

(2019) 01 BOM CK 0077

In the Bombay High Court

Case No : Public Interest Litigation No. 57 Of 2012

Ahmad M. Abdi

APPELLANT

Vs

State Of Maharashtra And Ors

RESPONDENT

Date of Decision : 22-01-2019

Acts Referred:

Constitution Of India, 1950 — Article 21, 39A

Citation : (2019) 2 BCR 639

Hon'ble Judges : M.S. Sonak, J;A.S.Oka, J

Bench : Division Bench

Advocate : A.Y. Sakhare, Rohan Mirpur, Harshwardhan Borse, Yashwant Dhanegave, Raviraj Shinde, Geeta Shastri, Sagar Patil, Sanjay Udeshi, Sanjay Udeshi, Milind Sathe, Bhushan Deshmukh, Mallika Taly, Mohamadbhai, V.A.Thorat, S.M.Gorwadkar, P.J.Thorat, L.T.Satelkar, Anil Singh, Rui Rodrigues, N.R.Prajapati, Upendra Lokegaonkar, Dushyant Kumar, Darius Khambatta, Zal Andhyarujina, Shivani Khanna, Ajay Fernandes, Sneha Pandey, Motiwalla, Aditya Pratap, A.M. Chandekar

Final Decision : Disposed Off

Judgement

A.S. Oka, J.

OVERVIEW

"....the Bombay High Court has stood, and is accepted by the public as standing, as the proverbial 'temple of justice', where judges stand away from extraneous influence and justice is dispensed without fear or favour." This is what late Shri K.M.Munshi said about the High Court of Judicature at Bombay.

Under a Charter issued by Her Majesty, Queen Victoria on 26th June 1862, the High Court of Judicature at Bombay was established on 14th August 1862. The Letters Patent had authorised appointment of 15 Judges, but the Court worked only with 7 Judges for sixty years. Thus, it is a 156 years old institution. On 17th April 1871, construction of the present building of this Court at Mumbai commenced which was completed in November 1878 and functioning of this

Court in the present building commenced on 10th January 1879. The material placed on record will show that the building as originally constructed was meant for six to seven Courts which were located on the second floor. Now, the sanctioned strength of the Judges of the Bombay High Court is 94. When all the posts are filled in, about 50 Judges will have to function at the principal seat at Mumbai. During last few years, not less than 35 Judges are sitting at the principal seat of this Court at Mumbai. In the Annex building which runs parallel to the main building, small Court rooms and chambers have been set up during last few years by converting offices of the Registry. Even this building is more than 60 years old which was not meant to be a building for Court rooms of this Court. The affidavits filed on record and the orders passed by this Court from time to time will show that all the stakeholders including three historic Bar Associations- (i) Advocates' Association of Western India (for short "AAWI"), (ii) Bombay Bar Association (for short "Bombay Bar"), and (iii) Bombay Incorporated Law Society (for short "Law Society") have accepted the position that if this Court is to function efficiently, it needs to be shifted to a bigger premises having ultra modern facilities which are available in several other High Courts in the country. Their contention is that a plot will have to be provided near the new High Court complex for construction of chambers for the lawyers.

2. A 138 years old building which was constructed to accommodate 5 or 6 Courts is still being used along with parallel High Court annex building though the sanctioned strength of the Judges has progressively increased. In the subsequent part of the judgment, we have referred to some figures of pendency which will indicate that as far as civil and criminal matters on the appellate side of the principal seat are concerned, between 1990 to June 2018, the pendency has doubled as a result of increase in filing. There is a manyfold increase in number of staff members as indicated in the subsequent part of the judgment. The same is the case with number of the members of the Bar practising in this Court.

3. The prayer in this PIL, inter alia, is for issuing a writ of mandamus enjoining the State Government to provide a new building for this Court with fixtures, furniture and other infrastructure on priority basis. The second prayer is for appointing a High Power Committee consisting of all stakeholders for implementation of the project of new building. The petitioner has set out the amenities and facilities which are required to be provided in the new High Court complex.

4. The credentials of the petitioner who is a member of the Bar have been set out in the petition and, in particular in clauses (a) to (f) of paragraph-2.

ORDERS PASSED IN THIS PIL

5. Before we go to the affidavits filed in the petition and the submissions, a brief reference will have to be made to the orders passed from time to time. The first order which is of some significance is the order dated 10th September 2014 which notes that the prayer for construction of a new Court complex or Court

building is a long term measure and, therefore, the said order as well as the order dated 23rd September 2014 take a note of the efforts made to secure allotment of the premises of the Central Telegraph Office(CTO) for the use of this Court on temporary basis as well as GT Hospital building of the State Government. The order dated 10th October 2014 makes a note of the accepted position that the present premises available to the principal seat of this Court in Mumbai are inadequate to cater the need of the Judges, the members of Bar and litigants and the staff. This is the observation made in paragraph-1 of the said order. Paragraph Nos.3, 4 and 6 of the said order are material which read thus:

"3. The aforesaid issues are temporary measures to ensure that additional space is made available to the High Court. A very long time will be required for establishing new High Court Complex. It appears that the State Government had offered a land at Wadala (Sewri) which is bearing Survey no.3/4, 6 (part) of Village Mouze. The members of the Registry visited the said plot on 22nd August,2014. The area of the land was found to be about 13,383 sq.mts. By a letter dated 26th August,2014, the Registrar General of this Court informed the Chief Secretary of State of Maharashtra that the said land offered at Sewree is not at all suitable for establishing the High Court complex, for the reasons as set out in the said letter. It is stated in the said letter that the Revenue Officers present at the site pointed out that there is another land available on the western side of the road situated in Survey No.83. The said letter of the Registrar General records that the said land is covered by water-bodies and hutments. The letter records that the land offered by the State Government is not at all suitable for establishing the High Court Complex, but nevertheless, the said land can be utilized for accommodating Courts of Metropolitan Magistrates, Civil Civil Court etc. By the said letter, as per the directions of the Hon'ble the Chief Justice, a request was made to allot a land admeasuring 100 acres from the aforementioned Survey Nos.4/3, 5, 6 (part) and 83 . The said request is stated to be pending with the State Government.

4. It appears that the High Court had earlier requested the Government to allot a large plot in Bandra Kurla Complex for establishing the High Court Complex. It appears that the said suggestion is not accepted and the State Government offered a plot at Sewree which is not suitable for various reasons as set out in the letter dated 26th August,2014. The submission of the President of the seventh respondent is that an adequate land is available in Bandra Kurla Complex which can be suitably allotted to the High Court for construction of a new High Court Complex. His submission is that the State Government can be directed to consider the proposal for allotment of adequate land in Bandra Kurla Complex apart from considering the proposal for the allotment of a plot of land admeasuring 100 acres at Sewree. His contention is that the Bandra Kurla Complex is centrally located in Mumbai which will be convenient for the litigants. The said submission is worth accepting. Accordingly, we direct the State Government to consider the suggestion for the allotment of sufficiently large plot of land at Bandra Kurla Complex for construction of new High Court Complex.

The State Government shall also consider the request made in the letter dated 26th August,2014 addressed by the Registrar General of this Court to the Chief Secretary of the State of Maharashtra. We direct the State Government to consider the said proposals and place the appropriate decision before the Court on or before 30th November,2014.

5.

6. The learned ASG suggested that a substantial part of the land allotted to the University of Mumbai at Kalina Complex is vacant. His suggestion is that the State Government should consider of allotting of the vacant land in possession or the University of Mumbai which is adjacent to the Bandra Kurla Complex. According to him, approximately 50 acres of land is lying vacant. The State Government may even consider the said suggestion. The State Government shall also consider the said suggestion provided the land available is adequate to meet the requirements of the High Court."

(emphasis added)

The first paragraph of the order dated 10th September 2015 records that so far as the respondent Nos.5 to 7 (the Bar Council of Maharashtra and Goa, Bombay Bar Association and the Advocates' Association of Western India) are concerned, there is a consensus that the State Government must allot a centrally located land having adequate area in the city of Mumbai for construction of a new High Court complex. Paragraph-3 of the said order is material which records that even from the stand of the State Government before this Court it appears that it is not disputing that there is a need to have a new High Court complex in the city of Mumbai. Paragraphs-2 and 3 of the said order dated 10th September 2015 read thus:

"2. The learned counsel appearing for the High Court Administration states that within a period of three weeks from today, he will be able to make a statement as regards the approximate requirement of area of land for construction of new Court complex.

3. Even from the stand of the State Government it appears to us that even the State Government is not disputing that there is a need to have a new High Court complex in the city of Mumbai. To enable the learned counsel representing the High Court Administration to take instructions, place the Petition on 8th October, 2015 under the caption of high upon board. "

(emphasis added)

Till today, the State Government has not disputed the correctness of what is recorded in paragraph-3 which is reproduced above. The order dated 15th October 2015 is very material. Paragraphs-1 to 7 of the said order read thus:

"1. Heard the petitioner in person, the learned ASG for the Union of India and the learned counsel for respective respondents.

2. Perused the earlier orders passed in the present Public Interest Litigation (PIL) especially the order dated 10th September, 2014. In paragraph 3 of the said order, this Court has recorded that undisputedly the present building available to the High Court is not at all sufficient to cater the need of the litigants as well as Advocates and for that matter, even the Judges. The same were the views expressed by the Bar Associations (the Bombay Bar Association and the Advocates Association of Western India). Today, the learned counsel representing the High Court Administration has placed on record a letter dated 14th October, 2015 addressed by the Prothonotary and Senior Master to the Registrar (Legal and Research) of this Court. The letter records that keeping in view the requirement of the land for the buildings of the High Court Complex, for the premises required by the Bombay Bar Association, the Advocates Association of Western India and Incorporated Law Society, the office of the Bar Council of Maharashtra and Goa, the High Court Judges' Library, dispensary etc. and considering the need for the next 100 years, it is necessary that a plot having an area of minimum 25 Acres should be allotted for the construction of the new High Court Complex and a plot having minimum area of 25 Acres should be allotted to meet the other requirements. The suggestion of the High Court Administration is that the plots of land having total area of 50 Acres be made available in Bandra Kurla Complex, Kalina, Mumbai. The reason is that the Bandra Kurla Complex is centrally located in Mumbai and, therefore, is ideal from point of view of the litigants and the Advocates.

3. It is pointed out that today, the High Court occupies approximate total area of 5,50,000 sq. ft. in High Court main Building, Annex Building, PWD Main and Extension Building and G.T. Hospital Complex. The residential area which is available as on today to the Judges and the members of the staff and members of the Registry is approximately 1,70,000 sq. ft. As of today, there are about 2400 staff members working on the establishment of the Appellate Side and the Original Side. It is pointed out that the sanctioned strength of the Judges of this Court has been raised from seventy five to Ninety four. It is pointed out that when the present building was constructed, the sanctioned strength of the Judges was only seven. It is pointed out that in the existing Court building, there are only 29 Court rooms. Substantial number of Court rooms are makeshift Court rooms which are converted from the office premises into Court rooms. It is pointed out that the size of the rooms is not sufficient to accommodate the members of the Bar and litigants as large number of matters are being listed on daily boards before every Court in this building. There is no sitting facility available to the litigants in the court premises. There is no parking facility available. The court rooms are congested and it is very difficult to walk through very crowded corridors of the Court.

4. The learned senior counsel representing the Bombay Bar Association as well as the Advocates Association of Western India, submit that both Bar Associations are of the view that urgent steps are required to be taken by the State Government to allot a large plot of land in Bandra-Kurla Complex for setting up a

new High Court Complex. They submit that if the allotment of a plot in Bandra Kurla complex is made, the Bar Associations would welcome the same. They, however, submit that since many members of the Bar are having their offices near the existing High Court premises, the Government will have to consider of allotting a plot of land for setting up Advocates' chambers. Though there may be some justification in the submission, as per the existing policy of this Court, the Advocates' chambers are not allowed to be set up within the premises of a Court Complex. However, the Bar Associations are free to put forward their demands to the State Government for allotment of a separate plot for construction of their chambers.

5. We are sure that even the State Government is very keen on ensuring that a large plot of land which is centrally located is allotted for the construction of new High Court Complex as expeditiously as possible. We are sure that the requests made by the High Court Administration and the members of the Bar are bound to be positively considered by the Government.

6. Though a submission is made on behalf of the State Government that there will have to be a valid justification for making a demand for the area of 50 Acres of land, considering what is set out above, we find that no justification is required. However, we are sure that all the details of the requirements of the new High Court Complex will be submitted by the registry to the State Government, if so required.

7. The High Court Administration will forward a formal requisition to the State Government in terms of what is set out in the letter dated 14th October, 2015. We direct the State Government to take appropriate decision on the proposal of the High Court Administration as well as on the proposal which may be submitted by the Bar Associations as expeditiously as possible and in any event on or before 11th December, 2015. A copy of this order be forwarded to the Chief Secretary of the State of Maharashtra."

(emphasis added)

Thus, according to High Court administration, a plot of land having an area of 50 Acres (20.23 Hectatre) was required for setting up new High Court Complex. After the order dated 5th October 2015 was passed, this PIL came up on 15th December 2015 when a statement of the learned Assistant Government Pleader was recorded that a decision has been recently taken by the State Government on the aspect of allotting a suitable land for construction of new High Court complex.

6. The order dated 29th January 2016 records that the High Court registry submitted a chart containing calculations of the required area of the proposed High Court complex at Bandra. The said order directs that if AAWI, Bombay Bar and Law Society make an application to the State Government for allotment of a plot of land for construction of Advocates' chambers, the State Government shall consider of allotting a plot to the said associations in the close vicinity of the plot

to be allotted for new High Court complex. This Court expressed a hope that such a request would be favourably considered by the State Government. The requirements submitted by the High Court Administration are in the form of a chart which is taken on record and marked "A-1" for identification. The said requirement specified in the said chart is of a constructed area as well as a provision for lawns, gardens, parking of vehicles of the Judges and visitors, open spaces, waiting platforms etc. The order dated 23rd March 2016 is also material. Paragraphs-1 and 2 of the said order read thus:

"1 We have perused affidavit of Shri Neeraj Pradeep Dhote, Legal Advisor-cum-Joint Secretary, Law and Judiciary Department and in particular paragraphs 8 to 10 of the said affidavit. We are of the view that the State Government will have to take a decision in principle about the total area of the land to be allotted to the High Court Complex as well as total land to be allotted for the benefit of the members of the Bar. The requirements of the High Court Administration as well as members of the Bar have been placed before the State Government long back as indicated by order dated 29th January, 2016. In fact, the Petition was adjourned till today to enable the State Government to take appropriate decision.

2 Paragraph 10 of the affidavit tendered today suggests that the decision of allotting a particular area for the Court Complex as well as to the members of the Bar will be taken only after a Detailed Project Report (DPR) is prepared for redevelopment of the Bandra Government Colony. If the decision of the State Government of allotment of the land is to await till DPR for redevelopment of Bandra Government Colony is placed before the Government and till the master plan is finalised, there will be a long delay in allotment of the land to the Court Complex as well as to the members of the Bar. The State Government is fully aware of the urgency involved in the decision making."

Thereafter, when the matter came up on 13th April 2016, a statement was made by the learned Advocate General which is recorded in paragraph-2. Paragraphs-1 and 2 of the said order reads thus:

"1. We have perused the orders passed by this Court in PIL No.57 of 2012 from time to time. The order dated 10th September, 2015 records a consensus arrived at that the State Government must allot a centrally located land having adequate area in the city of Mumbai for construction of a new High Court Complex. Thereafter, a statement was made across the Bar by the State that in principle, a decision has been taken by the State Government to allot a land at Bandra (East) on which at present there is a Government Colony.

2 The learned Advocate General on instructions states that the State Government proposes to have an integrated project of development of the entire area covered by the Bandra Colony. He states that a tender is being finalized for appointment of a Consultant for the purposes of preparing a project report of the Integrated project. He states that the expert appointed will have to look into several things such as availability of FSI, restrictions, if any, on the height of the building

considering the proximity of the area to the Mumbai Airport and several other relevant factors. He states that after considering all relevant factors, the expert will have to suggest and recommend exact area to be allotted for the High Court Complex. He states that an affidavit will be filed within a period of two weeks from today setting out the outer limit with which a final decision of actual allotment of the land for the High Court complex with reference to all particulars will be placed on record of this Court."

(emphasis added)

As regards the Advocates' chambers, in paragraph-6, this Court observed thus:

"6 As far as PIL (L) No.15 of 2010 is concerned, we must note that there is already a direction issued by this Court in PIL No.57 of 2012 directing the State Government to consider the request for an allotment of a plot for construction of lawyers' chambers in the close vicinity of the plot to be allotted to the High Court. The other issue is as regards cost of construction and the manner of allotment of the chambers which may be constructed for the benefit of the members of the Bar. It will be open for the Bar Associations to submit a comprehensive scheme in this behalf to the State Government. The Bar Associations may also provide copies of the Schemes which govern the allotment of lawyers' chambers in Supreme Court as well as the High Courts of the other States to enable the State of Maharashtra to take appropriate decision. Necessary Scheme shall be formulated by the Bar Associations and submitted to the State Government as expeditiously as possible and preferably within a period of one month from today."

(emphasis added)

By the order dated 30th June 2016, further directions were issued in terms of paragraphs-3 to 5 which read thus:

"3. We direct the High Court Administration to place on record various factual details such as figures of filing various categories of matters in this Court from 1980 onwards, figures of pendency, figures of number of staff members working in this Court and number of Judges working in this Court. If possible, the High Court Administration shall place on record the data showing the increase in the strength of the Bar. The High Court shall also submit details about the availability of the facilities to the litigants and members of the staff such as availability of canteen, toilets, parking spaces and other facilities. The total area available including the area allotted in G.T. Hospital Building as well as C.T.O. Building shall be also placed on record.

4. Details of infrastructure available at Nagpur and Aurangabad Benches in above terms shall also be placed on record along with the particulars of the infrastructure available in the leading High Courts of the Country including newly constructed High Court Buildings. The data shall be placed on record within a period of two weeks from today.

5. At this stage, the learned counsel representing the Bombay Bar Association states that the said Association has unanimously passed a Resolution recording that the said Bar Association in principle is not opposing the shifting of this Court to a bigger premises provided adequate facilities are made available to the members of the Bar and litigants."

7. The order dated 9th August 2016 is a detailed order under which rule was issued in the PIL and interim directions were issued. This order also refer to the earlier orders passed by this Court from time to time. Paragraphs 7 and 8 of the said order dated 9th April 2016 read thus:

"7. The figures of the pending cases at the principle seat are placed on record by the learned senior counsel representing the High Court Administration. In the year 1997, total 37,488 civil cases (main) were pending on the Appellate Side. Up to May 2016, pendency of civil cases (main) increased up to 72,615. In the year 1997, total 8769 criminal cases (main) were pending. Now, in the month of May 2016, there are 28,521 pending main criminal matters. Thus, within a span of about 20 years, the pendency of the main criminal cases has been increased by 3 times. Though substantial number of suits (more than 36,000) pending on the original side of this Court were transferred to the City Civil Court about four years back as a result of the enhancement in the pecuniary jurisdiction of the City Civil Court, there is hardly any difference between the pendency of 1997 and June 2016. As far as the Miscellaneous cases on the Appellate Side are concerned, the pendency in the year 1997 was of 20,778 cases. The miscellaneous cases (civil) in May 2016 have gone up to 48868. In the year 1997, 528 miscellaneous cases (criminal) were pending and in May 2016, the number of miscellaneous cases (criminal) has increased to 6,270. The figures from 1997 will show that filing of cases, both civil and criminal, on the Appellate side has substantially increased. Correspondingly, the pendency has increased.

8. Another important aspect which is brought to the notice of this Court is that in the year 1975, total staff members on the Appellate Side were 542 and now in the year 2016, the total staff members working on the Appellate Side are 1446. In the year 1975, the total staff members working on the Original Side were 398 and now in the year 2016, the total staff members have been increased to 672. With recent increase in the sanctioned posts of Judges, the number of staff members will substantially increase in near future."

(emphasis added)

The present pendency (as on 30th June 2018) is as under:

Main

Misc.

1.

Civil Appellate

77,786

50,746

2.

Original

43,443

15,734

3.

Criminal

33,145

8,358

Paragraphs-31 to 34 of the said order dated 9th August 2016 are also material, which read thus:

"31. Thus, the orders passed by this Court take a note of the decision taken by the State Government to allot a suitable and adequate land for construction of a new High Court Complex in the City of Mumbai. We may note here that while allotting a suitable land for construction of a new High Court Complex, the convenience of the litigants will have to be considered by the State Government. Future requirement if not of 100 to 150 years, but at least for 75 to 100 years will have to be taken into consideration by the State Government. The requirements of all the stakeholders viz. members of the Bar and the Bar Associations as well as the Bar Council of Maharashtra and Goa will have to be taken into consideration by the State Government. While laying down that the Government will have to consider the plight of the litigants who visit the present High Court Complex, the State Government will have to keep in mind that the Mumbai is the financial capital of the State. In fact, on the last date, the learned Acting Advocate General assured the Court that considering the status of the City, the State Government will take an appropriate decision so that a Complex can be constructed with world class facilities.

32. Now coming to the affidavit of the State Government tendered today which is dated 9th August 2016, in Paragraph 2 thereof, it is stated that the State Government has decided to rebuild the Government Colony at Bandra and to reconstruct a world class township with an ultramodern infrastructure. It is further stated that the proposal is to provide a state of the art of building for the High Court wherein the area available will be approximately 25.93 lakhs sq. ft. We may note here that in Paragraph 5 of the said affidavit, a statement has been made that a master plan for redevelopment of the area will be made available by 31st December 2016. We make it clear that the State Government will have to make a statement before this Court on or before 31st December 2016 as regards the total area which will be made available for construction of a new High Court

Complex together with all the particulars such as the extent of FSI available, restriction on construction of number of floors etc. The State Government will have to also make a statement as regards the allotment of a sufficiently large plot of land to the members of the Bar for construction of Advocates' chambers.

33. In the case of New Bombay Advocates' Welfare Association, through its President and Another v. State of Maharashtra and Others, this Court has held that it is the constitutional obligation of the State Government to provide a proper infrastructure for the Judiciary and that the plea of financial constraints is no ground to deny the proper infrastructure to the Judiciary. The law laid down by this Court in the said decision shall be taken into consideration by the State Government before taking appropriate decision.

34. In the light of the discussion made above, we direct the State Government to take appropriate decision on the aforesaid aspects and to place the said decision on record on or before 31st December 2016 by filing an affidavit. We may clarify here that the design of the Court building and other aspects will have to be left to the High Court Administration and the consultants appointed by the State Government will have no say in the said matter."

(emphasis added)

8. A Division Bench of this Court by order dated 7th December 2016 observed that before entertaining this PIL on the judicial side, it would be appropriate if the matter is heard on the administrative side by the Hon'ble the Chief Justice and the committee appointed by the Hon'ble the Chief Justice. The registry was, therefore, directed to place the matter before the Hon'ble the Chief Justice.

9. The High Court Administration has placed on record a true copy of the resolution dated 5th April 2018 passed by the Committee of the Administrative Judges of this Court. It records that the subject of allotment of plot for new High Court complex was taken up in the meeting of the Hon'ble the Chief Justice and the Hon'ble Chief Minister when a presentation was given by the State Government. The Administrative Committee directed that the matter may be listed before the Court. We may note here that one of us (A.S.Oka, J.) who is a member of the Administrative Committee recused himself from the discussion and decision on the subject in the meeting held on 5th April 2018. That is specifically recorded in the minutes. Accordingly, on 17th April 2018, PIL was placed before a Division Bench of this Court when this Court noticed that compliance with the directions issued in the order dated 9th August 2016 was not made and reported. Therefore, a direction was issued to the State Government to file a compliance affidavit by 2nd May 2018. The order dated 3rd May 2018 notes that the State Government has not complied with the earlier orders. The order specifically records that though the Court would have been justified in issuing a contempt notice, the same was not issued and, therefore, an order was made by this Court directing the Additional Government Pleader to invite attention of the Chief Secretary of the State Government to the order

dated 9th August 2016 and all other orders. As a submission was made that large lands are available with Mumbai Port Trust in city of Mumbai, a notice was issued to the Port Trust in the said order. The orders passed earlier and, especially in the year 2016 including the order dated 9th August 2016 show that till that stage, the State Government had not taken adversarial stand and the statements of the Advocate General recorded in various orders including the order dated 9th August 2016 show that the State Government had taken a fair stand realizing the necessity of providing larger accommodation to the Court.

10. However, the order dated 16th August 2018 will show that there was a shift in the stand of the State Government and an objection to the maintainability of this petition was raised for the first time. By a detailed order dated 16th August 2018, this Court dealt with the preliminary objection and rejected the same. The said order is not subjected to a challenge by the State Government. As per the said order, PIL was taken up for final hearing and the hearing was concluded on 31st October 2018.

11. Thus, it can be said that as far as actual allotment of adequate land for setting up a new High Court complex is concerned, though the petition is pending for last more than six years, there is hardly any progress made notwithstanding various ad-interim/ interim orders passed by this Court from time to time.

SUBMISSIONS

12. The petitioner appearing in person invited our attention to the material on record and the orders passed by this Court from time to time. He submitted that the interim order passed by this Court has not been implemented though a period of more than 2½ years has elapsed. He urged that the existing building of this Court has become very congested wherein there are no elementary facilities available to the litigants and the members of Bar. He pointed out that there is absolutely no parking facility in the compound of the High Court. He submitted that not only that there is a congestion in the Court rooms but there is a congestion in the offices of the registry. He would, therefore, submit that a writ of mandamus as prayed may be issued.

13. Dr.Milind Sathe, learned senior counsel representing the Bombay Bar made detailed submissions. He has tendered a compilation of documents and judgments. The compilation contains a note on membership of the High Court Law Library which is in room Nos.38 and 39 of the second floor and room No.56 on the third floor. He pointed out that this 156 years old library has a membership of 5,000 and there are 300 to 400 new members enrolled every year. He pointed out that the library has more than 7 lakh periodicals, journals etc. and the area of the library is only 6,000 sq.ft. He pointed out that out of 5,000 members, only 500 to 600 members can use the library at a time. The library has become over-crowded. He submits that the law library requires an area of about 20,000 sq.ft. He pointed out that by a letter dated 20th January 2016, the Bombay Bar has submitted its requirements to the High Court

Administration taking into consideration the requirements in future. He also pointed out the letter dated 5th September 2016 addressed by the Bombay Bar to the Hon'ble Chief Minister. He invited our attention to the resolution passed by the Bombay Bar in its extra-ordinary general meeting held on 20th June 2016. By way of illustration, he pointed out the facilities provided to the High Court buildings at Lucknow which is only a Bench of Allahabad High Court. He pointed out that the facilities which are available to Lucknow Bench are far superior to the facilities available to the principal seat of this Court. He also relied upon the infrastructure provided to Saket District Court in Delhi. He relied upon the decision of the Apex Court in the case of Supreme Court Bar Association v. B.D.Kaushik (2011) 13 SCC 774. He pointed out the important role played by the members of the bar in the administration of justice. He relied upon a decision of the Apex Court in the case of Union of India v. Debts Recovery Tribunal Bar Association and another (2013) 2 SCC 574. He relied upon another decision of the Apex Court in the case of Cardamom Marketing Corporation v. State of Kerala (2017) 5 SCC 255. Lastly, he pointed out the recent order of the Apex Court dated 2nd August 2018 passed in Interlocutory Application No.279/2010 in Writ Petition (Civil) No.1022/1989 (All India Judges Association v. Union of India) laying down the infrastructure required for the Courts. He supported the prayer made by the petitioner. He further submitted that an adequate land should be made available by the State Government for the new High Court complex as well for constructing the chambers of the Advocates.

14. Shri V.A.Thorat, learned senior counsel appearing for AAWI submitted that financial constraints is no ground to deny allotment of adequate land for setting up a new Court Complex. He urged that if the State Government does not possess adequate land, it must procure a sufficiently large land for High Court complex by acquiring the same by taking recourse to compulsory acquisition. He urged that the lack of funds is no ground. He submitted that this Court has rendered service to the citizens for last 156 years and, therefore, the State Government should have no hesitation in granting a large plot of land for new High Court complex. He submitted that the land has to be centrally located so that litigants from mofussil can easily approach the Court. He submitted that allotment of land at far away place at Pahadi Goregaon cannot be made for the new High Court complex as the litigants from Districts will find it difficult to reach the Court.

15. Shri Khambatta, learned senior counsel representing the Law Society urged while concurring with the submissions made by other two Bar associations that it is an obligation of the State Government to allot a suitable land for the High Court complex. He would urge that the allotment of land has to be as per the requirements of the High Court and the State Government cannot allot a land which is not suitable. He urged that while allotting the land, the requirements in future also must be considered.

16. Shri Anil Singh, learned Additional Solicitor General submitted that while

there is no dispute that this Court needs a bigger premises, considering the scarcity of open spaces in the city, if a large plot of land at Pahadi Goregaon is allotted, the same should be accepted by the High Court Administration.

17. Shri Aditya Pratap made submissions as an intervener supporting the cause raised by the petitioner. Another party tried to appear and intervene for opposing the proposal for allotment of land at Pahadi Goregaon as, according to him, the said land was earlier covered by mangroves. However, we did not permit intervention by him as we made clear that a Writ Court cannot decide that a particular land should be allotted to the High Court complex.

18. Shri Sakhare, learned senior counsel representing the State firstly stated that the stand taken by the State Government should not be misunderstood as an adversarial stand. He submitted that there are constraints on availability of lands in the city of Mumbai. There are financial constraints and the stand taken by the State Government has to be understood in that context. He placed on record minutes of the meeting held on 22nd October 2018 which was chaired by the Hon'ble Chief Minister. He pointed out that in the said meeting, it was noted that in the project of redevelopment of Government Colony at Bandra, there is a proposal to demolish the existing buildings. He submitted that an area of 6.02 Hectare out of the said land at Bandra can be made available for new High Court complex. He submitted that in the said meeting, it was decided that in the vicinity of the said land at Bandra, it is not possible to provide a plot of land for lawyers' chambers. He submitted that considering the fact that only an area of 6.02 Hectare will be available at Bandra, the High Court complex will have to be multi-storied. He pointed out that in the said meeting it was recorded that a plot of land of 25 Acres can be made available at Pahadi Goregaon for developing a new High Court complex. He submitted that in Pahadi Goregaon, a suitable plot can be allotted for lawyers' chambers. He has also placed on record a compilation of documents containing correspondence between High Court Administration and the State Government as well as minutes of various meetings. He relied upon the decision taken in the meeting of 2nd November 2017 between the Hon'ble the Chief Justice and the Hon'ble Chief Minister. He also invited our attention to a concept note which is already produced on record along with an affidavit and which is a part of the compilation tendered by him. His submission is that as the Government is agreeable to allot a land for development of a new High Court complex, it is not necessary to issue a writ of mandamus.

CONSIDERATION OF SUBMISSIONS

19. We have carefully considered the submissions. At the outset, we may record that as observed in the earlier orders, there is no dispute between the contesting parties including the State Government that this Court needs a larger and a modern Court complex. In fact, Bombay Bar, AAWI and Law Society have already passed resolutions by which they have accepted the need to have a larger High Court complex provided it is suitably located and a provision is made for lawyers' chambers.

20. As stated earlier, this Court is 156 years old Court. This Court has given number of Chief Justices to the Supreme Court of India and number of law officers who occupied august offices of the Attorney General of India and Solicitor General of India. This Court has given legal luminaries to the nation. There cannot be any dispute that the High Court of Judicature at Bombay is not only one of the most premier High Courts in the country but also in the entire democratic world. It is in the context of historic importance of this Court and the important role played by this Court in the administration of justice that the submissions made will have to be appreciated. We may note here that this petition has nothing to do with the heritage status of the present building of this Court. Even if the High Court is shifted from the existing building, there cannot be a doubt that considering the heritage status of this historic building, the same will have to be properly preserved and maintained under any circumstances.

21. As far as issue of maintainability of this petition is concerned, the preliminary objections raised by the State Government have been dealt with in detail by the order dated 16th August 2018 and the objections of the State Government have been already rejected. As of today, the said order has become final and, therefore, we need not deal with the preliminary objections.

22. The first issue to be considered is whether the State Government is under an obligation to set up a modern Court Complex for this Court. The second question will be whether on the aspects of area required for new High Court complex, the design of the new High Court complex and infrastructure to be provided therein, the views of the High Court will have primacy or the views of the State Government will prevail. The third question will be about the relief, if any, to be granted in this PIL.

LEGAL OBLIGATION OF THE STATE

23. In the case of *Brij Mohan Lal v. Union of India and others* (2012) 6 SCC 502, the Apex Court had an occasion to consider the obligation of the State in the context of judicial infrastructure in the light of provisions of Articles 21 and 39A of the Constitution of India. Paragraphs-136 and 137 of the said judgment read thus:

"136. However, as far as functioning of the courts i.e. dispensation of justice by the courts is concerned, the Government has no control whatsoever over the courts. Further, in relation to matters of appointments to the judicial services of the States and even to the higher judiciary in the country, the Government has some say, however, the finances of the judiciary are entirely under the control of the State. It is obvious that these controls should be minimised to maintain the independence of the judiciary. The courts should be able to function free of undesirable administrative and financial restrictions in order to achieve the constitutional goal of providing social, economic and political justice and equality before law to its citizens.

137. Article 21 of the Constitution of India takes in its sweep the right to

expeditious and fair trial. Even Article 39-A of the Constitution recognises the right of citizens to equal justice and free legal aid. To put it simply, it is the constitutional duty of the Government to provide the citizens of the country with such judicial infrastructure and means of access to justice so that every person is able to receive an expeditious, inexpensive and fair trial. The plea of financial limitations or constraints can hardly be justified as a valid excuse to avoid performance of the constitutional duty of the Government, more particularly, when such rights are accepted as basic and fundamental to the human rights of citizens."

(emphasis added)

24. A Division Bench of this Court in the case of *Purshottam Manohar v. State of Maharashtra* 2001 (4) MhLJ 320 dealt with the same issue in the context of establishing Motor Accident Claims Tribunal. Paragraph-6 of the said decision is relevant, which reads thus:

"6. It is no longer debatable and rather it is well settled that the speedy justice is an ingredient of Article 21 of the Constitution of India and, therefore, each litigant has a fundamental right of a speedy justice. That being so, it is the corresponding obligation of the State to constitute sufficient number of courts, Tribunals and forums so that a litigant, who has knocked the door of the Court or Tribunal, is able to get justice speedy. Taking into consideration the huge pendency of motor accident claim cases at Nagpur, expected future filing and slow disposal of such cases, it is necessary for the State Government to provide sufficient Motor Accident Claims Tribunals at Nagpur. This is essential to ensure the speedy disposal of cases and in consonance with Article 39-A of the Constitution of India, which provides that the State shall secure that the operation of the legal system promotes justice. As observed by the Apex Court in *S.C. Advocates-on-Record v. Union of India*, AIR 1994 SC 268, with reference to Article 216 of the Constitution of India, which deals with the constitution of High Courts, "This is essential to ensure speedy disposal of cases, to 'secure that the operation of the legal system promotes justice' - a directive principle 'fundamental in the governance of the country' which, it is the duty of the State to observe in all its actions; and to make meaningful the guarantee of fundamental rights in Part III of the Constitution." The Apex Court further observed that the failure to perform this obligation, resulting in negation of the Rule of law by the laws' delay must be justiciable, to compel performance of that duty. Applying the same principle, in our view, it must be held that the constitution of Motor Accident Claims Tribunal, as required by the State under section 165 of the Motor Vehicles Act is justiciable issue and if it is shown that the existing Tribunal is inadequate to provide speedy justice to the people, a direction can be issued to the State Government to take appropriate steps in discharge of their duty, commensurate with the need to fulfil the State obligation of providing speedy justice to the victims or the dependent of the victims of motor accident."

This Court in the case of *Mumbai Grahak Panchayat v. State of Maharashtra* 2017 SCC OnLine Bom 726, a Division Bench of this Court after considering the aforesaid decision in paragraph-191 recorded its conclusions. Clause (A) of clause-191 of the said judgment reads thus:

"A] We hold that:

(a) It is the constitutional obligation of the State Government to provide lands and/or adequate premises

for establishing adequate number of Courts;

(b) It is an obligation of the State Government to appoint sufficient number of Judicial officers consistent with pendency and filing in the concerned Courts and Tribunals. The cadre strength should be such that there will be no pendency of old cases;

(c) It is the obligation of the State Government to provide all necessary infrastructure to the newly established as well as the existing Courts and Tribunals for the benefit of the Judicial Officers, litigants, members of the staff as well as members of the Bar;

(d) The infrastructure has to be provided in such a manner that the Courts are able to function efficiently;

(e) The infrastructure has to be consistent with the concept of dignity of the Court;

(f) Speedy disposal of cases in consonance with the mandate of Article 39A of the Constitution of India cannot be achieved unless adequate number of Courts and Tribunals are established and adequate and proper infrastructure is provided to all the Court premises;

(g) Financial constraints is no ground to deny permission for establishing new Courts and denying essential infrastructure to all the Courts, whether existing or new.

These principles will apply to all Civil and Criminal Courts in the State, Cooperative Courts and Maharashtra State Cooperative Appellate Court, State Commission and District Forum under the Consumer Protection Act, 1986, the Motor Accidents Claims Tribunals under the Motor Vehicles Act, 1988 as well as Labour and Industrial Court;"

(emphasis added)

25. In the case of *All India Judges Association v Union of India* (supra), in the order dated 2nd August 2018, the Apex Court has laid down detailed guidelines about the infrastructure to be provided to the Courts by all the States. The Apex Court considered the decision in the case of *Brij Mohan Lal* (supra). Paragraphs-5 to 13 of the said order read thus:

"5. The aforesaid two verdicts, as is noticeable, lay stress on infrastructure in the context of Rule of Law, effective civil and criminal justice system and the constitutional duty of the Government to provide the same and the principle of access to justice that does not accept the excuse of the Government as regards financial limitation.

6. It has to be firmly borne in mind and accepted as a reality that raising the infrastructure standards in the court complexes is the need of the hour as it is the basic requirement for the courts in the twenty-first century. We are absolutely clear that when people are aware of their rights, their desire to get the rights realised is enhanced and they would like to knock at the doors of the Court to shape their aspiration into reality. It is a welcome phenomenon and conceptually, Rule of Law nourishes and garners the said idea. The idea of speedy and quality justice dispensation system cannot be treated with status quoist approach, for the definition of infrastructure and the understanding of the same in all associated contexts changes with the passage of time and introduction of modern technology in many a sphere of life. The consumers of justice expect prompt and effective delivery of justice in an atmosphere that is acceptable. Therefore, infrastructure enhancement will go a long way in strengthening functioning of the court and would improve the productivity in the justice delivery system.

7. Be it noted, a court complex is not just a building. It is the building of justice which breathes and infuses life into the exalted and sublime ideals of justice. The widening gap between the ideal and the real and between the vision and the pragmatic realization of justice has to be bridged by proper access to justice for all.

8. It brings us to the focal point, i.e., judicial infrastructure which has been given relatively low importance, if not long neglected. That needs an overhaul. Apart from the metropolitan cities and State capitals, infrastructure in Courts, especially in the interior parts of the country, is dying out. It would not be wrong to say that some of them are just on the ventilator. A decrepit or crumbling court infrastructure inevitably results in causing impediment in access to justice. Undeniably, access to justice and rule of law is intrinsically linked. No democracy can afford to undermine the core values of rule of law. Thus, strengthening of court infrastructure requires immediate attention in the form of planning, enhanced budgeting and structured implementation or execution of the plans. Presently, most of the States are making budgetary provision as low as less than 1% of their total budget for the judiciary.

9. In view of the above, we deem it extremely necessary to declare that it is essential to provide basic infrastructural facilities, amenities, utilities and access oriented features in all Court complexes around the country as it is axiomatic that infrastructure forms the core for efficient and efficacious dispensation of speedy and qualitative justice.

10. The court development plan should comprise of three components a short term (or annual plan); a medium term plan (or a five year plan); and a long term plan (ten year plan). The annual plans so prepared shall be incorporated into the five year plan which, in turn, rolls into the ten year plan. While focussing on judicial infrastructure, due regard has to be given to adequate and model court building, furniture, fixture, judges chamber, record/file storage, adequate sitting and recreation arrangement for staff and officers, sitting/waiting room for litigants and bar members, latest gadgets and technology. In other words, the core factors in the design of a court complex must reckon a) optimum working conditions facilitating increased efficiency of judicial officers and the administrative staff; b) easy access to justice to all and particularly to the underprivileged, persons with disability, women and senior citizens; c) safety and security of judges, administrative staff, litigants, witnesses and under-trial prisoners. The court complex must consist of:

I. COURT BUILDING

Court rooms

Judges' chambers Judges' residential complex Litigants' waiting area
Administrative offices Conference Hall/Meeting Room Video conferencing rooms
Mediation centre/Legal Services Authority Common rooms for male/female staff
Staff canteen Destress rooms for male /female staff Office space for Government
pleader/Public prosecutor/ Advocate General/Standing Counsel for Union of India
with separate cubicles for conducting conferences and including space for
accommodating their Secretarial staff and files Support facilities like ramp,
creche, etc.

II. SPACE FOR LAWYERS/LITIGANTS Bar rooms for ladies and gents

Consultation rooms and cubicles Stamp vendors and notary public/oath
commissioner/typist/photocopy/business centre Library Canteen for lawyers and
litigants Facilitation counter for litigants/visitors Support facilities

III. FACILITY CENTRE

providing for common facilities for functioning of the complex unrelated to courts
such as bank, post office, medical facility, disaster management, etc.

IV. UTILITY BLOCK for accommodating the utility services such as A.C. plant, electrical substation, DG set/Solar panel, STP, Repair workshop, storage, garage, etc.

V. JUDICIAL LOCKUPS.

VI. STRONG ROOM FOR RECORD PRESERVATION.

VII. ADEQUATE PARKING SPACE for judges, lawyers, litigants and other visitors.

VIII.IT INFRASTRUCTURE FOR COMPUTERISATION AND eCOURTS

11. The finance needed for court infrastructure should be ideally placed under

the head of planned expenditure which will be more specific, better managed and obviate any cut by the Governments. The budgeting must be from the demand side and cannot be from the supply side.

12. Apart from what we have stated above, we think it appropriate to issue the following directions which are the most fundamental and vital features to be provided at the earliest in all court complexes:

(i) Basic amenities such as adequate seating space for litigant public as well as lawyers, sufficient waiting area with seating arrangements, proper lighting and electricity, functional air- conditioning/ air-cooling/ heating, accessible clean drinking water with Reverse Osmosis (RO) facility, clean and hygienic washrooms separate for men, women, trans-genders and physically handicapped persons, kiosk and functional canteens selling beverages and eatables at nominal rates, preferably managed by court staff are some amenities and facilities which ought to be ensured at court complexes throughout the country. If these are missing in our court complexes, it would be an appalling situation which requires immediate rectification.

(ii) We must further ensure that all our court complexes are conducive and friendly for the differently-abled and towards this end, the Court complexes must have certain features for the benefit of the vulnerable persons such as persons with disability or visually impaired persons. We have to move from disabled friendly buildings to workable and implementable differently-abled friendly court infrastructure. Ramps for such categories of persons must be operable, feasible, tried and tested. Such ramps should definitely have steel railings and handles. The court infrastructure must also keep in view the accessibility for visually impaired persons and, therefore, court complexes must have tactile pavements and signage in braille for the benefit of visually impaired citizens. That apart, for ensuring easy movement of common citizens in the court complexes, there must be maps and floor plans of the entire court complex at entry and exit points and visible signage and directional arrows with colour coding throughout the court premises.

(iii) For saving the litigant public and other citizens from running one end to the other without any guidance in the Court complexes and for assisting them to reach their desired place, it is necessary that all court premises must establish a working and fully operational help desk at major alighting points with trained court staff to brief and guide the citizens about the layout of the court premises.

(iv) Court premises must also have sufficient number of functional electronic case display systems for litigants and lawyers with the feature of automatic update in every ten seconds.

(v) With the increase in motor vehicles, including cars and two wheelers, it is imperative that court premises have sufficient and proper parking space to ease vehicular traffic and avoid crowding. All upcoming court complexes must have provision for both sufficient underground and surface parking facilities

segregated into four broad categories - for judges, court staff, lawyers and litigants. As far as the existing court complexes are concerned, the possibility and feasibility of constructing underground or multi level parking facilities must be explored.

(vi) The court premises must have easy access at both entry and exit points. End to end connectivity of public transport systems must be ensured for court premises by starting feeder bus service and other dedicated transport services between major public transport points and court complexes. Access to justice will forever remain an illusory notion if access to courts is not ensured.

(vii) Court premises must be armed with better crowd management arrangements along with adequate security measures. It has been seen, time and again, that at the time of court proceedings of cases which are well covered by the media, the crowd management in court premises runs into utter chaos. Measures must be taken to ensure that whenever court premises are thronged with heightened crowds, there is smooth ingress and egress of both vehicular traffic as well as citizens in the court premises.

(viii) Creche facility at nominal rates for toddlers, falling within the age group of 6 months to 6 years, of lawyers, clerks of lawyers, bar association staff and officers and employees of court registry must also be constructed. The said creche facility must not be just for the namesake, it has to be both functional as well as effective with proper space and equipment such as baby proofing and other toddler-friendly provisions. That apart, the courts should have a proper atmosphere for children and vulnerable witnesses.

(ix) Professionally qualified court managers, preferably with an MBA degree, must also be appointed to render assistance in performing the court administration. The said post of Court managers must be created in each judicial district for assisting Principal District and Sessions Judges. Such Court Managers would enable the District Judges to devote more time to their core work, that is, judicial functions. This, in turn, would enhance the efficiency of the District Judicial System. These court managers would also help in identifying the weaknesses in the court management systems and recommending workable steps under the supervision of their respective judges for rectifying the same. The services of any person already working as a Court Manager in any district should be regularised by the State Government as we are of the considered view that their assistance is needed for a proper administrative set up in a Court.

(x) Adequate residential accommodation for judicial officers and court staff is another infrastructural aspect which requires immediate attention. The productivity of judicial officers and court staff who are not provided with residential quarters in and/or around the court premises gets negatively hampered.

Thus, residential accommodation in proximity of court complexes for judicial officers and court staff must also be provided.

(xi) There shall be solar power installation in each of the district court premises initially and thereafter, the same should spread to all other courts.

(xii) Keeping in view the obtaining scenario, CCTV cameras should be placed at proper locations within the court complex.

(xiii) To enhance the quality of speedy justice, video conferencing equipments and connectivity to jails shall be provided at the earliest.

(xiv) The district court complex should have a dispensary with adequate medical staff and equipments.

13. It is clear that judicial infrastructure not only needs attention and budgeting but also effective utilization of the funds towards specific and proper ends so that the primary goal of access to justice for all is realized. Prompt measures are to be undertaken and procrastination in these matters cannot brook delay where Rule of Law is supreme."

Perusal of the aforesaid order of the Apex Court shows that the law laid down by it in the case of Brij Mohan Lal (supra) that the plea of financial limitations or constraints can hardly be justified as a valid excuse for not providing infrastructure to the judiciary has been reiterated. The Apex Court has emphasized that raising infrastructure standards in the Court is a need of the hour as it is the basic requirement for the Courts in 21st century. The Apex Court emphasized that the infrastructure enhancement will go a long way in strengthening the functioning of the Court and will improve productivity.

26. It is true that the Apex Court has not laid down the requirements of the High Courts but the requirements laid down are of the District Courts. No one can dispute that the facilities which should be available to all other Courts should be the basic facilities available to the High Courts. In fact, the facilities ordered to be provided under the aforesaid order should be the bare minimum for a High Court. If we examine facilities available in the existing Court complex of this Court in the context of requirements laid down by the Apex Court, we find that many important facilities are not available. The following facts stare at the face:

(a) There is absolutely no parking facility available for lawyers, litigants and other visitors. There is no adequate parking space even for the official cars of the Judges. There cannot be any dispute that this Court requires facility of parking of cars and two wheelers in hundreds considering the large number of lawyers practicing in this Court and large number of litigants coming to this Court. There are no parking facilities even for the persons with disabilities and senior citizens;

(b) There is no sitting space available as contemplated by the Apex Court for the benefit of the litigants;

(c) There are no proper canteen facilities for lawyers and litigants;

(d) There is no adequate space for the litigants even to stand in corridors. The corridors abutting the makeshift Court rooms in the Annex building are so narrow

that the same get blocked;

(e) Considering the large number of members of the staff, there is hardly any facility of common rooms for male/female staff;

(f) There is no residential complex for the staff in the vicinity of the High Court;

(g) There are no video conference rooms for the purposes of Court proceedings;

(h) There is no conference hall for holding functions and very often historic Court Room No.46 is used as a hall;

(i) The material placed on record by AAWI and Bombay Bar will show that the bar rooms for ladies and gents are wholly inadequate considering the strength of the bar;

(j) There are no consultation rooms and cubicles. No separate premises are available for ADR activities;

(k) There is no place for stamp vendors, Notary Public, typist to sit in the Court complex and render services;

(l) There is no facility of photo copying and business centre;

(m) There is no adequate working space available for the advocates' clerks;

(n) The area available for the High Court Library as well as Kirtikar Law Library is far from being adequate;

(o) The clinic available in the Court complex is of a bare minimum size which is not adequate to deal with the requirements of Hon'ble Judges, members of bar, staff and litigants;

(p) Though there is a Post-Office, there is no facility of Bank;

(q) Utility Block as laid down in the order of the Apex Court is not available;

(r) Record of cases including record of large of live cases like appellate side writ petitions has been shifted to the premises outside the Court complex viz. CTO building;

(s) Many of the Court rooms and chambers of the Hon'ble Judges are makeshift Court rooms and chambers. The Hon'ble Judges who occupy the chambers in the annex building have to reach their respective chambers by passing through narrow corridors wherein there is always a presence of large number of litigants;

(t) There is no proper facility for Judges' personal staff including Secretaries and Stenographers to sit and render services to the Hon'ble Judge;

(u) There is no scope to make arrangements for crowd management, when for a particular matter, more than 150 to 200 litigants come to Court at a given time. Even if 100 or 150 litigants come at a time for attending to a one particular matter, it creates huge problems to the other litigants and lawyers. This happens

due to lack of adequate space;

(v) In fact the staff of this Court has been working in difficult working conditions in cramped and congested offices with no proper facilities for the storage of files. Providing offices in a building constructed for hospital and in a more than 135 years old building constructed for Central Telegraph Office (which is very old) which are not a part of the Court Complex is not a permanent solution.

27. We have highlighted very few areas of lack of basic infrastructure only by way of illustration. We must note that the concept evolved by the Apex Court is of an integrated Court complex. The concept is that all facilities should be available in one complex. It cannot be an ideal situation that a Court functions in the main complex and the Court offices are in the buildings which are outside the Court complex at some distance. The record of all the live cases should be in the same complex. Today, we have a situation that even live matters like writ petitions (Appellate Side) are stored in CTO building. The movement of the files of writ petitions has become a difficult job for the Registry. This situation of having offices in buildings outside the Court complex is far from being ideal. It creates difficulties and road blocks in the administration. The act of shifting offices to buildings outside the main Court complex is only a short term solution. There cannot be any dispute that 156 years old prime institution like Bombay High Court should have an ideal Court complex considering not only the requirements of 21st Century but also of 22nd Century.

28. The lack of adequate infrastructure noticed may be due to some of the following reasons:

(a) The present Court complex is 136 old Court complex which meant for 6 to 7 Courts and 15 Judges;

(b) The Judges' strength, the staff strength and the lawyers' strength has multiplied;

(c) Filing and pendency has multiplied due to various factors;

(d) Categories of litigations have increased;

(f) As observed by the Apex court, the requirements of modern Court complex in 21st Century are completely different than the requirements of Court complexes in the 19th and 20th Centuries;

(g) The structural assessment report of the building provides for bringing down the load on the second and third floors of the building for the sake of safety of the structure. The structural stability of this 138 years old Court building is also an issue.

29. None of the parties before the Court dispute that the requirements of this Court are bound to increase with the passage of time in future as filing, pendency, Judges' strength, staff strength and lawyers' strength is bound to progressively increase in future.

30. In short, the present Court complex is now most ill-equipped to render services to all stakeholders such as litigants, lawyers, members of staff and the Judges. Moreover, there is a need to think about future requirements for 100 and more years. If the persons who are now in the helm of affairs ignore the same, the future generation will blame them.

31. In the circumstances, we have no hesitation in holding that long before filing of the PIL, the State Government should have taken steps to provide adequately large plot of land for establishing new High Court complex and ought to have established a new High Court complex. When it comes to providing of land and infrastructure to a 156 years old historic High Court, the issues such as non availability of adequate land vesting in the State Government and high cost of compulsory acquisition are completely irrelevant inasmuch as the new Court complex is going to serve for at least 150 years or more to the common man. Moreover, there are various statutory authorities such as Maharashtra Housing and Area Development Authority, Mumbai Metropolitan Regional Development Authority etc. which are holding the lands in the city. There are public entities like Mumbai Port Trust which could have been approached by the State Government through the Government of India with a view to ensure that the Port Trust releases adequate land as per the requirements of this Court. However, that has not been done. As there is no effort by the State Government to persuade the authorities like Mumbai Port Trust to provide land, the said Port Trust has adopted over simplified approach by stating that it cannot provide any land. The State Government is under an obligation to provide a large plot of land for new Court complex. It is the legal obligation of the State Government to do so.

VIEWS OF THE HIGH COURT WILL HAVE PRIMACY

32. Now, we come to the location and area of the land required. The independence of judiciary is held to be a basic structure of the Constitution. If the State is to be treated as the sole Judge to decide what should be the infrastructure provided to this Court, it will directly affect the independence of Judiciary. Only the Judiciary can determine what infrastructure it needs for its effective functioning. The State Government cannot decide how many Court rooms, offices and other facilities this Court needs. After taking into consideration various factors such as Judge strength, staff strength, pendency of cases, institution of cases, categories of cases etc., the High Court Administration has to decide its own area requirements and the infrastructure requirements. That is the essential part of the concept of independence of judiciary. In fact that is how the Apex Court has consistently held that financial constraints is no ground to deny adequate infrastructure to the Courts. Considering the fact that independence of judiciary and separation of powers is a basic structure of the Constitution of India, the High Court should be the sole judge of the extent of the area of the land as well as constructed area required for its effective functioning apart from the facilities/ infrastructure required for its Court complex.

EASY ACCESSIBILITY TO THE LITIGANTS

33. The Apex Court has laid a stress on easy accessibility of the Court Complex to the litigants. Following districts come within the jurisdiction of the principal seat of this Court at Mumbai: Palghar, Thane, Mumbai, Mumbai Suburban, Raigad, Ratnagiri, Sindhudurg, Nashik, Pune, Satara, Sangli, Kolhapur and Solapur apart from the two union territories of Dadra and Nagar Haveli as well as Diu and Daman. Due to proximity of Chhatrapati Shivaji Terminus, the present High Court complex is very convenient for the litigants and the members of the bar who come from almost all districts except district- Palghar and the aforesaid two union territories. District- Palghar and the aforesaid two union territories have connectivity on the Western Railway. Important terminus like Mumbai Central on Western Railway is also in a reasonable proximity of the present Court complex. The consumer of justice is the litigant and, therefore, the convenience of the majority of litigants should be a major and primary consideration for selecting a plot for allotment for new High Court complex. The majority of litigants come from far away districts. If the new High Court Complex is established at a place which is not easily accessible by means of a public transport to a large number of litigants who come from the Districts, it will affect their fundamental right of access to justice. We are saying this in the context of suggestion regarding allotment of a plot at Pahadi Goregaon. The learned counsel representing one of the Bar associations has categorically stated that the said land offered at Pahadi Goregaon is very inconvenient for the litigants from the districts. In any event, no material is placed on record by the State Government except the minutes of the meeting held in October 2018 to show that the State Government after application of mind has come to a conclusion that the place Pahadi Goregaon is easily accessible to the litigants and lawyers from the Districts by means of public transport. The minutes record no such conclusion. There is no material placed on record to show whether the said area is accessible to the litigants and lawyers from Districts. However, it is for the High Court administration to decide the aspect of suitability and we are not making any final adjudication on the question of suitability of the land at Pahadi Goregaon.

34. Now, we come to the area of the land to be allotted. The correspondence on record will show that the minimum area demanded by this Court is of 50 Acres. All affidavits filed on record by the State and the statements made across the bar are perhaps based on incorrect reading of what is set out in the requirements submitted by the High Court Administration which have been taken on record and marked as "A-1". Perhaps, the State Government has applied its mind to only the constructed area specified therein. However, the State Government has not taken into consideration the fact that the said document also refers to making a provision for development of lawns and gardens, open places, waiting platforms and area for parking of vehicles for Hon'ble Judges and visitors. The area of 26 lakh sq.ft. is only the requirement of built-up area. Moreover, the State Government cannot expect the main High Court building consisting of

Court rooms and chambers to be a multi storied building of more than 4 to 5 floors. Again for the reasons which we have recorded, the views of the High Court on the design of new Court Complex will have the primacy.

AREA OF THE LAND FOR HIGH COURT COMPLEX AND CHAMBERS FOR ADVOCATES

35. Now, we come to the stand taken by the State Government. In the affidavit of Shri Dinesh Kumar Jain, Chief Secretary of the State which is of 9th July 2018, he has come out with the case that only an area of 6.02 Hectare can be allotted to High Court complex out of the area of Bandra Government Colony. As stated earlier, this affidavit and all other affidavits filed by the State are based on incorrect reading of the requirements submitted by the High Court Administration which is taken on record and marked as "A-1" for identification. The affidavit refers only to the requirement of having a constructed area of 25,93,391 sq.ft. What the affidavit overlooks is the requirement of land for the lawns and gardens, parking area for parking of cars of Judges as well as visitors which include litigants and lawyers, the open spaces and waiting platforms. The area offered is only 6.02 Hectare which is 60,200 sq.meters which is equivalent to 6,47,987 sq. feet. No argument is needed to hold that for the requirement of constructed area of about 26,00,000 sq.feet, lawns, gardens, parking spaces, open areas, platforms etc., the area offered is not at all sufficient. Thus, in a relatively smaller area of 6 Hectare, the State Government wants to cramp this 156 years old institution. None of the affidavits talks about providing adequate parking space, lawns and gardens, open spaces and waiting platforms. It is in this context, that by way of illustration, it will be necessary to set out the infrastructure provided to other High Courts. Paragraph-18 of the order dated 9th August 2016 takes a note of the fact that the new building of the Bench of Allahabad High Court at Lucknow has been constructed upon an area of more than 16 Hectare (40.2 Acres). The new Court complex has a provision for 57 Court Rooms, 71 Chambers and more than 14,000 chambers for the advocates. It has a facility of auditorium of having an area of more than 2,000 sq.ft., a club house, a guest house, canteen, dispensary, Railway Booking Centre, etc. Apart from usual facilities such as Automated Teller Machine, Bank, Post-Office, it has an arrangement of parking of 5,000 cars and 15,000 two wheelers. The ground coverage is only 35%. That shows that the complex has large open areas. We must note that Lucknow is only a Bench and not the principal seat of the High Court. Even in Saket District Court at New Delhi, there is a provision of parking of more than 1,100 cars. There are affidavits on record filed by the State Government from time to time stating that there is a proposal to construct a "state of art" building for this Court at Bandra. One such affidavit is of 9th August 2016 of Shri Rajendra K. Jawanjal, Superintending Engineer, Mumbai Public Works Circle. Even the affidavit dated 30th April 2016 of the Legal Advisor-cum-Joint Secretary of the Law and Judiciary Department of the State Government gives the same assurance of providing "state of art" High Court complex.

36. Assuming that the land of the Government Colony at Bandra is suitable, considering the interests of the litigants, the area of 6.02 Hectare sought to be allotted by the State Government for construction of "state of art" Complex is not at all sufficient. We must note here that in the affidavit of Shri Dinesh Kumar Jain dated 9th July 2018, it is stated that gross area covered by the Government Colony at Bandra is 37.75 Hectares. It is stated that the area available for redevelopment is 30.70 Hectares. In paragraph-24 of the said affidavit, it is claimed that out same, an area of 11.68 Hectares will be available for sale. It is alleged that the cost of construction of High Court complex will come from the consideration received by sale of the area of 11.68 Hectare. In our view, this approach is fundamentally wrong. Construction of High Court complex is not a commercial venture. If additional land of 11.68 Hectare is available, it must come to the Court. The State Government cannot deny more area to the Court Complex, though available, only on commercial considerations. In paragraph-25, an assurance is given that out of area of 11.68 Hectare, a suitable part can be considered for allotment of advocates' chambers subject to viability. Paragraph-24 of the affidavit of the Chief Secretary of the State dated 9th July 2018 makes it clear that the State Government is looking upon the entire venture as a commercial venture in which there is a proposal to accommodate High Court complex in a small area of 6.02 Hectare. It is the obligation of the State to bear the cost of construction of High Court complex. The State cannot offer lesser area to High Court though additional area of 11.68 Hectare is available on the ground that it is required to be sold for generating funds for meeting the cost of construction. While saying that the area of 6.02 Hectare will be sufficient, the State Government has ignored the requirement of having lawns, gardens, open spaces, parking to accommodate four and two wheelers. Thus, assuming that the land in Bandra Government Colony is suitable for new High Court complex, the State Government is under a legal obligation to make additional land available. We propose to direct the State Government to consider whether the said additional area of 11. 68 Hectare or a part thereof can be offered to the High Court. Till such decision is taken, obviously, the State will have to hold its hands and cannot transfer the said additional land.

37. Now, in the meeting chaired by the Hon'ble Chief Minister held on 22nd October 2018, the earlier decision is reiterated to allot only an area of 6.02 Hectare in Bandra Government Colony on which a multi- storied building can be constructed for the High Court. For the first time it is suggested in the meeting that a plot at village Pahadi Goregaon in Mumbai Suburban district of private ownership can be made available. The careful scrutiny of the minutes of the meeting will show that it is not the case of the State Government that after application of mind, it has come to a conclusion that the land at Pahadi Goregaon will be easily accessible by means of public transport to litigants who come from far away places in districts in western Maharashtra and Konkan area. The minutes of the meeting will show that the convenience of the litigants is not at all taken into consideration by the State Government. The minutes of the meeting

record that a suitable and convenient land having an area of 25 acres is not available in Mumbai district for High Court complex.

The meeting does not consider the possibility of acquiring a private land for High Court complex which is suitable for the litigants. The minutes of the meeting dated 22nd October 2018 record a refusal to grant land for the lawyers' chambers. In the aforesaid affidavit of Shri Jain in paragraph-23, he has set out the requirements of three associations. The requirement of AAWI is 3,500 chambers, the requirement of Bombay Bar is 2,500 chambers, and the requirement of Law Society is 1,000 chambers. If High Court is to be shifted to a new location, the Advocates will need chambers in the vicinity of the Court. It is in this context that the decision of the Apex Court in the case of Supreme Court Bar Association and others v. B.D.Kaushik (supra) is relevant wherein the importance of Court-annexed Bar Associations has been recognized. In paragraph-28 of the said decision, the Apex Court has observed thus:

"28. There is no manner of doubt that court annexed Bar Associations constitute a separate class different from other lawyers associations such as Lawyers' Forum, All India Advocates' Association, etc. as they are always recognized by the concerned court. Court annexed Bar Associations function as part of the machinery for administration of justice. As is said often, the Bench and Bar are like two wheels of a chariot and one cannot function without the other. The court annexed Bar Associations start with the name of the court as part of the name of the Bar Association concerned. That is why we have Supreme Court Bar Association, Tis Hazari District Court Bar Association, etc. The very nature of such a Bar Association necessarily means and implies that it is an association representing members regularly practicing in the court and responsible for proper conduct of its members in the court and for ensuring proper assistance to the court. In consideration thereof, the court provides space for office of the association, library and all necessary facilities like chambers at concessional rates for members regularly practicing in the court, parking place, canteen besides several other amenities. In the functions organized by the court annexed Bar Associations the Judges participate and exchange views and ascertain the problems, if any, to solve them and vice- versa. There is thus regular interaction between the members of the Bar Association and the Judges. The regular practitioners are treated as officers of the court and are shown due consideration.

(emphasis added)

When the State Government took a decision not to allot a plot of land for chambers of the members of bar, perhaps, the State Government glossed over the observations made by the Apex Court in the case of Cardamom Marketing Corporation v. State of Kerala (supra). Paragraph-13 of the said judgment reads thus:

"13. We agree with the aforesaid approach of the High Court. First of all, the argument of the appellants ignores that as per Section 76(3) of the CF Act, one

of the purposes for which the Fund is to be utilised is for providing efficient legal services for the people of the State. It clearly amounts to quid pro quo. Other purpose is also for the benefit of the public at large. When we talk of sound and stable system of administration of justice, all the stakeholders in the said legal system need to be taken care of. Legal community and advocates are inseparable and important part of robust legal system and they not only aid in seeking access to justice but also promote justice. Judges cannot perform their task of dispensing justice effectively without the able support of advocates. In that sense, advocates play an important role in the administration of justice. It is wisely said that for any society governed by Rule of Law, effective judicial system is a necessary concomitant. The Rule of Law reflects man's sense of order and justice. There can be no Government without order; there can be no order without law; and there can be no administration of law without lawyers. It is no small service to be called upon to prosecute and enforce the rights of a litigant through the court of law and in that sense the legal profession is treated as service to the justice seekers. It is, therefore, by contributing an essential aid to the process of the administration of justice that the advocate discharges a public duty of the highest utility."

(emphasis added)

38. We may note that there is no specific case made out by the Bar Associations that a plot of land or constructed chambers should be provided to them free of cost. Even the interim order of this Court dated 9th August 2018 does not issue such a direction and the only direction issued is to consider the case for allotment of a suitable plot for construction of lawyers' chambers in the vicinity of the proposed new High Court complex. We fail to understand the approach of the State Government of ignoring the fact that in the process of administration of justice, the Advocates discharge a public duty of highest utility. If the High Court complex is to be relocated, a provision will have to be made for construction of chambers for the Advocates in its close proximity. It is true that the order of the Apex Court in the case of All India Judges Association v. Union of India (supra) which we have quoted above was passed on 2nd August 2018 after the affidavit of Shri Jain was filed, but the order has come two months before the date of hearing of this PIL. The order lays emphasis on providing modern amenities to the litigants who are the consumer of justice and to the members of the Bar. The order emphasizes concept of modern Court complex of 21st Century. The decision of the State Government to allot only an area of 6.02 Hectare, the decision to deny allotment of plot for construction of lawyers' chambers and now the decision to offer a private land at Pahadi Goregaon clearly show that the State Government has completely brushed aside and ignored the interests of lakhs of litigants who are litigating in this Court. The State Government will have to reconsider its decision of not allotting a plot of land for the chambers of the Advocates.

DENIAL OF THE ACCESS TO JUSTICE

39. By continuing functioning of the High Court in a building which is rendered unsuitable with the passage of time, the State Government is effectively denying access to justice to the litigants. The State Government has completely overlooked that as long back as on 26th August 2014, the Registrar General of this Court addressed a letter to the Principal Secretary of the Law and Judiciary Department of the State Government for allotment of 100 acres of land at Wadala, Mumbai. Now the State Government is talking about allotment of a small portion of land at Bandra.

40. Perhaps, with the passage of time, the stand taken in this petition by the State has undergone a change between 2016 and 2018 and now the State Government has taken an adversarial stand.

41. In fact, the State Government ought not to have created a situation which lead to filing of this petition. After filing of the petition, except for giving assurance to set up new "state of art" High Court Complex, nothing concrete has been done by the State Government to prove its intent. Considering the importance of this historic institution of the High Court of Judicature at Bombay in the administration of justice of the entire country, in fact, the State Government on its own ought to have offered adequately large area which is suitable and convenient for the litigants.

42. The summary of some of our conclusions is as under:

(i) Considering the increase in the strength of Judges of this Court, manyfold increase in the number of staff members and members of the Bar, and huge rise in institution and pendency of cases, it is necessary to construct a modern High Court complex which will cater the need of the High Court for at least 100 years more. Moreover, the concept of Court Complex in 21st Century has undergone a change.

(ii) As held by the Apex Court, the new High Court complex should be a modern 21st Century Court complex having all modern amenities for all stakeholders;

(iii) The views of the High Court administration on the location of new complex, its area, its design and required infrastructure shall have primacy;

(iv) The financial constraints or non-availability of Government land in the city of Mumbai is no ground to deny allotment of a large and convenient plot of land for the new High Court complex. It is the obligation of the State Government to procure a suitable land, if necessary, by taking recourse to compulsory acquisition. It is the duty of the State Government to make a provision for the construction of the chambers for the Advocates near the new Court complex;

(v) As far as the selection of the land for the new High Court complex is concerned, it should be easily accessible by convenient modes of public transport to the litigants coming from various Districts under the jurisdiction of the principle seat of this Court at Mumbai;

(vi) As observed earlier, even if the High Court complex is shifted to new complex, the present historic heritage building will have to be preserved by all concerned;

43. We, therefore, propose to issue a writ of mandamus directing the State Government to identify and offer a suitable land in the city of Mumbai which is convenient for the litigants having sufficiently large area. There is no concrete offer made by the State Government to the High Court Administration till date. Before, making an offer, the State Government shall consider the issue of accessibility as held earlier. The offer will have to be made by the State Government within a period of three months from today by issuing a letter of offer to the High Court Administration. We must make it clear that for the time being, the State Government cannot transfer earmarked lands at Bandra (East) admeasuring 6.02 Hectare (earmarked for High Court complex) and 11.68 Hectare (earmarked for sale).

44. Before we part with the Judgment, we must note what the Chief Justice M.C. Chagla said when this Court completed 100 years of its existence. He wrote:

" A hundred years is a long time in the history of any institution. The High Court of Bombay has had an illustrious and resplendent history. Great Judges have sat on its Bench and distinguished lawyers have practised before it. But ultimately the question that must be asked is, has it earned the confidence of the public? Has the small man, the humble citizen, the weak and the downtrodden felt that he could safely turn to it for justice? I think the question must be answered in favour of the High Court. We have had Judges who have fearlessly upheld the rights of the citizen against the State, and we have had lawyers who have courageously stood up against the most autocratic Judge to champion the cause of their clients. Men come and go, but institutions must go on, and in celebrating this centenary of the High Court we can only hope and pray that at the end of the next hundred years the historian will be truthfully able to say that irrespective of human weaknesses the brilliant record of the institution as such was maintained."

(emphasis added)

Our endeavour should be to achieve what Justice Chagla expected us to achieve. For that purpose, we need a modern Court Complex keeping in mind the requirements of not only 21st Century but also of 22nd Century.

45. Hence, we dispose of this petition by passing the following order:

(i) In view of the law laid down in this judgment and order and the findings recorded therein, the State Government shall take appropriate decision of offering a large and convenient plot of land for the construction of High Court complex. While doing so, the State Government shall also consider whether additional area of 11.68 Hectare (earmarked for sale) in addition to the earmarked area of 6.02 Hectare at Bandra (East) can be offered. The State

Government shall take appropriate decision within a period of six months from today which shall be immediately communicated to the High Court Administration. Till the date of the communication of the decision to the High Court and for a period of three months from that date, the State Government shall not transfer or encumber the aforesaid plots at Bandra (East) admeasuring 6.02 Hectare (earmarked for High Court complex) and 11.68 Hectare (earmarked for sale) respectively;

(ii) The State Government shall reconsider its decision of not allotting a plot for the Advocates' chambers and shall consider whether a plot of land can be allotted for that purpose as per the demand of the three Bar Associations and in terms of interim order of this Court. The said decision shall be also taken within three months from today which shall be immediately communicated to the High Court administration. Thereafter, the High Court Administration shall take appropriate decision on the said proposal of the State Government ;

(iii) Needless to add that if the proposal of the State Government is approved by the High Court Administration, necessary and adequate funds shall be provided to the High Court Administration for construction of Court Complex, for development of the land and for providing infrastructure;

(iv) Rule is made partly absolute on the above terms;

(v) For reporting compliance with the directions by the State Government, the petition shall be listed on 2nd August 2019 under the caption of direction.