

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO.2735 OF 2017

The Tata Power Company Ltd. & Anr. ...Petitioners

Versus

The State of Maharashtra & Ors. ...Respondents

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Mr. R.A. Dada, Senior Advocate with Mr. Bhushan Deshmukh, Mr. M.N. Vakil i/b. M/s. Mulla and Mulla and CBC for the Petitioners.

Smt. Geeta Shastri, AGP with Smt. Jyoti Chavan, AGP for the Respondent -State.

Mr. G.S. Hegde with Mr. C.M. Lokesh, Ms. J. Pandey i/b. M/s. A.R. Bhole and Co. for the Respondent Nos.2 to 5.

Mr. Sagar Patil for M.C.G.M.

**CORAM : RANJIT MORE AND
SMT. ANUJA PRABHUDESSAI, JJ.**

DATED: 7th FEBRUARY, 2018.

P.C.:-

Heard Mr. R.A. Dada, the learned senior counsel for the Petitioners, Mr. G.S. Hegde, the learned counsel for the Respondent Nos.2 to 5, Mr. Sagar Patil, the learned counsel for M.C.G.M. and Smt. Geeta Shastri, the learned AGP for the Respondent-State.

2. By this petition filed under Article 226 of the Constitution of India, the Petitioners are challenging the order dated 13th July, 2017 whereby the Under Secretary, Government of Maharashtra dismissed

the appeal challenging the levy of penalty for carrying out work beyond the plinth level without commencement certificate.

3. The record reveals that the Petitioners had filed an appeal under Section 47 of the M.R.T.P. Act, 1966, which was held to be not maintainable. Mr. Dada, the learned senior counsel for the Petitioners concedes that the said Appeal under Section 47 of the M.R.T.P. Act was not maintainable. He however, contends that the penalty imposed on the Petitioners was subject to the decision of the Urban Development Department (UDD) and therefore, the appeal filed by the Petitioners could have been considered as a representation. We agree with the submission of Shri Dada, the learned senior counsel for the Petitioners that the said appeal ought to have been considered as a representation and UDD ought to have taken appropriate decision instead of disposing of the same on technical grounds. The learned AGP submits that since the Petitioners have already deposited the amount of penalty and subsequently commencement certificate is also granted, let the Petitioners make fresh application to UDD and the same would be decided on its own merits. The statement is accepted.

5. In the light of above, we dispose of the Petition by passing following order:-

(i) The Petitioners are at liberty to file a fresh representation challenging levy of penalty for construction of transmission centre without having certificate of the Government of Maharashtra, UDD Department. In the event, such representation is filed within a period of four weeks from today, the Principal Secretary, UDD shall decide the same as expeditiously as possible and preferably within a period of 12 weeks from the date of filing of the same.

(ii) Needless to mention that Principal Secretary, UDD shall decide the representation of the Petitioners on its own merits in accordance with law and by giving an opportunity of hearing to all the concerned parties.

(SMT. ANUJA PRABHUDESSAI, J.)

(RANJIT MORE, J.)