

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 35 OF 2017

BICHOLIM MUNICIPAL COUNCIL, THR.
ITS CHIEF OFFICER.,

... Petitioner

Versus

DR. MITHUN M. MAHATME AND ANR.,

... Respondents

Mr. Sandesh D. Padiyar, Advocate for the petitioner.

Mr. Cleofato Almeida Coutinho, Advocate for respondent no. 1.

Coram:- C. V. BHADANG, J.

Date:- 15th June, 2017

ORAL ORDER:

The petitioner is challenging the Order dated 20.04.2016 passed by the learned Director of Urban Development at Panaji by which the demand of house tax raised by the petitioner - Municipal Council is held to be unlawful. It appears that the respondent who is running a nursing home in the name and style of Mahatma Nursing Home was sought to be charged at commercial rate.

2. It is contented by the learned Counsel for the petitioner that the proceedings before the learned Director were without jurisdiction. It is submitted that the Impugned Order also does not show as to under what legal provisions the learned Director has assumed jurisdiction. Learned Counsel points out that the petitioner has statutory remedy under Section 164 of the Goa

Municipality Act, of filing an appeal before the learned Judicial Magistrate First Class. It is pointed out that under Section 167 of the said Act all other proceedings challenging the demand of taxes, are barred.

3. Learned Counsel appearing for the respondent no. 1, in all fairness, does not dispute the proposition that the appropriate remedy was to approach the learned Magistrate in an appeal under Section 164 of the Act. The learned Counsel for the respondent no.1 states that the respondent no. 1 shall file the Appeal within three weeks from today.

4. In such circumstances, by consent of parties following Order is passed:

- i. The petition is allowed.
- ii. The Impugned Order is hereby set aside.
- iii. The petitioner shall file an appeal under Section 164 of the Act, if so advised, within three weeks from today.
- iv. All the rival contentions about the applicability of the Limitation Act and/or any of the provisions contained therein, are left open.

- v. The petition is disposed of in the aforesaid terms.

C. V. BHADANG, J.

msr