

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CIVIL APPELLATE JURISDICTION****WRIT PETITION NO. 11442 OF 2014**

Mr. Abdul Rauf S.H. & Ors.

..Petitioners

VS.

Bandra East Ghausia Compound
Cooperative Housing Society
Ltd and Ors.

...Respondents

Mr. Mihir Desai a/w Ms. Manjiri Sharad Parsnis for the petitioners.

Mr. Arshil Shah for respondent no. 1.

Mr. Milind Sathe, Sr. Advocate a/w Mr. Girish Utangale a/w
Mr.Suyash Gadre and Mr. Chetan Mhatre i/by M/s. Utangale & Co.
for respondent no.5 SRA.

Mr. S. Babar, AGP for the Respondent State.

Mr. Pravin Samdani, Sr. Advocate a/w Mr. Ashish Kamat i/by Mr.
Chandrakant Gole for respondent no. 3.

Mr. Shankar Thorat for respondent no. 4.

**CORAM : SHANTANU KEMKAR &
SMT ANUJA PRABHUDESSAI, JJ.
SEPT 20, 2017**

P.C.:

By filing this petition, the petitioners have challenged the order dated 21.4.2014 Exhibit "C" whereby the High Power Committee dismissed their Appeal No.152 of 2009.

2. The grievance of the petitioners is that the petitioner's appeal has not been decided on merits but has been dismissed essentially on the ground that the appeal filed by the earlier

developer i.e. M/s. Vilayatiram Mittal has already been dismissed and the said order has been upheld by this Court.

3. The appeal of M/s. Vilayatiram Mittal was essentially regarding his removal as a developer whereas the appeal in question filed by the petitioners was challenging the appointment of the new developer respondent no. 3. In our considered view, the petitioner's appeal which was on a different footing could not have been dismissed on the ground that the appeal of the earlier developer Vilayatiram Mittal was dismissed and the said order was confirmed by this court. The petitioner's appeal was required to be decided on its own merits.

4. Learned counsel appearing for respondent no. 3 as also the learned counsel for the SRA submit that the petitioner's appeal before the High Power Committee was not maintainable as the society had supported the appointment of the new developer and the appeal at the instance of the individual members was incompetent. Be that as it may, we find that while deciding the appeal, the High Power Committee has not considered all these aspects and has dismissed the appeal merely on the ground that the appeal of Vilayatiram Mittal has been dismissed and the said order has been upheld by this court. In the circumstances, we are of the view that the impugned order cannot be sustained and the same is liable and is hereby set aside. Accordingly we remand

the matter to the Grievance Redressal Committee for deciding the petitioner's appeal afresh keeping all the contentions of the parties open including the issue of maintainability of the appeal.

5. We direct the Grievance Redressal Committee to decide this appeal as also the appeal filed at the instance of the society i.e. Appeal (L) No. 23 of 2017 as expeditiously as possible preferably within four months from the date of receipt of copy of this order.

6. Petition is accordingly disposed of.

(SMT ANUJA PRABHUDESSAI, J.)(SHANTANU S. KEMKAR, J.)