IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2337 OF 2015

ATC India Tower Corporation. ...Petitioner
Vs.
1.Pune Municipal Corporation & Ors. ...Respondents
with
Civil Application No.1014 of 2018

Mr.Hafeezur Rahman,for the Petitioner.

CORAM : NARESH H. PATIL, C.J.
& G.S. KULKARNI, J.

DATE: 30th OCTOBER, 2018.

<u>P.C.</u>

1. Heard the learned Counsel for the petitioner.

2. This petition which was filed on 4 March 2015. The substantive prayers as made in the petition are as under:-

> "(a) That this Hon'ble Court do declare that the Respondents are not entitled to levy or demand any property taxes on the telecommunication sites of the Petitioners;
>
> (b) Pass an appropriate writ, order or direction declaring that the Respondents have no legislative competence to levy tax pertaining to telecommunications towers;
>
> (c) That this Hon'ble Court do issue a Writ of Certiorari or a

> Writ in the nature of Certiorari or any other appropriate writ, order or direction calling for the records pertaining to the impugned demand at Exhibits 'B-1 to B-8' hereto and after going through the legality or otherwise thereof, do quash and set aside the same;"

3. The issue as raised by the petitioner is no more *res integra* in view of the decision of the Supreme Court in "***Ahmedabad Municipal Corporation Vs. GTL Infrastructure Ltd. & Ors.***"[1] in which the Supreme Court interpreting the provisions of the Gujarat Provincial Municipal Corporation Act,1949, has held that the mobile towers would fall within the definition of "land" and "building" as defined under the Act and for the Municipal Corporation to enable to levy tax thereon. The Court in paragraph 32 has observed thus:-

> "32. Viewed in the light of the above discussion, if the definition of "land" and "building" contained in the Gujarat Act is to be understood, we do not find any reason as to why, though in common parlance and in every day life, a mobile tower is certainly not a building, it would also cease to be a building for the purposes of List II Entry 49 so as to deny the State Legislature the power to levy a tax thereon. Such a law can trace its source to the provisions of Schedule VII List II Entry 49 to the Constitution."

4. In view of the above authoritative pronouncement of the Supreme Court, we are of the opinion that the reliefs as prayed by the

1 2017(3) SCC 545

petitioner cannot be granted.

5. We however clarify that if the petitioner has any grievance in regard to the bills which are issued, it will be open for the petitioner to avail of statutory remedies as available under the law.

6. The Writ Petition is accordingly disposed of in the above terms. No costs.

7. As the Writ Petition is disposed of, the pending Civil Application No.1014 of 2018 does not survive. It is accordingly disposed of.

(G.S. KULKARNI,J.) **(CHIEF JUSTICE)**