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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION No. 913 of 2020

Abdul Sattar Haji Mohammad Merchant ..Petitioner.
Vs
State of Maharashtra through through
the Principal Secretary & Ors ..Respondents.

Dr. Virendra Tulzapurkar, Senior Advocate with Sandeep Parekh,
Mr. Ayaz Bilawala along with Prevy Parekh and Dhanashree
Gaikaiwari i/by Bilawala & Co. for the Petitioner.

Mr. Manish Upadhyay, AGP for the Respondent-State.

CORAM :- B. P. COLABAWALLA, J.
DATED :- 19th MARCH, 2020.

P.C. :-

1. This matter is listed at Sr.No.901 on the Supplementary Board today. In view of the extreme urgency the matter is taken up for consideration.

2. Considering that the Writ Petition is not yet admitted and there is no objection on behalf of the Respondents, leave is granted to amend prayer clause (c) of the Writ Petition by deleting the words “and order dated 20th January,2020 being Exh. “R” hereto”. The

amendment to be carried out forthwith. Re-verification is dispensed with.

3. This Petition challenges the order dated 23rd December, 2019 (**Exh. "O"**) passed by the Maharashtra Revenue Tribunal, Mumbai (M.R.T.) in Appeal No.TNC/Mum/5/2018 along with the order dated 21st March,2017 being "**Exh. "A"**" and 4th May,2017 being **Exh. "J"** passed by Respondent No.3 (the Collector Mumbai City).

4. The principal ground of challenge in the present Petition is that the order passed by Respondent No.3 and which was affirmed in Appeal, is by invoking the provisions of Section 37A of the Maharashtra Land Revenue Code, 1966 and calling upon the Petitioner Trust to pay certain amounts to the Government. Dr. Tulzapurkar, the learned Senior Counsel appearing on behalf of the Petitioner, has brought to my attention that on a plain reading of Section 37A, the same would not apply in the facts of the present case as there was merely a licence that was created in favour of four Telecom Companies for setting up of Mobile Towers. In such circumstances, Section 37A can never be attracted, was the submission. He submitted that this issue is no longer res integra

and is covered by a decision of a Division Bench of this Court (Pradeep Nandrajog, CJ & Smt. Bharati Dangre,J) dated 12th February, 2020 passed in Writ Petition No.448 of 2020. He submitted that this decision clearly holds that a Leave and Licence, be it either for residential, commercial or industrial purpose, would not be subject to any levy under Section 37A of the Maharashtra Land Revenue Code.

5. Dr. Tulzapurkar submitted that the M.R.T has itself granted a stay to its own order which is operative till tomorrow (i.e. 20th March,2020) and submits that this stay be extended till the above Writ Petition is heard for admission.

6. The learned AGP appearing on behalf of all the Respondents states that he has just been served with the papers and proceedings in the above Writ Petition and therefore seeks time to file an affidavit-in-reply.

7. Having heard both sides and going through the papers and proceedings, I think a prima facie case is made out for continuing the stay that was granted by the M.R.T. vide its order

dated 23rd December, 2019 and which was extended by its order dated 20th January, 2020.

8. In these circumstances, there will be ad-interim relief in terms of amended prayer clause (c) of the Writ Petition which reads thus :-

“(c) that pending the final hearing and disposal of the present Writ Petition, the operation and effect of the Orders dated 21st March, 2017 being Exhibit- “A” hereto along with the Order dated 4th May, 2017 being Exhibit “J” passed by Respondent No.3 and 23rd December, 2019 being Exhibit “O” passed by the learned President, Maharashtra Revenue Tribunal, Mumbai in Appeal No.TNC/Mumbai/5/2018 along with orders dated 21st March,2017 and 4th May, 2017 be stayed.”

9. Place the Writ Petition for admission in usual course. The Respondents shall file their affidavit-in-reply, if any, within a period of four weeks from today.

10. All parties are directed to act on an ordinary copy of this order duly authenticated by the Associate of this Court.

(B.P. COLABAWALLA, J.)