

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO.2329 OF 2016

M/S. Mauli Sai Developers Private Limited
and Another.

.. Petitioners

Vs

New Navratna Vakratunda Co-operative
Housing Society and Others.

.. Respondents

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Shri M.M. Vashi, Senior Counsel along with Shri Shri Makrand Kale i/b
M/s. M.P. Vashi & Associates for the Petitioners.

Shri A.G. Damle, Senior Counsel along with Shri Ajay S. Patil for the
Respondent No.1.

Shalaka Potdar along with Shri Ashok Purohit & Co for the Respondent
No.2.

Shri Milind Sathe, Senior Counsel along with Shri J.G. Reddy for the
Respondent No.3.

Shri Rohit Deo, Acting Advocate General along with Shri Amar Mishra,
AGP for the Respondent No.4.

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CORAM : A.S. OKA &
SMT.ANUJA PRABHUDESSAI, JJ

DATED : 23RD DECEMBER 2016

PC.:

1. Heard learned senior counsel appearing for the Petitioners,
the learned senior counsel appearing for the first Respondent, the
learned counsel appearing for the second Respondent, the learned
senior counsel appearing for the third Respondent and the learned
Acting Advocate General for the fourth Respondent.

2. On the last date, draft amendment was tendered on record by the learned senior counsel appearing for the Petitioners which is marked as "X1". The parties were directed to make submissions on the footing that the said amendment is permitted. We formally permit the amendment. Amendment to be carried out within a period of two weeks from the date on which this order is uploaded.

3. Apart from seeking a writ of mandamus against the High Power Committee established by the State Government to hear and decide the Application made by the Petitioners, larger issue was raised regarding the manner in which the High Power Committee is functioning.

4. The first issue was as regards the failure of the High Power Committee to make available a copy of the order passed on the praecipe filed by the Petitioners recording that no urgency was made out by the Petitioners and, therefore, the Application should be listed in the usual course of hearing. The second issue is regarding non-availability of the High Power Committee for adjudicating the cases except on 1st and 3rd Saturdays of every calendar month. The third issue was of a large pendency and filing before the High Power Committee. Another issue in this context canvassed by the learned senior counsel appearing for the Petitioners was that the information furnished to the Petitioners

under the Right to Information Act, 2005 (for short “the RTI Act”) shows that number of cases have been heard long back which are awaiting judgments.

5. As far as the last issue is concerned, on the last date, a chart was tendered across the bar. The learned senior counsel appearing for the High Power Committee-third Respondent pointed out that the information furnished under the RTI Act was factually incorrect either because of the incorrect data entry or conversion of one category of complaints into another. The chart shows that the cases which were shown pending for orders in the information supplied under the RTI Act were already disposed of.

6. On the basis of the decision of the Full Bench of this Court dated 1st November 2007 in the case of Tulsiwadi Navnirman Co-operative Housing Society Ltd. v. State of Maharashtra and Others¹, by a Government Resolution dated 15th November 2007, a High Power Committee was constituted. Needless to note that the High Power Committee is empowered to exercise very important powers and it is performing quasi judicial functions.

7. As per the data tendered across the bar, as of 7th December 2016, total 583 Applications and 18 Appeals have been pending before

¹ 2007(6) MhLJ 851

the High Power Committee. Thus, the total pendency as of 7th December 2016 is of 601 cases.

8. We may note here that as the High Power Committee is dealing mainly with the cases arising out of the implementation of the Slum Rehabilitation Schemes in the City of Mumbai. A large number of documents are produced by the parties and, therefore, in most of the cases, the proceedings become bulky. Moreover, considering the value of real estate in the City, the proceedings are very contested proceedings.

9. Therefore, it is impossible for the High Power Committee to get rid of of the pendency by sitting only on 1st and 3rd Saturdays of each calender month. We may note here that from 1st January 2016 till 7th December 2016, 227 Applications and 12 Appeals have been preferred before the High Power Committee.

10. On this aspect, the State Government has responded. There is an affidavit filed by Shri Shankar S. Bhise, the Secretary of the existing High Power Committee dated 9th December 2016. The learned Acting Advocate General stated that the affidavit has been filed as per the express instructions of the Additional Chief Secretary of the Housing Department and the said affidavit records the decisions taken by the

State Government. In the said affidavit, it is stated that one more High Power Committee will be made functional within a period of two months. The affidavit records that both the High Power Committees will function on 1st, 3rd and 5th Saturdays of every calendar month. In Paragraph 6 of the affidavit dated 22nd December 2016 filed by Shri Shankar S. Bhise, it is stated thus:

“I say that as regards mechanism available to Applicant/Appellant who wants to seek urgent ad-interim relief on a day other than 1st, 3rd and 5th Saturday of every month the Applicant/Appellant has to make an Application along with supporting documents and an Affidavit making out the ground of urgency for ad-interim relief before the HPC. Further, Applicant/Appellant thereafter, shall serve the Respondent. Thereafter all such urgent Applications for ad-interim relief will be placed before HPC once a week on working Monday/Tuesday however, in exceptional circumstances on any other working day during the week”.

(Underline supplied)

11. Thus, there is an assurance that apart from the 1st, 3rd and 5th Saturday of every calendar month, once in a week on working Monday or Tuesday, the High Power Committee will function to deal with the urgent Applications for ad-interim relief or interim relief. It is stated that in the exceptional circumstance, even on any other working day during the week, a High Power Committee will assemble for hearing such Applications. Needless to add that an immediate threat of dispossession of the Appellants/Applicants shall be treated as one of the

exceptional circumstances warranting immediate hearing to be given by the High Power Committee to the Appellants/Applicants.

12. By creating one additional High Power Committee and by making available a High Power Committee for hearing of urgent matters as aforesaid, most of the grievances made in the Petition shall stand redressed.

13. It is needless to add that a decision to create second High Power Committee has been taken in the light of the present pendency and filing. If the filing and/or pendency substantially increases in future, the State Government will have to reconsider the whole issue and consider of creating one or more High Power Committees.

14. The learned senior counsel appearing for the High Power Committee stated that the High Power Committee has its own dedicated website on which orders of the High Power Committee are being uploaded. He stated that it is only a practice which is followed by the High Power Committee that the orders passed on the praecipes seeking early hearing are being signed by the Law Officer of the High Power Committee.

15. The High Power Committee exercises an important quasi judicial function. We, therefore, make it clear that the orders of the High Power Committee cannot be signed by the Law Officers of the Committee. We may also add here that even the orders passed on the praecipes/notes/Applications seeking urgent ad-interim or interim relief will have to be uploaded on the dedicated website of the High Power Committee.

16. As far as the orders recorded in the Roznama under the signatures of the Law Officer thereon are concerned, in the affidavit of Shri Bhise dated 9th December 2016, there is an assurance recorded that in a case where the High Power Committee comes to a conclusion that no urgency is made out in a particular case, Roznama will be drawn and signed by the Chairman or Secretary of the High Power Committee. There is a further assurance recorded that the copies of the said orders will be supplied to the concerned parties. We accept the assurances recorded in Paragraph 11 of the said affidavit dated 9th December 2016. We make it clear that the orders of the High Power Committee shall be signed by all the members who are present at the time of hearing.

17. The affidavit of Shri Shankar S. Bhise, which is also filed on behalf of the State Government records an assurance that a Grievance

Redressal Committee as provided under Section 35(1A)(b) of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 will be constituted by the State Government within a period of two months. We accept this statement.

18. Subject to what is observed above, we accept the statements made in the affidavit dated 22nd December 2016 of Shri Shankar S. Bhise as the statements made on behalf of the State Government. We also accept the statements made in the affidavit of Shri Shankar S. Bhise which is dated 9th December 2016 as the statements of the State Government.

19. Now, coming to the facts of the case, the Application filed by the Petitioners has not been considered even as far as the prayer for ad-interim/interim relief is concerned.

20. Now, as per the statements made in the affidavits, the High Power Committee will be available on 7th January 2017 and 21st January 2017. We direct the High Power Committee to take up for hearing the Application made by the Petitioners for grant of prayers for ad-interim/interim relief either on 7th January 2017 or 21st January 2017.

21. We direct that the State Government shall ensure that all necessary infrastructure is made available to both the High Power Committees including proper Court rooms/offices, adequate staff, computers, printers, servers, etc. It will be always open for the Chairpersons of both the High Power Committees to submit a requisition for providing necessary infrastructure. In terms of the requisition issued by the Chairperson of the High Power Committee, the State Government shall take steps to provide necessary infrastructure.

22. With the above directions, the Petition is disposed of.

(SMT.ANUJA PRABHUDESSAI, J)

(A.S. OKA, J)