pmw

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.4050 OF 2014 WITH
WRIT PETITION NO.2592 OF 2017 WITH
CIVIL APPLICATION NO.794 OF 2017

Indus Towers Limited … Petitioner
Vs.
Bhiwandi Nizampur Municipal Corporation and Ors. … Respondents

Mr. A.V. Anturkar, Senior Advocate i/by Mr. Sugandh B. Deshmukh for the Petitioner.

Mr. N.R. Bubna for the Respondent Nos.1 to 4.

CORAM : A.S. OKA &
SMT. VIBHA KANKANWADI, JJ.

DATE : 3rd AUGUST, 2017

P.C.

1 By these Petitions under Article 226 of the Constitution of India, the challenge is to the demands made by the first respondent – Municipal Corporation of penalty under Section 267A of the Maharashtra Municipal Corporations Act, 1949 (for short "the said Act"). The demands subject matter of Writ Petition No.2592 of 2017 have been made by way of Exhibits – G-1 to G-50 and the demands subject matter of challenge in Writ Petition No.4050 of 2014 have been made by way of Exhibits – D to D-49.

2 We may note here that in the impugned demands, there is also a demand for taxes. These Petitions are confined only to the demand of penalty under Section 267A and interest thereon.

3 The learned counsel appearing for the first respondent has placed on record a letter dated 1st August, 2017 addressed to him by the first respondent informing that the first respondent – Municipal Corporation will raise demand for penalty and interest, if any, after following due procedure and therefore, the impugned demands will not be acted upon.

4 A Municipal Corporation established under the said Act has power to recover penalty under Sub-Section (1) of Section 267A. Sub-Section (2) thereof provides that penalty payable under Sub-Section (1) shall be determined and collected under the provisions of the said Act, as if the same was a property tax due.

5 Chapter VIII of the Schedule to the said Act contains Taxation Rules. Elaborate provisions have been made regarding levy of property taxes. In view of Sub-Section (2) of Section 267A, the Municipal Corporation will have to issue notices as contemplated by

Rule 15 and if complaints are filed by the petitioners within 21 days from the receipt of the assessment notices, the said complaints will have to be heard in the manner laid down in the Taxation Rules.

6 In view of the statement made by the learned counsel appearing for the first respondent – Municipal Corporation, it is not necessary for us to go into the wider issue of availability of a statutory remedy to the petitioner for challenging the demand of penalty under section 267A. Hence, we pass the following order :-

ORDER

(i) The impugned bills/demands subject matter of these petitions only in relation to the demands of penalty under Section 267A and interest thereon stand quashed and set aside. We clarify that no adjudication is made on the legality and validity of the other demands made by the impugned bills;

(ii) It will be open for the first respondent – Municipal Corporation to demand penalty amounts in accordance with the provisions of Section 267A after determining the same as if it were property taxes. The Municipal Corporation shall follow the procedure laid down by the Taxation Rules and in particular from Rule 15 onwards;

(iii) We direct the authorised representatives of the petitioner to remain present in the office of the Municipal Commissioner on 1st September, 2017. The Municipal Corporation shall serve notices as required by Rule 15 of the Taxation Rules to the authorised representative of the petitioner;

(iv) If the petitioners file complaints within 21 days from the date of receipt of the notices, the complaints shall be disposed of by following the procedure laid down in the Taxation Rules;

(v) We make it clear that we have made no adjudication on the issue whether the petitioner is liable to pay penalty and/or interest thereon. The question is left open to be decided by the Appropriate Authority;

(vi) The petitions are disposed of on above terms;

(vii) All concerned to act upon an authenticated copy of this order;

(viii) Pending Civil Applications do not survive and the same are disposed of.

(SMT. VIBHA KANKANWADI, J) **(A.S. OKA, J)**