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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELATE JURISDICTION
WRIT PETITION NO.752 OF 2013

Reliance Communication Ltd. & Ors. ...Petitioners
vs.

The Bhivandi Nizampur City
Municipal Corporation & Anr. ...Respondents

Mr.V.A.Thorat, Senior Advocate with Dr.B.Saraf and
Ms Priyanka Joshi i/b M/s.K.Ashar and Company for
the Petitioners

Mr.N.R.Bubna for the respondents

CORAM : A.S.OKA, &
A.R.JOSHI, JJ.
DATE : APRIL 30,2013

P.C.:

1 Heard the learned senior counsel for the petitioners and the learned counsel for the respondents. The learned senior counsel for the petitioners submits that the challenge in this petition under Article 226 of the Constitution of India is confined to the demand notices at Exh.A and B to the extent to which a demand is made for penalty under section 267-A of the Maharashtra Municipal Corporations Act,1949. The learned senior counsel for the petitioners has invited our attention to various challenges in this petition. He pointed out that section 267-A will have no application as the telecommunication towers installed by the petitioners cannot be said to be a building or a part of a building and therefore, it

does not require prior permission of the Planning Authority. Moreover, no property and other taxes are payable in respect of the same.

2 Perusal of the impugned notices show that the Municipal Corporation has come to the conclusion that the erection of the telecommunication tower is illegal and therefore, the petitioners are liable to pay penalty equal to twice the property taxes leviable on the mobile tower.

3 It is not necessary for this Court to go into larger issue. The admitted position is that before passing a drastic order of imposing penalty, no opportunity of being heard has been granted to the petitioners. The procedure contemplated by sub-section (2) of section 287-A has not been followed. Only on these grounds, we are inclined to set aside the impugned demand notices under section 267-A of the said Act. It will be open for the respondents to follow proper procedure so that the the petitioners can show cause as to why penalty under section 267-A should not be imposed. It will be always open for the petitioners to urge the contentions which are raised in this petition. The demand, if any, shall be made by the respondents only after giving an opportunity of being heard to the petitioners.

4 Hence, we pas the following order:

(I) Impugned demand notices at Exh.A and B

stand quashed and set aside only in so far as the same relate to the demand of penalty made under section 267-A of Maharashtra Municipal Corporations Act, 1949;

(II) It will be open for the respondents to follow the procedure as contemplated by sub-section (2) of section 267-A of the said Act. It is obvious that demand for penalty,⁴ if any, shall be made after following principles of natural justice;

(III) All contentions raised by the petitioners are kept open which can be agitated before the first respondent-Municipal Corporation;

(IV) In the event a demand is made by the respondents of the penalty under section 267-A of the said Act, we direct that no coercive action shall be taken against the petitioners on the basis of the demand for a period of two weeks from the date on which the same is served to the petitioner;

(V) The petition is disposed of on above terms.

(A.R.JOSHI, J.)

(A.S.OKA, J.)