

SetCom Chairman couldn't direct a particular course of action to be taken during pendency of application

Summary – The High Court of Bombay in a recent case of Raghuleela Builders (P.) Ltd., (the Assessee) held that where during pendency of assessee's application before Settlement Commission, Chairman of Commission desired to peruse final order in another case wherein similar issues were involved and thereupon he also expressed his willingness to discuss pending cases with Members of Settlement Commission, it amounted to undue and uncalled interference in pending judicial proceedings

Facts

- The assessee's settlement application in petitions were in normal and ordinary course listed before a bench comprising two members of the Commission. They proceeded with the matter and post-admission the settlement application was scheduled for hearing and final disposal.
- However, there was a curious development, according to the assessee, and that was a communication from the Chairman, addressed to the Secretary of the Additional Bench of the Settlement Commission, *inter alia* said that the chairman would like to peruse the papers and final orders in the cases of MAAD Realtors wherein similar issues were involved.
- The Chairman desired a discussion in relation to those pending cases with the members of the settlement commission or the Bench dealing with them. According to the assessee, this was ordinarily not done and even if the person was higher in hierarchy and was the chairman of the Settlement Commission, he should not have interfered with pending judicial proceedings before the other members of the Commission.
- The said undue and uncalled for interference in pending judicial proceeding would send a wrong message. Therefore, it was submitted that instant petition be entertained.

Held

- After perusing the communications, it is found that the assessee is not precluded from challenging the manner in which the Chairman intervened in this matter at a later stage. It would not be proper to presume at this stage that the proceedings are necessarily going to an end, with final orders, but adverse to the assessee's interests. The settlement may go through to the satisfaction of all parties before the Settlement Commission. In the event the apprehension comes true and the Chairman's meeting and discussion with the members of the Commission results in an adverse order as apprehended, then, while challenging such final orders and if they are found to be influenced by the Chairman's alleged uncalled for and undue intervention, the assessee can raise appropriate pleas and urge before the Court that they have not been dealt with fairly by the Settlement Commission. There was a uncalled for interference in judicial proceedings and none including the Chairman could direct a particular course of action to be taken or a particular order being passed in pending judicial proceedings. Thus, the outcome of judicial proceedings cannot be controlled in this manner. All such

pleas of the assessee are kept, despite their participation in the hearing before the larger Bench. In the event the final orders were adverse, then, amongst other grounds to challenge them, the assessee could raise appropriate pleas in relation to the impugned communications.

- However, while disposing of these petitions with the above clarifications, it may be noted that these petitions has been filed challenging a somewhat curious and unforeseen development. It is not known in what circumstances the Chairman flew down to Mumbai and invited the members for discussion in relation to some cases or related issues. It would be highly risky if such discussions in relation to judicial orders and judicial matters are held in a close-door meeting or in the privacy of the chambers of the members of the Settlement Commission. Eventually, the guarantee of justice is ensured when there are public hearings and open sittings. In judicial matters and proceedings of that nature, the discussion in open Court, after questioning the respective parties/their advocates or their representatives ensures not only fairness but purity and sanctity of Judicial process. It is not that everybody gets an opportunity to preside over as a Judge or Member of quasi-judicial/judicial Commission. The more the power, the greater the responsibility. Here the power comes with a trust. Litigants and Parties trust the Judges and Members of judicial bodies and Commissions only because they are sure that they will not decide cases going by somebody's interference or influence. Members of Judicial bodies have to act without fear or favour, affection or ill will. They have to uphold the Constitution and the Laws. The guarantee or assurance of justice is above everything and that is ensured by the Constitution of India. If independence and impartiality of a Judge is questioned, then, that sets the above guarantee and assurance at naught.
- To avoid an allegation of the nature made in the writ petitions, the chairman would be well advised not to chart this course hereafter.
- The writ petition is disposed of.