. One of the contentions raised is that large flower

beds on footways and islands on the streets obstruct the free movement of traffic and pedestrians thereby endangering life and limb of the pedestrians. We must note here that we are dealing with the issue of condition of roads. In this petition, we are not concerned whether the flower beds or islands obstruct free flow of traffic and therefore, the said contention merits no consideration as it is beyond the scope of the petition.

POLICY MATTERS

39. In the earlier part of the judgment, we have recorded a finding about the legal obligation of various local authorities and the State Government to maintain streets and footways in a reasonable condition. When a Writ Court finds that there is a right in favour of the petitioner especially a fundamental right, there is always an obligation on the part of the respondents or the concerned authorities to ensure that the said right remains available to the citizens and the citizens are able to exercise the said right very effectively. Thus, there is also an obligation on the part of the authorities to ensure that they do not infringe the said right available to the citizens. The directions have been given in some of the interim orders and, especially the interim order dated 20th May 2015 only to ensure that the authorities perform their legal duty and discharge their legal obligation. As observed earlier, it is not for us to venture into the matters of policy and, in fact, as observed earlier, we propose to issue no directions as to what particular policy should be adopted.

CONTINUATION OF THE COMMITTEES APOINTED EARLIER

40. We must note that during the course of hearing, the learned

counsel appearing as Amicus Curiae invited our attention to the observations made by the Apex Court in the case of *Common Cause (A Regd. Society) vs. Union of India and others*² wherein, in substance, the Apex Court has held that while exercising writ jurisdiction, the Courts cannot constitute committees and entrust the committees so constituted the power to issue orders to the authorities or to the public and to confer powers of the statutory authorities on such constituted committees. The learned Amicus Curiae made this submission while we were debating on the issue as regards continuation of various interim orders or ad-interim orders which have been passed from time to time. This was in the context of the orders dated 3rd August 2017 and 8th November 2017. As far as the order dated 3rd August 2017 is concerned, from the perusal of the said order, we find that perhaps to monitor the action taken on the complaints regarding bad condition of the streets that Nodal Officers were appointed who are the office bearers of the Maharashtra State Legal Services Authority and the District Legal Services Authorities which are the Authorities under the Legal Services Authorities Act, 1987 (for short “the said Act of 1987”) which discharge various functions. We must note here that a judicial notice will have to be taken of the fact that now the scope of Legal Services required to be rendered by the said Authorities has been considerably enlarged. Moreover, the Secretaries of the District Legal Services Authorities as well as the Secretary of the State Legal Services Authority who are judicial officers are required to be full time Secretaries who cannot be assigned any judicial duty. Considering the multifarious duties assigned to the Secretaries under the said Act of 1987, we are of the view that Secretaries cannot be burdened with any other

2. (2008) 5 SCC 511

responsibilities. As far as the aspect of continuation of the order dated 8th February, 2017 is concerned, we find that Committee consisting of two Hon'ble Judges of this Court was appointed. This was done at the interim stage during the pendency of the petition. Now, by final judgment, we are laying down what are the obligations of the concerned respondents and that we are issuing a writ of mandamus enjoining them to perform constitutional, public and legal duty. Apart from the issue of legality of appointing such Committees, we are of the view that the Committees which were appointed during the pendency of the petition by way of interim directions need not be continued while we are finally disposing of the petition. However, as the suggestions made by the Committee of the Hon'ble Judges are very useful, some of them find a place in the final directions.

MUNICIPAL COUNCILS

41. During the course of final hearing, we had made it very clear that we do not propose to issue specific directions to the Municipal Councils established under the said Act of 1965. The reason is that the State Government possesses sufficient plenary powers to issue directions to the Municipal Councils. In this judgment, we have laid down the principles which will equally apply to the Municipal Councils. We, therefore, propose to issue directions to the State Government to exercise the said powers and issue appropriate directions to the Municipal Councils in terms of this judgment as, in substance, we find that there is no difference between the obligations of the Municipal Corporations and Municipal Councils.

APPRECIATION

42. Before we come to the effective directions which we propose to issue, we must record our appreciation to the assistance rendered by the members of the Bar including the learned advocates who were appointed as Amicus Curiae and the learned advocates who appeared for the intervenors. Though some of the Municipal Corporations may have contested the matter on some of the issues, we find from the record that neither the State Government nor the Municipal Authorities and other Authorities which appeared before the Court have taken this litigation as an adversarial litigation. Even the State has not taken the litigation as an adversarial litigation perhaps because the State has announced its policy of converting most of the prominent cities into “Smart Cities”. No city can become a Smart City unless its streets and footways are always maintained in a very good condition.

43. Lastly, we must record a statement made by the learned Government Pleader, on instructions. There was a direction issued by this Court for the reasons which are recorded in the order dated 19th January 2018 to reimburse the MSLSA for the expenditure which has been incurred for complying with the interim directions issued by this Court. Funds which are allocated to the State Legal Services Authority have to be utilized for the purposes for which the same are allotted. In fact, the learned Government Pleader stated that necessary reimbursement will be made within a period of six weeks from today. He states that the order dated 19th January 2018 could not be complied with earlier as more than one departments are involved. We accept the statement made by the learned Government Pleader that necessary reimbursement will be made

within a period of six weeks from today and therefore, it is not necessary for us to issue any directions.

44. We make it clear that all interim directions issued from time to time by this Court except the interim directions which we have specifically declined to continue will continue to operate as final directions.

45. We summarize our conclusions as under :-

A] It is a right of the citizens which is a part of Article 21 of the Constitution of India to have streets and footways in a reasonable condition. The citizens have right to use public streets and footways without any obstruction;

B] The basic object of constructing the streets is to allow passage of vehicles. The basic object of making footways which are part of the streets is to allow the citizens to walk and travel from one place to another. If obstructions are created on the streets and footways in such a manner that the same prevent the citizens from beneficially or reasonably enjoying their right of passage through the streets and footways, surely it will amount to infringement of their fundamental rights under Article 21 of the Constitution of India to have streets in a reasonable condition. If poor or bad condition of the streets or footways prevents the citizens from reasonably enjoying their right of passage through the streets or footways, it will be a violation of the said fundamental right by the authorities which are under a legal obligation to maintain the streets and footways in a reasonable condition;

C] As this right vests in the citizens, there is a corresponding obligation of the concerned authorities to ensure that all possible steps are taken to see that the citizens are not deprived of their right to use the streets and footways in effective manner. For that reason, it is the obligation of the said authorities to create appropriate Grievance Redress Mechanism so that the citizens can complain about the violation of their rights. It is the right of the citizens to ensure the municipal and other authorities promptly deal with the complaints by taking effective steps. They have a right to know about the steps taken for upholding and protecting their rights;

D] If there is an injury caused to a citizen due to poor condition of streets as a result of negligence on the part of the Municipal and other Authorities, he has a right to seek compensation from the State or local Authorities, as the case may be, which are responsible for maintaining streets. In case of loss of life on account of poor condition of streets due to negligence on the part of the Authorities, the legal representatives of the deceased can seek compensation from the concerned Authorities in accordance with law.

46. It is in the light of the principles stated above that we pass the following order :-

ORDER

- (i) Except for those interim directions which we have expressly declined to continue, all other interim directions which are not in any way inconsistent with the final directions will continue to operate;

(ii) The directions contained in clauses (ii) to (xi) of paragraph 34 of the judgment and order dated 20th May 2015 will operate as the final directions with following modifications:

(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;

(C) All the Municipal Corporations as well as MMRDA, MSRDC, CIDCO and MbPT shall set up a Grievance Redress Mechanism to enable the citizens to file complaints about the poor conditions of streets. The complaints shall be received by various modes including the following four modes:

- (a) Complaints in writing received at designated centers and in offices;
- (b) Complaints received through dedicated toll free number/s;
- (c) Complaints received through dedicated website; and
- (d) Complaints received by messages via cell phones.

(D) The facility of receiving complaints by the aforesaid methods shall be made available throughout the year. The dedicated websites shall be designed or improvised in such a way that citizens are able to upload the photographs showing the potholes on the streets or poor condition of streets on the website. Arrangement shall also be made to receive such photographs through cell phones. The websites shall be friendly to persons with visual disability;

(E) System of tracking shall be made available to track the actions taken on the basis of the complaints

received by all four methods. Tracking facility shall be made available on the dedicated websites. Final action taken report on the basis of the complaints shall be uploaded on the websites within a period of three weeks from the date of receipt of the respective complaints. Wherever the citizens have forwarded the photographs of the sites either through cell phones or by uploading the same on the dedicated websites, along with the final report, photographs showing compliance made by carrying out repairs shall be also uploaded on the dedicated websites. All the Municipal Corporations and Authorities shall ensure that the mechanism in terms of the above directions is effectively made available latest by 31st July , 2018. We make it clear that till the mechanism as directed above is provided, the existing mechanism, if any, shall continue to function;

(F) In addition, the State Government shall create a similar centralized mechanism common for all the Municipal Corporations and Councils as well as all the Planning and other Authorities in relation to the streets in the State. The State and the Mumbai Municipal Corporation shall also consider whether complaints can be received on a website www.voiceofcitizens.doc. It shall be the obligation of the State to forthwith forward the complaints received through centralized mechanism to the concerned authorities which are responsible for

the maintenance and repairs of the concerned stretches of streets. Such mechanism shall be made available on or before 31st July 2018;

(G) A very wide publicity shall be repeatedly given by all concerned authorities to the mechanism provided as aforesaid in all leading newspapers, at strategic locations on major streets, in various ward and other major offices as well as on the electronic media on or before 1st August 2018;

(H) If the Committee appointed under the Government Resolution dated 28th September, 2012 has not submitted its recommendations, the same shall be submitted to the State Government on or before 31st July 2018. The State Government shall take appropriate policy decision on the basis of the said recommendations on or before 31st August, 2018;

(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) In addition to what is stated in the note placed on record by the State Urban Development Department, the State Government shall take appropriate policy decision about the terms and conditions which should be incorporated in relation to the road contracts which will ensure quality and durability of the work carried out. 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 used for construction or repair of streets. The State shall issue necessary directions to the authorities which do not have benefit of expertise of the Committee like STAC Committee appointed by the Mumbai Municipal Corporation. Appropriate policy decision shall be taken by the State Government on this aspect within a period of three

months from the date on which the judgment is uploaded and necessary directions be issued to all concerned Local Authorities within a period of one month thereafter;

- (vi) We hold that the principles laid down in the judgment will equally apply to the Municipal Councils established under the said Act of 1965. Therefore, it will be appropriate that the State Government exercises its powers under the various provisions of the said Act of 1965 and especially under Section 312A of the said Act of 1965 for issuing directions to implement the directions issued by this Court. The State Government will ensure that the Director of the Municipal Councils issues such directions by using power under Section 312 of the said Act of 1965 to the Municipal Authorities. This exercise shall be completed within a period of two months from the date on which this judgment and order is uploaded. Equally, the State Government shall issue necessary directions to the Authorities such as MMRDA, MSRDC and Planning Authorities like CIDCO within the aforesaid period. Needless to add that even the said Authorities are under an obligation to create Grievance Redress Mechanism as per the directions contained in this judgment and order;

- (vii) We direct that all the Authorities who are bound by the

directions of this Court will give adequate publicity as already directed regarding availability of the Grievance Redress Mechanism. Wide publicity shall be given to availability of such mechanism with all details as directed above at least thrice a year including in the first week of June of every year;

(viii) In addition, the State Government shall give adequate publicity to the Centralized Grievance Redress Mechanism created by it on all district, State or national highways as well as in major Government offices. The State Government shall appropriately publish the information regarding the availability of Centralized Grievance Redress Mechanism at various strategic places on the said highways so that the citizens are in a position to take benefit of Grievance Redress Mechanism;

(ix) We also make it clear that it is the responsibility of all the Authorities who are bound by the directions of this Court to ensure that the work of the Grievance Redress Mechanism is monitored by making some officers responsible with a view to ensure that all complaints received through the same are promptly attended and communication to that effect is issued to the complainants. The compliance reports shall report compliance of this direction as well;

- (x) The State Government shall issue necessary directions to the Traffic Police as observed in paragraph-29 of this Judgment on or before 15th July 2018;
- (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;
- (xiii) It is obvious that compliance reports will incorporate the details of the complaints received and the complaints which were successfully attended to;
- (xiv) The compliance reports which may be submitted by the State Government will also include the compliance of the directions specifically issued against the State Government;
- (xv) First such compliance reports shall be placed in this Court on or before 21st July 2018;

- (xvi) Further compliance reports shall be filed on record periodically after expiry of period of four months thereafter;
- (xvii) The Petition is disposed of with the above directions;
- (xviii) For considering the compliance reports, the Petition shall be listed on 24th July 2018 under the caption of "Directions". The Registry will seek directions of the Hon'ble the Chief Justice for placing the petition before the same Bench or before a Bench of which one of us is a party;
- (xix) Copies of the compliance reports shall be supplied to all the concerned.
- (xx) All concerned to act upon an authenticated copy of this Judgment and Order.

(P.N.DESHMUKH, J.)

(A.S.OKA, J.)