

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 3609 OF 2019

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 the petitioners.

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. The petitioner has one more grievance and it says that a notice under section 267(1) of the Maharashtra Municipal Corporations Act, 1949 has been issued by respondent no. 1- Municipal Corporation on the assumption that the construction of mobile tower requires development permission under section 44 of the Maharashtra Regional and Town Planning Act, 1966. That such a mobile tower has been constructed unauthorisedly and illegally is, therefore, the allegation. This notice is dated 29th October, 2018, but the petitioner says that there was a prior notice of 17th October, 2018 and which also contains similar allegations. To that notice, which is at page 134 of the paper book, a detailed reply has been given on 29th October, 2018 by the

petitioner and a copy thereof has been also received by the Municipal Corporation. Yet, the second notice dated 29th October, 2018 has been issued and therefore, the grievance is that without the issue being determined and particularly without giving an opportunity to the petitioner to seek the relief in terms of sub-section (3) of section 53 of the Maharashtra Regional and Town Planning Act, 1966, the demolition is threatened. Thus, the provision, which enables seeking a relief of retention of development carried out at site, is also frustrated and deviated.

2. On a bare perusal of pages 134 to 137 of the paper book, it is clear that a reply was indeed given. Once the reply was given, then, the Municipal Corporation could not have proceeded on 29th October, 2018 on the assumption noted above. The notice at page 138 of the paper book assumes that neither any cause has been shown nor any penalty has been paid. As far as the penalty is concerned, we have taken care of that aspect in the order passed today in the companion writ petition (Writ Petition No. 1940 of 2018).

3. As far as the construction is concerned, we are of the opinion that the later notice, copy of which is at page 138 of the paper book, could not have been issued without considering the cause shown by the petitioner and without giving the petitioner

an opportunity to invoke section 53(3) of the Maharashtra Regional and Town Planning Act, 1966. Once we take the above view, then, even this writ petition must succeed. It succeeds to a limited extent. The communication at page 138 of the paper book (Exhibit 'V') dated 29th October, 2018 is quashed and set aside. However, the notice dated 17th October, 2018 stands and the reply thereto given by the petitioner shall now be considered as a composite request and once the petitioner makes that request, the Municipal Corporation has to deal with the same and pass appropriate orders in accordance with law. Let the Municipal Corporation do that as expeditiously as possible, but until it passes the orders in terms of our directions, no coercive action should be taken against the petitioner.

4. The writ petition is disposed of in terms of the above.

(G.S.PATEL, J.)

(S.C.DHARMADHIKARI, J.)