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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.6589 OF 2014

GTL Infrastructure Limited

...Petitioner

v/s.

Mira Bhayandar Municipal Corporation and Ors.

...Respondents.

Mr.Surel Shah a/w Mr.Prasad Dhande and Mr.Rahul Bothra, i/b D.H.Law Associates, for the Petitioner.

**CORAM: A. S. OKA &
REVATI MOHITE DERE, JJ.**

DATED : 8th JULY, 2015.

P.C.

1. Heard the learned counsel appearing for the petitioner
2. On 14th June, 2013, the Mira Bhayandar Municipal Corporation (first respondent) issued notice to the petitioner under Section 260 of the Maharashtra Municipal Corporation Act, 1949 (for short 'the said Act').

The Notice was issued calling upon the petitioner to show cause as to why action of demolition should not be taken against a mobile tower and cabin erected by the petitioner on a terrace of the building, more particularly described in the said notice. A reply was issued to the said notice by the petitioner on 8th July, 2013. The fact that the mobile tower and the cabin was erected was not disputed in the said reply. It was contended in the reply that an application dated 31st December, 2009 was made by the petitioner to the Municipal Corporation through their Consultants/Architects for the NOC/Permission of the Municipal Corporation and thereafter a Demand Notice dated 2nd May, 2012 was issued by the Municipal Corporation for demanding payment of premium and other charges. It was contended that the controversy has been set at rest by the Bench of this Court at Aurangabad by order dated 21st December, 2012. On 31st December, 2013, the Designated Officer of the Municipal Corporation passed an order under Section 260 of the said Act directing demolition of the mobile tower and cabin.

3. The first challenge in this petition is to the said order dated 31st December, 2013. The second challenge is to the demand dated 2nd May, 2012 made by the Municipal Corporation calling upon the petitioner to

deposit total amount of Rs.1,69,476/- by way of permission charges/regularization charges. There is also a challenge to this demand made by a letter dated 2nd February, 2010.

4. As per the law laid down by this Court, for construction of a mobile tower and cabin, the permission of the Planning Authority under the Maharashtra Regional and Town Planning Act, 1966 (for short 'MRTP' Act) is required. The learned counsel appearing for the petitioner is not disputing this position. His submission is that on an application made by the petitioner in the year 2009 for grant of development permission, on 2nd May, 2012 a demand of amount of Rs.1,69,476/- was made which is completely illegal. He urged that several petitions challenging such demands are pending in this Court. He submits that within the time provided by the law, an application for grant of permission was neither rejected nor granted and therefore, the permission is deemed to have been granted on the basis of which construction was made. He pointed out that the application for grant of permission was kept pending only on the basis of the illegal demand dated 2nd May, 2012. He, therefore, urged that the order of demand made by the Designated Officer is erroneous and there is no basis for the demand made on 2nd May, 2012.

5. We have carefully considered the submissions. It is not in dispute that the mobile tower and cabin could not have been erected by the petitioner without obtaining the permission from the Municipal Corporation which is the Planning Authority under the Maharashtra Regional and Town Planning Act, 1966. It is pertinent to note that in the Writ Petition running into 36 paragraphs, even the date on which the application for grant of development permission was allegedly made in accordance with Section 44 of the Maharashtra Regional Town Planning Act, 1966 is not disclosed. In paragraph 12 of the petition, a vague statement is made that before constructing such mobile tower and cabin, by way of abundant precaution, the Petitioner applied for permission of the respondent no.1 – Corporation. Further it is stated that the petitioner never received any communication from the Municipal Corporation. In paragraph 14, there is a vague averment that more than three years after the application for permission was filed by the petitioner, in the second week of May, 2012, the demand notice demanding an amount of Rs.1,69,476/- was issued. In paragraph 17, again a vague statement is made that the application was made in the year 2009 with all the requisite documents and that there is no response to the said application. The Demand dated 2nd

May, 2012 refers to an application dated 7th February, 2009. In the reply to the show-cause-notice, the petitioner has relied upon an application dated 31st December, 2009.

6. Even a copy of the application allegedly made for grant of development permission in accordance with section 44 is not annexed to the petition. The deeming fiction is provided under sub-section 5 of Section 45 of the MRTP Act which provides that if the Planning Authority does not communicate its decision on the application, whether to grant or refuse permission to the applicant, within sixty days from the date of the receipt of the application, the development permission shall be deemed to have been granted.

7. As far as such deeming provisions are concerned, the law is very settled. There can be a deemed permission provided the application made for grant of permission under Section 44 is otherwise lawful. In the present case, the petitioner has not even placed a copy of the said application on record. Therefore, the petitioner cannot establish that the application was lawful. Infact there is nothing placed on record to show that any such application as contemplated under Section 44 of the MRTP

Act was made by the petitioner.

8. Very importantly it is not the case of the petitioner that only after expiry of the period of sixty days from the date of making the application that the petitioner proceeded to make the construction of the mobile tower and cabin. Thus, the contention of the petitioner is that erection of the mobile tower and cabin was made on the basis of the deeming fiction provided under sub-section 5 of Section 45 of the MRTP Act deserves to be rejected. Thus, the only conclusion which can be drawn is that the petitioner has made illegal and unauthorized construction of the mobile tower and cabin and therefore, there is no reason to disturb or interfere with the order dated 31st December, 2013.

9. In our view, considering the aforesaid conduct of the petitioner, this was a fit case to reject the petition only on the basis of such conduct inasmuch as, the jurisdiction of this Court under Article 226 of the Constitution of India is always discretionary.

10. Now coming to the impugned Demand, the same was made for regularization and not for grant of permission. We have found that the

construction made by the petitioner is patently unauthorized. Therefore it is not necessary to consider the challenge to the said demand. If after the removal of the offending constructions, a fresh application for grant of permission is made, the petitioner can always challenge such demand, if made, in accordance with law.

11. Subject to what is observed above, the petition is rejected.

(REVATI MOHITE DERE,J.)

(A.S. OKA,J.)