IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 510 OF 2014

Sanjay Ghanshyam Dessai, major of age, Indian National, r/o H. No. 76, Vailawada, Xelvona, Goa. … Petitioner

Versus

1. Curchorem-Cacora Municipal Council, through its Chief Officer, having office at Municipal Building, Curchorem, Goa.
2. The Chief Officer, Curchorem-Cacora Municipal Council, having office at Municipal Building, Curchorem, Goa. … Respondents

WITH
WRIT PETITION NO. 511 OF 2014

1. Ghanashyam R. Kamat, of major age, Indian National,
2. Smt. Kunjan G. Kamat, of major age, Indian National,
Both r/o H. No. 2316, 'Meghkunj', 2^{nd} Floor, Curchorem, Goa. … Petitioners

Versus

1. Curchorem-Cacora Municipal Council, through its Chief Officer, having office at Municipal Building, Curchorem, Goa.
2. The Chief Officer, Curchorem-Cacora Municipal Council, having office at Municipal Building, Curchorem, Goa. … Respondents

WITH
WRIT PETITION NO. 512 OF 2014

1. Kashinath Damodar Mopkar, of major age, Indian National,
2. Smt. Sandhaya K. Mopkar, of major age, Indian National,
Both r/o H. No. 340, Bebquegal, Curchorem, Goa. … Petitioners

Versus

1. Curchorem-Cacora Municipal Council, through its Chief Officer, having office at Municipal Building, Curchorem, Goa.
2. The Chief Officer, Curchorem-Cacora Municipal Council, having office at Municipal Building, Curchorem, Goa. … Respondents

WITH
WRIT PETITION NO. 513 OF 2014

1. Ghanashyam R. Kamat, of major age, Indian National,
2. Smt. Kunjan G. Kamat, of major age, Indian National,
Both r/o H. No. 2316, 'Meghkunj', 2nd Floor, Curchorem, Goa. … Petitioners

Versus

1. Curchorem-Cacora Municipal Council, through its Chief Officer, having office at Municipal Building, Curchorem, Goa.
2. The Chief Officer, Curchorem-Cacora Municipal Council, having office at Municipal Building, Curchorem, Goa. … Respondents

WITH
WRIT PETITION NO. 514 OF 2014

Bhavani Shankar alias Shankar N. Rao, major of age, Indian National, r/o Flat No. SF9, 2nd floor, Ramalayam, Bebquegal, Curchorem, Goa. … Petitioner

Versus

1. Curchorem-Cacora Municipal Council, through its Chief Officer, having office at Municipal Building, Curchorem, Goa.
2. The Chief Officer, Curchorem-Cacora Municipal Council, having office at Municipal Building, … Respondents

Curchorem, Goa.

WITH
WRIT PETITION NO. 515 OF 2014

1. Ghanashyam R. Kamat, of major age, Indian National,
2. Smt. Kunjan G. Kamat, of major age, Indian National,
   Both r/o H. No. 2316, 'Meghkunj', 2nd Floor, Curchorem, Goa. ... Petitioners

Versus

1. Curchorem-Cacora Municipal Council, through its Chief Officer, having office at Municipal Building, Curchorem, Goa.
2. The Chief Officer, Curchorem-Cacora Municipal Council, having office at Municipal Building, Curchorem, Goa. ... Respondents

WITH
WRIT PETITION NO. 516 OF 2014

1. M/s Mopkar Real Estates LLP, A Limited Liability Partnership, Incorporated under the Limited Liability Partnership Act, 2008 having registered office at Mopkar Building, Curchorem, Goa, represented by its Director and Authorized Representative Shri Kashinath Damodar Mopkar, major, Indian National, r/o H. No. 340, Mopkar Building, Bebquegal, Curchorem-Goa.
2. Kashinath Damodar Mopkar, of major age, Indian National, r/o H. No. 340, Mopkar Building, Bebquegal, Curchorem, Goa. ... Petitioners

Versus

1. Curchorem-Cacora Municipal Council, through its Chief Officer, having office at Municipal Building, Curchorem, Goa.

2. The Chief Officer, Curchorem-Cacora Municipal Council, having office at Municipal Building, Curchorem, Goa. … Respondents

WITH
WRIT PETITION NO. 517 OF 2014

1. Ghanashyam R. Kamat, of major age, Indian National,
2. Smt. Kunjan G. Kamat, of major age, Indian National,
Both r/o H. No. 2316, 'Meghkunj', 2nd Floor, Curchorem, Goa. … Petitioners

Versus

1. Curchorem-Cacora Municipal Council, through its Chief Officer, having office at Municipal Building, Curchorem, Goa.
2. The Chief Officer, Curchorem-Cacora Municipal Council, having office at Municipal Building, Curchorem, Goa. … Respondents

WITH
WRIT PETITION NO. 518 OF 2014

Alexio P. Fernandes, major of age, Indian National, r/o H. No. 241, Maria Villa, Somulwada, Cacora, Goa. … Petitioner

Versus

1. Curchorem-Cacora Municipal Council, through its Chief Officer, having office at Municipal Building, Curchorem, Goa.
2. The Chief Officer, Curchorem-Cacora Municipal Council, having office at Municipal Building, Curchorem, Goa. … Respondents

WITH
WRIT PETITION NO. 519 OF 2014

Bhavani Shankar alias Shankar N. Rao, major of age, Indian National, r/o Flat … Petitioner

No. SF9, 2nd floor, Ramalayam, Bebquegal, Curchorem, Goa.

Versus

1. Curchorem-Cacora Municipal Council, through its Chief Officer, having office at Municipal Building, Curchorem, Goa.
2. The Chief Officer, Curchorem-Cacora Municipal Council, having office at Municipal Building, Curchorem, Goa. … Respondents

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Mr. Nitin Sardessai, Senior Advocate with Mr. Shivam Fadte and Mr. Kabir Sabnis, Advocates for the Petitioners in all the Petitions.

Mr. Ashwin D. Bhobe with Ms. Anushka Kuvelkar, Advocates for the Respondents in all the Petitions.

Coram:- **M. S. SONAK &**
M. S. JAWALKAR, JJ.

Date:- **16th MARCH 2021**

ORAL JUDGMENT : (per M.S. Sonak, J.)

Heard Mr. Nitin Sardessai, the learned Senior Advocate, who appears along with Mr. Shivam Fadte and Mr. Kabir Sabnis for the petitioner, and Mr. Ashwin D. Bhobe appearing along with Ms. Anushka Kuvelkar for the respondents, in all these Petitions.

2. The learned Counsel for the parties agree that this batch of Petitions can be disposed of by a common judgment and order since the issues raised are identical and even the

facts are quite similar. They also request that Writ Petition No. 510/2014 may be treated as the lead matter. Accordingly, we proceed to dispose of all these Petitions by a common judgment and order by treating Writ Petition No. 510/2014 as the lead matter.

3. In all these Petitions, the challenge is to the resolution dated 28.11.2012, passed by the Curchorem-Cacora Municipal Council (Council) purporting to levy property tax on properties/premises leased out to Banks and Financial Institutions in the first instance. The petitioners have also challenged the respective demand notices issued to them based on this resolution dated 28.11.2012 (impugned resolution). For example, the challenge in Writ Petition No. 510/2014 is to the demand notice dated 22.07.2014.

4. On 14.01.2015, Rule was issued in the lead Petition, but all contentions of all parties on merits, including on the question of maintainability of the Petition was left open. The interim order made on 12.08.2014 was also directed to continue until further orders. On 12.08.2014, the parties were directed to maintain the status quo, subject to the petitioners depositing in this Court the property tax of the current year, in terms of demand notices impugned in the respective Petitions. Liberty was also granted to the petitioners to apply for further

interim relief, in case of any subsequent demands in terms of the impugned resolution. No further demands were issued by the Council and therefore, no occasion arose for seeking further interim relief in these matters.

5. Mr. Sardessai, the learned Senior Advocate for the petitioners submits that the impugned resolution was never passed at the special meeting convened by the Council, even though, Rule 4 of the Goa, Daman, and Diu Municipalities (Consolidated Property Tax) Rules, 1971 (said Rules) requires such resolution to be passed only in a special meeting. He submits that such resolution was never published for the municipal area together with notice specifying only the date on which the tax is to be levied. He submits that this is in clear breach of Rule 4(2) of the said Rules. He submits that all taxing statutes have to be construed strictly and since, this is a case of total non-compliance, both, the impugned resolution and the impugned demand notice based thereon, are liable to be set aside.

6. Mr. Sardessai submits that even otherwise, there are serious factual errors in the determination of the rateable value and the consequent tax demand. He pointed out that for example, the lease deed by which the petitioners leased out the premises in question to the Banks, indicated the monthly rent

of Rs.44,000/-, but the assessment has been done and the rate is determined based on the monthly rent of Rs.1 lakh. He submits that all these errors are apparent on the face of the record, which make the impugned demands quite unsustainable. He submits that these Petitions may be allowed and Rule therein may be made absolute.

7. Mr. Bhobe, the learned Counsel for the respondents submits that the preliminary objection as to the maintainability of these Petitions was expressly kept open and these Petitions may not be entertained because the petitioners have an alternate and efficacious remedy available to them. He points out that the impugned resolution could have been questioned under Section 293 of the Goa Municipalities Act, 1968 (said Act) by filing appropriate proceedings before the Director of Municipal Administration and Urban Development. He points out that even to challenge the impugned demand notices, an Appeal is provided to the Magistrate under Section 164 of the Act. He submits that since an alternate and efficacious remedy is available to the petitioners, this Court, may not entertain these Petitions.

8. Mr. Bhobe submits that there are no errors in the impugned resolution or the impugned demand notices. He submits that there is no significant difference between a special

meeting and an ordinary meeting. He points out that more than requisite notice was given to the Councillors and these are the matters where the impugned resolution was passed almost unanimously. He submits that the petitioners cannot take undue advantage of the slight error in the publication of the notice. He submits that the said publication was not mandatory as the said Rules never contemplated further objections, based on the publication of the said Rules. He submits that from 2014 onwards, no property tax has been paid by the petitioners, even though, the State Government has approved the minimum rate of 8% and maximum rate of 10% of the rateable value. For all these reasons, he submits that all these Petitions be dismissed and/or the petitioners be relegated to the alternate remedy.

9. The rival contentions now fall for our determination.

10. At the time of admission of these Petitions, no doubt, the respondents were granted the liberty to urge the issue of maintainability. Accordingly, we permitted Mr. Bhobe to urge the issue of maintainability, even though, ordinarily, the plea of availability of alternate remedy is not entertained at the stage of final hearing of the Petitions, which were admitted way back in the year 2015. However, upon consideration of the submissions made by Mr. A.D. Bhobe, we do not feel that this is a fit case to relegate the petitioners to the alternate remedy at

this stage. This is because the material on record very clearly makes out a case of non-compliance with the requirement of publication of the impugned resolution as required by Rule 4(2) of the said Rules.

11. Therefore, even if, the petitioners are relegated to the alternate remedy, the Appellate Authority will have to necessarily hold that there was no publication as contemplated under Rule 4(2) of the said Rule and as a consequence, interference with the impugned demand notice is required. At this point, no useful purpose would be served, by relegating the petitioners to the alternate remedy under the said Act.

12. Besides, the mere availability of the alternate remedy does not render the Petitions, as, not maintainable. The Petitions are very much maintainable. The Writ Court may not, as a self-imposed rule, exercise its extraordinary jurisdiction, if it is pointed out that the petitioners have an equally efficacious alternate remedy under the statute. For all these reasons, we do not accept the contentions of Mr. Bhobe on the aspect of maintainability of these Petitions.

13. Rule 4 of the said Rules, which prescribes the procedure preliminary to imposing the tax reads as follows:

> *"(1) Every Council, other than the one to which rule 5 applies, shall by a resolution passed at a special meeting convened, within thirty days from the date of coming into force of these rules (or such further period or period as the Government may, in case allow) decide to levy the tax on lands and on buildings and approve the rate at which the tax shall be levied.*
>
> *(2) Within seven days of the passing of such resolution the Council shall publish in the Municipal area the resolution together with a notice specifying the rate at which and the date from which the tax shall be levied:*
>
> *Provided that, such date shall not be less than thirty days from the date of publication of the notice and shall not be any date other than the first day of the quarter immediately following the expiry of the said period of thirty days, that is to say, the first day of April, the first day of July, the first day of October or the first day of January, as the case may be, and if the tax is to be levied from any day other than the first day of April, it shall be leviable by the quarter till the first day of April then next ensuing."*

14. If the impugned resolution is perused, then, it states that the same was passed in the ordinary Council meeting held on 10.08.2012. Rule 4(1) requires the resolution to be passed at a special meeting. However, according to us, this is not some infirmity, which goes to the root of the matter, at least, in the peculiar facts of the present case. Section 78 of the said

Act makes provision concerning the meetings of the Council. This section provides that there shall be held six ordinary meetings in each year for disposal of general business. The Chairperson may, whenever he thinks fit and shall, upon the written request of not less than one-third of the total number of Councillors and on a date not later than fifteen days after the receipt of such request by the Chairperson call a special meeting. Seven clear days' notice is required of an ordinary meeting and three clear days' notice of a special meeting. There is a provision to call a special meeting with only one day's notice, in case of emergency. The quorum necessary for the ordinary meeting shall be one-third of the total number of Councillors and at a special meeting, it shall be one-half of the total number of Councillors.

15. In the facts of the present cases, there is no complaint, whatsoever of any short notice. The impugned resolution indicates that all 12 Councilors attended the meeting and even supported the resolution. This means that not only the quorum of more than 50% was available, but, further, the impugned resolution was passed by all the Councillors i.e. 12 Councillors unanimously.

16. With the aforesaid peculiar facts, it is not possible to hold that because the impugned resolution was passed in an

ordinary meeting, the same is legally infirm or ultra vires. Therefore, the impugned resolution cannot be struck down on the ground that the same was passed in an ordinary meeting and not a special meeting in the facts of these cases.

17. Rule 4(2) of the said Rule then contemplates the publishing of the resolution passed by the Council in the municipal area together with the notice specifying the rate at which and the date from which the tax shall be levied. The petitioners have made specific pleadings of the non-compliance of this requirement by urging that the impugned resolution was never published in the municipal area.

18. The Chief Officer of the Council has filed an affidavit denying the allegations of non-compliance. The affidavit states that after the impugned resolution dated 28.11.2012 was passed, a public notice dated 07.01.2013 was issued in local daily Gomantak and Gomantak Times dated 08.01.2013 "*indicating the decision of the respondent no. 1 to levy property tax*". The affidavit proceeds to state that in pursuance of the aforesaid public notice dated 07.01.2013, objections were received from the occupants of the property and such objections were disposed of by respondent no. 1 vide order dated 14.02.2013 and on some other dates. The affidavit states that despite the dismissal of the objections, none of the

petitioners even bothered to challenge the impugned resolution though, they had said that they would challenge the same. Therefore, the Council issued the impugned demand notices.

19. Since, the plea taken by the Council is that there was compliance of Rule 4(2) of the said Rules, in the sense that the impugned resolution was published vide notice dated 07.01.2013, in the local daily Gomantak and Gomantak Times, the only issue which requires consideration is whether there was indeed such compliance.

20. The notice dated 07.01.2013 as published in daily Gomantak is found on record at Exhibit 'D' of the paper book of Writ Petition No. 510/2014. This public notice reads as follows:

Tel: 2650547, Fax - 2654168.
Website :- ccmccurchoremgoa.webstarts.com
Email : Curchoremcacora.municipalcouncil@yahoo.com
Office of the CURCHOREM - CACORA MUNICIPAL COUNCIL CURCHOREM – GOA

No.CCMC/Admn/Notice/2012-13/87 Dated: 07/01/2013.

PUBLIC NOTICE

WHEREAS, this Council vide Resolution No.4 of the Council meeting held on 21/05/2012, has resolved to increase the House tax at the rate of Rs.3/- per Sq.mtr. for laterite masonary load bearing structure meant for residential purpose and Rs.20 per Sq.mtr. in respect of building meant for commercial purpose.

AND WHEREAS, the Municipal Act empowers the

Municipal Council to levy property tax on Land and Buildings at the minimum range of 8% of the rateable value, leviable for the owner of the building after deducting 10 % from the annual rental value towards allowance lieu of repairs and maintenance as required under section 110 of the Municipal Act.

AND WHEREAS, as per section 120 of the Municipalities Act, 1968, assessment of every property in the Municipal area should be done not less than once in four years and the same shall remain in force for four years, which is not done by this Council for the last 12 years.

AND WHEREAS, it is observed that the revenue Recovery of this Council is very poor and therefore requires to be recovered on war-foot basis. This Council will therefore revise the old house tax based on Council decision dated 21/05/2012 w.e.f. 1/04/2013.

Therefore all the owners/occupants are requested to pay their house tax, trade tax, property tax, signboard tax, rent due to the Municipality well before 31/03/2013, failing which interest will be levied on the revenue arrears at the rate of 12 percent per annum.

Any person having any objection to the above may file written objection to the Chief Officer within 15 days from the date of publication of the above notice, failing which the above notice will be made effective from the expiry of thirty days from today.

seen *Sd/-* *Sd/-*

PATRICIA FERNANDES *AGNELO A. FERNANDES*

CHAIRPERSON *CHIEF OFFICER*

Curchorem-Cacora Municipal Council

Curchorem-Goa.

21. The above public notice refers to resolution no. 4 passed by the Council in its meeting dated 21.05.2012. The impugned resolution, in this case, is resolution no. 167 passed by the Council in its meeting held on 28.11.2012. This is not some case of a mere typographical error in stating the correct date. It is not also the case of the Council that this is some case of typographical error which was soon rectified. The record indicates that there was yet another resolution no. 4 dated 21.05.2012 with which we are not concerned in these Petitions. Therefore, the Council published resolution no. 4 dated 21.05.2012 but is now seeking to enforce resolution no. 167 dated 28.11.2012. As such, quite clearly, there was no publication of the impugned resolution no. 167 dated 28.11.2012 and to that extent, there was no compliance with the provisions of Rule 4(2) of the said Rules.

22. Without publication, there was no question of the Council issuing the impugned demand notice dated 22.07.2014. The impugned demand notice dated 22.07.2014 is, therefore, ultra vires and will have to be set aside. Similarly, the demand notices, which are under challenge in connected Petitions, being based on the impugned resolution dated 28.11.2012, which was never published, are also ultra vires and are required to be set aside.

23. However, there is no case made out to set aside the impugned resolution dated 28.11.2012, on the ground that the same was not passed in a special meeting of the Council. Besides, there is no occasion to go into the contention of Mr. Sardessai about factual errors because after publication, if the Council still insists on raising demands on factual errors, the petitioners, can always challenge such demands in accordance with the law.

24. Therefore, these Petitions are liable to be partly allowed. The demand notices in each of these Petitions are quashed and set aside, but no interference is warranted with the impugned resolution dated 28.11.2012.

25. The interim order issued by this Court had eventually restrained the Council from giving effect to the impugned resolution. Therefore, status quo was ordered, and based thereon, it may not have been possible for the Council to publish the impugned resolution in the municipal area together with a notice specifying the date on which the tax is levied. Now that we have held that there is no case made out to interfere with the impugned resolution, we grant the Council seven days to publish the impugned resolution together with notice specifying the rate at which and the date on which the tax shall be levied. It is only if the Council avails of this

opportunity, that the Council will be in a position to demand property tax from the petitioners. The Council will, no doubt, take into consideration even the objections on facts raised by the petitioners, particularly in the context of lease rentals before the issuance of demand notice to avoid any further challenges.

26. Rule in each of these Petitions is partly made absolute to the aforesaid extent. There shall be no order as to costs.

27. All concerned to act based on an authenticated copy of this Order.

M. S. JAWALKAR, J. **M. S. SONAK, J.**

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VAIGANKAR ESHA SAINATH Digitally signed by VAIGANKAR ESHA SAINATH Date: 2021.03.17 17:13:58 +05'30'