Arun

REPORTABLE

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 3879 OF 2021

WITH

INTERIM APPLICATION NO. 975 OF 2022

IN

WRIT PETITION NO. 3879 OF 2021

1. **The Satara District Bar Association Satara**, Registered Association having Registration No. MAH/11164/Satara having office at District Court Building, Satara 415 002, through its President Arun Shrirang Khot, Advocate, Satara …Petitioner

~ versus ~

1. **State Of Maharashtra** Through the Ministry Of Law And Judiciary, Mantralaya, Mumbai
2. **The High Court Of Judicature At Bombay** Through The Registrar General
3. **The Principal District And Sessions Judge, Satara** …Respondents

APPEARANCES

FOR THE PETITIONER	**Mr Anil Anturkar, Senior Advocate,** with Vijay Patil, i/b Siddharth Karpe.
FOR RESPONDENTS NOS. 2 AND 3	**Dr Milind Sathe, Senior Advocate,** i/b Aumkar Joshi.
FOR THE STATE-RESPONDENT NO. 1	**Mr SS Panchpor, AGP**.

CORAM : G.S.Patel &
Madhav J Jamdar, JJ

DATED : 22nd March 2022

ORAL JUDGMENT (*Per GS Patel J*):-

1. We have heard Mr Anturkar for the Petitioners and Dr Sathe for Respondents Nos. 2 and 3.

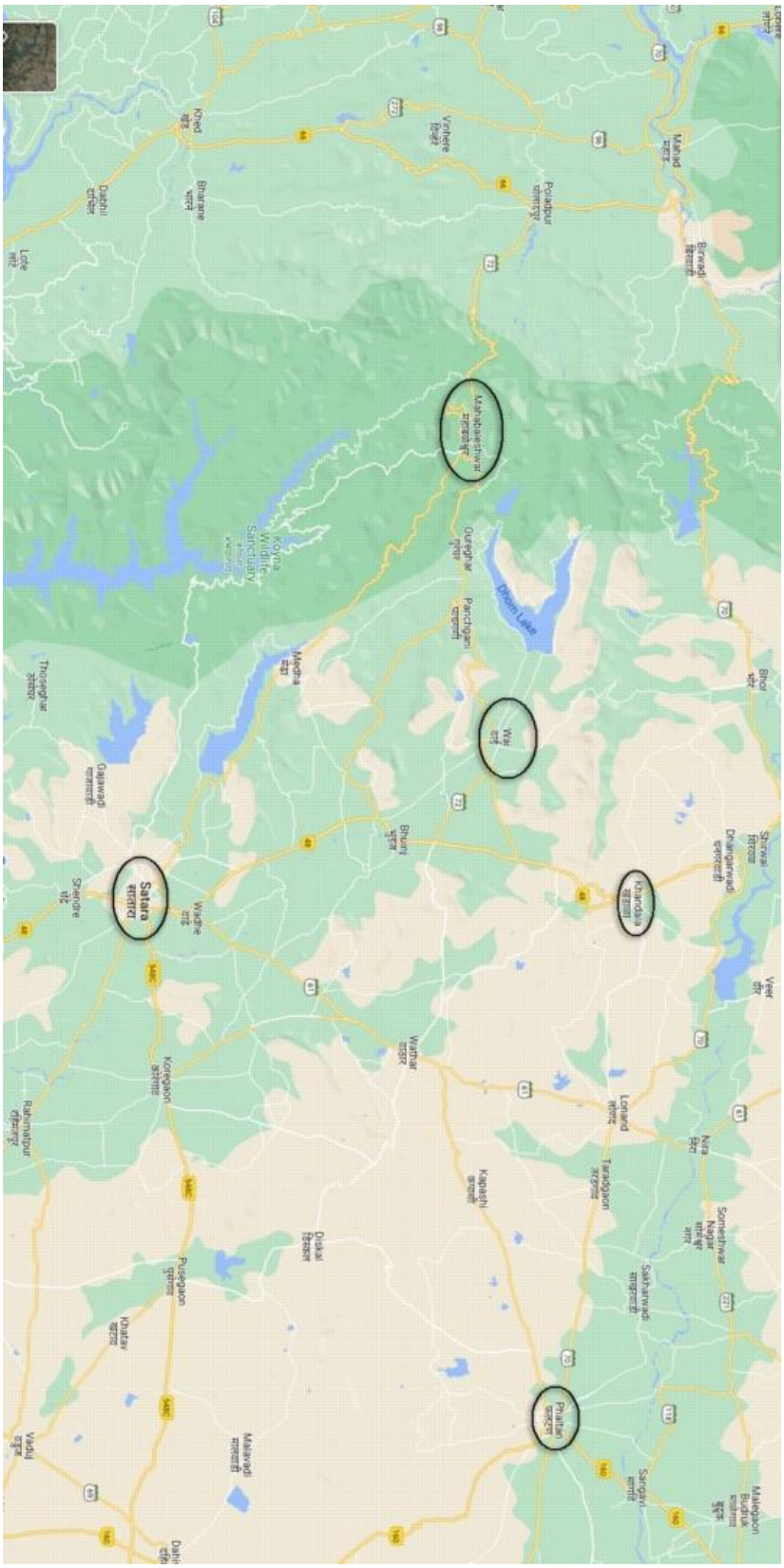
2. Filed by the Satara District Bar Association, this Writ Petition under Article 226 of the Constitution of India challenges what it calls "approvals" dated 31st July 2015 and 6th March 2020 of this High Court on its administrative side. The impugned approvals relate to the establishment at Wai in the Satara District of a Court of an Additional District Judge and a Court of a Civil Judge, Senior Division.

3. A few facts are necessary. These are drawn from the Petition and also from the Affidavit in Reply filed on behalf of the High Court Administration by Mr Yogesh Rane, Registrar (Legal and Research).

4. The Petitioner claims to be a registered organization of about 2500 members and is a Bar Association of the Satara District. The District Court at Satara has 11 Talukas. The Petition recites that the Petitioner learnt that the Bar Associations at Wai and Phaltan were making representations to the High Court to establish a District Court and a Court of a Civil Judge, Senior Division at those places.

5. In paragraph 4(vii) of the Petition, the Petitioner says that these representations by the taluka-level Bar Associations at Wai and Phaltan were "needless" as Wai did not have sufficient infrastructure. Judicial officers, staff and litigants would be put to great difficulty. The Petition then goes on to say that the Petitioners learnt that the High Court had accepted the representation of the Wai Bar Association and sanctioned the establishment of a District Court, Additional Sessions Court and that of a Civil Judge, Senior Division at Wai to cover the Talukas of Wai, Khandala and Mahabaleshwar. These three Talukas fall in Satara District and are presently under the jurisdiction of the Satara District Court. (This Khandala Taluka is distinct from the other one near Lonavala).

6. To give some idea of the relative siting of these places, we include a public-domain map of the region below. This is only for convenience and ease of reference.


Mahabaleshwar
Koyna Wildlife Sanctuary
Dhom Lake
Wai
Satara
Khandala
Phaltan

7. Paragraph 4(viii) of the Petition then says that the Petitioner filed an application under the Right to Information Act ("**RTI Act**") and received some documents pertaining to the administrative approvals of 31st July 2015 and 6th March 2020. On 3rd October 2020, the Petitioners made a detailed representation to this Court asking that the decision to establish Courts at Wai be reconsidered. The main thrust of this representation for reconsideration is that the mere pendency of cases cannot be a determinative criterion for approving the establishment of a new court. A judge-to-cases ratio fixed in 2004 at 500 is outdated because there is a surge in case filings. Strangely, in an apparent contradiction to the previous submission, it is then urged that there are *insufficient* cases pending in the Wai, Khandala and Mahabaleshwar (and Phaltan) Talukas to justify the establishment of an Additional Sessions Court and a Civil Judge, Senior Judge. In other words, it is suggested that caseload pendency is not a valid determinant for approving a proposal to establish a new court; but the *lack* of a pendency can be invoked to justify rejecting a proposal for a new court.

8. As usual, the truth lies somewhere in between. What the law says, and we will turn to a binding decision a little later, that pendency and caseloads cannot be the *sole* determinant. No judgment says that pendency and caseloads cannot be a determinant or a consideration at all.

9. There is a tabulation given for the years 2018, 2019 and 2020 in the Petition itself.

Year 2018

Civil Judge Senior Division	Khandala	400
	Wai	332
	Mahabaleshwar	200
District Court		
Civil and Criminal	Khandala	390
	Wai	455
	Mahabaleshwar	189
	Phaltan	597

Year 2019

Civil Judge Senior Division	Wai	330
	Mahabaleshwar	212
	Khandala	410
District Court		
Civil-	Wai	516
	Mahabaleshwar	169
	Khandala	310
Criminal	Wai	180
	Mahabaleshwar	65
	Khandala	140

Year 2020

Civil Judge Senior Division	Wai	393
	Khandala	427
	Mahabaleshwar	260

District Court		
Civil-	Wai	420
	Khandala	250
	Mahabaleshwar	109
	Phaltan	216
Criminal	Wai	235
	Khandala	201
	Mahabaleshwar	96
	Phaltan	391

10. The submission in the Petition — notwithstanding that Mr Anturkar took a far more tempered line — appears to be that this High Court considered 'only' the caseload pendency, i.e. statistical figures of the numbers of cases and nothing else while arriving at its impugned approvals to establish the Additional District Courts and a Court of Civil Judge, Senior Division at Wai. Specifically, other criteria such as buildings, infrastructure, distance, transportation and convenience of litigants, though required to be considered, had not been. It is asserted that geographical conditions in a district have to be seen.

11. Paragraph 4(xiii) then proceeds on a slightly fantastic and certainly hyperbolic narrative about Naxalite movements, difficulties in communication and so on. We will discount this as being a considerable exaggeration. Wai, Khandala and Mahabaleshwar are just off NH-48, the major Mumbai–Pune–Bengaluru highway. There is no question of any of these other factors (Naxalites, communications or transport) being adverse factors at these

locations. Phaltan is also within easy motoring distance as the map above shows. There is nothing whatever to substantiate these allegations.

12. The Petition then goes on to say that if the proposal is accepted, greater convenience and hardship will be caused to litigants in Khandala and Mahabaleshwar. We will return to this argument a little later. We are then told that Mahabaleshwar is a hilly area (a statement that overstates the obvious; it is a hill-station). Apparently, it is 'more difficult' to reach Wai from Mahabaleshwar than it is to reach Satara. This is not common experience, but we will let that pass. There is nothing adduced to establish this. Khandala Taluka is located on a six lane highway.

13. The Petitioners made another representation on 2nd December 2020. This was rejected on 4th March 2021 and communicated to the Petitioner on 9th March 2021.

14. The prayers after amendment in the Petition read thus:

> (a) This Hon'ble Court be pleased to issue any appropriate writ, order or direction thereby calling for record and proceedings of approval dated 31.07.2015 and 06.03.2020 of this Hon'ble Court, thereby accepting the proposal of Bar Association, Wai for establishment of District Court and Civil Judge, Senior Division at Wai and after examining its legality, validity and propriety, further be pleased to quash and set aside the same.
>
> (1 a) That, this Hon'ble Court be pleased to issue any appropriate writ, order or direction thereby be pleased to quash and set aside the impugned communication/order

dated 4/3/2021 issued by the Ld. Registrar, (Inspection-I), High Court, Appellate Side, Mumbai. (Exhibit F)."

15. The Affidavit in Reply begins by telling us that the proposal to establish the Court of the District Judge, Additional Sessions Judge and Civil Judge, Senior Division at Wai covering the Talukas of Wai, Khandala and Mahabaleshwar was accepted by the Administrative Committee of this Court in 2015. On 6th March 2020, the Principal District and Sessions Judge, Satara was told that the committee had accepted a proposal to take premises on rent for the residence of judicial officers for the proposed Courts at Wai until a new building was completed. The High Court asked that a concrete proposal for government accommodation for the Court and for rented premises for the judicial officers along with a rent certificate from the PWD, a rough sketch map, area statement, a consent letter of the landlord, etc be forwarded to be placed before the Judges of the Administrative Committee. A copy of 6th March 2020 letter annexed to the Petition is incorrect. A correct copy was sent on 5th July 2021. The Affidavit then says that the approval of 31st July 2015 was an in-principle approval but it was not dependent only on assessment of the pendency of cases. Other factors were considered. Paragraph 5 tells us that for these three Talukas in 2015, the cases triable by the District Judge and Additional Sessions Judge and by the Civil Judge, Senior Judge were 1261 and 821 respectively. By August 2021, these figures had arisen to 1395 and 1061. But that was not the only consideration. The administrative committee also took into account distances and other aspects as well. Paragraph 8 of the Affidavit in Reply sets out the distances in a tabular form. We reproduce the whole of paragraph 8 from pages 40 and 41 of the paperbook.

"8. I say and submit that, distance between Wai, Khandala and Mahabaleshwar is as follows :

Sr. No.	Talukas	Satara Court Kms (Approximately) Parent	Wai Court Kms (Approximately) Proposed
1.	Wai	35	0
2.	Khandala	55	27
3.	Mahabaleshwar	60	33

I say and submit that, Wai is approximately 35 kms away from Satara and Mahabaleshwar is approximately 60 kms away but the farthest village in Mahabaleshwar Taluka named Mhalunge is located approximately 150 kms from District and Sessions Court, Satara and Khandala is approximately 55 kms away from Satara but the farthest village in Khandala Taluka named Lohom is located approximately 75 kms from District and Sessions Court, Satara. I say and submit that, Wai is nearer to the other two talukas as compared to District Head quarter Satara. It would be more convenient for the litigants and Advocates from all the three talukas to approach Wai Court. I say and submit that, convenience of litigants is of paramount importance in the light of the provisions of the Constitution of India."

16. In the meantime, the Principal District and Sessions Judge, Satara forwarded a proposal for government accommodation and makeshift arrangements for housing judicial officers. Similar proposals for rental residential accommodations were accepted on 3rd September 2021 as a special case.

17. The Petitioners' representation of 2nd December 2020 was rejected in view of the decisions that the Administrative Committee

had already taken. Indeed the representation was not rejected in limine. A report was sought from the Principal District Judge, Satara. He returned the figures that were triable by the District Judge in regard to these three Talukas and by the Civil Judge, Senior Division for those three Talukas. Some 860 cases would remain at Wai Taluka even if the Khandala Taluka cases were reduced. The representation of the Petitioner was rejected after considering the report from the Principal District Judge, Satara. Paragraph 11 specifically states that the criteria of distance, convenience of litigants and Advocates and other factors have been considered while rejecting the representation.

18. Paragraph 12 then points out that the Petition is materially defective in that it does not make an adequate disclosure about the representation that was filed by the Petitioner or the 17th July 2019 letter issued by the Khandala Taluka Bar Association at the time of filing of the present Writ Petition.

19. Indeed in paragraph 14 it is said that the Bar Associations of Khandala and Mahabaleshwar had supported the establishment of the proposed Court by their letter of 16th December 2009 and 11th December 2009 respectively.

20. In paragraph 17 the Reply says that the other criteria such as infrastructure, distance, transportation etc all favour the establishment of a Court at Wai.

21. There is one other issue that arises and this relates to the disclosure of information to the Petitioners pursuant to an RTI query.

The Public Information Officer responded to that query by providing some information and by saying that the remainder was exempted under Section 8(e) of the RTI Act being information protected from disclosure as it was in the nature of fiduciary relationship. Dr Sathe has clarified that all that was withheld from disclosure were internal notings. A fresh Affidavit dated 21st March 2022 has been filed, which we will take on record. This Affidavit clearly states that only the file notings made by the Hon'ble Judges as members of the Committee were not disclosed. All other information was given.

22. We accept this explanation but we must caution the PIOs to be more accurate in their responses when any information is sought to be withheld as exempt for disclosure requirements. There is certainly an element of confidentiality in the notings by Judges of any Committee of this Court. There is also very good reason why such notings should not in fact ever be disclosed or allowed to be disclosed. Whether or not this falls within the description of "a fiduciary relationship" is something we need not examine further. But the routine practice is that a submission from the Registry is placed before each of the Judges in that particular committee in turn. It is placed in order of seniority beginning with the Judge who is most junior in terms of years of service on the Bench. This is done consciously so that the Judges who are given the papers next in sequence have the benefit of seeing the comments and notings previously made and of then either agreeing or raising any other point. Often, any Judge in this list irrespective of the hierarchy, may ask that the point be discussed in the meeting. That request is always accepted. In any meeting, there is no question of any Judge being senior or junior. At that stage, all are equally entitled to voice their

views. There is a full and frank exchange of views; dissents, especially noted dissents, are exceedingly rare. A judge who had earlier endorsed contrary notings might, in the discussions that followed with the other Judges reverse his position. We may also note that the system of placing a submission before "a junior" Judge first does not indicate and is not meant to indicate that any less weightage is given to that opinion. These are our internal processes for dealing with complex administrative issues. In Maharashtra, this is indeed especially complex given the size of the judiciary and the fact that decision-making is not confined to matters pertaining to the High Court alone. Withholding file notings is, in our view, entirely salutary. This is required for the better administration of justice. The actual material may be disclosed pursuant to an RTI enquiry as along with the final decision but the file notings are only transitory and tentative views and an exchange of views. These should under no circumstances be allowed to be brought into public domain or be made the subject of any controversy. The last thing that is desirable is a litigation calling into question the candid views on an administrative issue of any judge. And, finally, this is critical: the High Court administration speaks with one voice. We leave this aspect of the matter at this stage.

23. It is clear that the High Court took into account other factors down to details such as adequacy of accommodation for judicial officers in Wai and it is only on being satisfied that there were all these feasibilities that it made its proposal. To say, therefore, that the High Court considered nothing except pendency of cases is factually incorrect and is demonstrated to be incorrect on the record itself.

24. Mr Anturkar then argues that in doing all this the High Court has completely ignored the State Government. It ought to have consulted the State Government. Even if the Court's view was determinative, the State Government should *first* have been consulted. For this, we turn to the further Affidavit in Reply affirmed on 17th March 2022 by Mr Yogesh Rane. This refers to the correspondence between the Principal Secretary (Law and Judiciary Department) of the Government and the High Court. Here the Government on 20th December 2021 sought several clarifications and explanations from the High Court on this very proposal. On 6th January 2022, the High Court called for a report from the Principal District and Sessions Judge, Satara. This was received on 22nd January 2022 and sent on to the Government. There was also a sketch map of the places annexed.

25. We expressly reject Mr Anturkar's submission that before making the proposal the High Court should *first* have consulted the State Government or that such a proposal should have emanated from the State Government. There is no such hard and fast rule. The High Court on its administrative side is primarily concerned with the administration of justice in its widest possible sense. It makes no difference whether the High Court first formulates a proposal and then places it before the Government for an opinion or whether the proposal comes from the Government. Nothing can possibly turn on this. It is clear that operationally neither the High Court nor the State Government can go around establishing Courts on their own without the involvement of the other. That is all that needs to be said in this regard. The High Court's view in any case has primacy.

26. Some law is cited before us. Mr Anturkar in particular refers to the Division Bench judgment in *Partur Advocate Bar Association v State of Maharashtra*.[1] He says, drawing on paragraphs 14, 18 and 20 that mere pendency of cases is not a determinative factor.

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

1 2016(4) Mh.LJ 498.

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

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

> entitled to hold his Court at such place within the local limits of his jurisdiction as may be determined by the State Government, and may, with the previous sanction of the High Court to hold it at any other place within such limits. Thus, under the Civil Courts Act, the State Government has a power to alter the limits of the existing judicial Districts and to create new judicial Districts. The authority of the State Government under section 19 is to confer powers on any Additional District Judge of a District Judge in a particular part of a District. Once such power is conferred on Additional District Judge with reference to a particular part in the District, the jurisdiction of the Principal District Judge is excluded to the extent of the said area. Thus, this is a power to invest Additional District Judges with the powers of the District Judge confined to one or more Talukas within a judicial District.
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> **20.** The learned counsel appearing for the Petitioner has relied upon various provisions of the Code of Criminal Procedure, 1973 and has contended that the State Government without the concurrence of the High Court has a power to create a sessions division in a judicial District."

27. This case was one where the question that arose was whether it would be the State Government or the High Court that would take the decision for establishing Courts. On a careful consideration of the submissions, the Division Bench rejected the Petition. It held that having "requisite" number of cases cannot be the *sole* criteria for establishing Courts at any place or at any Taluka. Other factors would have to be considered. As to the question of establishing Courts, the actual establishment would have done by the State Government in

consultation with the High Court. But the views of the High Court would have primacy. This does not mean, in our view that the High Court cannot, on material that comes before it or a representation made to it, recommend or suggest the establishment of a Court. This is precisely what has happened here. The *Partur* decision is against the Petitioner, and does not support it.

28. There is then the decision of a Division Bench of this Court in *Ahmad M Abdi v State of Maharashtra and Others.*[2] In paragraph 34, the Division Bench extracted the various guidelines about Court infrastructure drawn from decided case law. Then from paragraphs 37 to 41 it addressed itself to the question of inadequacy. It said clearly in paragraph 42 that the High Court's views would have primacy. It is in this context that we believe paragraph 43 is relevant:

> "**EASY ACCESSIBILITY TO THE LITIGANTS**
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> **43.** 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

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2 2019 SCC OnLine Bom 89: (2019) 2 Bom CR 639.

> 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."
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> (*Emphasis added*)

29. Now in *Ahmad Abdi*, the Division Bench was dealing with the question of easy accessibility to litigants. It was not addressing and did not think it necessary to address 'the convenience of Advocates' This will have to be read in the context of the tabulation which we

have extracted above and which clearly shows that litigants benefit from the current proposal.

30. Dr Sathe also draws our attention to the legendary three-judge Bench decision of the Supreme Court in *State of Maharashtra v Narayan Shamrao Puranik And Others*[3] relating to the establishment of the Aurangabad Bench of this Court. In paragraph 26, the Supreme Court quoted the words of a Division Bench of this Court of the MC Chagla, CJ and Badkas, J in *Seth Manji Dana v CIT, Bombay.*[4] We quote the relevant portion from paragraph 26.

> "**After all, Courts exist for the convenience of the litigants and not in order to maintain any particular system of law or any particular system of administration. Whenever a Court finds that a particular rule does not serve the convenience of litigants, the Court should be always prepared to change the rule.**"
>
> (*Emphasis added*)

Chief Justice Chagla's words ring out through time from 1958 to 2022. They are as true now than they were then.

31. Mr Anturkar in fairness draws our attention to the decision of the Supreme Court in *Federation of Bar Association in Karnataka v Union of India.*[5] He submits that although this is apparently against

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3 (1982) 3 SCC 519.

4 Civil Appeal No.995 of 1957, decided on July 22, 1958 (Bom).

5 AIR 2000 SCC 2544.

him, it was his duty to place it before the Court. The Supreme Court held that a proposal to establish a Bench of the High Court away from the principal seat and which proposal came from a Federation of Bar Association was not maintainable. It held that no litigant could claim a fundamental right to have a High Court located within a proximal distance of his residence. We do not believe we need to say anything further on this subject. We thank Mr Anturkar for placing it, but we do not believe it is relevant to the issue at hand.

32. The real difficulty with this Petition is that it is unclear what is the legal right that the Petitioner is asserting when it says that this High Court should not consider establishing a Court at Wai. It seems to us that this is entirely self-serving. We do not deny that the Bar has a role to play in the administration of justice. We however emphatically assert that it is the interest of the litigants that is paramount and the role of the Court and all those who enable its functioning, whether Judges or lawyers, are meant to assist the delivery of justice to the litigant. Two important aspects of this are the speedy and timely delivery of justice and physical access to justice. The establishment of a Court in a close proximity cannot really be said to be an undesirable thing to litigants who are in the vicinity of the proposed Court. There is no reason why a litigant should, on the Petitioners' representation be required to travel 35 kms from Wai to Satara rather than have a Court in Wai itself; or to travel 55 kms from Khandala to Satara instead of 27 kms from Khandala to Wai or 60 kms from Mahabaleshwar to Satara rather than 33 kms from Mahabaleshwar to Wai.

33. The present Petition is, in our view, entirely without substance or merit. It is rejected. There will be no order as to costs.

34. The Interim Application does not survive and is disposed of accordingly.

(Madhav J. Jamdar, J) **(G. S. Patel, J)**