

Sharayu Khot.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3125 OF 2018

Vodafone India Limited

...Petitioner

Versus

State of Maharashtra & Ors.

...Respondents

Mr. P.K. Dhakephalkar, Senior Advocate, i/by Mr. Punit B. Anand and Mr. Siddharth Rajamohan, for the Petitioner.

Mrs. R.A. Salunkhe, AGP, for the Respondent No. 1.

Mr. A.S. Rao, for the Respondents No. 2 to 4.

**CORAM : ABHAY S. OKA AND
RIYAZ I. CHAGLA, JJ.**

DATE : 16 April 2018

ORDER :

1. Heard the learned Senior Counsel appearing for the Petitioner, the learned Counsel appearing for the 2nd to 4th

Respondents and the learned AGP appearing for the 1st Respondent.

2. The Petitioner has tendered an undertaking of Shri. Rajinikandh ARS, General Manager-Legal and Constituted Attorney of the Petitioner. The undertaking has been filed on behalf of the Petitioner. A true copy of the Power of Attorney executed by the Petitioner Company appointing Shri. Rajinikandh ARS as their Constituted Attorney is annexed to the Affidavit. Paragraph 2 of the said Undertaking reads thus:-

“I say that in compliance with the oral undertaking given before the Hon'ble Court on 09-03-2018, the Petitioners in compliance thereof, file this written undertaking in this behalf in this Hon'ble Court and hereby undertake that the Petitioner Company will henceforth ensure compliance with the provisions contained in the (i) Mumbai Municipal Corporation Act, 1888; (ii) The Maharashtra Municipal

Corporation Act, 1949; (iii) The Maharashtra Municipal Councils, Nagar Panchayat and Industrial Townships Act, 1965 and (iv) The Maharashtra Regional and Town Planning Act, 1966, for erection of any cellular base station (mobile tower) comprising of fabricated iron structure with base, shelter room and DG set, in accordance with the prevailing law and with the permission of the appropriate authority, as set out therein.”

3. We accept the undertaking given therein as an undertaking of the Petitioner. The legal position as of today is very clear. The mobile tower/mobile antenna or cell phone tower and allied equipments cannot be erected without obtaining development permission under the provisions of the Maharashtra Regional Town Planning Act, 1966 (for short “**MRTP Act**”).)

4. Thus, now there is a solemn undertaking given by the Petitioner that the Petitioner will not erect the mobile antenna/mobile towers/cell phone antenna with the allied equipments within the areas to which the provisions of four Acts mentioned in paragraph 2 of the undertaking are applicable without obtaining development permission of the Planning Authority. We accept the said undertaking.

5. We direct the Urban Development Department of the State Government to forward to all the Municipal Councils and the Municipal Corporations as well as the other Planning Authorities a copy of the undertaking tendered today and a copy of this order. This exercise shall be made within a period of one month from the date on which this order is uploaded.

6. It is not in dispute that the mobile towers in respect of which the impugned notices have been issued have not been removed. The learned Senior Counsel appearing for the Petitioner states that the Petitioner will apply for regularization

of mobile towers and therefore, the towers may be protected. We accept the said statement. In view of what is stated above, we pass the following order:-

- (i) The undertaking of the Petitioner Company recorded in paragraph 2 of the Affidavit dated 16 April 2018 of Shri. Rajinikandh ARS (marked “U1” for identification) is accepted;
- (ii) Subject to what is observed above, we direct the Urban Development Department of the State Government to forward the copies of the said undertaking along with a true copy of this order to all the Planning Authorities in the State, the Municipal Councils and the Municipal Corporations within a period of one month from the date of this order is uploaded;
- (iii) It will be open for the Petitioner to apply for

regularization of the subject towers by making an Application through the Architect in prescribed form and by prescribed mode within a period of six weeks from today;

- (iv) If such Application is made within the stipulated period of six weeks, it shall be processed and shall be decided within a period of 60 days from the date of making of the Application;
- (v) The order passed on the Application shall be communicated to the Petitioner's Architect. Till the date of communication of the order to the Petitioner's Architect, an action of demolition on the basis of the impugned notices shall not be taken. In any event, if the order be adverse to the Petitioner, such action shall not be taken for a period of three weeks from the date on which the order is served to the Petitioner's Architect;

- (vi) We make it clear that we have made no adjudication on the merits of the regularization application proposed to be filed;
- (vii) On the failure of the Petitioner to apply for regularization within the period fixed as aforesaid, on expiry of the said period, the 2nd Respondent shall proceed to remove the towers without issuing any further notice to the Petitioner;
- (viii) The Petition is disposed of in the above terms.

[RIYAZ I. CHAGLA J.]

[ABHAY S. OKA, J.]