

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Amk

WRIT PETITION NO. 10203 OF 2013

Viom Networks Ltd.

.. Petitioner

Vs.

The State of Maharashtra & Anr.

.. Respondents

Mr. Hiten Shyamrao Venegaonkar for the Petitioner.

Mrs. M. P. Thakur, AGP for the Respondent No.1.

Mr. N. R. Bubna for the Respondent No.2.

CORAM : **A.S. OKA &**
C. V. BHADANG, JJ.
DATE : **7th JANUARY, 2016.**

P.C.

1. Heard learned Counsel for the petitioner. The petitioner has erected an antenna and a temporary cabin on the building of the Ekdant Co-operative Housing Society Ltd. A Notice dated 24th February, 2011 under Section 260(1)(2) of the Maharashtra Municipal Corporations Act, 1949 (for short 'MMC Act') was served in respect of the said antenna and temporary cabin. The order dated 5th April, 2011 was passed by the Assistant Commissioner of the second respondent Municipal Corporation. The said order records that a representative of the petitioner was present along with the representative of the Ekdant Co-operative Society. The said order holds that a development permission for erection of the antenna and temporary cabin was not produced. Therefore, the Assistant Commissioner directed the demolition of the structure. Thereafter, by a communication dated 2nd July,

2013 addressed to the petitioner and the Secretary of the said society, the Assistant Commissioner directed them to remove the antenna and temporary cabin. By a letter dated 5th July, 2013 again an opportunity of being heard was sought by the petitioner by making an application to the Municipal Corporation. By a communication dated 20th September, 2013, the Municipal Corporation expressed inability to give hearing to the petitioner as the order of demolition was already passed after giving hearing.

2. The challenge in this petition under Article 226 of the Constitution of India is to the order dated 5th April, 2011, the notice dated 2nd July, 2013 and the communication dated 20th September, 2013.

3. Learned Counsel appearing for the petitioner submitted that the order of removal of antenna and temporary cabin is on the erroneous ground that the antenna is releasing electro magnetic signals which is adversely affecting the health of the citizens. He submitted that there is no basis for the said finding. He urged that on 10th January, 2011 an application dated 3rd January, 2011 under Section 44 of the Maharashtra Regional and Town Planning Act, 1966 (for short 'MRTP Act') was made for grant of permission to erect antenna and temporary cabin. He submitted within the statutory period of 60 days, the said application was neither rejected nor granted by the Municipal Corporation and, therefore, the development permission is

deemed to have been granted. He, therefore, urges that even otherwise, the finding that the construction was made without obtaining development permission is erroneous.

4. We have carefully considered the submissions. Even assuming that the application for development permission for erection of antenna and temporary cabin under Section 44 of the MRTP Act was made by the petitioner on 10th January, 2011, the statutory period of 60 days would have been completed on 8th March, 2011. However, the antenna and temporary cabin was very much in existence in February, 2011 as a notice under Section 260 of the MMC Act was admittedly issued on 29th February, 2011. In paragraph 12 of the petition, the service of the said notice in February, 2011 has been admitted. It is contended that at the time of the hearing based on the said notice, an officer of the petitioner was deputed to make a submission that there was a deemed permission.

5. It is not the case of the petitioner that though notice calling upon removal of the antenna and temporary cabin was served in February, 2011, the erection of antenna and temporary cabin was not made as on that date. Thus, the antenna and cabin were erected by the petitioner before completion of the period of 60 days from 10th January, 2011. Hence, the plea of deemed permission is not available to the petitioner. Hence, the only

conclusion which can be drawn is that though the petitioner was fully aware of the requirement of obtaining a permission under the MRTP Act for erection of antenna and cabin, the same was erected without obtaining such permission. Even after passing a reasoned order of demolition on 5th April, 2011 by a notice dated 2nd July, 2013, the petitioner was again called upon to remove the antenna and cabin. Therefore, the erection of antenna and temporary cabin is illegal.

6. Therefore, it is not necessary to consider the other contention based on the findings regarding causing health hazard to the petitioner.

7. Hence, the petitioner has no case as it is established that the petitioner erected the antenna and cabin without obtaining permission. The petition is rejected. There will be no order as to costs.

(C. V. BHADANG, J.)

(A.S. OKA, J.)