IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1636 OF 2017

Reliance Communication
Ltd. & Others .. Petitioners.
Vs.
Thane Municipal
Corporation & Others .. Respondents.

Mr. Venkatesh Dhond, Senior Advocate with Mr.Sarosh Bharucha i/b. H. Rahman for the petitioner.
Mr. R.S. Apte, Senior Advocate with Mr.N.R. Bubna for the respondents.

CORAM : M. S. SANKLECHA &
A.K. MENON, JJ.

DATED : 23RD FEBRUARY, 2017

P.C. :

1. This petition challenges a demand notice dated 6th January, 2017 issued by respondent no.1 - corporation seeking to recover an amount of Rs.21.72 crores being the property taxes payable in respect of Mobile Towers. The impugned demand notice has been issued for property taxes under Maharashtra Municipal Corporation Act, 1949 (Act).

2. The fundamental issue with regard to leviability of tax on mobile towers now stands concluded in favour of the respondent – corporation by decision of the Supreme Court in Ahmedabad Municipal Corporation vs. GTL Infrastructure Ltd. and Others (Civil Appeal No.5360-5363 of 2013) decided on 16th

December, 2016.

3. The petitioners grievance as articulated before us is that the procedure with regard to raising and issuing demand notices have not been followed by the respondent corporation. This in view of the fact that there was no service of special notice to enable the petitioners to file a complaint. Thus making the demand notices without jurisdiction.

4. The respondents have filed an affidavit in reply of Mr.Omprakash Divate dated 11th February, 2017 pointing out that the petitioners had earlier filed a petition being Writ Petition No.3140 of 2012 challenging demand notices and action for recovery of property tax in respect of mobile towers within jurisdiction of the respondent – corporation. This Court by the order dated 30th April, 2013 refused to entertain the petition and relegated the petitioner to availing the statutory remedy of appeal under Section 406 of the Act. Further, it appears that the petitioners did not file any statutory appeal consequent to the order of this Court dated 30th April, 2013 in Writ Petition No.3140 of 2012 but appealed against the same to the Apex Court. However the order dated 30th April, 2013 of this Court was confirmed by the Apex Court. The affidavit also in terms states that the petitioners were also served with the demand notices/bills for the year 2011-12 and 2012-13 and the same are part of Writ Petition No.3140 of 2012 filed by the petitioners. The bills for the year 2013-14 were

served upon the petitioners by registered post and acknowledgment of receipt on behalf of the petitioners is also annexed as Exhibit-1 to the affidavit in reply. Similarly, bills for year 2014-15 were sent by registered post on 3rd July, 2015 and receipt of same by the petitioners is duly acknowledged and annexed as Exhibit-2 to the affidavit in reply.

5. During course of hearing before us Mr.Apte, learned senior counsel for the respondents further relied upon compilation of documents, a copy of which was served on the petitioners, in support of his contention that subject notices were served upon the petitioners and petitioners had attended personal hearing. However, Mr.Dhond, learned senior counsel appearing for the petitioners seriously contests the same and interalia places reliance upon the affidavit in rejoinder dated 16th February, 2017. We note that this requires a fact finding exercise. This we are not inclined to do in our writ jurisdiction as an efficacious alternate remedy by way of statutory appeal is provided under Section 406 of the Act. The petitioner could well raise all legal and factual contentions in the appeal, if filed.

6. In the above view we do not entertain present petition. Petition is dismissed.

(A.K. MENON,J.) **(M. S. SANKLECHA,J.)**