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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

PUBLIC INTEREST LITIGATION NO. 84 OF 2021

Feroze Mithiborwala ..Petitioner
vs.
The State of Maharashtra & ors. ..Respondents

**WITH
PUBLIC INTEREST LITIGATION NO. 85 OF 2021**

Yohan Tengra ..Petitioner
vs.
The State of Maharashtra & ors. ..Respondents

Mr. Tanveer Nizam a/w. Mr. Vijay Kurle, Mr. Shivam Mehra,
Ms. Snehal Surve, Ms. Poonam Rajbhor, Mr. Pratik Jain, Ms.
Dipali Ojha, Ms. Deepika Jaiswal, Mr. Mangesh Mali, Mr.
Siddhi Dhamnaskar i/b. Mangesh Bhimrao Dongare for
petitioner in PIL No.84 of 2021.

Mr. Nilesh Ojha a/w. Mr. Vijay Kurle, Mr. Shivam Mehra, Ms.
Snehal Surve, Ms. Poonam Rajbhor, Mr. Pratik Jain, Ms.
Dipali Ojha, Ms. Deepika Jaiswal, Mr. Mangesh Mali, Mr.
Siddhi Dhamnaskar, Mr. Rajeshwar Panchal and Mr. Sarang
Gundagwar, Mr. A.R. Kori and Mr. Mohan Rawat i/b.
Abhishek N. Mishra for petitioner in PIL No. 85 of 2021.

Mr. Anil V. Anturkar, Senior Advocate a/w. Mr. Yatin
Malvankar, Mr. Shubham Misar, Mr. Preet Phanse i/b. Mr. P.P.
Kakade, G.P., Smt. R.A. Salunkhe, AGP for State.

Mr. Anil C. Singh, ASG a/w. Mr. Aditya Thakkar and Mr. D.P.
Singh for respondent no.7 – UOI.

Mr. Santosh Parad for respondent no. 3 – MCGM.

Mr. T. J. Pandian for respondent no.6.

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

DATE : DECEMBER 15, 2021

P.C. :

1. Learned advocates for the respective petitioners have concluded their addresses.
2. Mr. Anturkar, learned senior advocate is in the midst of his arguments. According to him, neither does the petitioners have *locus standi* to present writ petitions invoking the writ jurisdiction of this Court in public interest nor has the cause of action been spelt out therein. It is also urged by him that circulars/notifications issued by the State Disaster Management Authority and the State Executive Committee, constituted in terms of the provisions of the Disaster Management Act, 2005, are under challenge in both the writ petitions without such Authority and/or Committee being impleaded as respondents in the writ petitions.
3. These are technical objections to the maintainability of the writ petitions; however, keeping in mind the broader issue of curtailment of the Fundamental Rights of non-vaccinated citizens to avail suburban rail services, the rationale therefor needs to be presented before the Court either by the State Government or by the State Disaster Management Authority/the State Executive Committee. We find that the Chief Secretary to the Government of

Maharashtra is the *ex-officio* Chairperson of the State Executive Committee as well as a member of the State Disaster Management Authority. We, therefore, invite the Chief Secretary to file an affidavit by Tuesday next (December 21, 2021), with copies to the learned advocates for the petitioners, putting forth the rationale for making classification between vaccinated and non-vaccinated citizens to avail suburban train services, which is mainly the subject matter of concern expressed in the writ petitions. We are of the opinion that though the writ petitions are not in proper form, we could take cognizance even *suo motu* since the above issue is in the larger public interest. We hope and trust that the State would file the requisite affidavit despite the State Disaster Management Authority or the State Executive Committee not being on record. We, however, grant leave for their impleadment.

4. List the PIL petitions on Wednesday next (**December 22, 2021**) at 10.30 a.m. for further consideration.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)