

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO. 458 OF 2017**

KHR Hospitality India Ltd., Having office at
Utorda, Salcete, Goa, through its Authorized
Signatory,

Mr. Sanjay Srivastava, son of
Rajendraprasad, age 48 years, Occ. Service,
Married, Indian National, Resident of F-6,
Sunshine Apartment, Shantinagar, Navelim,
Margao, Goa 403 707.

.... Petitioner

Versus

Village Panchayat of Majorda-Utorda-
Calata, through its Secretary, office of the
Village Panchayat, of Majorda-Utorda-
Calata, Majorda-Utorda, Goa 403 721.

.... Respondent

Mr. Shivan Desai, Advocate for the Petitioner.

Mr. Shailesh Redkar, Advocate for the Respondent.

CORAM:- C.V. BHADANG, J.

DATE:- 19th JUNE, 2017.

ORAL JUDGMENT:

Rule made returnable forthwith. The learned
Counsel for the respondent, waives service. Heard finally by
consent of parties.

2. The petitioner is challenging the judgment and order
dated 17.05.2013, passed by the Block Development Officer

(BDO), by which the appeal filed by the petitioner purportedly under Section 201-A of the Goa Panchayat Raj Act, 1994 (the Act, for short), challenging the demand notice dated 05.01.2013, issued by the respondent, has been dismissed, as being not maintainable. The said judgment and order has been confirmed by the learned Deputy Director of Panchayats on 17.11.2015 and subsequently, by the learned District Judge vide judgment and order dated 19.04.2017 passed in Civil Revision Application No. 51/2015.

3. The record discloses that on behalf of the respondent, an objection was raised that the demand notice has to be challenged, by way of an appeal under Section 155 of the Act read with Rule 5 of the Goa Panchayat Raj (Imposition of taxes, fees and other dues) Rules, 1998 (Rules of 1998, for short). The Authorities below have held that the appeal filed under Section 201-A of the Act, was not maintainable.

4. Shri Desai, the learned Counsel for the petitioner points out that it was urged before the learned BDO that the Appellate Authority, both, under Section 155 of the Act read with Rule 5 of the Rules of 1998, as well as the Appellate Authority under Section 201-A of the Act, is the same and as

such, there was no difficulty in entertaining the appeal. Shri Desai, the learned Counsel for the petitioner, on instructions, states that the petitioner would give up the claim that the appeal is filed under Section 201-A and would prefer to continue the remedy as the one provided under Section 155 of the Act read with Rule 5 of the Rules of 1998. It is submitted that the matter may be sent back to the learned BDO for deciding the appeal on merits in accordance with law.

5. Shri Redkar, the learned Counsel for the respondent states that all along, it has been the case of the petitioner that the appeal was filed under Section 201-A of the Act. Mr. Redkar, the learned Counsel for the respondent, in all fairness, alternatively submits that in the event the matter is sent back, the rival contentions on merits be kept open.

6. I have carefully considered the rival circumstances and the submissions made. It does appear that the appeal challenging the demand notice lies before the BDO under Section 155 of the Act read with Rule 5 of the Rules of 1998. The mere label under which the challenge is filed may not be decisive. More so, when the Authority which can entertain the appeal under Section 201-A, as well as Section 155 of the Act

read with Rule 5 of the Rules of 1998 is the same. In my considered view, the ends of justice can be met, if, the matter is remitted back to the BDO with a direction to treat the appeal under Section 155 of the Act read with Rule 5 of the Rules of 1998 and decide the same on its own merits, in accordance with law, after hearing the parties.

7. Hence, the following order is passed:

ORDER

(a) The petition is partly allowed.

(b) The impugned orders are hereby set aside.

(c) The appeal filed by the petitioner being Case No. 3/u/s 201(A)(1)/BDO/MOR/2012-13, is remitted back to the learned BDO for deciding it afresh on merits, in accordance with law after hearing the parties.

(d) It is made clear that the appeal shall be treated as the one under Section 155 of the Act read with Rule 5 of the Rules of 1998.

(e) Parties to appear before the learned BDO on 10.07.2017.

(f) Rival contentions of the parties on merits are left open.

(g) The amount of Rs.7,03,500/- lying with this Court shall be returned to the petitioner alongwith interest, if any. In the event, the petitioner insists for grant of stay in appeal, it will be open for the BDO to impose appropriate condition as to deposit of the amount.

(h) Rule is made absolute in the aforesaid terms, with no order as to costs.

C. V. BHADANG, J.

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