

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1112 OF 2016

INDUS TOWERS LIMITED NEW DELHI
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. V.J. Dixit, Senior counsel i/b.
Mr. Sachin S. Deshmukh
GP for respondent No.1 : Mr. A.B. Girase.
Advocate for respondent Nos. 2 and 3 : Mr. V.P. Latange.

CORAM : S.V. GANGAPURWALA &
K.K. SONAWANE, JJ.

DATE : 7th APRIL, 2016.

PER COURT:

1] We have heard Mr. Dixit, learned Senior Counsel for the petitioner. Mr. Dixit, learned Senior Counsel submits that time and again this Court has held that the Central Regulations will apply in cases of erection of towers and the State regulations are not to be applied. According to learned Senior Counsel the respondent Corporation is still applying the State Government Regulations. The petitioner had applied for permission way back in December, 2012 alongwith necessary documents as enlisted in the said application and it has also paid necessary charges, which the respondents have accepted. The said application is pending since then. No decision is taken by the respondent authority. The tower was functional. The petitioner relies on the provisions of Section 45 of the MRTP Act, i.e. deemed permission. According to petitioner, the impugned action of sealing the tower, is per-se erroneous.

2] Mr. Latange, learned counsel for the Municipal Corporation submits that the plot on which tower is erected the permission was obtained for residential purpose. The Occupancy/Completion Certificate is not obtained by the owner. A school is being run on the said plot. The

application is not submitted under the signature of the Architect. The petitioner cannot take the benefit of deemed permission.

3] In fact, the respondent Corporation ought to have decided the application given by the petitioner way back in the year 2012 for erection of the tower. Till date, no orders are passed on the said application. If there were some deficiencies, the respondent Corporation ought to have communicated it to the petitioner and the petitioner would have got an opportunity to clear the said deficiencies.

4] The Tower is sealed since January, 2016. In our view, the interest of justice would be sub-served by passing the following order.

[a] The petitioner may present itself before the respondent Corporation on 11th April, 2016 to put forth its case.

[b] The respondent Corporation shall decide the application of the petitioner seeking permission (page 23) within a period of 10 days from today, on its own merits, in accordance with law.

[c] Writ petition is disposed of. No costs.

[K.K. SONAWANE,J.]

[S.V.GANGAPURWALA,J]

grt/-