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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION (L) NO.3777 OF 2017**

ATC Telecom Infrastructure P. Ltd.	... Petitioner
Vs.	
Mumbai Municipal Corporation and Ors.	... Respondents

Mr. Sanjay R. Haritwal for the Petitioner.
Ms. Kejali Mastakar for the Respondent – BMC.

**CORAM : A.S. OKA &
PN. DESHMUKH, JJ.**

DATE : 10th JANUARY, 2018

PC.

1 Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the Respondent Nos.1 to 4.

2 The petitioner is carrying on business of installing and leasing out Mobile antenna for telecommunication services. On 29th July, 2009 the petitioner made an application to the Executive Engineer of the Building Proposal Department of the first respondent – Municipal Corporation for regularisation of installation of antenna and temporary cabin on the site in question. A notice under Sub-Section (1) of Section 53 of the Maharashtra Regional and Town Planning Act, 1966 (for short

“the MRTTP Act”) was issued by the first respondent to the petitioner which was replied by the petitioner. On the basis of the said reply, an order was made on 12th December, 2017 by the first respondent holding that the petitioner has failed to produce any document showing authorisation for the roof top mobile tower. It is not in dispute that thereafter the tower has been dismantled.

3 The submission of the learned counsel appearing for the petitioner is that the application for grant of permission made on 29th July, 2009 was pending and therefore, pending the said application, the action of removal ought not to have been taken by taking recourse to the provisions of the MRTTP Act. Inviting our attention to the policy framed by the Ministry of Telecommunications and Information Technology of the Government of India effective from 1st August, 2013 and in particular clause (B) thereof, he submitted that sub-clause (VI) of clause (B) provides that any grievance made by the third party regarding illegal erection of mobile tower ought to have been forwarded to one of the Committees required to be constituted. He submitted that grievance regarding alleged illegality committed by the petitioner could have been considered only by the said Committee. He also invited our attention to the document on page 56. He submitted that the application made by the petitioner remained pending as certain

documents were not supplied. He submitted that as the application made by the petitioner is still pending, till the disposal of the said application, a permission may be granted to erect base station and tower. He submitted that the petitioner is even willing to make a fresh application for grant of development permission.

4 We have considered the submissions. As far as the law regarding erection of mobile antenna/ towers (Cell Site/ Base Station) are concerned, it is well settled. A development permission under the MRTP Act is necessary for erecting Mobile Tower/ Base Station. In fact the petitioner is relying upon the State Government Resolution dated 4th March, 2014 by which the State Government exercised powers under clause (c) of Sub-Section (1AA) of Section 37 of the MRTP Act and directed that notifications sanctioning Development Plans of Planning Authorities in the State shall stand amended by incorporating additional entry which incorporates Schedule A dealing with the regulation for setting up telecommunication network in the State. The said regulations itself lay down that permissions will have to be obtained under Sections 44 to 47 of the MRTP Act. In any case, the aforesaid work will fall within the definition of development within the meaning of MRTP Act.

5 We have carefully perused the application dated 29th July, 2009. The application clearly shows that it is not an application for grant of permission of installation of antenna and temporary cabin. It is an application for regularisation of installation of antenna and temporary cabin. The petitioner could have relied upon legal fiction under Sub-Section (5) of Section 45 provided regular application for development under Section 44 of the MRTP Act would have been made before installation of antenna and erection of temporary cabin. In the present case, application dated 29th July, 2009 is obviously made after erection of mobile tower as is clear from the subject mentioned in the application.

6 The other issue is of the alleged illegality on the part of the first respondent of removal of the structure. Reliance is placed on sub-clause (VI) of clause (B) of the policy of Government of India. Clause (VI) reads thus :-

“(VI) In order to effectively address Public Grievances relating to installation of towers and issues related to telecom infrastructure, State Governments may setup;

- State Level Telecom Committee (STC) consisting of officers from TERM Cells, State Administration, representative(s) of concerned Telecom Service Provider(s) and eminent public persons etc.

- District Level Telecom Committee (DTC) consisting of officers from District Administration, representative(s) of concerned Telecom Service Provider(s) and eminent public persons etc.”

7 On plain reading of sub-clause (VI), it is apparent that the policy does not take away the power of the Planning Authority under the MRTP Act. In any case, the provisions of the MRTP Act cannot be amended by a policy circular or policy guidelines. In the present case, after considering the reply filed by the petitioner to the notice under Sub-Section (1) of Section 53, a speaking order was passed by the designated officer of the Municipal Corporation. Even going by the case of the petitioner, without obtaining development permission, mobile antenna and other infrastructure was erected. The petitioner will not be entitled to the benefit of deeming provision. Moreover, the Municipal Corporation as a Planning Authority was well within its powers to remove the illegal structure by exercising the powers under the MRTP Act.

8 The learned counsel appearing for the petitioner states that the petitioner will make a fresh application for grant of permission and pending the grant of permission, the petitioner may be permitted to re-

erect of the antenna. Obviously, such a prayer cannot be granted as it will amount to doing violence to the provisions of Sections 44 and 45 of the MRTTP Act.

9 Hence, no relief can be granted in this Writ Petition.

10 Writ jurisdiction under Article 226 of the Constitution of India is always discretionary and equitable. Considering the conduct of the petitioner of erecting mobile tower and other infrastructure without obtaining permission of the Planning Authority, no relief can be granted in this Petition. Accordingly, we pass the following order :-

ORDER

- (i) Prayers made in this Petition are rejected;
- (ii) It will be open for the petitioner to make an application through a licensed architect in a prescribed format and by prescribed mode to the first respondent – Corporation for grant of permission. If such an application is made, the Municipal Corporation shall decide the same within a maximum period of 60 days from the date of making application;

(iii) We make it clear that unless permission is granted by the first respondent, it will not be open for the petitioner to erect antenna and temporary cabin;

(iv) Subject to the above directions, the Petition is rejected.

(PN. DESHMUKH, J)

(A.S. OKA, J)