

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.4254 OF 2017

Indus Towers Ltd.,
A Company incorporated under the
Companies Act, 1956 and its registered
office at Bharti Crescent, 1, Nelson
Mandela Road, Vasant Kunj Phase II,
New Delhi-110070 and having its office
at Skyline Icon, 3rd Floor, Near Mittal
Industrial Estate, Andheri-Kurla Road,
Andheri (East), Mumbai – 400 059.] ... Petitioner

Vs.

1. Mira-Bhayandar Municipal Corporation,
having its office at Mira-Bhayandar
Municipal Corporation, Chatrapati Shivaji
Maharaj Marg, Bhayander (West),
Thane 401101.
2. The Municipal Commissioner,
Mira-Bhayandar Municipal Corporation,
having his office at Mira-Bhayandar
Municipal Corporation, Chatrapati Shivaji
Maharaj Marg, Bhayandar (West),
Thane 401101.
3. Assistant Director, Town Planning,
Mira-Bhayandar Municipal Corporation,
having his Head Office at Chatrapati
Shivaji Maharaj Marg, Bhayandar (West),
Thane 401101.
4. The Assessor & Tax Collector,
Mira-Bhayandar Municipal Corporation,
Having his office at next to Rasaj Talkies,
Mira Road (East), Thane 401101.
5. State of Maharashtra,
Through the Secretary,

- Urban Development Department,
Mantralaya, Mumbai.]
]
]
6. The Registrar,
Small Causes Court, Mumbai,
having his office at Small Causes Court,
Mumbai 400001.]
]
]
7. The Manager,
HDFC Bank, Fort Branch,
Nanik Motwane Marg,
Fort, Mumbai 400023.] ... Respondents

Mr. Janak Dwarkadas, Senior Counsel, a/w. Mr. Amit Jamsandhekar,
Mr. Prasad Dhande, Mr. Toufiq Kapadia and Mr. Amit Khairnar, i/by M/s.
Link Legal India Law Services, for the Petitioner.

Mr. N.R. Bubna for Respondent Nos.1 to 4-Municipal Corporation.

Ms. R.A. Salunkhe, A.G.P., for the Respondent-State.

**CORAM : NARESH H. PATIL &
DR. SHALINI PHANSALKAR-JOSHI, J.J.**

DATE : 4TH MAY 2017.

ORAL JUDGMENT : [Per Naresh H. Patil, J.]

1. Rule. Rule made returnable forthwith. Heard learned counsels for the respective parties.

2. On 6th April 2017, the Division Bench of this Court, [*Coram : M.S. Sanklecha & S.C. Gupte, J.J.*], has passed the following order in Civil Writ Petition No.3211 of 2017 :-

- “ This petition challenges the notice dated 8 February 2017 (Exhibit-C to the Petition) demanding penalty (shasti) and interest under the Maharashtra Municipal Corporations Act, 1949 (Act) and Rules thereunder relating to property taxes. The impugned communication also records that “as per the writ petition filed by you in Bombay High Court, you have paid the property tax bills excluding Shasti and interest amount”.*
- 2 Mr. Bubna, learned Counsel appearing for the Corporation, on instructions, states that the impugned notice dated 8 February 2017 is withdrawn by Respondent No.1 Corporation.*
- 3 In view of the above observation, as quoted hereinabove, found in the impugned notice, the Respondent corporation will not take any action against the Petitioner in respect of nonpayment of any property tax bills and/or penalty and/or interest unless it gives a clear 72 hours notice to the Petitioner of the action it proposes to take along with copies of the bills which have been issued and which, according to the Corporation, are still payable. In view of the impugned communication being withdrawn by the Corporation, we have had no occasion to examine the merits of the Petitioner's grievance.*
- 4 The petition is disposed of in above terms. In view of the disposal of the petition, the civil application does not survive and the same also stands disposed.”*

3. The Petitioner, thereafter, filed the present Petition. On 7th April 2017, the Division Bench of this Court, [Coram : M.S. Sanklecha & S.C. Gupte, J.J.], has passed the following order in the present Petition:-

- “ Not on board. Mentioned for urgent reliefs. Upon mentioning, taken up for consideration. Respondents are represented after notice. The Petitioner undertakes to remove the office objections by 10th April, 2017.
- 2 This Petition challenges the action of the Respondent-Corporation, seeking to recover the penalty and interest, relatable to property taxes. This coercive action by the Corporation is evident, by it handing over letter dated 31st March, 2017 addressed to the Registrar, Small Causes Court and the Branch Manager, HDFC Bank, seeking to recover the outstanding dues. In fact, a copy of the aforesaid communication dated 31st March, 2017, was delivered to the Petitioner at 4.45 p.m. on 6th April, 2017.
- 3 In fact, the Petitioner had earlier filed Writ Petition No.3211 of 2017, challenging a notice dated 8th February, 2017 (being Exhibit C thereto), seeking to recover penalty and interest which was allegedly not paid by the Petitioner. This after recording that the property taxes have been paid. The above Writ Petition No. 3211 of 2017 was on board, yesterday, at that time, the Respondent withdrew the impugned notice dated 8th February, 2017. It was also agreed by

Respondent-Corporation that if it takes any action against the Petitioner for recovering its dues, a clear notice of 72 hours would be given to the Petitioner, informing it of its proposed action. This is particularly so as the Petitioner is apprehensive that the withdrawal of the impugned notice by the Respondent-Corporation was with some ulterior motive. The order indicating the above was dictated in Court in the presence of the learned Counsel for the Respondent-Corporation yesterday. However, it has yet to be uploaded.

- 4 Prima facie, we are of the view that the action of the Respondent-Corporation in serving notices dated 31st March, 2017 to the Registrar, Small Causes Court & HDFC Bank with a copy of the aforesaid communication also being given to the Petitioner yesterday at 4.15 p.m. after the Petition No.3211 of 2017 was disposed of, was entirely uncalled for. In the circumstances, we grant ad-interim relief in terms of prayer clauses (d) and (e), while fixing the Petition for admission on Monday, the 10th April, 2017.*
- 5 Before the next date, the Respondent-Corporation should put on record the manner, the date and time, the notice dated 31st March, 2017 was delivered to the Registrar, Small Causes Court and to the HDFC Bank. It is pertinent to note that at the time when the order was passed yesterday, the Court was not informed that the process of issuing of the above notice to the Bank and the Registrar of Small Causes Court had already commenced/started.*

6 *Respondent No.4 Assistant Assessor & Collector should also be present in Court on Monday, the 10th April, 2017.*

Stand over to 10th April, 2017.”

4. Mr. Bubna, learned counsel appearing for the Respondent-Municipal Corporation, on instructions, submits that in respect of the subject bills demanding penalty (*shasti*), the Petitioner will be heard afresh by the appropriate authority, designated for the said purpose by the Respondent-Municipal Corporation and a decision will be taken thereafter by the Respondent-Municipal Corporation, which would be communicated to the Petitioner.

5. Mr. Dwarkadas, learned Senior Counsel appearing for the Petitioner, submits that the Petitioner is raising issues that; (i) in some cases, there was a deemed permission for erecting the towers; (ii) in some cases, the applications for regularization are still pending; and (iii) in some cases, actual permission to erect the towers was granted.

6. While hearing the Petitioner and taking the decision, the Respondent-Municipal Corporation would consider these instances so that further litigation on the similar issues would be avoided. We expect

the Respondent-Municipal Corporation to take appropriate view of the matter.

7. The learned counsel appearing for the Respondent-Municipal Corporation submits that, within a period of eight weeks from today, this exercise will be completed and the decision would be communicated to the Petitioner by passing a brief reasoned order.

8. We direct that, in case the decision taken by the Respondent-Municipal Corporation is adverse to the Petitioner, the same shall not be effected without giving 72 hours clear notice to the Petitioner.

9. In view of the above, the Respondent-Municipal Corporation shall not resort to the coercive methods in respect of the subject matter till the decision is taken on the issues raised by the Petitioner.

10. Rule made partly absolute in the above terms.

[DR. SHALINI PHANSALKAR-JOSHI, J.] [NARESH H. PATIL, J.]