

Suresh

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 6294 OF 2014
WITH
CIVIL APPLICATION NO. 1717 OF 2014
IN
WRIT PETITION NO. 6294 OF 2014

ATC Telecom Tower	...Petitioner
<i>Versus</i>	
Mira Bhayandar Municipal Corporation & Ors	...Respondents

Mr Amit Khairwar, *with Prasad Dhandy, i/b DH Law Associates, for the Petitioner/Applicant.*
Mr NR Bubna, *for Respondents Nos. 1 to 3.*
Mr NK Rajpurohit, *AGP, for Respondent No. 4.*

CORAM: S. C. DHARMADHIKARI &
G.S. PATEL, JJ
DATED: 3rd September 2019

PC:-

1. After this writ petition was argued for some time, we have realized that the petitioner is aggrieved by certain Notices at Exhibits D to D6, which the petitioner terms as illegal actions by respondent Nos. 1 to 3. The illegal actions are disconnection of the electric supply to the telecommunication site set up by the petitioner in the Mira-Bhayandar Municipal Area. Secondly, there

are notices issued which, according to the petitioner, prevent the petitioner from continuing with these antennae at the site and providing telecommunication services. The petitioner says in the writ petition that it is in the business of providing infrastructure facilities to other telecom operators across the country. The petitioner says that the Ministry of Communications and Information Technology has issued a Registration Certificate under which the petitioner can set up or install infrastructure for cellular mobile telephone operators across the country. Thereafter the petitioner says that the cellular telephone system requires the installation of cell sites on the top of houses, known as Roof Top Towers, and in areas where there are no buildings, then on the open plot of land, known as Ground Based Towers. Through such towers, which are unmanned, services are provided to telecom service providers who in turn give connections to individual subscribers. Thus, the petitioner says that such an activity termed as controlled construction or redevelopment requires no development permission. The petitioner relies upon certain legal proceedings, including the one brought in this Court to submit that the Municipal Corporation insists that what the petitioner has done at site is without taking its permission as a Planning Authority and therefore the development or construction is unauthorized and illegal.

2. On perusal of the writ petition, the prayers and the annexures to the writ petition, we find that there are serious factual disputes. Whether the petitioner has any permission is doubtful. In the event the petitioner has applied for permission and that permission has not been granted, even that assertion is not an undisputed factual position. The Municipal Corporation has been insisting on removal

of all the cell towers simply because it says that there is no development permission obtained prior to their construction. Whether such permission was necessary and if necessary, but not obtained, and after the Notices were issued, could the Municipal Corporation in law consider the applications so that the towers are retained at site, or whether such applications though brought were kept in abeyance, are all matters which would need an in-depth adjudication. It is not possible for us to presume that the Municipal Corporation is sitting over any applications and not deciding them.

3. The petitioner has in the writ petition itself stated that it has entered into Leave and Licence/Equipment Agreements with the owners of buildings in the Mira-Bhayandar Municipal Area for the roof top/terrace areas on which such antennae and equipments are placed and as an abundant precaution, also applied for permission to do so from the respondent/Corporation. This Leave and Licence Agreement is in relation to what the petitioner contends is its business activity and would require the owner or licensor of the immoveable property to grant a permission or licence and under that licence allow the licensee to carry out the activity of the nature stated by the petitioner. In the absence of the relevant documents, and to decide whether at all municipal permissions were necessary to be obtained, would require the petitioner to approach the competent Civil Court. We do not think that in the absence of all such details, such disputed questions as are presented before us can be resolved in our writ jurisdiction. Copies of the leave and license agreements are not annexed. Copies of the applications, if any, for municipal permissions are not annexed. Copies of the permissions

granted, if any, are not annexed. We are simply asked to presume that all this exists. We cannot.

4. We give for illustration a table or a chart annexed by the petitioner to the petition itself at Exhibit “C”, page 29 of the paper-book, which enlists certain buildings. But this list is not the subject matter of the petition, which impugns Exhibits D to D6; and at least one of the buildings or sites (at age 3, called “Achyut Niwas”) is not to be found in the list at Exhibit “C”.

5. The writ petition is dismissed.

6. In view of dismissal of the writ petition, Civil Application No. 1717 of 2014 preferred in the writ petition does not survive and it accordingly stands disposed of.

(S. C. DHARMADHIKARI, J)

(G. S. PATEL, J)