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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3367 OF 2017

ATC Telecom Infrastructure Private Limited ..Petitioner
Versus
Nashik Municipal Corporation & Ors. ..Respondents

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Mr. Akshay Kolse-Patil a/w Siddhartha Srivastava, Ankit Kothari and Amit Khairwar i/b. Link Legal India Law for the Petitioner.
Mr. Murlidar Patil a/w Rupesh R. Lanjekar for Respondent nos.1 to 3.

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

DATE : 21st MARCH, 2017

P.C.

1. This petition was mentioned yesterday for urgent reliefs. This in view of the fact that the respondent no.1-corporation had sealed 15 mobile towers on 18th March, 2017 for alleged failure to pay the property taxes. It was kept on board today for admission after notice to respondent-Corporation.

2. This petition under Article 226 of the Constitution of India challenges:

(a) the sealing of 15 mobile towers as well as disconnecting the electric supply to the sealed mobile towers;

(b) the property tax bills annexed to the petition at Exhibit B to B-17 and

E to E-24 along with the final notices annexed to the petition at Exhibit D to D-40.

This, inter alia, on the ground that the petitioner has failed to pay the property taxes as well as penalty under the Maharashtra Municipal Corporation Act (the Act).

3. The only provision under the Act which provides the manner in which the corporation could recover the property taxes is found in Section 128 of the Act. For ease of reference the same is reproduced here:-

> *"128. Manner of recovering municipal taxes.*
> *A municipal tax may be recovered by the following processes in the manner prescribed by rules: –*
> *(1) by representing a bill,*
> *(2) [***],*
> *(3) by distraint and sale of a defaulter's movable property,*
> *(4) by the attachment and sale of a defaulter's immovable property,*
> *(5) in the case of octroi and toll, by the seizure and sale of goods and vehicles,*
> *(6) in the case of property tax by the attachment of rent due in respect of the property,*
> *(7) by a suit."*

4. The Taxation Rules as provided in Chapter VIII of Schedule D to the Act(Rules) also does not in terms indicate any power in the Respondent-

Corporation to seal the defaulting property and disconnect the electric supply to it for recovery of property taxes.

5. As none of the aforesaid provisions in the Act and the Rules indicate any power in the corporation to seal the defaulting property and/or disconnect the supply of electricity to the defaulting property, we asked Mr. Patil the learned counsel of the Corporation, the source of its power to seal the property and disconnect electricity supply to be defaulting property. Mr. Patil, the learned counsel appearing for the Corporation did concede there is no specific power in the Act and/or the Rules which entitles the Corporation to seal and disconnect the electric supply to the defaulting property. He submits that it is incidental to the Corporation's power to sell the property under Rule 47 of the Rules after attachment under Section 42 of the Rules. In this case there has been no attachment of the defaulting property, so no question of any sale or exercise of incidental power can arise. In any event, a power to seal and disconnect electric supply is a very drastic power which would make defaulting property unusable only because the property taxes have not been paid. The action of sealing the defaulting property and cutting of its electric supply is consequently without jurisdiction as it is not supported by any provisions of law. The Act and the Rules thereunder provides the manner in which the property taxes in respect of the property is to be recovered by

the Corporation and the Corporation and its officers are bound to strictly follow the provisions of the Act and Rules and not read into the provisions/powers which are not explicitly found in the statute so as to clothe themselves with powers which they do not possess.

6. In the above view, the impugned sealing of the 15 mobile towers as well as disconnecting of electric supply by the respondent no.1-Corporation is completely without jurisdiction. In the above view, we direct the corporation to forthwith reconnect the electric supply as well as de-seal the subject 15 mobile towers. The same should be done latest by this evening.

7. So far as the petitioners challenge with regard to the impugned property bills at Exhibit B to B-17 and E to E-24 and the final notice annexed at Exhibit D to D-40 are concerned, we note that the petitioners have filed representations on 6th March, 2017 and 14th March, 2017 with the respondent no.1 corporation. The communication dated 6th March, 2017 is the petitioners representation on why the demand for property taxes made by the corporation in the impugned property tax bills and final notices are not warranted. The representation dated 14th March, 2017 merely seeks a breakup of the alleged arrears of property taxes payable by the petitioners. Mr. Patil on instructions states that the breakup of the arrears of property taxes in the form of bills issued will be handed over to

the petitioner's representative, if he visits the office of Mr. Rohidas Dorkulkar, Dy. Commissioner, Tax and Valuation Department at 4.00 p.m. on 24th March, 2017. So far as the representation dated 6th March, 2017 is concerned, the respondent corporation will hear the petitioners on the same and dispose of the petitioners representation in accordance with law. It is agreed between the parties that Mr. Rohidas Dorkulkar, Deputy Commissioner-Tax and Valuation Department, would hear the petitioners on the representation dated 6th March, 2017 on 29th March, 2017 at 4.00 p.m.

8. The petitioners have undertaken to pay the undisputed amount of property taxes of Rs.47 lakhs on or before 28th March, 2017. Needless to say that till such time the Deputy Collector-Assessor disposes of the petitioners representation dated 6th March, 2017, the corporation will not not act further upon the impugned property bills and final notices.

9. In the above view, nothing now survives in this petition. Therefore, petition is disposed of in above terms. No order as to costs.

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