

vat

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

WRIT PETITION No. 8858 OF 2016

ITC Limited and Anr.

....Petitioners

Vs.

***The Tahsildar, Ambarnath Taluka
and Ors.***

....Respondents

Mr.Gaurav Joshi, Senior Counsel a/w. Birendra Saraf a/w. Tanmayi Rajadhyaksha a/w. Mr. Nimish Kothare a/w. Mr. Nikhil Mutha a/w. Ms.Priyanka Gidh a/w. Ms. H. Bootwalla i/b. Nanu Hormasjee & Co. for Petitioners.

Mr.A.B. Vagyani -Government Pleader a/w. V. B. Thadani -AGP for State

***CORAM : V. M. KANADE &
M.S. KARNIK, JJ.***

DATE : MARCH 23, 2016

P.C. :

1. By this petition, which is filed under Article 226 of the Constitution of India, the Petitioners are seeking an appropriate writ, order and direction for quashing the impugned notice dated 18th March, 2016 issued by Respondent No. 1- Tahasildar, Ambernath Taluka

which is annexed at Exhibit 'CC' to this petition. Petitioner No.1 is a company incorporated under the Companies Act, 1956. Petitioner No.2 is a shareholder of Petitioner No.1. Petitioner No.1 claims to be the Class-I Occupant in accordance with the SANADs which were granted by the State Government to WIMCO Limited. The said company is a subsidiary company of the Petitioner. Petitioner No.1 and WIMCO Ltd. made an application, seeking the permission for setting up a biscuit factory. After obtaining the statutory permission, the Petitioners started construction of their factory and as of today almost 65% of the construction is over. Since Petitioner No.1 was facing difficulties in obtaining approval, they filed an application to Respondent No.1 for making change in the mutation record, in the 7x12 extract and in the property card and also for substituting the name of Petitioner No. 1 in the place of WIMCO Ltd.

2. Respondent No.1 after receiving that application, calling upon Petitioner No.1 to pay unearned income. The said notice was challenged by Petitioner No.1 and finally the writ petition was filed in this Court vide Writ Petition No. 3153 of 2016 challenging the jurisdiction of the Ambernath Municipal Council (Planning Authority)

to impose a condition for payment of unearned income. This Court by its judgment and order dated 15th March, 2016, allowed the petition and observed that the Ambernath Municipal Council has no jurisdiction to impose a condition of payment of unearned income and directed the Collector and the Revenue Authorities to give notice to the Petitioners, and after hearing them, decide whether the Petitioners were liable to pay an unearned income or they were exempted, being a Class-I Occupant. The Division Bench in paragraph 8 has given the following direction :

“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, 1964. 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.”

3. It is apparent, therefore, that the Court had clearly observed that the Collector as on that date had not adjudicated an unearned income. This Court, therefore, has observed that finally after giving an opportunity of hearing to the Petitioners, the Collector could then adjudicate the dispute.

4. It is obvious, therefore, that when the order was passed, the counsel appearing on behalf of the State did not point out that the Collector had already adjudicated the said issued.

5. The grievance of the Petitioners is that despite the clear direction given by this Court to the Collector to adjudicate the said issue on the very next date i.e. on 17th March, 2016, the Collector has directed the Petitioners to deposit 75% of the unearned income which was quantified at Rs.41,00,34,938/- .

6. Perusal of the impugned order indicates that the order passed by this Court was brought to the notice of the Collector.

7. In our view, this order is clearly in violation of the directions

given by this Court in Writ Petition No. 3157 of 2016 and, therefore, the order will have to be set aside. The Collector shall issue a fresh show cause notice to the Petitioners. However, the Divisional Commissioner, Konkan Division shall give notice to the Petitioners and after giving personal hearing and supplying them the documents, which are demanded by them, adjudicate the issue expeditiously on merits and in accordance with law. Writ petition is allowed and disposed of in the aforesaid terms. It is clarified that we have not decided the petition on merits and all the contentions raised by the parties are kept opened. In this case, if any adverse order is passed, no coercive steps shall be taken by the Respondents for a period of four weeks thereafter.

M.S. KARNIK, J.

V.M. KANADE, J.