

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3157 OF 2016

ITC Limited, Colaba, Mumbai		Petitioner
V/s.		
Ambernath Municipal Council & Anr.		Respondents

Mr. Ravi Kadam, Sr. Counsel, a/w. Mrs. Tanmayi Rajyadaksha, Mr. Nimish Kothare, Mr. Nikhil Mutha and Ms. Priyanka Gidh, i/by M/s. Nanu Hormasjee & Co., for the Petitioner.

Mr. A.S. Rao for Respondent No.1-Municipal Council.

Mrs. M.P. Thakur, A.G.P., for Respondent No.2-State.

CORAM: RANJIT MORE &
DR. SHALINI PHANSALKAR-JOSHI, J.J.

DATE : 15th MARCH 2016.

P.C. :

1. Leave to amend the prayer clauses is granted. Necessary amendment shall be carried out forthwith.
2. Heard Mr. Ravi Kadam, learned Senior Counsel for the Petitioner, Mr. Rao, learned counsel for Respondent No.1-Municipal Council and Mrs. Thakur, learned A.G.P., for Respondent No.2-State.
3. This Petition is filed for the following reliefs :-

*(a) This Hon'ble Court be pleased to order and declare
that in view of the letter dated 23rd November 2015*

(Exhibit L) withdrawing the impugned Stop Work Order dated 7th April 2015 (Exhibit G), and in view of the subsequent show cause notice dated 21st October 2015 (Exhibit J), the impugned Stop Work Order dated 7th April 2015 does not revive automatically;

- (b) In the alternative to prayer (a), this Hon'ble Court be pleased to call for the records and after going through the legality thereof, be pleased to issue a Writ of Certiorari quashing and setting aside the impugned Stop Work Order dated 7th April 2015 (Exhibit G);*
- (c) This Hon'ble Court be pleased to call for the records and after going through the legality thereof, be pleased to issue a Writ of Certiorari quashing and setting aside the impugned Show Cause Notice dated 21st October 2015 (Exhibit J);*
- (d) In the alternative to prayers (b) and (c), this Hon'ble Court be pleased to issue a Writ of Mandamus or a writ in the nature of mandamus or any other appropriate writ, order or direction under Article 226 of the constitution of India restraining Respondent No.1, by themselves, their servants, agents, officers and subordinates from in any manner acting upon or in furtherance of the impugned Stop Work Order dated 7th April 2016 and impugned Show Cause Notice dated 21st October 2015 (Exhibit J);*
- (e) This Hon'ble Court be pleased to issue a Writ of Prohibition or any other writ, order or direction in the nature of Writ of Prohibition as this Hon'ble Court may*

deem fit and proper against Respondent No.1, restraining it from acting in furtherance of the Show Cause Notice dated 21st October 2015 (Exhibit J);

- (f) *That Respondent No.1 be restrained from taking any action against the Petitioner in respect of non payment of unearned income allegedly due to the State Government;*

4. Brief facts giving rise to the present Petition are as follows :-

The Government of Maharashtra issued Sanad in favour of M/s. Wimco Limited, a Public Limited Company, for factory land on transferable and heritable basis, in perpetuity, as Class I Occupant under Maharashtra Land Revenue Code. On 17th December 2013, M/s. Wimco Limited applied for development permission to Respondent No.1 under Section 45 of the Maharashtra Regional Town Planning Act, 1966, (*for short "the MRTP Act"*), to put up a biscuit factory on the said factory land. On 10th April 2014, M/s. Wimco Limited and the Petitioner were amalgamated in pursuance of the sanction to the Scheme by the Bombay High Court and the Petitioner became owner of the factory land. Thereafter, on 20th October 2014, Respondent No.1 granted permission to M/s. Wimco Limited to put up the biscuit factory on the factory land. Since, in pursuance of the Scheme sanctioned by the Government, the Petitioner became owner of the factory land,

construction was commenced by the Petitioner. It is the case of the Petitioner that, as on date, 65% of the construction is complete.

5. On 2nd March 2015, the Collector addressed a letter to the Tahasildar, copy of which was issued to Respondent No.1 with a direction not to issue any permission to M/s. Wimco Limited / the Petitioner. In pursuance of this letter, Respondent No.1, on 7th April 2015, issued "Stop Work Notice" to the Petitioner. The Petitioner thereafter approached to the Government by way of Appeal under Section 47 of the MRTP Act. The Government disposed of the said Appeal on 8th September 2015 and directed Respondent No.1 to withdraw the said stop work notice. Respondent No.1 accordingly withdrew the said stop work notice.

6. Public Interest Litigation No.41 of 2015 came to be filed in this Court. In this PIL, statement was made by the Government that it is withdrawing order dated 8th September 2015 passed under Section 47 of MRTP Act and on this statement, Public Interest Litigation No.41 of 2015 was disposed of.

7. Respondent No.1 thereafter issued fresh notice dated 21st October 2015, under Section 53 of the MRTP Act, asking M/s. Wimco Limited to show cause as to why the building permission should not be

revoked. This notice is impugned in the present Writ Petition. Mr. Kadam, learned Senior Counsel appearing on behalf of the Petitioner, submits that the notice impugned in the Petition is issued on the sole basis of the Collector's letter dated 2nd March 2015. The Collector issued the said letter claiming that Petitioner has not deposited the unearned income as per the provisions of Revenue Code. Mr. Kadam, learned Senior Counsel for the Petitioner, disputes that the Petitioner-Company is liable to pay unearned income to the Government. He submits that the Sanad was issued in favour of M/s. Wimco Limited for factory land on transferable and heritable basis, in perpetuity, as Class I Occupant under Maharashtra Land Revenue Code and, therefore, M/s. Wimco Limited or the Petitioner are not liable to pay the said unearned income to the Government.

8. Be that as it may, the Collector, as on today, has not adjudicated the unearned amount, which he alleged that the Petitioner or M/s. Wimco Limited are liable to pay. This can be done only after giving an opportunity of hearing to the Petitioner. That apart, Respondent No.1 is the Planning Authority within the meaning of MRTP Act and constituted under Maharashtra Municipal Councils, Nagar Panchayat and Industrial Township Act, 1965. Respondent No.1-Council has nothing to do with the unearned income and the Collector and Revenue Authorities are obliged to receive the same in appropriate cases.

9. Shri. Sauhard Saran, Branch Manager of the Petitioner-Company, has filed an affidavit dated 14th March 2016, making averments in Para 5 thereof that the Petitioner undertakes that in the event if Petitioner being finally adjudicated to be liable to pay unearned income in respect of the amount in question to the State Government and subject to exhaustion of all of its legal rights and remedies, the Petitioner will pay such unearned income, as may be finally determined. We have accepted this undertaking.

10. In the above facts and circumstances, we are of the view that the construction, which Petitioner-Company has undertaken on the said land, cannot be stopped on the basis of the said letter of the Collector dated 2nd March 2015 to the effect that the Petitioner has not paid unearned income to the Government.

11. We, accordingly, allow the Petition in terms of prayer clause (c).

(DR. SHALINI PHANSALKAR-JOSHI, J.)

(RANJIT MORE, J.)