

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.3813 OF 2018

ATC Telecom Infrastructure Pvt. Ltd. ... Petitioner

Versus

Khopoli Nagar Parishad and Ors. ... Respondents

Mr. Hafeezur Rehman for the petitioner.

Mr. R.S. Datar for respondent nos. 1 and 2.

Mrs.Ashwini Purav, AGP for respondent no. 3.

**CORAM : SHANTANU KEMKAR &
SARANG V. KOTWAL, JJ.**

DATE : OCTOBER 01, 2018

P.C.:

Parties thorough their counsel.

2. Challenging the demand notice issued by the respondents to the petitioner regarding penalty and interest in respect of its mobile towers, the petitioner has filed this petition under article 226 of the Constitution of India.

3. According to learned counsel for the petitioner, the question involved in this petition has already been considered and decided by the Division Bench of this court in the case of Viom Infra Networks Maharashtra Ltd. Vs. Kalyan Dombivli Municipal

Corporation and Ors. in Writ Petition No. 11216 of 2011 and connected writ petitions decided on 7/5/2013 as also in the case of Writ Petition No. 4884 of 2018 decided on 18/6/2018.

4. It has been argued by the learned counsel for the petitioner that while imposing the penalty and levying interest, the procedure contemplated under section 189A of the Maharashtra Municipal Councils (Nagar Panchayats and Industrial Townships) Act, 1965 (for short “Act of 1965”) has not been followed. Learned counsel for the petitioner has referred to the observations made by the Division Bench of this court in *Viom Infra Networks Maharashtra Ltd. (supra)* in paragraph 12 and 13 which reads thus :

“12. It is true that Sub Section (2) of Section 267A of the said Act of 1949 provides that the penalty payable under sub section (1) shall be determined and collected under the provisions of the said Act of 1949, as if the amount thereof were a property tax due by such person. Thus, the procedure required to be followed before a bill of property tax is issued must be followed before a demand of penalty is made.

13. It is not the stand taken by the Municipal Corporations that the process of law as contemplated under sub section (2) of Section 267A of the said Act of 1949 has been strictly followed as far as determination of penalty is concerned. Moreover, there is no finding recorded by the Municipal Corporations that the Petitioners have unlawfully constructed a building or a part of the building as contemplated by the clauses (a) to (d) under Sub section (1) of Section 267A of the said Act of 1949 is of an amount equivalent to twice the property taxes leviable on such building. For levying penalty, the procedure contemplated under the provisions of the said Act of 1949 has not been followed.”

5. He submits that the provisions contained under section

189A of the Act of 1965 and section 267A of the Maharashtra Municipal Corporation Act, 1949 are *pari materia*.

6. On the other hand, learned counsel for the respondents has justified the impugned action.

7. Having considered the submissions made by the learned counsel for the parties and having gone through the aforesaid provisions of the Act of 1965 and Act of 1949, we find that both the provisions are *pari materia* and since the question regarding interpretation of Section 267A of the Act of 1949 has already been considered and decided by the Division Bench of this Court the petition deserves to be disposed of in the light of the decision in the case of Viom Infra Networks Maharashtra Ltd.

8. In the circumstances, since the respondents have not followed the procedure prescribed in imposing the penalty, the impugned demand notice deserves to be quashed and set aside.

9. We accordingly allow the petition to the extent in so far as penalty and interest is concerned and the same is to the extent of penalty and interest is set aside and quashed, however, with liberty to the respondents to initiate fresh action in regard to penalty and interest as provided under section 189A of the Act of 1965.

10. With the aforesaid directions and liberty, the petition is allowed to the extent as aforesaid.

(SARANG V. KOTWAL, J.)

(SHANTANU KEMKAR, J.)