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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 557 OF 2015
WITH
CIVIL APPLICATION NO. 2847 OF 2014

Idea Cellular Limited & Anr. ...Petitioners
Versus
Pune Municipal Corporation & Anr. ...Respondents

Mr. Amit Jamsandekar, a/w Ms. Parinaz Vakil and Mr. Zeus Dhanbhoore, i/b Bharucha & Partners, for the Petitioners and Applicants.
Mr. Abhijit Purshottam Kulkarni, for the Respondents Nos. 1 and 2.

CORAM: A.S. OKA & G.S. PATEL, JJ.
DATED: 16th November 2015

PC:-

1. Learned counsel appearing for the Petitioners relies upon orders passed by this Court on 21st April 2014 in Writ Petition Nos. 7237 of 2009, 10282 of 2009 and 7236 of 2011. He submits that the issues raised in this Petition are same as raised in these three Petitions. He invites our attention to the order dated 1st September 2014 passed by the Apex Court wherein challenge is to the order dated 21st April 2014 in Writ Petition No. 7327 of 2009. He relies upon the order passed on 1st September 2014, which reads thus:

> "Issue notice.
>
> Tag with C.A. No. 8114 of 2013.
>
> In the meantime, it is clarified that, as an interim measure, the respondents may determine the tax on the mobile towers under the Maharashtra Municipal Corporation Act, 1949 and raise demand on the petitioners. However, such demand shall not be enforced against the petitioners during the pendency of the petitions."

2. He states that a Special Leave Petition in which order dated 1st September 2014 has been passed is still pending for consideration of the Apex Court. He states that though the Apex Court has not specifically stayed the order dated 21st April 2014 passed in Writ Petition No. 7327 of 2009, the order dated 1st September 2014 will have to be construed as stay of the order passed by this Court.

3. As Petitions raising similar issues as regards the legality of retrospective demand of property taxes have been admitted, we issue Rule. Learned counsel appearing for the Respondents waive service.

4. We have heard learned counsel appearing for the parties on the prayer for interim relief. It will be necessary to make reference to the order dated 21st April 2014 passed by this Court in Writ

Petition No. 7327 of 2009. Clauses 2 and 3 of the said order reads thus:

> "2. For the reasons recorded separately in the Writ Petition No. 10282 of 2009, the Petitioner will not be entitled to a blanket interim relief.
>
> 3. Therefore, by way of interim relief, we direct that the ad-interim relief granted on 22nd September 2009 shall continue to operate subject to condition of the Petitioner depositing with the first Respondent Municipal Corporation the entire impugned demand styled as retrospective demand within a period of three months from today. The deposit will be subject to final outcome of the Petition and if the Petitioner succeeds in the Petition, the first Respondent Municipal Corporation shall refund the said amount to the Petitioner with appropriate rate of interest as may be fixed by this Court."

5. It is this order which was subjected to challenge before the Apex Court. We have already quoted order dated 1st September 2014 passed by the Apex Court in the said Special Leave Petition. On plain reading of the said order, we find that the conditional order of deposit in terms of clause 3 of the order dated 21st April 2014 has not been stayed by the Apex Court. The order of this Court in terms of paragraph 3 of the order dated 21st April 2014 grants stay subject to condition of the Petitioner depositing with the Municipal Corporation entire amount which was already demanded including the alleged retrospective demand within a period of three months from 21st April 2014. The order dated 1st September 2014 passed by the Apex Court permits the Municipal Corporation to determine the tax on the mobile towers and raise demands on the

Petitioner. The Apex Court has directed that such demands which may be raised after 1st September 2014 in that matter shall not be enforced against the Petitioner during the pendency of the Petition before the Apex Court.

6. Thus, the restraint order of the Apex Court is applicable to the demands made by the Municipal Corporation after 1st September 2014 in that matter. We cannot read the order of 1st September 2014 in the manner suggested by Learned Counsel for the Petitioners, i.e., to mean that in all other matters also where demands are made after that date the same are not enforceable. In each case, the interim order will depend on the facts of the case. Where in a given case the challenge is to a demand already made then evidently there must be an order of deposit as a regular remedy under Section 406 of the Maharashtra Municipal Corporations Act, 1949 requires pre-deposit. An order similar to the one made by the Apex Court on 1st September 2014 is, in our view, possible only in such cases where a demand is yet to be made.

7. Hence, as a condition for grant of interim relief in terms of prayer clauses (e) and (f), the Petitioners will have to deposit the entire amount payable in terms of the impugned bills with the 1^{st} Respondent-Municipal Corporation within a period of three months from today.

8. Accordingly, there will be interim relief in terms of prayer clauses (e) and (f) subject to the condition of Petitioners depositing the entire amount due and payable as per the impugned bills with the 1st Respondent within a period of three months from today.

The deposit will be subject to final outcome of the Petition and if the Petitioner succeeds in the Petition, the 1st Respondent-Municipal Corporation shall refund the said amount to the Petitioner with appropriate rate of interest as may be fixed by this Court.

9. We make it clear that notwithstanding the order of the interim relief, it will be open for the 1st Respondent to determine the tax on mobile towers and raise further demands during the pendency of this Petition against the Petitioners. However, such demand shall not be enforced against the Petitioners during the pendency of this Petition without the leave of the Court.

10. In view of the order of interim relief, Civil Application No. 2847 of 2014 stands disposed of. We make it clear that the objection raised by the learned counsel appearing for the Municipal Corporation regarding maintainability of the Petition in the light of remedy available under Section 406 of the Maharashtra Municipal Corporations Act, 1949 is expressly kept open.

(G. S. PATEL, J.) **(A.S. OKA, J.)**