IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3288 OF 2017

ATC Telecom Tower Corporation Pvt. Ltd. .. Petitioner
Vs
Mira Bhayandar Municipal Corporation & Ors. .. Respondents

WITH
WRIT PETITION NO.3287 OF 2017

ATC Telecom Infrastructure Pvt. Ltd. .. Petitioner
Vs
Mira Bhayandar Municipal Corporation & Ors. .. Respondents

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Mr. Venkatesh Dhond, Senior Advocate a/w Mr. Siddhartha Srivastava, Mr. Ankit R. Kothari and Mr. Amit Khairnar i/b. Link Legal India Law Services for the Petitioner in both the WPs'.
Mr. N. R. Bubna for the Respondent Nos. 1, 2 and 4.

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

DATE : 02/08/2017.

P.C. :

1] In both these Writ Petitions under Article 226 of the Constitution of India, the challenge by the Petitioner is to the demand of penalty in the bills issued by the First Respondent Municipal Corporation (Exh. B to B25 in Writ Petition No. 3288 of 2017) (Exh. C to C17 in Writ Petition No. 3287 of 2017). The learned senior counsel appearing for the Petitioner states that challenge to these bills is confined only to the demand for penalty and interest, if any, claimed thereon. The penalty is purportedly claimed in exercise of the powers under Section 267-A of the Maharashtra Municipal Corporations Act, 1949 (for short “the Said Act”).

2] The first submission made by the learned senior counsel appearing for the Petitioner is that going by sub-section 2 of Section 267-A, before penalty and consequential interest thereon is demanded, the procedure which is prescribed for determination of property taxes under the provision of the said Act will have to be followed. Our attention is invited to taxation Rules forming part of Chapter VIII of Schedule (D) to the said Act and in particular Rules 12 onwards of the said Rules. The learned senior counsel for the Petitioner submitted that though a statement has been made in the reply filed by the Municipal Corporation that the procedure contemplated by the said Act has been followed by giving special notices, no such document is produced by the Municipal Corporation. He also invited our attention to statement made in the rejoinder on oath that no special notice in relation to the penalty has been served to the Petitioners.

3] The learned counsel appearing for the First Respondent Municipal Corporation submitted that as held by this Court, remedy of preferring appeal for challenging demand of penalty under Section 267-A is also available. He submitted that in the facts of this case, the Municipal Corporation is willing to follow the requisite procedure so that the Petitioner can be given an opportunity of filing complaints as provided in Rule 15 of the Taxation Rules. We may note here that in view of the aforesaid submission made on behalf of the Municipal Corporation, we are not going to the question whether a reference is required to made to a larger Bench on the issue of availability of a remedy under Section 406 of the said Act for challenging the demand for penalty.

4] Considering the aforesaid submissions, we dispose of the petition by passing the following order:-

<u>O R D E R</u>

a) We direct the authorized representatives of the Petitioners to remain present before Deputy Municipal Commissioner (Head Quarters) of the First Respondent Municipal Corporation on 1st September 2017 at 11.00 am. The Petitioner shall produce an authenticated copy of this order on that date;

b) If according to the 1st Respondent, Special Assessment Notices in relation to demand for penalty under Section 267-A have been already issued, copies thereof shall be furnished to the representatives of the Petitioners on that date. If such Special Assessment Notices have not been issued, the same shall be issued and copies thereof shall be served on the representatives of the Petitioners on the date fixed for appearance. Within a period of 21 days from 1st September 2017, it will be open for the petitioners to file complaints as provided in Rules 15 read with 16 of the taxation Rules;

c) If complaints are filed as aforesaid, the same shall be investigated and heard as provided in Rules 17 and 18 of the Taxation Rules. Thereafter, it will be open for the 1st Respondent Municipal Corporation to issue fresh bills in respect of demand of Penalty under Section 267-A of the said Act along with interest payable thereon, if any;

d) In view of the aforesaid direction, the demand made under the impugned bills to the extent of the penalty under Section 267-A and interest, if any, thereon shall be inoperative and shall not be enforced. We, however, make it clear that we have made no adjudication on legality and validity of the other demands made by the impugned bills and the said demands continue to be valid unless set aside by appropriate forum;

e) The petitions are disposed of on above terms. All concerned to act upon on an authenticated copy of this order;

f) We make it clear that we have made no adjudication on the issue whether the Petitioners are liable to pay any penalty.

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