IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO. 4413 OF 2013

IDEA CELLULAR LIMITED
VERSUS
THE STATE OF MAHARASHTRA AND ANOTHER
...
Advocate for Petitioner : Mr. S.S. Jadhavar
AGP for Respondents: Mr. B.V. Virdhe.
Advocate for respondent No.2 : Mr. Mukul Kulkarni.

CORAM : S.V. GANGAPURWALA
& K.K. SONAWANE, JJ.
DATE : 5TH JULY , 2016.

PER COURT:

1] Mr. Jadhavar, learned counsel for the petitioer submits that the respondent issued a bill demanding the tax in respect of mobile tower erected by the petitioner for the year 2012-13 vide bill dated 30.3.2013. Learned counsel submits that the said amount of tax was already paid by the petitioner. The same was demanded vide bill of the same date. The respondent is claiming dual tax. The petitioners had already been granted the no objection certificate (NOC for short) by the respondent corporation to erect the mobile tower. Pursuant to the grant of the NOC, the petitioner erected the Mobile tower. No fault can be attributed to the petitioner. It is after following the proper procedure the mobile tower was erected by the petitioner and the petitioner is regularly paying the tax assessed by the respondent corporation.

2] According to learned counsel, pursuant to the orders passed by this Court in W.P. No. 3575 of 2013 with connected matters, dated

21.2.2014, the petitioners have filed application under Section 44 of the MRTP Act. Same is pending for two years. Same is not decided. Learned counsel further submits that even prior to the said order being passed by this Court in aforesaid writ petition, the applications were also filed under Section 44, but same were not favourably considered. According to learned counsel, the respondent is not entitled for dual taxation. No question of levying penalty also arises as it is after obtaining the NOC, the mobile towers are erected.

3] Mr. Kulkarni, learned counsel for the respondent Municipal Corporation submits that the construction of the mobile tower is unauthorized without seeking construction permission from the respondent corporation. For such an unauthorised structure, the respondent Corporation is entitled to levy penalty twice the amount of tax, as laid down under Section 267A of the MRTP Act.

4] Learned counsel for respondent further submits that the earlier application for regularization under Section 44 of the MRTP Act was also rejected on 21.6.2013. This Court in W.P. No. 3375 of 2013, did not interfere with the said order, however, granted liberty to the petitioners to file fresh application. The bill issued to the petitioner is in respect of the penalty only and it is not a case of dual taxation.

5] We have considered the submissions canvassed by the learned counsel for the respective parties.

6] There is no dispute that before erection of the mobile tower the petitioner s have applied for NOC from the respondent corporation and were issued NOC. Pursuant thereto, the mobile tower was erected. However, it appears that the Commencement Certificate, as is required under the provisions of the Maharashtra Provincial Municipal Councils Act read with the MRTP Act was not applied for, nor was granted. The Division bench of this Court in the matter of ***GTL Infrastructures Vs. Dhule Municipal Corporation through Commissioner and others, reported in 2011 (6) BCR, 152***, had held that while erecting the mobile tower the commencement certificate is necessary.

7] It is not disputed that the Commencement certificate has not been obtained. The earlier post-facto application filed by the petitioner under Section 44 of MRTP Act was rejected. This court had granted liberty to the petitioners to apply afresh. The said application is of the year 2014. The penalty which is levied by the Corporation is for the year 2012-13.

8] We could have appreciated the case of the petitioner had the imposition of penalty being for the period during the pendency of that application. However, the levy of penalty is prior to the application under Section 44 of the MRTP Act and the provisions of Section 267A would certainly apply. As per Section 267A, any construction made without obtaining permission, is liable to be taxed with penalty which would be equal to twice the property tax leviable on such amount. In the present case, it appears that the penalty levied is equal to the property tax and not twice the property tax.

9] Considering the above, no relief can be granted to the petitioner. Writ petition is accordingly disposed of. No costs.

[K.K. SONAWANE]
JUDGE

[S.V. GANGAPURWALA]
JUDGE.

grt/-