

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No. 4239 of 2019
Decided on : 20.02.2019**

ATC Infrastructure Service Private Limited

... Petitioner(s)

Versus

State of Haryana and others

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL**

PRESENT: Mr. Aman Bansal, Advocate
for the petitioner(s).

AJAY KUMAR MITTAL, J. (Oral)

Petitioner has approached this Court under Article 226 of the Constitution of India, seeking a writ of *Certiorari*, for setting aside the impugned bill dated 17th January, 2019 (Annexure P-7), impugned demand letter bearing Memo No. MCR/ZTO/2019/81, dated 17th January, 2019 (Annexure P-8) and the impugned order dated 17th January, 2019, issued under Section 130 of the Haryana Municipal Corporation Act, 1994 (Annexure P-9), issued by respondents No.2 and 3, being illegal, arbitrary and unsustainable as per law. Further, petitioner has sought writ of *Mandamus*, for issuing direction to respondents No.1 to 3 to refund an amount of Rs. 3,10,716/- along with interest, which is stated to be deposited with the Corporation by the petitioner-company under protest.

2. A few facts necessary for adjudication of the present writ petition as narrated therein may be noticed. The petitioner i.e. ATC Infrastructure Services Pvt. Ltd. (previously ATC Infrastructure Services Ltd. and erstwhile Idea Cellular Infrastructure Services Ltd.) is a company incorporated under the provisions of the Companies Act, 1956 and is engaged in providing the infrastructure services

pursuant to the registration certificate viz “Infrastructure Provider Category-I” (IP-I) by the Department of Telecommunication, Government of India ('DoT') for providing passive infrastructure services which *inter alia* includes installing and maintain telecom towers installation of Dark Fibers, Duct Space and other passive Telecom Infrastructure and providing the same to the Telecommunication Service Provides i.e. Mobile Operators, who granted the licence under Section 4 of the Indian Telegraph Act, 1885 (Annexure P-1). M/s Escotel Mobile Communications Ltd., a company incorporated on 25.05.1995, changed its name to M/s Idea Mobile Communication Ltd. On 01.07.2004 and thereafter, M/s Idea Mobile Communication Ltd. was amalgamated to Idea Cellular Ltd. Further, the Idea Cellular Limited including towers was sold to Idea Cellular Infrastructure Services Limited (ICISL) vide Business Transfer Agreement on slump sale basis. The Idea Cellular Infrastructure Services Limited had further changed its name to ATC Infrastructure Services Limited w.e.f. 26.07.2018 and after that the ATC Infrastructure Services Limited was converted into ATC Infrastructure Services Pvt. Ltd. w.e.f. 24.12.2018 i.e. the present petitioner-company (Annexures P-3 & P-4). Now, the brief facts as narrated in the petition are that the petitioner company which includes its predecessor companies as detailed above, entered into an agreement with respondent No.4, whereby, they have taken the land situated at Mustkil No. 86, Killa No.10, Rohtak, Tehsil and District Rohtak, Haryana, for installing the tower on the said land for providing the cellular services. The petitioner company had already obtained the permission for installing the mobile communication tower from the Eductive Officer, Rohtak Municipality, Rohtak (Haryana) on 13.01.1998 (Annexure P-5). The renewal fee/permission of the tower has been renewed from time to time as per the applicable policies, the said fact is also clear from the letter for permission dated 22.07.2004 (Annexure P-6)

received from the respondent authorities. The permission granted to the petitioner company is valid till date as well as the agreement with the performant respondent No.4 has also been renewed from time to time by the petitioner company. It has been further averred in the petition that despite having all the requisite permissions and deposition of prescribed fees by the petitioner company, respondents No.2 & 3 issued the impugned property tax bill dated 17.01.2019 and raised the issue of tower permission fee in its aforesaid letter dated 17.01.2019. On the same date, respondents No.2 & 3 further issued the impugned order whereby the property Tax of ₹ 310716/- was demanded from respondent No.4. The officials of respondents No.2 & 3 also threatened that the proceedings of sealing the property/attachment and sale of the property will be initiated in case the property tax as mentioned above is not deposited. The copies of the impugned tax bill, letter and order of the same date i.e. 17.01.2019 are attached with the writ petition as Annexures P-7 to P-9 respectively. On 29.01.2019 when respondent No.4 informed the petitioner company about the impugned notices and thereafter, the officers of the petitioner company contacted with respondents No.2 & 3. It was brought to the notice of respondents No.2 & 3 that the property tax has been assessed considering the Mobile Communication tower as a commercial shop situated on ground floor of a building, whereas, in the present case, there is no commercial shop at the property in question and only a ground based mobile communication tower of the company is installed, but all in vain. The respondent authorities didn't bother to hear the material submissions made by the officials of the petitioner company and didn't admit that the impugned property tax bill, impugned letter and impugned orders are self contradictory to each other and suffers from procedural errors and the respondents authorities are acting in a mala fide manner.

The petitioner company through letter dated 01.02.2019 (Annexure P-10) has

deposited a sum of ₹ 3,10,716/- under protest, with the respondent authorities to avoid any kind of disturbance to the telecommunication in the area. Due to the aforesaid action of the respondent authorities, the petitioner-company approached this Court without admitting that the property tax is susceptible to the petitioner-company. Hence, this writ petition.

3. Learned counsel for the petitioner submitted that for the relief claimed in the writ petition, letter dated 01st February, 2019 (Annexure P-10) was sent to respondent No.3-Corporation, but no decision thereon has been taken by the respondent-Corporation so far. He, however, prayed that direction be issued to respondent No.3 to take a decision on the aforesaid letter expeditiously in a time bound manner.

4. After hearing learned counsel for the petitioner, perusing the averments made in the writ petition and without expressing any opinion on the merits of the case, while disposing of the writ petition we direct respondent No.3 to decide the letter dated 01st February, 2019 (Annexure P-10), in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner, within a period of 15 days from the date of receipt of certified copy of the order.

(AJAY KUMAR MITTAL)
JUDGE

(MANJARI NEHRU KAUL)
JUDGE

February 20, 2019
J.Ram

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>