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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.1290 OF 2015
WITH
WRIT PETITION NO.1312 OF 2015
WITH
WRIT PETITION NO.1348 OF 2015

Big Cinemas Talreja, Parbhani. (wp/1290 & 1312/15)
Big Cinemas Priti, Parbhani. (wp/1348/15) ..Petitioners
-***Versus***-
The State of Maharashtra and others. ..Respondents

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Mr.A.M.Kulkarni, Advocate for the Petitioners.
Mr.D.R.Korde and Mr.K.M.Suryawanshi, AGPs, for the Respondent Nos.1 to 3.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 16th February, 2015

Per Court:

1 I have heard the learned Advocate for the Petitioners and the learned AGPs appearing on behalf of the Respondents/State.

2 The impugned order in these petitions dated 30.09.2014 is delivered by the Divisional Commissioner, Aurangabad. The learned AGPs state that the Divisional Commissioner does not have the jurisdiction to entertain an appeal against the orders passed by the District Collector under Sections 11 and 12 of the Maharashtra Advertisements Tax Act,

1967.

3 Mr.Kulkarni, learned Advocate appearing for the Petitioners, refutes/ contradicts the said contention by stating that the advertisement tax is recoverable as arrears of land revenue. Therefore, an appeal to the Divisional Commissioner is maintainable under Section 247 of the Maharashtra Land Revenue Code, 1966.

4 I am not required to go into the issue as regards the jurisdiction of the Divisional Commissioner in these matters for the reason that Mr.Kulkarni has made out a case which can be decided by the District Collector, Parbhani by remitting these matters for a fresh hearing.

5 The Petitioners in these petitions are directed to pay an amount of Rs.15,12,120/-, Rs.15,12,120/- and Rs.04,79,220/- respectively. The tax for advertisements imposed by the District Collector on these three Petitioners is with regard to the private advertisements telecast by the Petitioners before the start of telecasting movies and during the interval sessions.

6 Mr.Kulkarni's contention is that while the Petitioners telecast the private advertisements, certain statutory advertisements are also

required to be telecast under the orders of the Statutory Authorities. As such, there cannot be an entertainment tax imposed on the telecast of the statutory advertisements. The District Collector in the impugned judgments dated 24.09.2013, 21.12.2012 and 24.12.2012 respectively has not segregated the statutory advertisements from the private advertisements telecast by the Petitioners. According to Mr.Kulkarni, if this exercise is undertaken the tax levied upon the Petitioners would be reduced and the Petitioners have no hesitation in paying the actual taxes as may be imposed/ levied in accordance with law.

6 The learned AGP appearing on behalf of the Respondents/ State submits that the Petitioners be directed to deposit the entire amount as is recorded in this order. Thereafter, the District Collector would consider the submissions of the Petitioners provided they produce necessary records which are in their custody.

7 Having considered the submissions of the Petitioners as well as the Respondents, it appears from the impugned orders passed by the District Collector that the statutory advertisements telecast by the Petitioners have not been segregated from those private advertisements that they have telecast. In the event, same is done, there is a likelihood that the entertainment tax levied upon the Petitioners may be scaled

down. No doubt the District Collector has recorded in the impugned orders that the Petitioners have not produced the relevant record before him despite opportunities given to the Petitioners.

8 In the peculiar facts of the case as recorded herein above, I find that ends of justice would be met by relegating these three matters to the District Collector, Parbhani for a fresh hearing so as to consider the contentions of the Petitioners that the entertainment tax need not be levied upon the statutory advertisements. However, since the matters pertain to taxes of 2012 onwards, I deem it proper to direct the Petitioners to deposit 50% of the amounts as have been recorded in paragraph No.5 of this order.

9 In the light of the above, these petitions are partly allowed. The impugned orders are quashed and set aside.

10 However, the Petitioners shall deposit Rs.7,70,000/- in Writ Petition No.1290/2015, Rs.7,70,000/- in Writ Petition No.1312/2015 and Rs.2,40,000/-in Writ Petition No.1348/2015 before the District Collector, Parbhani within a period of FOUR WEEKS from today.

11 Upon deposit of the above amounts, the Petitioners shall

appear before the District Collector, Parbhani on 24.03.2015 at 03:00 pm. A separate notice of hearing need not be issued by the District Collector. The Petitioners shall, thereafter, abide by the dates of hearing as may be posted by the District Collector.

12 Needless to state, the Petitioners shall produce such material/ record as they may find appropriate to establish their case before the District Collector as regards the segregation of statutory advertisements and private advertisements. Same shall be done as expeditiously as possible and preferably on or before 30th April, 2015. Thereafter, the District Collector, Parbhani shall decide these three cases strictly in accordance with law and on their own merits as expeditiously as possible and preferably on or before 29.08.2015.

13 If the Petitioners do not deposit the amount as directed herein above, this order shall stand recalled and these three petitions shall then stand dismissed thereby, giving liberty to the District Collector to recover the taxes from the Petitioners.

(**RAVINDRA V. GHUGE, J.**)