

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2597 OF 2019

ATC Telecom Infrastructure Pvt. Ltd. ..Petitioner.
Versus
Baramati Nagar Parishad & Others. ..Respondents.

Mr. H. Rahman for the Petitioner.
Mrs. M. P thakur, AGP for the Respondent-State.
Mr S. R. Nargolkar and Ms. Sherrie Rebello for Respondent No. 2.

Coram : RANJIT MORE &
SMT. BHARATI H. DANGRE, JJ.
Date : **March 6, 2019.**

P. C. :

1. Heard the learned counsel for the respective parties.
2. Challenging the demand notice issued by the Respondents, regarding the 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 the 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 th case of Viom Infra Networks Maharashtra Ltd v. Kalyan Dombivli Municipal Corporation [Writ Petition No. 11216 of 2011, decided on 7th May 2013] as also in Writ Petition No. 4884 of 2018 decided on 18th June 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 & Industrial Townships) Act, 1965 [for short “the said Act of 1965”] has not been followed. The learned counsel for the Petitioner has referred to the observations made by the Division Bench of this Court in *Viom Infra (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 therefore were a property tax due by such persons. 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 a 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 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 Corporations Act [for short “the MMC Act”] are *pari materia*.

6. On the other hand, the learned counsel for the

Respondents have justified the impugned action.

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

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. We accordingly allow this petition in terms of prayer clause (a).

[SMT. BHARATI H. DANGRE, J.]

[RANJIT MORE, J.]