IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1940 OF 2018

Indus Towers Ltd.	}	**Petitioner**
versus		
Bhiwandi Nizampur City Municipal Corporation and Ors.	}	**Respondents**

Mr.A.V.Anturkar-Senior Advocate with Mr. S. B. Deshmukh for thepetitioners.

Mr.R.S.Apte-Senior Advocate with Mr.N.R.Bubna for respondent nos. 1 to 4.

CORAM :- S. C. DHARMADHIKARI &
G. S. PATEL, JJ.

DATED :- JULY 5, 2019

P.C. :-

1. On this writ petition, this court had passed detailed orders on 4th and 22nd April, 2019. The matter was listed thereafter on 12th June, 2019. On that date, Mr.Apte learned senior counsel appearing for the Bhivandi Nizampur City Municipal Corporation sought time to take instructions.

2. The grievance in the writ petition is that a penalty has been imposed invoking section 267A of the Maharashtra Municipal Corporations Act, 1949, but without any prerequisites being followed. Section 267A reads as under:-

> "267A. (1) Whoever unlawfully constructs or reconstructs any building or part of a building,—

(a) on his land without obtaining permission under this Act or any other law for the time being in force or in contravention of any condition attached to such permission;

(b) on a site belonging to him which is formed without approval under the relevant law relating to Regional and Town Planning ;

(c) on his land in breach of any provision of this Act or any rule or bye-law made thereunder or any direction or requisition lawfully given or made under this Act or such rule or bye-law; or

(d) on any land, belonging to, or leased by, the Corporation, or the Central or State Government, or any statutory corporation or organization or company set up by any such Government, in breach of any provision of this Act or of any other law for the time being in force and the rules or bye-laws made thereunder,

shall be liable to pay every year a penalty, which shall be equal to twice the property tax leviable on such building, so long as it remains as unlawful construction, without prejudice to any proceedings which may be instituted against him in respect of such unlawful construction:

Provided that, such levy and collection of tax and penalty shall not be construed as regularization of such unlawful construction or reconstruction for any period whatsoever of its such unlawful existence.

(2) Penalty payable under sub-section (1) shall be determined and collected under the provisions of this Act, as if the amount thereof were a property tax due by such person.

3. It is apparent from a reading of the same that this section provides for a levy of penalty on unlawful building. Now, the grievance was that the penalty has to be levied at such rate as may be decided by the Municipal Corporation. Absent a decision on the rate, no notice or order, much less levy of penalty can take place. It is on this short point we had directed Mr.Apte to take instructions.

4. Today, Mr.Apte places on record a communication dated 28th June, 2019 addressed to Mr.Bubna the advocate on record for the respondents, which clearly says that rates have not been fixed/ decided. Now, a proposal in that regard has been prepared and it will be placed before the General Body of the Municipal Corporation. It is only when the General Body takes a decision that the levy and collection can take place. Once we take this communication on record and which is clear, the petitioners need not apprehend any recovery in terms of the impugned orders dated 15th September, 2017 and 16th November, 2017. Once the orders levying penalty are flawed and there is no legal basis for the same, presently, these orders also do not survive. No penalty can be recovered unless compliance is made with the pre-conditions set out in the above provision.

5. The writ petition, therefore, succeeds in the light of the communication addressed to Mr.Bubna. We clarify that we have not examined the rival contentions and they can be raised at an appropriate stage in appropriate proceedings.

(G.S.PATEL, J.) **(S.C.DHARMADHIKARI, J.)**