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

WRIT PETITION NO.5098 OF 2012

Partur Advocate Bar Association,
Partur, Dist. Jalna. (Through it's President-
Vijaykumar s/o Ganpatrao Kulkarni,
Age:57 years, Occup : Legal Profession,
R/o : Rajput Galli, near Sidla Devi Temple,
Partur Town, Partur, Dist. Jalna.

... Petitioner

Versus

- 1 State of Maharashtra,
Through it's Principal Secretary,
Law and Judiciary Department,
Mantralaya, Mumbai 400 032.
- 2 The Hon'ble High Court of Bombay,
Through it's Registrar General
Fort, Mumbai
- 3 The District Judge,
District and Sessions Court,
Jalna, at Jalna.

... Respondents

Mr. S.B. Talekar a/w Ms. Pradnya Talekar and Mr. Vinod Sangvikar for the Petitioner.

Mr. A.B. Vagyan, Government Pleader a/w Mr. V.B. Thadani, AGP for the Respondent No.1.

Mr. E.P. Bharucha, Senior Advocate a/w Mr. Sanjay Udeshi i/by M/s. Sanjay Udeshi & Co. for the Respondent Nos.2 and 3.

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

THE DATE ON WHICH JUDGMENT IS RESERVED : 08th February 2016

THE DATE ON WHICH JUDGMENT IS PRONOUNCED : 5th May 2016

(As per Rule 1 of Chapter XI of the Appellate Side Rules, 1960, signed Judgment is pronounced by Shri A.S. Oka, J at Bombay as Shri C.V. Bhadang, J is sitting at the Bench at Goa.)

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

. The issue involved in this Petition under Article 226 of the Constitution of India is as regards the establishment of the Courts of the District and Additional Sessions Judge as well as the Civil Judge, Senior Division at Partur, Taluka Partur, District Jalna. The issue which arises for consideration is for establishing the said Courts, which is the decision making authority, the State Government or the High Court Administration.

2 With a view to appreciate the submissions canvassed across the Bar, a brief reference to the facts of the case will be necessary. The Petitioner is a Bar Association of the Advocates at Partur. At Partur, which is a Taluka Headquarter, there is a Court of Civil Judge (Junior Division) and the Judicial Magistrate First Class. The Petitioner Association has been espousing the cause of the people living in Talukas of Partur, Mantha and Ghansawangi in District Jalna and have taken up their demand for establishing the Courts of Additional District Judge, Additional Sessions Judge (for short “the ADJ ”) and the Court of Civil Judge, Senior Division (for short “the CJSD ”) at Partur for the aforesaid three Talukas. The Petitioner has pointed out that in similar situations, the Courts of ADJ and CJSD have been established at various Taluka

places in the Districts of Hingoli, Parbhani and Ahmednagar. Reliance is placed on various resolutions passed by the Petitioner Bar Association. The challenge in the Petition is to the stand taken by this Court as well as the Government of Maharashtra that the State Government has no power to establish the Courts of ADJ and CJSD without prior approval of this Court. On 30th March 1998, the State Government declined to consider the request of the Petitioner on the ground that there was no approval of this Court. After the High Court Administration by its communication dated 13th August, 2009 declined to grant approval to a proposal to establish the Courts of ADJ and CJSD at Partur, the Petitioner Association made an application on 28th October, 2009 for seeking review of the decision dated 13th August, 2009. The prayer in this Petition under Article 226 of the Constitution of India is for quashing the decision dated 13th August, 2009 refusing to grant approval to the proposal of establishing the Courts of ADJ and CJSD at Partur. Another prayer is for directing the State of Maharashtra to decide the proposal regarding establishment of the said Courts at Partur without being influenced by the decision of the High Court Administration dated 13th August, 2009. By carrying out amendment, a challenge was incorporated to the order of this Court dated 24th February 1993. By the said administrative order, it was directed that the Petitions under Article 226 filed at the Benches at Nagpur, Aurangabad

and Panaji against the Hon'ble Chief Justice of this Court and Officers of this Court stand transferred to the principal seat at Bombay. A challenge is also to similar order issued by the Hon'ble the Chief Justice on 6th January 2010. No submissions are canvassed in this Petition on these two prayers.

3 The learned counsel appearing for the Petitioner urged that there cannot be any doubt about the proposition that the citizens must have a fair access to the justice. He invited our attention to the powers of the High Court under Articles 233 and 235 of the Constitution of India. The submission is that even as per the provisions of the Constitution of India, the power to establish the Courts as prayed for by the Petitioner is not vested in the High Court Administration but it continues to vest in the State Government. He invited our attention to the provisions of Sections 14 and 15 of the Maharashtra Civil Courts, 1869 (for short "the Civil Courts Act"). He submitted that the State Government is empowered to appoint one or more Additional District Judges who shall ordinarily hold their Court at the same place as the Principle District Judge. However, when the Principle District Judge directs an Additional District Judge to hold his Court elsewhere in the District, previous sanction of the High Court is required. He relied upon Section 19 of the Civil Courts Act which confers power on the State Government to invest any Additional District Judge with all or any of

the powers of the District Judge in a particular part of the District. He pointed out that under Section 21 of the Civil Courts Act, which provides that there shall be in each District so many Civil Courts subordinate to the District Court as may be directed by the State Government from time to time. He urged that under the Civil Courts Act, the power to establish the Courts of ADJ and CJSD at Taluka places in a judicial District is of the State Government and the consent or concurrence of the High Court is not required. His submission is that the provisions of the Civil Courts Act have undergone many amendments after the coming into force the Constitution of India, but the aforesaid powers of the State Government are retained.

4 The learned counsel appearing for the Petitioner invited our attention to the provisions of the Civil Courts Act as well as the Code of Criminal Procedure, 1973 (for short “the CrPC.”). He urged that the State Government under Section 3 of the Civil Courts Act has a power to create judicial District, to alter the limits of a judicial District and to create new Districts. He emphasized on Section 19 of the Civil Courts Act which confers power on the State Government to invest Additional District Judge with all the powers of the District Judge within a particular part of a District and from time to time determine and alter the limits of such part. He pointed out that third part of

Section 19 specifically provides that every such Additional District Judge who is invested with the powers by the State Government shall ordinarily hold his Court at such place within the local limits of his jurisdiction as may be determined by the State Government, and may, with the previous sanction of the High Court hold it at any other place within such limits. His submission is that power to establish a Court of ADJ having powers of the District judge confined to particular area is only of the State Government. He pointed out that even Section 23 confers power on the State Government to decide at which place or places the Civil Judges shall hold their Courts. He pointed out that the State Government has a power to order that a Civil Judge shall hold his Court at a place outside the local limits of his jurisdiction. His submission is that thus the power to establish the Courts of ADJ and CJSD at a place other than the District place is vesting in the State Government. He submitted that the said power remains unaffected by the Constitution of India. He invited our attention to various affidavits on record and the figures of pendency of cases in various Taluka Courts.

5 He invited our attention to the decision of this Court in the case of Vidharbha Labour Law Practitioners Association Vs. State of Maharashtra & others¹. He relied upon a decision of the Apex Court in

1 2003(6) Bom.C.R. 468

the case of *M.P. Gangadhar Vs. State of Kerala*² and the principles laid down therein. He relied upon the 120th Report of the Law Commission of India on Manpower Planning in Judiciary. He relied upon the report of the Law Commission of India being report No.230. He pointed out page 142 of the additional compilation to show as to how the Courts of ADJ and CJSD have been established at various Taluka places in the State. He pointed that though the population of Jalna District is 19,59,046, not a single court of ADJ or CJSD has been established in the said District at a Taluka place. But, in the three Districts having lesser population, such Courts have been established at Taluka places. In some other Districts in Marathwada area, such Courts have been established even in three or four Talukas. He submitted that pendency of cases cannot be the sole criteria for deciding whether the establishment of the Courts of ADJ and CJSD at Taluka places is necessary. On facts, he pointed out that at the State Government level, a decision was taken to establish the Courts of ADJ and CJSD at Partur and even a budgetary provision was made. He invited our attention to the provisions of the CrPC and urged that the power to establish a Court of Sessions is vesting in the State Government and even concurrence of this Court is not required. It is the prerogative of the State Government to take a decision on this aspect. He urged that neither the provisions of the Civil Courts Act nor the provisions of CrPC support the view taken

² 2006(6) SCC 162

by the High Court that the State Government cannot establish the Courts of ADJ OR CJSD at Taluka places without its concurrence. He urged that the object of establishing the Court of ADJ and CJSD is to provide access to justice. The decision about viability of establishing new Courts cannot be taken only on the basis of pendency of cases as ultimately the Courts will have to be established to sub-serve the need of the common man. He urged that the stand taken by the High Court Administration is not consistent. At various places where there is no adequate pendency, the Courts of ADJs and CJSD have been established at Taluka places. He urged that going by the statistics made available, as on 15th October, 2015 there were 406 civil cases and 277 criminal cases pending in the District Court pertaining to only two Talukas of Partur and Mantha. As of that day, the pendency in the Court of the CJSD at Jalna pertaining to the said two Talukas was about 2082 civil cases. He urged that these figures justify the establishment of the Courts of the ADJ and CJSD at Partur.

6 He pointed out the affidavits filed by the High Court Administration. He submitted that in the first affidavit of Shri Sangitrao S. Patil, Registrar (Legal and Research), reliance is placed on policy decision taken on 21st April, 2001 of not establishing new Courts till Government accommodation for Courts and residence for the Judicial Officers is made available. He submitted that from time to time, a

departure has been made from the said decision. He invited our attention to the affidavit in rejoinder dated 7th September, 2012 to which the figures of cases arising out of Taluka of Partur, Mantha and Ghansawangi have have been annexed which show that there are sufficient number of cases available for establishing a separate Court for the said three Talukas at Taluka Partur. He lastly invited our attention to the affidavit of Shri Shrinivas Brijmohan Agarwal, Registrar(Legal) dated 3rd November, 2015. He urged that even going by the quota as suggested by the report of the Committee relied upon in the said affidavit, establishment of the Courts at Partur can be justified. He urged that the fact that infrastructure is not available at Partur is no ground inasmuch as this Court can always direct the State Government to provide infrastructure.

7 The learned Senior Counsel appearing for the High Court Administration urged that the State Government cannot establish new Courts without concurrence of the High Court Administration as only High Court Administration can decide the issue of the viability of new Court.

8 The learned Government Pleader has tendered written submissions. He has relied upon the provisions of the Civil Courts Act and urged that the prerogative of setting up the Courts lies within the

exclusive domain of the State Government in consultation with the High Court. He urged that in those cases, where the High Court is of the view that it is not necessary to establish the new Court, the Government will abide by the opinion of the High Court. He relied upon a decision of Madras High Court in the case of V. Anil Kumar Vs. State of T.N.³. He submitted that the members of the Bar cannot decide at which place the Court should be established.

9 The learned counsel appearing for the Petitioner while making submissions by way of reply submitted that the learned Government Pleader has made a volta face. He urged that the Government Pleader cannot make any unwarranted concession on behalf of the State Government and the said concession cannot be contrary to the provisions of the Civil Courts Act. He relied upon the doctrine of separation of powers. He submitted that the High Court has power to appoint Judges to the posts of District Judges, ADJs and Civil Judges but the High Court cannot assume power of deciding as to at which place Courts should be established.

10 Considering the submissions canvassed across the Bar, broadly, two issues arise for consideration of the Court which read thus :-

3 AIR 2008 MADRAS 56

- (I) What should be the consideration for establishing new Courts of ADJ and CJSD at Taluka places within existing judicial District;
- (II) Whether in the matter of deciding the issue of establishment of aforesaid Courts, the State Government has a primacy or the High Court Administration has the primacy.

11 Now we deal with the first issue. There is no gainsaying that Courts are required to be established to ensure that common man has an easy access to justice. It is the duty of the State to ensure that citizens get access to the justice. Article 39A forming a part of the directive principles of the State Policy reads thus:

“39-A. Equal justice and free legal aid.—The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.”

The state must ensure that an opportunity to seek justice is not denied to any citizens. If the Courts remain inaccessible due to long distance or other material factors, in case of some citizens, it will amount to denial of justice. Therefore, ensuring easy access to justice is a part of Article 39A..

12. The question as to what should be the criteria for establishing new Courts is not easy to answer inasmuch as there cannot be a straight jacket formula. The learned counsel appearing for the Petitioner has relied upon various reports of the Law Commission. In our country, where we are short of resources, it is not possible to maintain the ideal Judge Population Ratio. In fact, we do not live in an ideal situation.

13 There are large number of Courts in the State which are housed in privately owned rented properties. At many stations, there are no judicial quarters available and wherever they are available, the same are not adequate in number. In a city like Mumbai, the judicial officers do not get quarters immediately after they are posted and, therefore, they are required to stay in a make-shift hostel facility at Small Causes Court at Mumbai. In other bigger Cities in the State , even such transit facility is not available. Most of the Taluka and District Courts lack elementary infrastructure. In fact, in large number of PILs pending in the Court wherein the issues of lack of infrastructure has been raised, this Court has issued directions from time to time to the State Government to provide funds and or infrastructure. In many cases, this Court was required to issue writs directing release of funds for construction of Court buildings. In many cases, the Court premises which are situated in rented properties require repairs but the landlords

are refusing to co-operate and permit repairs. The Judiciary has no financial independence in the sense that for carrying out even a small work of repairs or for buying furniture, the Courts have to seek sanction of the State Government for release of funds. The orders passed by this Court shows that it is difficult to get funds from the Government even for basic needs of the Court. Various orders passed by this Court in PILs show that from time to time, this Court was required to issue directions to the State Government for providing elementary facilities to the litigants such as availability of washrooms, water purifiers, water filters, etc. Many buildings of the Courts are being constructed only after a writ of mandamus is issued by this Court for the release of funds. For establishment of new Courts, land and buildings are required for the Courts and judicial quarters. Additional Judges are required and additional posts of staff are required to be created by the State Government. Additional furniture, computers, printers etc are required. Perhaps, that is the reason why the High Court Administration took a policy decision that unless all the infrastructure/ facilities are provided by the State Government, new Courts should not be established. It is true that there are cases of departure from the said decision. But, they are only by way exceptions. That is the reason why there are inherent limitations on the implementation of the ideal concept of the justice at door-steps.

14 Therefore, every demand for establishing Courts of ADJ and CJSD at Taluka places within the Districts cannot be accepted. Hence, such demands are required to be tested on the basis of some rational criteria. The learned counsel appearing for the Petitioner is right when he submits that availability of adequate number of cases in the proposed Court cannot be the sole criteria. Some of the Districts in the State have areas which are backward in many respects. Some Districts have hilly terrain. In some areas, there are no proper public transport facilities available due to various reasons. In some of the Districts, easy modes of transport are not available for reaching District Headquarters. In some Districts, there is a large Tribal area. In some Districts, there are areas where there is a naxalite dominance. The litigants in such areas cannot easily approach the District Court and Court of CJSD at District Headquarters. Therefore, in the peculiar facts of the case, litigants at particular Taluka place may find it very difficult to commute up to the District headquarter for attending their cases. In some Taluka places, there may be a very large number of cases justifying establishment of the Courts of ADJ and CJSD, but the Taluka places may be close to District Headquarters and may have easy accessibility in terms of the availability of easy and quick modes of transport. Therefore, availability of requisite number of cases cannot be

the sole criteria for establishing the Courts of ADJ and CJSD at Taluka places. Various other factors are required to be considered with a view to ensure that there is no denial of easy accessibility to justice. While taking a decision whether a new Court should be established, the cases which may be available to the newly established Courts is not the only consideration. The proposal to establish Courts of ADJ and CJSD at Taluka places cannot be rejected only on the ground that number of cases as per the quota fixed by the High Court will not be available. All the relevant factors are required to be considered some of which are stated above only by way of illustration. The said factors are not exhaustive. The issue of easy access to justice to a common man should be one of the main considerations. To that extent, the submissions of the Petitioner will have to be accepted.

15 Now we turn to second question. Reliance is placed by the learned counsel appearing for the Petitioner on the provisions of Sections 19 and 23 of the Civil Courts Act. The said Sections read thus :-

“19. **Power to invest (Additional District Judge) with powers of District Judge.**- The State Government may, by notification in the Official Gazette, invest an Additional District Judge with all or any of powers of a District Judge within a particular Part of a district, and may, by like notification, from time to time determine and alter the limits of such part.

The jurisdiction of an Additional District Judge so invested shall *protanto* exclude the jurisdiction of the District Judge from within the said limits.

Every Additional District Judge so invested shall ordinarily hold his Court at such place within the local limits of his jurisdiction as may be determined by the State Government, and may, with the previous sanction of the High Court hold it at any place within such limits.

23. **Situation of Subordinate Courts.-** The Civil Judges shall hold their Court at such place or places as the State Government may from time to time appoint within the local limits of their respective jurisdiction:

[Provided that for special reasons it shall be lawful for the State Government to order that a Civil Judge shall hold his Court at a place outside the local limits of his jurisdiction.]

Wherever more than one such place is appointed, the District Judge shall, subject to the control of the High Court, fix the days on which the Civil Judge shall hold his Court at each of such places, and the Civil Judge shall cause such days to be duly notified throughout the local limits of his jurisdiction.”

16 For interpreting the Sections, the entire scheme of the Civil Courts Act will have to be considered. Section 3 of the Civil Courts Act provides that the State Government may by a notification create a new District. Sections 5 and 6 of the Civil Courts Act read thus :-

- “5. District Judges.- There shall be in each district a District Court presided over by a Judge to be called the District Judge.

6. Situation of District Court.- The District Judge shall ordinarily hold the District Court at the sadar station in his district, but may, with the previous sanction of the High Court, hold it elsewhere within the district.”

17 As provided in Section 7, the District Court shall be the Principal Court of original civil jurisdiction in the District, within the meaning of the Code of Civil Procedure, 1908. Section 8 confers Appellate powers on the District Courts. The purport of Section 6 is that if a District Judge wants to hold a sitting at a place other than the District headquarters, he can do so only with the previous sanction of the High Court.

18 The Civil Courts Act is silent about the power to appoint the District Judges. However, under Section 12, the State Government has a power to appoint in any District a Joint District Judge who shall be invested with co-extensive powers and concurrent jurisdiction with the District Judge. Under Section 14, the State Government has a power to appoint one or more Additional District Judges in addition to the District Judge. Section 19 is material which we have quoted above. It confers power on the Government to invest an Additional District Judge with all or any of the powers of the District Judge (the Principal District Judge) within a particular part of the District and may, by a notification from time to time determine and alter the limits of such part. The

jurisdiction of such Additional District Judge so invested shall *pro tanto* exclude the jurisdiction of the Principal District Judge from within the said limits. Such Additional District Judge so invested is entitled to hold his Court at such place within the local limits of his jurisdiction as may be determined by the State Government, and may, with the previous sanction of the High Court to hold it at any other place within such limits. Thus, under the Civil Courts Act, the State Government has a power to alter the limits of the existing judicial Districts and to create new judicial Districts. The authority of the State Government under Section 19 is to confer powers on any Additional District Judge of a District Judge in a particular part of a District. Once such power is conferred on Additional District Judge with reference to a particular part in the District, the jurisdiction of the Principal District Judge is excluded to the extent of the said area. Thus, this is a power to invest Additional District Judges with the powers of the District Judge confined to one or more Talukas within a judicial District.

19 Section 22A confers power on the State Government to fix the local limits of ordinary jurisdiction of the Civil Judges and to alter the same. Even the place or places at which the Civil Judges shall hold their Courts is to be determined by the State Government under Section 23. Therefore, by virtue of Section 23 of the Civil Courts Act, the State

Government can appoint a Civil Judge, Senior Division (CJSD) who will have jurisdiction confined to only one or more Talukas a judicial District.

20 The learned counsel appearing for the Petitioner has relied upon various provisions of the Code of Criminal Procedure, 1973 and has contended that the State Government without the concurrence of the High Court has a power to create a sessions division in a judicial District.

21 It is true that CrPC is enacted post Constitution and Civil Courts Act is a pre-Constitutional law. It is well settled that the provisions of any enactments which are contrary to or in breach of the provisions of the Constitution are ultra vires. However, it is always open for the Courts to interpret the legal provisions to save the same from the vice of ultra vires.

22 At this stage, it will be necessary to make a reference to Article 235 and 236 of the Constitution of India, which read thus :-

“235. Control over subordinate courts. -

The control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a

State and holding any post inferior to the post of district judge shall be vested in the High Court, but nothing in this article shall be construed as taking away from any such person any right of appeal which he may have under the law regulating the conditions of his service or as authorising the High Court to deal with him otherwise than in accordance with the conditions of his service prescribed under such law.”

236. Interpretation. - In this Chapter -

- (a) The expression “district judge” includes judge of a city civil court, additional district judge, joint district judge, assistant district judge, chief judge of a small cause court, chief presidency magistrate, additional chief presidency magistrate, sessions judge, additional sessions judge an assistant sessions judge;”
- (b) the expression “judicial service” means a service consisting exclusively of persons intended to fill the post of district judge and other civil judicial posts inferior to the post of district judge.”

23 The Constitution of India incorporates the principle of separation of powers. Therefore, the control over the District Courts and Courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to judicial service of a State and holding any post inferior to the post of District Judge has been vested in the High Court. As far as the recruitment and appointments to the post of District Judges and persons other than District Judges to the judicial

services are concerned, Article 233 and 234 are relevant, which read thus :-

“233. Appointment of district judges.- (1) Appointments of persons to be, and the posting and promotion of, district judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State.
(2) A person not already in the service of the Union or of the State shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.

234. Recruitment of persons other than district judges to the judicial service. - Appointment of persons other than district judges to the judicial service of a State shall be made by the Governor of the State in accordance with rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State.”

24 Thus, the appointment/recruitment of the judicial officers is governed by Articles 233 and 234. But once appointments are made, the posting of the Judges and promotion is the exclusive province of the High Court. In fact, the High Court retains control over the District Courts and Courts subordinate thereto and the control includes posting and promotion of the persons belonging to the judicial service of the State.

25 If the argument of the Petitioner is accepted that the power under the CrPC and powers under various provisions of the Civil Courts

Act and in particular Sections 3, 4, 12, 12A, 15, 19,21,22 22A and 23 has to be exclusively exercised by the State Government without consultation of the High Court, it will be completely contrary to the spirit of Article 235 of the Constitution of India and it will be contrary to the principle of separation of powers between the judiciary and executive adopted by the Constitution. Moreover, in a given case, it will create a peculiar situation. The State Government may decide to establish a Court of ADJ within a judicial district for one or more Talukas without consultation with the High Court. The High Court after finding that the Court is not viable, will be justified in refusing to post a judicial officer to preside over such Court established by the State Government as the said power is the exclusive domain of the High Court under Article 235 of the Constitution. Hence, harmonious construction of the provisions of the Civil Courts Act and CrPC with the Constitutional provisions is necessary. The power of establishing Courts, wherever conferred on the State Government, both under the Civil Courts Act and the CrPC will have to be exercised by the State Government after consultation with the High Court. In view of the provisions of Article 235, the views of the High Court will have the primacy. This can be the only harmonious interpretation put to the relevant provisions of the Civil Courts Act and CrPC to make it consistent with the provisions of the Constitution. If any other

interpretation is made, the relevant provisions of the Civil Courts Act and CrPC will be exposed to vice of unconstitutionality. In the case of *Namit Sharma v. Union of India*⁴, the Apex Court in paragraph 51 held thus:

“51. Another most significant canon of determination of constitutionality is that the courts would be reluctant to declare a law invalid or ultra vires on account of unconstitutionality. The courts would accept an interpretation which would be in favour of the constitutionality, than an approach which would render the law unconstitutional. Declaring the law unconstitutional is one of the last resorts taken by the courts. The courts would preferably put into service the principle of “reading down” or “reading into” the provision to make it effective, workable and ensure the attainment of the object of the Act. These are the principles which clearly emerge from the consistent view taken by this Court in its various pronouncements.”

(emphasis added)

26 None of the decisions relied upon by the parties have a direct bearing on the issues involved.

27 As far as the demand of the Petitioner of establishing the Courts of ADJ and CJSD for three Talukas is concerned, considering the consistent demand, in our view, it will be appropriate if the High Court Administration considers the said request afresh in accordance with law.

4 (2013) 1 SCC 745

28 Hence, we dispose of the Petition by passing the following order :-

ORDER

- (i) Subject to what is observed in the judgment, the Petition is rejected;
- (ii) We hold that availability of requisite number of cases cannot be the sole criteria for establishing the Courts of ADJ and CJSD at Taluka places. Various other factors are required to be considered with a view to ensure that there is no denial of easy accessibility to justice. While taking a decision whether a new Court should be established, the number of cases which may be available to the newly established Court is not the only consideration. The proposal to establish Courts of ADJ and CJSD at Taluka places cannot be rejected only on the ground that number of cases as per the quota fixed by the High Court will not be available without considering all the relevant factors, some of which are stated in paragraph 14 above only by way of illustration. The issue of easy access to the justice should be one of the main considerations;

- (iii) The powers of establishing the Courts, wherever conferred on the State Government, both under the Civil Courts Act and the CrPC, will have to be exercised by the State Government after consultation with the High Court. In view of the provisions of Article 235, the views of the High Court in such matters will have the primacy:
- (iv) It will be appropriate if the High Court Administration reconsiders the demand of establishing the Courts of District Judge and Civil Judge (SD) at Partur in accordance with law:
- (v) There will be no orders as to costs.

(C.V. BHADANG, J)

(A.S. OKA, J)